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

Vol. 32, No. 1

Meet the New Executive Director for 603 Legal Aid

Sonya Bellafant started as the Executive Director for 603 Legal Aid on May 5 and things are moving forward quickly.



When she isn't working to improve access to legal aid for Granite Staters, you might find Bellafant baking a range of confectionaries in her kitchen for a side business she calls Sweet Pleadings, reading a novel, walking her dogs, or even shooting a game of pool.

Bellafant sat down with the *Bar News* to discuss her career, her family and hobbies, and to explain some of the important objectives she has for 603 Legal Aid.

Interview By Scott Merrill

Where are you from?

I'm from Detroit, Michigan—born and raised. I moved to Nashville five years ago and it's a running joke because, you see, I have an adult daughter and when she graduated from high school she was advised to go away to college and she picked Michigan State. I thought it was important for her to understand that she had all the skills she

needed to navigate this world and in order for her to know that I thought she had to test them without being near her mom. It worked out really well because I got to move to Nashville, where my father was, and I got to see my mom in Atlanta. It was ironic too because after I moved to Tennessee my mother's health declined rapidly after being a two-time breast cancer survivor. I was fortunate and blessed to be able to take care of her in the last few months when she was placed in hospice.

Did your daughter decide to choose law?

I believe she will at some point. I went to law school when she was 4 as a single parent and unfortunately I was always taking her to classes. So, she was taught early on how to argue and debate, and she's the only person I tend to lose to as a result. She's very good.

Why did you become a lawyer?

The practice of law is my second career. I have a degree in journalism. I started working in marketing and advertising, doing campaigns for Chrysler, Plymouth, Eagle, Dodge, then I worked at Kelly Scott Madison in Chicago. Around that time, I was transitioning from my divorce from my daughter's father and there were some issues with the

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The Duckfeet team, from left: Meghan Lien, Rue, Briggs Brady, Justin Brady, and Jamie Rogers

Photo/Scott Merrill

Who Let the Dogs In?

The Legal 'What Ifs' of Pets in the Workplace

By Scott Merrill

2020 was a boon for a lot of dogs and their owners alike. Finding day care or dog walkers was no longer a priority, and animal adoptions flourished.

With adoption numbers strong in the state and people now returning to work, veterinary and animal care specialists say the problem of finding affordable day care—as well as dealing with separation anxiety—is now a real concern.

For those businesses where every day

is, Take Your Dog to Work Day, employment law attorneys are imagining a number of 'what if' situations that could arise in workplaces, and they say employers should consider creating pet policies before issues arise.

"People have become so used to being at home with their pets, and I think you're going to see more employees asking for that workplace perk on a case by case basis," says Lindsay Hamrick, Di-

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Lawsuit Alleges State Doesn't Spend Enough to Address Abuse of Children

By Scott Merrill

The final piece in the case of Anna Carrigan, a former New Hampshire health department worker who received a \$120,000 settlement last year from the state over a whistleblower lawsuit, will be decided by the New Hampshire Supreme Court.

The second portion of the lawsuit was brought to the New Hampshire Superior Court in February 2021 calling for changes at DCYF and claiming the state is not spending enough to protect children from abuse and neglect.

This portion was rejected on its merits by Superior Court Judge Andrew R. Schuman but was appealed to the New Hampshire Supreme Court in May.

The appeal restates what Carrigan's attorney, Michael Lewis, argued in the original lawsuit regarding the state's failure to



uphold the law regarding RSA 169-C, New Hampshire's Child Protection Act created in 1979.

"The statute says that each child shall receive a response from the government upon a report of child abuse and neglect," Lewis said. "Each child means every child. When you have a clear law creating clear

mandates and you have a 2000 case backlog you have illegality."

Lewis says the trial court erred by adding restrictions to state constitutional language that does not exist.

Part I Article 8 of the state constitution confers standing upon taxpayers that are eligible to vote and this gives them the right to challenge illegal spending, Lewis says.

"The trial court concluded that language foreclosed Carrigan's lawsuit because she is challenging the state's failure to spend [enough]," Lewis said. "But there is nothing in the state constitution or its language that would indicate that this sort of challenge is not contemplated by the state constitution language. The conclusion runs completely counter to the substantive obligations that are imposed by 169-C and the

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By Dan Will

I probably wouldn't admit to many out there that I do yoga. Twice most weeks, but keep it on the downlow. That said, I am not one who even understands, much less practices, yoga as anything other than physical exercise and a way to try to remain flexible as the years pile on. If I haven't fallen asleep during shavasana, then I'm already rolling up my mat as my online instructor brings the class to a cross legged seated position, closes the session with three breaths, and says "we bow in gratitude." I don't get it. And it isn't just that I am physically unable to sit cross legged, never mind bow from that position.

We know that gratitude is good for our health. Baylor University psychologist Jo-Ann Tsang describes a "grateful personality," and summarizes the scientific research as, "if you're greater in the grateful personality, you tend to have increased life satisfaction, happiness, optimism, hope, positive emotion, and less anxiety and depression." Not only that, continues Tsang, but gratitude can bring actual, physical benefits, including fewer symptoms of illness and better sleep, lower anxiety, among others.

But gratitude for what, and to whom? My trusty online dictionary defines "gratitude" as, unsurprisingly, "the quality or feeling of being grateful or thankful." That seems to imply a reason and an object, a "for" and a "to." My yoga instructor does not identify for what or to whom I am to be grateful while struggling to achieve the impossible task of sitting cross legged while bowing. So what is her game?

For the spiritually inclined, the "to" is obvious: positive things in life are gifts from a more powerful divinity to whom believers are grateful. Pointing to the Thanksgiving holiday, though, one could argue that gratitude need not be aimed at anyone, even the divine. President Lincoln established Thanksgiving, a national, secular day of thanks, in 1863, for the secular purposes of restoring "the full enjoyment of peace, harmony, tranquility and Union" in our country. But explaining his vision, Lincoln spoke in terms of gratitude to the divine for the "blessings of fruitful fields and healthful skies." Lincoln definitely contemplated a powerful "to."

Writing for the Atlantic, Emma Green describes gratitude as the acknowledgment that life itself depends on the help of others at nearly every turn, and demands that we return the favor. In addition to Joann Tsang quoted above, Green quotes the University of

I Am Grateful

President's Perspective



By Daniel E. Will

Solicitor General,
NH Attorney General's
Office, Concord, NH

Miami's Michael McCullough, who suggests that gratitude is an "evolutionarily beneficial trait." McCullough posits that "gratitude helps people initiate friendships and alliances which then help people survive." Gratitude, in his view, is an important, perhaps necessary, ingredient in humanity's existential cocktail.

Based on my own scientific study, McCullough may be right: in the movie Ice Age, a prehistoric mammoth, saber toothed tiger and sloth form an unlikely alliance to survive the hazards an ice age brings. At various points, Diego the tiger, and Manny the mammoth, express gratitude toward the other for saving him from peril; each responds, by saying, "that's what you do in a herd." At the end of the movie, they are both still alive. This is science even I can understand, and I am surprised McCullough overlooked it. In the end, though, the McCullough theory still rests on a "to" – we have evolved to be grateful to someone.

Happiness expert Arthur Brooks (readers will recognize him from a prior column) sees a strong link between the practice of gratitude and personal happiness. He cites a 2003 study in which one group kept a weekly list of things for which they were grateful, while another group kept a list of the opposite. After just ten weeks, the former enjoyed greater life satisfaction than the latter. So strong is gratitude's connection to happiness that Brooks urges us to practice it even when we don't feel grateful, because going through the motions leads to actual gratitude, which leads to greater happiness.

Brooks goes so far as to maintain a "gratitude list" that he actively reviews and contemplates on his daily walk. To a cynic, that may sound like a contrivance at best and saccharine self-help advice at worst. But the cynics out there might want to consider one of their own, the character Hyde from a popular sitcom several years ago, who passionately declared "I love Camaros, Zeppelin and French fries. In that order." Those familiar with Hyde would not consider him

an overly happy or grateful person. But if even he keeps a gratitude list, maybe there is something to it. As an additional data point, Hyde's list had no "to."

Most of us experience some degree of gratitude for the big ticket items we may be blessed to experience – a healthy family, a prosperous career, our children remaining uninjured when they wreck our cars, things like that. But Professor Brooks urges us to be grateful for what he calls "the small, useless things" we all experience, such as "the smell of fall in the air, the fragment of a song that reminds you of when you were a kid." Looking through Brooks' lens, we see that Hyde has gratitude nailed.

My gratitude list would differ from Hyde's in a few important respects. I'd substitute Chevelles for Camaros, and Springsteen for Zeppelin. I'd definitely include French fries, though, as well as a lot of seemingly mundane things that, as I look back, evoked intense gratitude in me even before my yoga instructor brought the concept front and center. After a close shave with a chain saw several years ago, I had the obvious gratitude that the injury hadn't been worse. But I was absolutely overcome with gratitude from the small and simple gestures – mostly words – from many, many people (most of them members of our association). I'd include the gratitude I felt when I saw a luna moth on the side of the house late one night as I got home from work, and the night with my family and some close friends when I experienced an astonishing display of the Perseids in a giant sky over Moosehead Lake. It seems that our days are filled with items to populate our own gratitude lists. Maybe Hyde and Professor Brooks are on to something.

As I type my last column as your President, and whether or not gratitude requires it, you are my "to." It is now beyond hackneyed to say that this past year was extraordinary. All at once, it created novel challenges in the operation of our bar association and it robbed all of us of what makes our association so rich by depriving us of any opportunity to come together. Throughout, the support and labor of our Executive Director and bar staff, officer group and the Board of Governors has been steadfast and unwavering. And the support from our membership has been no different. As I face another period of significant transition – transition out of bar leadership and into a new career – I find myself grateful for our association and my place in it, and to all of you who comprise it. I'm not saying that any of you land ahead of French fries, but you definitely make the list.

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Confronting Mental Illness With Art

By Scott Merrill

Lynda Michaud Cutrell's passion as an artist came to life shortly after a family member was diagnosed with schizophrenia in 2008. Thirteen years later, Cutrell's creations are sparking conversations and raising questions about mental health in the United States.

The Many Faces of Our Mental Health exhibit was opened at the YMCA in Concord, NH, May 25 and will run until August. The installation features 99 portraits—33 of individuals on the bipolar disorder spectrum, 33 on the schizophrenia spectrum and 33 who love them, as well as sculptures and paintings depicting the genetic structure of our emotional lives.

Cutrell says she envisioned the portraits, which feature celebrities such as Glenn Close, politicians, and a number of everyday people from around the country, as a journalistic project.

"I thought of the project as journalistic but wanted to use images to get the message across," she says. "I found that I could reach beyond the chorus with art."

While mental health statistics are important to demonstrate the severity of the problem, Cutrell says she believes the media often over reports the "devastating effects" of mental illness, forgetting most of those suffering lead fulfilling and successful lives.

Through her work she wants people to understand that symptoms do not define the person. And it is for this reason, she says, that no one in the portraits are named.

Along with the portraits displayed throughout the lobby and hallways of the Concord YMCA, two sculptures depict the mental health spectrum, and six paintings translate U.S. census data and scientific research on mental illnesses.

While interviewing subjects for the portraits, Cutrell says she was interested in hearing their recovery stories, and during the process she discovered four themes.

"One, people had someone in their life who continued to love them; Two, they received some type of therapy and treatment; Three, they had a practice, such as meditation, listening to music or podcasts they enjoy; and Four, they had a sense of purpose in life."

The exhibit in Concord includes a portrait of former New Hampshire Supreme Court Justice and current senior director of public affairs for Dartmouth Hitchcock's R.E.A.C.T. Mental Health Awareness Campaign, John Broderick, with his son Christian, and his wife.

In 2002 Broderick was severely



Artist, Lynda Cutrell, describing the portrait of former NH Supreme Court Justice John Broderick and his family. Photos/Scott Merrill

beaten in a middle-of-the-night attack by Christian, resulting in injuries that required facial reconstructive surgery.

Over the nearly 20 years that have passed since the attack, Broderick has dedicated many hours of his time to advocating on behalf of those suffering from mental illnesses.

Broderick first met Cutrell at a speaking event at Salem State in Massachusetts, where the exhibit was being displayed several years ago.

"When I went home after the event, I spoke to the people at Dartmouth Hitchcock and the exhibit eventually went up there. At some point she asked if she could take a photo," Broderick says. "The people in these photos are the people you work with. They're your neighbors, they're everyday people and they don't look frightening. That's what's so powerful about them. Mental Illness doesn't choose favorites."

Broderick emphasized that most people with mental illnesses are out in the community, teaching, working, living their lives, but that the stigma of mental illness remains.

"When we read about school shootings the first day the shooter is evil. Days two and three the story reveals he had mental health problems for years," he says. "This plays into idea that people with mental

health issues are going to shoot up a school. It plays into our worst fears as stereotypes."

Broderick expressed pride in his family for stepping up to do the portrait for the exhibit, and he says his son is dramatically better today. But the experience 20 years ago was a catalyst that shifted his thinking about mental illness from being an isolated taboo to a condition that affects nearly everyone.

And the work of educating and advocating continues, he says, citing a recent

conversation with a professor at Emory University where he spoke in March of this year.

"I said, 'Doc, the question I'd love to ask is, how would you rate the mental health system on a scale of one to 10, with one not good, and 10 fabulous,'" he says. "Sadly, he said to me, 'I can't answer that because we don't have a mental health system.' What he meant was that we have a patchwork. On the Seacoast for instance, OK, there's money, and people have more access. Can you imagine saying that about breast cancer? It's immoral."

Dellie Champagne, chair of the Disability Rights Center – NH's PAIMI (Pro-

tection and Advocacy for Individuals with Mental Illness) Advisory Council, says she is thrilled the exhibit was brought to Concord.

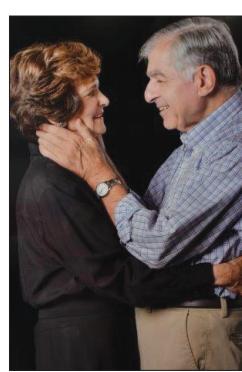
"Lynda's work has a hopeful message - those living with mental illness who receive proper treatment can lead productive lives," she says.

Cutrell's choice to go to art school at age 50 after a career in investment and her desire to create a deeper understanding about mental health comes at a time when interest in mental health is popular.

But it continues to be misunderstood by many, she says.

"My hope is that this exhibit leads to a deeper understanding of how we all experience our own mental health. And that recovery is attainable," she says.

The exhibit, formerly on display at the Museum of Science in Boston, is sponsored by Northeast Delta Dental. Additional sponsors are the Concord YMCA, Disability Rights Center - NH: PAIMI Advisory Council, New Futures, and New Hampshire Community Behavioral Health Association. It is on display at the Concord YMCA, 15 North State Street until August.



Kitty and Michael Dukakis at a speaking event at Salem State in Massachusetts, where the exhibit was being displayed several years ago.

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BECAUSE ALL PROBLEMS HAVE A SOLUTION

A Riot is Not a Protest: How Semantics Impact Racism

By Keziah K. Colleton

As a member of the New Hampshire bar, I am compelled to respond to William G. Gillespie's "Looking for Balance" opinion piece in New Hampshire Bar News Vol. 31, No. 11. His piece was inflammatory and offensive to not only BIPOC individuals, but to members of the bar and arbiters of justice writ large. Specifically, his discussion on the Capitol Riot, and references to the Black Lives Matter (BLM) Protests. In his article Gillespie wrote that "we all have blind spots, including me." I agree, and he has one that I would like to discuss.

Primarily I must point out that his opinion is his own, and it is his First Amendment right to express it. But how one receives and perceives that opinion, well, that is my right. Not quite written in the Constitution, but a social right nonetheless.

It is important to trim the fat of politics and get down to the heart of the matter: racism. Race relations and matters of diversity and inclusion go far beyond the left and right. When it comes to such an important topic, we cannot mince words, nor can we afford to use them incorrectly. Semantics matter. As human beings we understand this generally, but as attorneys we are trained to use words in a particular manner to elicit a specific response from our reader.

Gillespie questioned why Nancy Richards-Stover omitted mentioning the BLM "riots" in her February 2021 Bar News article. I will not speak for Ms. Richards-Stover but I can hypothesize her reasoning for the omission. Perhaps she did not include the BLM "riots" that occurred in Minneapolis and Portland because they were not riots. They were protests in response to the murder of George Floyd. By definition a riot is violent public disturbance of the peace. Alternatively, a protest is a public expression of disapproval or objection towards an idea or action. Whatever looting or violence that occurred at these protests was

done by opportunists, and I agree they should be punished. But should we allow those opportunists to diminish the larger message of BLM?

When the word "riot" is used to describe the protests that took place in Minneapolis and Portland, it further fuels the misconception that BLM is a dangerous cause. It stokes the flames of the fire of racism and serves as a threat to the fight for equality. The Capitol Riot and the BLM Protests should not be compared as apples to apples. The Capitol Riot was a mob of people storming and destroying the very building that represents America's institution of democracy, solely because they did not like the results of the 2020 elections. The BLM Protests on the other hand, were weeks-long demonstrations where people came out in scores to advocate for justice and peace in the wake of the murder of George Floyd. These two events are not the same. Not in origin, nor in purpose. And they should not be described as such.

Later in his piece, Gillespie described the Minneapolis and Portland protests as "creatures" of BLM. This word choice is troublesome. Offensive really. When you read the word "creature" one cannot help but immediately think of an animal or something else that is less than human. For too long BIPOC individuals have been compared to or

referred to as "animals" in social and political spaces. Gillespie's use of the word "creature" to describe the protests successfully perpetuates that harmful stereotype. There were other words that could have been used in its place. Words such as brainchild, product, idea, proposition, or event, to name few. So why did Gillespie choose the word "creature" to describe the BLM protests? Only he knows for sure.

The fight for equality, and against racism is ongoing. This fight has occurred prior to the murders of George Floyd, Breonna Taylor and countless others. Words have power. When you can choose them loosely to describe actions or events that don't directly impact people who look like you, that comes from a place of privilege.

Gillespie concluded stating that the Bar should condemn both the Capitol Riot, and the BLM "riots." I disagree. The Bar should condemn riots, and commend protests utilized by people to fight one of our basic human rights: to be treated equally in the eyes of every person, irrespective of the color of our skin.

Keziah K. Colleton is the founder and principal attorney of Colleton Law, PLLC, an intellectual property and immigration law firm with an office in Portsmouth, NH.

Jury Selection: Is it Time for a More Protective Approach?

By Erin Fitzgerald

In *State v. Soulia*, ___ N.H. __ (May 5, 2021), the New Hampshire Supreme Court upheld the trial court's decision to qualify certain people to serve as jurors. The defendant in the case was charged with four counts of aggravated felonious sexual assault of a minor and one count of prostitution. During jury selection, the trial court conducted individual

voir dire with prospective jurors whose names were drawn from the jury pool and who had answered "yes" to any of the preliminary questions posed to the entire jury panel. Juror A was one of the prospective jurors whom the trial court questioned via individual *voir dire*.

During *voir dire*, Juror A told the trial court "she had

FITZGERALD continued on page 5

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From Standing Trial to the Witness Box – COVID Should Bring About a Constructive Change

By Chuck Douglas

Standing trial in England in the 1700's meant literally standing at a fixed location in the court room. Witnesses also stood, but that eventually changed and witnesses were seated, in what could have been generally described as a captain's chair on a raised stand.

In fact, the internet has some great pictures of historic Virginia and British court rooms where the witness chair is on top of a one or two step raised box. So what changed?

The witness chair changed in the early 1880's amid the Victorian Era concern of modesty for women's legs and ankles. Thus, the enclosed boxes that we are all familiar with in New Hampshire courts usually allow only the head and neck of the witness to be visible.

The major problem with this box is that experts say that non-verbal communication dominates verbal communication for impact and that it is important to see all of the squirming, fidgeting, etc. that a witness will do unknowingly because it is not usually the words used but the body language that speaks the loudest to a juror.

Dr. Albert Mehrabian pioneered studies in the 1960's into nonverbal communication. Today most experts agree that 70% or more of all communication is nonverbal.

What comes out of your mouth and what you communicate with your body language may be two totally different things. When there is a disconnect the listener or juror has to choose between the verbal or the non-verbal message. Studies show jurors generally choose the non-verbal message as the more accurate and honest.



Historic British Courtroom.

Courtesy Photo

"If it works for card players it will for judges and jurors."

Several years ago when she was still a Superior Court judge, Justice Carol Ann Conboy moved witnesses in Hillsborough County Superior Court to a chair in front of the jury box. This is the same arrangement that I first saw in Virginia City, Nevada's court house (built in 1876, just before the Victorian Era) where a simple captain's chair shows far more of the witness than you could ever observe from the enclosures we are used to today.

With the COVID pandemic causing reconfiguration



Historic Virginia Courtroom.

Courtesy Photo

of court rooms it is much easier to let the jury have social distancing in the gallery seats and move counsel tables to facing each other with the witness chair (literally a chair) facing the jury.

I urge the Superior Court to remove the box so more body language can be observed as this is the most accurate "tell" of whether the words coming out of the mouth are matched by the body's response.

If it works for card players it will for judges and jurors.

Chuck Douglas is a former Superior and Supreme Court Justice practicing in Concord.

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previously worked as a para-educator and 'was trained to be a child advocate for nonverbal and nontraditional children.' She explained that, in that role, 'she once had to report a suspected sexual assault of one of her students to her supervisor.' She further stated that apart from the report and completing a 'write up' of the allegation for the school, she had no other involvement in the matter. She stated that no person was ever charged in relation to the allegation because the suspect was a member of the child's family and the child's parents did not want the suspect to be incarcerated. When the trial court asked Juror A whether that experience 'would affect [her] ability to be fair and impartial in this case,' she responded, 'I would say no, with a little bit of apprehension, because I just felt like the child wasn't advocated . . . for properly.' She further explained that she 'would do [her] best here to do what's right and answer honestly to [her] heart.' She also admitted that when hearing the evidence in the instant case, her 'mind [could] go back to that kid' and that the experience with that kid 'had an effect on [her].'

Defense counsel moved to strike Juror A for cause, however, the trial court qualified her and she participated in the jury deliberations that resulted in the defendant's

convictions. On appeal, the defendant challenged the trial court's decision to qualify Juror A. He argued that the record did not 'establish that Juror A would be able to set aside her personal experience involving an allegation of sexual abuse and render an unbiased verdict.' The New Hampshire Supreme Court disagreed, holding 'that the trial court sustainably exercised its discretion when it denied the defendant's motion to strike Juror A for cause.'

The New Hampshire Constitution provides, 'It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.' This right extends to jurors, as well. 'This constitutional provision therefore enshrines as 'a fundamental precept of our system of justice that a defendant has the right to be tried by a fair and impartial jury.'

A juror is presumed to be impartial. 'A juror is considered impartial if the juror can lay aside her [or his] impression or opinion and render a verdict based on the evidence presented in court.' 'When a juror's impartiality is questioned, however, the trial court has a duty to determine whether the juror is indifferent.' 'If it appears that any juror is not indifferent, [she or] he shall be set aside on that trial.' (Emphasis added.)

In *Soulia*, the experience that influenced Juror A's potential partiality was similar to the instant case — the alleged sexual assault of a child. During *voir dire*, Juror A

never stated she could lay aside her prior experience and render a verdict based solely upon the evidence introduced at trial. Rather, to her credit, she honestly expressed apprehension as to whether she could be impartial and committed only to doing her best to render an impartial verdict. The answers Juror A provided during *voir dire* call into question her ability to be indifferent; a question that was never clearly answered through the *voir dire* process.

If the legal standard in New Hampshire, as *Soulia* suggests, allows a trial court to seat people on juries even if they express honest concerns about their ability to be impartial, maybe the standard needs to change. The cornerstone of a fair trial is an impartial trier of fact — jurors who will decide the case solely upon the evidence introduced at trial, not upon their prior experiences, personal beliefs, or potential biases. Trial judges may better protect a defendant's constitutional right to an impartial jury if they dismiss jurors for cause when there is a reasonable basis to believe a juror may not be able or willing to be impartial. Given the gravity of a defendant's constitutional right to be tried by an impartial jury, shouldn't courts err on the side of caution, rather than risk seating partial jurors?

Erin Fitzgerald is a former prosecutor and will serve as a Faculty Fellow at New England Law in Boston during the 2021 and 2022 academic years.



Heather M. Burns



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A Tool Worth Buying

By Ryan Barton

Our industry is filled with articles and ads that play on cybersecurity-anxiety.

"Buy this product so you don't get hacked!" "Our solution makes you compliant!" "All you need to stop hackers is this software!"

Never true. When you see such nonsense, cry out "shyster, scallywag, and pettifogger!"

Why?

Because those claims are always only partially true. And partial truth (at least in this case) is untruth.

Cybersecurity is not a product; it is a discipline. Repelling the bristling hostility that stalks the information superhighways requires multiplicities. A veritable shedload of protections: Tenacious training, transformative technology, pertinacious processes, perspicacious people, and theoretical thau-maturity.

Yet, here I am, writing to recommend a particular product.

Why?

Because this one represents a new breed of products. An evolutionary vault. And it is eminently affordable to small businesses for the first time.

It is called Microsoft Defender for Endpoint and it protects you from many threats.

(Note: This is not to be confused with Microsoft Defender Antivirus. There are many products under the "Microsoft Defender" product umbrella, and I am specifically recommending Microsoft Defender

for Endpoint – the Endpoint Detection and Response (EDR) tool. It includes Defender Antivirus, but is much more than simply antivirus).

Here is how it works:

- It sits on the system, fully behind the scenes, and it monitors system level behavior. Its ever-vigilant eye watches for changes to code, unusual access to the system, or security settings being lowered – the kinds of things hackers do.
- Since the nastiest threats are the trickiest, it communicates constantly with the Microsoft security cloud. But not just the security cloud... actually, with Microsoft's AI that lives in the cloud. This AI evaluates over 8 trillion data points daily for insight and recommendations. Yes folks, that's right. Getting this tool means you can say "my company leverages AI to defend against hackers." That alone is worth it! I mean, c'mon.
- If Defender senses a malicious activity, it blocks the threat immediately, all on its own. This goes waaay beyond traditional antivirus, into blocking actual threat behaviors and tossing hackers out on their proverbial ears.
- The tool analyzes each endpoint looking proactively for ways a hacker could get in – known vulnerabilities, in other words.
- It sends alerts and recommendations to your trusty IT team for further investigation and for battening down the hatches

– proactively.

- It does all this with no discernable impact to any of the staff using the various computers. Even the install is whisper quiet.

Simply running Defender for Endpoint grants at least +50 points of cybersecurity power. Equipping a trained IT team who tunes it, monitors it, and leverages it for insight? That's verging on transcendent.

This tool is amazing. Powerful enough to make cybersecurity teams like us pontificate and use words like... pontificate.

You still must train your staff, still must have policies, still must grind out all the marvelous minutiae of an Information Security program. But! In terms of actual risk reduction, the Return on Investment on this tool is so good, it rivals Tesla stock in 2020. Expect to pay between \$5 and \$12 per user per month, depending on what else is bundled in and how its monitored and approached.

We can testify to its stopping power. One fine day this last fall, a long-tenured employee at a prestigious New Hampshire institution failed to detect the hallmarks of a phishing email – one that was so clever it circumvented antispam and anti-phishing security controls. She began a series of clicks and inputs, which unfortunately resulted in her granting access to her system to a malevolent miscreant. This malevolent miscreant's glee, however, turned to despair when the very first actions taken by said malevolent miscreant were detected by the stalwart Defender for Endpoint, were summarily blocked, and resulted in the tintin-

nabulation of alarm bells.

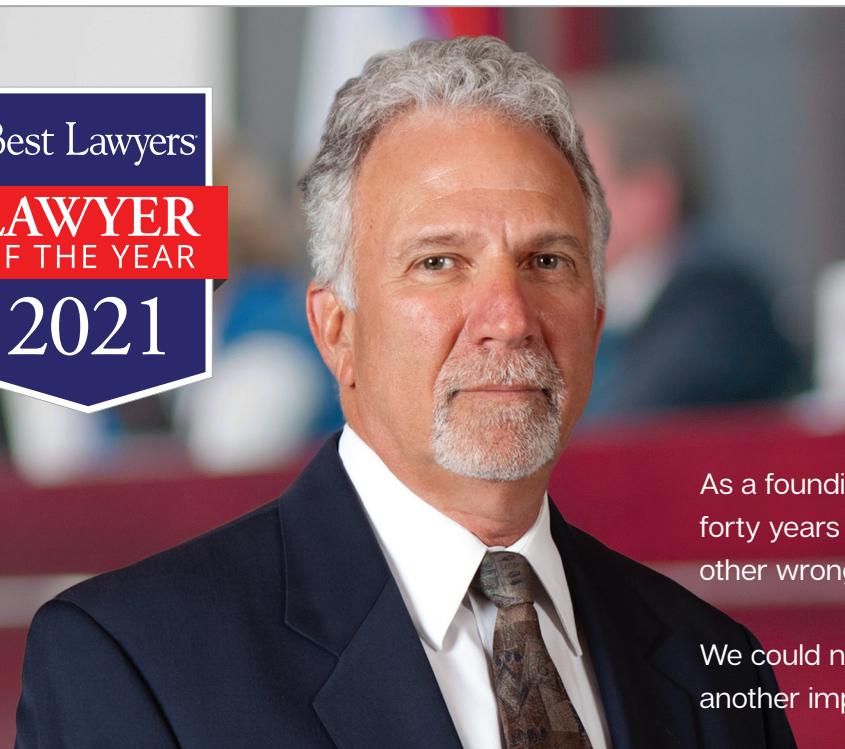
Another client hired a third party to penetration test from inside their network (essentially hiring an ethical hacker to find any weakness within an environment before the unethical hackers do). Microsoft Defender for Endpoint was so effective, the penetration testers couldn't complete their test or utilize their tools, and they requested that we remove Defender so they could actually do something!

This is like hiring a never-blinking, never-stopping, always-improving, AI-enabled, cyborg security guard and only having to pay it a penny an hour.

Get this tool. Here's how: Pause your reading of this astute article and open your email. Create a new message. To: whom-ever runs your IT. Subject line: "Cybersecurity tool." Body: "It's important to me that we are taking every reasonable measure to defend our firm from cybersecurity threats. I have recently learned about Microsoft Defender for Endpoint (the EDR tool, not the standalone antivirus), and I would very much like its AI-enabled advanced threat protection in place. I'd like to know how you recommend, install, and monitor this tool, and exactly what it would cost. Thank you. Also, thank you for your tireless work, I'd like to pay you 10% more."

Send the email, just like that.

*Cybersecurity-anxiety = The psychological consequence of thinking about how painful a breach would be. A more commonly accepted term than "cybersecurity tummy ache" or its unfortunate cousin, "cy-



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bersecurity gas."

** But not from sanguine salespeople selling such solutions.

*** Think "lidless eye of Sauron" but friendly. Much, much more friendly and definitely on your side.

**** Except that in this case, the Return is risk reduction, and you can't buy things with risk reduction. Things like... a new Tesla. But you can keep running your business without interruption. Which is maybe less exciting, but also much, much more important. If you think about it. Although that new Tesla Plaid hitting 0-60 in less than 2 seconds sounds pretty darn important.

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



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

Member Services

Member Benefits and Services Are Expanding

Your New Hampshire Bar Association member benefits are expanding. Since fall of 2020, three member discounts have been added, and the TechConnect benefit has significantly expanded. Be on the lookout for future announcements as the NHBA continues to add new benefits and services to meet the growing needs of today's law practice. Take a look at the current NHBA member benefits to see which might enhance your practice. Your New Hampshire Bar Association membership provides the following free benefits:

Casemaker is a comprehensive online legal research library and search engine that offers timely and accurate results. This powerful research tool provides NHBA members with free and unlimited access to a wealth of legal research materials, including both state and federal case law, statutes, regulations, and much more. Casemaker has been completely updated to provide state-of-the-art search capabilities.

The NHBA has partnered with **Affinity Consulting** to deliver a free member benefit to help you leverage technology to get the most value. Your TechConnect benefit offers tips and tools to use as your career progresses or your firm evolves. With NHBA **TechConnect** you can email an expert at Affinity with



your technology related questions or schedule a 30-minute free consultation for a longer conversation. Members have access to dozens of whitepapers and comparison charts created by industry experts. Newly added in fall 2020 is free access to 150+ Affinity Insight video tutorials for everything from basic technology usage to advanced feature capabilities for dozens of commonly used programs such as Microsoft Office products and Adobe Acrobat to legal industry specific software like Clio and Lexis Nexis.

In addition to free member benefits, the NHBA gives members access to valuable discounts on services and products focused on the needs of today's legal professionals. Our **premier benefit providers** offer special savings on a variety of products designed to make your law practice more efficient. Check out the Member Benefits and Services page of the NHBA website for the most up-to-date information about member discounts. Current member discounts are:

Tracers, cloud-based investigative research software, is designed to uncover key pieces of information available only in public and private records. A TechnoLawyer "Top Product of 2020," Tracers provides law firms access to an online database of over 43 billion records from over 6,000 sources of data for skip tracing, asset searches, social media searches, comprehensive background checks, better due diligence, and more. This member benefit newly added in May 2021 offers NHBA members a 10% discount.

RPost, the global leader in secure and

certified electronic communications provides simple-to-use compliant email encryption, legal electronic signatures, secure large file transfers up to 1GB, auditable proof of compliance, and more. **RMail** provides convenient email encryption at the click of a button and requires no special software for recipients. **RSign** is a web-based process that provides a quick and intuitive way to prepare and send documents for electronic signature. Increase your cybersecurity and receive expert customer onboarding and personalized training. This member benefit newly added in February 2021 provides NHBA members a 20% Discount.

Build your law library at a discount with this benefit newly re-added in November 2020. Members of the New Hampshire Bar Association save 15% off the general public price on all books available in the American Bar Association web store when using the special discount code: PAB8ENHB

Clio cloud-based legal technology software simplifies operations and allows legal professionals to work remotely from anywhere. Clio law practice management software simplifies operations and improves productivity with powerful tools to manage cases, clients, documents, bills, calendars, time tracking, reporting, and accounting. NHBA members are eligible for a 10% lifetime discount on Clio, as well as a free 7-day trial and free data migrations.

MyCase is an all-in-one case management software for your law firm, providing

EXPANDING continued on page 9

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Leadership Academy Shapes The Bar Leaders of Tomorrow

As the NHBA Leadership Academy Committee began its work recruiting for its Class of 2022, it looked at its past promotional messages. It also carefully considered new questions such as:

- What does a “bar leader of tomorrow” look like in a world turned upside down only a little more than a year ago?
- What characteristics and traits comprise a leader in the “new normal?”
- What have Leadership Academy alumni done with their careers since graduating from the rigorous program?

Answers to the first two questions are highly subjective and unique to one’s particular circumstances. The “where are they now?” question is much easier to answer, thanks to the Bar Association’s member database. As the table below illustrates, the career trajectory of Leadership Academy graduates is impressive. Some opened their own firms; others went to work for major firms, state agencies, or other organizations. Most still actively practice law. Some are on inactive status, while others are looking for their next opportunity.

What this listing doesn’t show is the significant amount of work these attorneys also do outside of working

hours as Board of Governor members, NHBA Committee members, trustees and board members of other organizations, coaches, mentors, and more.

We hope to add your name to our roster of graduates. Learn more and download a Leadership Academy application form today at nhbar.org/nhba-leadership-academy/

(If you are a Leadership Academy graduate and your contact information is printed on page 9 incorrectly, please contact our Member Records Coordinator Michele Gilbert immediately at mgilbert@nhbar.org to update the data we have on file for you.)

Leadership Academy 2010-2019 Where They Are Now

2010-2011

Christopher G. Aslin, NH Attorney General’s Office-DOJ
Anthony S. Augeri, The Lewis Group of Companies
Deanne Chrystal, Chrystal Law PLLC
Rachel A. Goldwasser, New England Conference of Public Utilities Commissioners
Adam B. Hescock, Marsicovetere & Levine Law Group PC
Abigail Sykas Karoutas, Wyskiel Boc Tillinghast & Bolduc PA
Celia K. Leonard, City of Nashua Office of Corporation Counsel
Sarah Mattson Dustin, NH Legal Assistance
Patrick T. O’Day, O’Day Law Office PLLC
Matthew R. Serge, Drummond Woodsum
Donald H. Sienkiewicz, Estate Preservation & Planning Law Office
Christine M. Smith, Law Office of Christine M. Smith
Patrick H. Taylor, Unilife Service Corp
David C. Tencza, Welts White & Fontaine PC
Cathryn E. Vaughn, RiverStone Resources LLC
Lisa L. Wolford

2011-2012

Mark E. Beaudoin, Nixon-Peabody LLP
Brooksley C. Belanger, NH DHHS Office of Medicaid Business & Policy
Christopher C. Buck, The Buck Law Firm PC
Kysa M. Crusco, Crusco Law Office PLLC
Joel T. Emlen, Raytheon Technologies
Francesca Hennessy, NH DHHS Legal & Regulatory Services
Suzanne S. McKenna
Meagan T. Munsey, Sun Life Financial
Lyndsee D. Paskalis, Stebbins Lazos & Van Der Beken PLLC
Jamie L. Pond, Sun Life Financial
Thomas E. Walker Jr., Niederman Stanzel & Lindsey

2012-2013

Joseph D. Becher, Bernard & Merrill PLLC
Jonathan M. Boutin, Boutin Law PLLC
Darrell J. Chichester Jr
Courtney H. Eschbach, NH General Court

Lisa A. Fearon, Blue Cross Blue Shield of Vermont
Seth J. Hipple, Law Offices of Martin & Hipple PLLC
Melissa L.B. Lyons, Sig Sauer Inc - Newington
Deborah Mulcrone, Mulcrone Law PLLC
Michael J. Ortlieb, Simmons & Ortlieb PLLC
Anthony F. Sculimbrene, Gill & Sculimbrene PLLC
Kirk C. Simoneau, Red Sneaker Law PLLC

2014-2015

Nicholas F. Casolaro, Cleveland Waters and Bass PA
Amy C. Connolly, Connolly Law PLLC
James P. Cowles, Walker & Varney PC
Joseph H. Driscoll IV, Mitchell Municipal Group PA
Kristina Finley
Susan A. Lowry, Upton & Hatfield LLP
Kathleen M. Mahan, Cook Little Rosenblatt & Manson PLLC
Jacob J.B. Marvelley, Hoefle Phoenix Gormley & Roberts PLLC
Kristin A. Ross, Van Dorn Curtiss Rousseau & Ross PLLC



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

*View additional verdicts and settlements at tl4j.com

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

Lynne Guimond Sabean, NH Bar Association
Talesha L. Saint-Marc, Bernstein Shur Sawyer & Nelson
PA
James C. Shaw, NH Division Children Youth &
Families
Daniel J. Swegart, State of NH Judicial Branch-Sullivan
Superior Court
Steven J. Venezia, Core Development & Management

2016-2017

Robert Berry Jr., NH DHHS Legal & Regulatory Services
Mary C. Bleier, NH Division Children Youth & Families
Jason B. Dennis, Hastings Malia PA
Laura D. Devine, Boyle Shaughnessy Law
Mariana Dominguez, NH Public Defender
Christine F. Donlan, Posteri Legal PLLC
Kristin G. Fields, Fields Law PLLC
Rebeka M. Fortess, NH Circuit Court Administrative
Office
Michelle C. Heaton, NH Insurance Department
Henry R. Klementowicz, American Civil Liberties Union of
NH
Molly M. Lynch, NH DHHS Commissioner's Office
Alexander E. Najjar, Najjar Employment Law Group PC
Nathan P. Warecki, Nixon-Peabody LLP

2018-2019

Alexandra S. Cote, McLane Middleton Professional
Association
Nicole A. Forbes, Sheehan Phinney Bass & Green PA
Joshua P. Lanzetta, Bruton & Berube PLLC
Brooke L. Lovett Shilo, Upton & Hatfield LLP
Evan M. Lowry, Southern NH University
R.J. Meurin, Niederman Stanzel & Lindsey
Kaitlin M. O'Neil, Normandin Cheney & O'Neil PLLC
Hilary A. Holmes Rheume, Bernstein Shur Sawyer &
Nelson PA
Justin S. St. James, Justin St. James Attorney at Law
Corinne A. Taylor-Davis, Taylor Davis PLLC
Stephanie L. Tymula, 1 Client Matters LLC
Carole L. Waters

Farewells and Ice Cream Bar Staff Gather to Say Goodbye to Pro Bono



The NHBA Pro Bono Referral Program staff gathered outside the Bar center for an ice cream cast off in late May. They were honored for their service by Executive Director, George Moore, and presented with plaques. Pro Bono merged with the Legal Advice and Referral Center (LARC) on June 1 to form 603 Legal Aid. They will be missed. From left: Elyse McKay, Barbara Heggie, Janice Rabchenuk (rear), Virginia Martin, Pam Dodge (front), Carolann Wooding (rear), Susanne Alexander

Expanding from page 7

tools to improve organization, increase efficiency, and scale your firm operations. MyCase simplifies document management, reporting, billing and invoicing, collecting payments, and more. NHBA members receive a 10% discount on MyCase.

Designed specifically for the legal industry, LawPay provides attorneys with a simple, secure way to accept online credit card and eCheck payments from clients. LawPay guarantees your firm accepts payments in compliance with ABA and IOLTA guidelines. NHBA members receive a free 3 month trial.

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To take advantage of the discounts on these great products, visit the NHBA Member Benefits and Services webpage at nhbar.org/resources/member-services-benefits/. Click on the links provided in the description of each benefit to learn more and receive your NHBA members only discount. For more information, contact Member services coordinator Misty Griffith mgriffith@nhbar.org or call (603)715-3227.

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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

View more case results at lubinandmeyer.com



NEW HAMPSHIRE BAR FOUNDATION NEWS

Powering Justice-Propelling Change

The New Hampshire Bar Foundation held its virtual kickoff event May 26—Powering Justice and Propelling Change. If you missed the event be sure to head to the Bar Foundation webpage and view the short video that showcases the foundation's initiatives.

The Bar Foundation's Board of Directors has decided that in addition to continuing the long-standing stewardship of IOLTA funds, the Foundation will focus on [three] distinct initiatives for the upcoming year. These initiatives are diversity and inclusion, civics education, and civil legal aid.

In the kickoff video Chief Justice Gordon MacDonald talks about the statewide diversity and inclusion project and highlights the importance of everyone completing the upcoming survey. William Dunlap, President of the NH Historical Society, discusses the civics education program, Moose on the Loose, that the Foundation continues to financially support. This program is designed for middle school aged children and teaches both civics and NH history. Finally, Sonya Bellafant, the executive director of the newly formed 603 Legal Aid organization,

speaks about the benefits of a unified call center that will act as a single-entry point for people who are looking for civil legal services in NH. These initiatives highlight the important role that lawyers fill in our communities and the NH Bar Foundation is excited to be involved.

The fundraising event was kickstarted by the honorable John Maher and his wife Skye, long time supporters of the Bar Foundation, who heard about the initiatives and made a \$10,000 donation. The Maher's \$10,000 donation was matched by the Law firm of Sheehan Phinney, and \$5,000 donations were made by Devine Millimet, Nixon Peabody, Primmer Piper Eggleston & Cramer, Preti Flaherty Beliveau & Pachios, and Tenn And Tenn.

Numerous other firms and individuals donated to the kickoff event and the "donate button" is still live if you go to the website. While the Foundation is on its way to meeting its fundraising goals, they still need your help. We are asking each of you to head to the Bar Foundation's webpage and make a donation to help us bring legal services and the access to justice for those in need into the future.

IOLTA

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2%	NBT BANK
2%	Northway BANK
2%	PeoplesUnitedBank

You have a choice at where you open an IOLTA account. Leadership banks provide 1% interest or more.

The money earned from the IOLTA program helps tens of thousands of our most vulnerable NH citizens receive free or low cost civil legal services.

NEW HAMPSHIRE BAR FOUNDATION Strengthening Justice for All

HELP ENSURE JUSTICE FOR THOSE WHO NEED IT MOST!

Our annual fundraising initiative may have a new name but our commitment to justice remains unchanged.

Become a "power player"

and help support key initiatives for the year ahead:

DIVERSITY AND INCLUSION PROJECT - an upcoming statewide survey and data analysis project to support diversity and inclusion efforts within the NH legal community

CIVICS EDUCATION - including the NH Historical Society's "Moose on the Loose" program

CIVIL LEGAL SERVICES - the new 603 Legal Aid organization and more

Thanks to all who attended our May 26 kickoff event with NH Supreme Court Chief Justice Gordon MacDonald, William Dunlap, and Sonya Bellafant.

View the video online at app.mobilecause.com/e/7rPjPg?vid=jguvzg?vid=jguvz

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NEW HAMPSHIRE
BAR FOUNDATION
Strengthening Justice for All



Community Notes

The New Hampshire Women's Bar Association is planning a special event for their Sustaining Members. A licensed esthetician and a professional massage and aroma therapist will be available Monday, June 21, at 5:30pm. Attendees will be

provided a sampling of goodies that will help to soothe the mind and body. To learn about becoming a Sustaining Member visit <https://www.nhwba.org/Sustaining-Members>.

Coming & Going

Nixon Peabody appointed **Stacie Boeniger Collier** as the firm's chief talent officer. In this newly created role, Collier will focus on growing and enhancing the firm's legal talent, and developing and cultivating its people and distinctive culture.

The law firm of McLane Middleton is pleased to announce the hiring of attorney **Brian B. Garrett**. Brian joins the firm as

Of Counsel in the Litigation Department and as a member of the Education Group.

Christopher Keefe will now be leading Nixon Peabody's Business & Finance Department. With more than 200 attorneys, the department is comprised of the firm's Corporate, Health Care, Global Finance, and Private Clients practice groups.

NH Bar Association New Members

The following Daniel Webster Scholar members were admitted to the New Hampshire Bar Association on May 21, 2021.

Nancy C. Braman, Concord, NH
Kitty A. Burke, Concord, NH
Benjamin A. Chapman, Manchester, NH
Cameron J. Cox, Manchester, NH
Jonathan P. Dean, Nashua, NH
Teresa D. Farley, South Portland, Maine
Christopher N. Glueck, Jenks, Okla.
Haley J. Goeckel, North Haverhill, NH
James W. Hawthorne, Concord, NH
Sofia A. Hyatt, Manchester, NH
Maria T. Hyde, Denver, Colo.
Derek J. Kaufman, Manchester, NH
Autumn H. Kish, Manchester, NH
Katherine A. Llangari, Belleville, NJ
Jennifer P. Lyon, Lee, NH
Christopher R. Mignanelli, Ossipee, NH
Katie A. Mosher, Concord, NH
Kaitlin P. Murphy, Wolfeboro, NH
Ian T. Rossi, Boston, Mass.
Victoria Saxe, Austin, Texas

Kara M. Skogholm, Manchester, NH
Christopher C. Snook, Franklin, NH
Colleen M. Yoder, Reno, Nev.

The following members were admitted to the New Hampshire Bar Association on May 26, 2021.

Sarah C. Leighton, Amesbury, Mass.
David S. Wickman, Redwood City, Calif.
Alexander R. Murphy, Sacramento, Calif.
Matthew J. Fay, Lebanon, NH
Harriet K. Fraser, New York, NY
Meagan N. Gann, Rochester, NH
Elizabeth A. Ingermann, Lowell, Mass.
Moriah J. King, Westford, Mass.
Chelsea N. Pande, Hampton, NH
Brittani L. Schanstine, Deerfield, NH
Whitney L. Shephard, Exeter, NH
Miles M. Stafford, South Royalton, Vt.
Daniel R. Torrey, Plaistow, NH
Nancy M. Clark, Concord, NH
Daniel S. Rich, Concord, NH

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Annick Tropp

Annick Tropp, 74, of Middleton Massachusetts, passed away on May 6, 2021, after a nearly four-year battle with cancer. Annick was born on October 11, 1946, to Jacob and Sonia Tropp in Leon, France.



In 1950, the Tropp family immigrated to Rock Island, Illinois. After graduating from the University of Illinois in 1966, Annick moved to Los Angeles, California—a move prompted by a scary spin out on an icy Illinois roadway.

Annick went to work at the Los Angeles Housing Authority and eventually worked her way up to Director and bought a home, uncommon for single women in the 70s. After the birth of her daughter in 1980, Annick left the Housing Authority and began a new chapter of her life as a

devoted mother.

In 1992, Annick moved with her daughter to Concord, NH, to attend law school, graduating in 1996 and beginning a new career. Annick worked as a Paralegal at Orr & Reno in Concord, NH, until retiring in 2012.

After retiring, Annick returned her focus to her daughter. Together, they traveled extensively, enjoyed sporting events, and live theater.

Annick also enjoyed gardening, cooking, and baking.

Annick was predeceased by her parents, Jacob and Sonia Tropp. She is survived by her daughter, Tiffany Tropp.

Thank you to the Medical Team and Hospice Team at Beth Israel Lahey Hospital. Although Annick ultimately lost her battle with the cancer, they made a scary and painful time a little less so showing amazing compassion and support.

Annick passed away at home in the comfort of her own bed as was her wish.

The family requests that in place of flowers, donations be made to Beth Israel Lahey Hospital Hospice.

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

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Lawsuit from page 1

law generally when it comes to children."

The trial court's decision stated Carrigan does not have standing because she hasn't been personally effected by the system and that Article 8 only allows taxpayers the right to petition the court regarding a declaration it "has spent (or has approved to spend) funds in violation of a law, ordinance or constitutional provision."

"Nothing in the text of Article 8 suggests that it grants every taxpayer the right to seek a judicial determination of whether the government has sufficiently funded the programs that it runs. Such a reading would allow virtually every resident of the state to challenge as legally inadequate the funding level for virtually every line item in the State budget," the decision states.

Carrigan, who co-founded a child advocacy group called The New Road Project, begs to differ.

"I know, having a relative in this system, that I've been effected in a lot of ways. However, the law doesn't always consider personal realities," she said.

One of the counter arguments to the trial court's line of reasoning in her appeal refers to the Claremont decision to the extent this lawsuit confers standing on the public to protect children.

"Many people in Claremont were not directly affected by the education budget but they were given standing," Carrigan said. "The state is arguing that not spending enough is not an issue of spending. Maybe they're spending the right amount but they're not spending it in right places because children are still dying."

Lewis views the "slippery slope" argument presented by the trial court as cutting both ways.

"If we don't hold the state accountable for this what can we expect at all from the state in terms of its legal obligations," he asked. "If we can't say the state is obliged to meet baseline legal standards in this environment for kids then everything else is an ephemeral joke. I don't want to hear about access to justice or public safety from anyone who is a politician or judge who can't do the right thing here."

One of those baseline standards involves caseloads. The national standard is 12 caseloads per caseworker — in 2016 there were 90 in New Hampshire, and the current number stands around 19, according to Director of DCYF Joe Ribsam.

"The state is arguing that not spending enough is not an issue of spending. Maybe they're spending the right amount, but they're not spending it in right places because children are still dying"

Anna Carrigan

Ribsam said caseloads for caseworkers at the agency are improving — from the worst in the nation just five years ago — but still not where they need to be. He cited issues with low pay as well as the difficulty filling these positions in the wake of the pandemic.

"We're down into high teens but the goal is 12 cases per worker. So, we have some work to do, and we do see a bit of modest growth in the past two months," Ribsam said, referring to an "explosion of calls" to

intake in March and April.

In April 2020, calls to central intake dipped to around 1450 from over 2300 in 2019 during the same month. The spike in March 2021 of over 2500 calls, Ribsam said, has to do with pandemic restrictions beginning to ease.

To show there's progress over the past few years, Ribsam points to the child protection workforce capacity chart on the agency's website. This section shows actual assessments assigned to child protection workers.

"Even though we have high call volume, we don't have high caseload levels," he said. "At the same time, I don't want to say 'mission accomplished.' 19 is a far cry from 12 which is where we need to get."

The state senate voted recently to defund vacant positions which doesn't help move closer to the national standard. There are currently 138 assessment workers at DCYF, but under SB 6 the agency is funded to have 160.

Other issues needing attention, Ribsam said, involve staffing and stagnating services at DCYF.

"The issue is not just staffing but services performed over that period as well," Ribsam said. "Providers did not receive any rate increases and models weren't redesigned to meet people's needs. If you don't have enough people to serve families, you also don't have enough people to do thoughtful back office work to redesign and contract for new programs."

One of Carrigan's concerns is the low number of substantiated cases at DCYF. Most states have around a 20 percent substantiation rate while New Hampshire's is at only seven percent.

Assessments — which determine whether a case is substantiated — involve establishing whether abuse or neglect has occurred, as well as a risk assessment.

Ribsam said DCYF is using an actuarial tool called Evident Change to determine the risk — or likelihood — of a particular outcome.

"When you complete these tools about 30 percent come up as high risk or very high risk, but only 7 are substantiated for abuse and neglect," he said, citing restrictive statutory definitions of what constitutes abuse and neglect in New Hampshire courts. "Either way, the delta is that families need attention whether through the courts or another means."

"State government is acting more like an insurance rather than thinking about the public health and the public good."

Michael Lewis

One way that gap is being filled, Ribsam said, is by using Community Based Voluntary Services such as Waypoint and the Family Resource Center.

"These organizations can provide the same services as we would in court, but without court involvement," Ribsam said.

If the New Hampshire Supreme Court rules in Carrigan's favor, the state will need to confirm or deny "the facts alleged in the complaint," Lewis said.

"I want a declaration of illegality and I don't think it's that complicated. It's Bleak House in nature," he said. "State government is acting more like an insurance rather than thinking about the public health and the public good."

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Pets from page 1

rector of Shelter Outreach & Engagement for the Humane Society.

Employment law attorney, Terri Pastori, acknowledges the difficulties many people have faced over the past year and agrees with Hamrick that there could be an increase in people asking to bring their dogs to work. A confessed dog lover, Pastori says the issue of workplace pet policies is a timely topic.

As it stands, many businesses that allow pets already do not have formal policies spelling out expectations, she says.

"Working remotely has impacted the situation. People and their pets are used to being together during the day and there was a spike in ownership. Life has changed so much because of COVID and we've expanded our vision about workplaces. Employee morale and pets are important."

Dogs boost employee morale

The correlation between employee morale and bringing pets to work was the subject of a 2012 study by a group of researchers who published their findings in the International Journal of Workplace Health Management under the lengthy title, "Preliminary investigation of employee's dog presence on stress and organizational perceptions."

The purpose of the research was to determine whether bringing a dog to work affected stress levels and changed organizational perceptions.

Comparing three groups—NODOG, NOPET, and DOG—the study found stress declined for the DOG group with their dogs present and increased for the NODOG and NOPET groups.

"The NODOG group had [significantly] higher stress than the DOG group by the end of the day. A significant difference was found in the stress patterns for the DOG group on days their dogs were present and absent. On dog absent days, owners' stress increased throughout the day, mirroring the pattern of the NODOG group," the study states.

While some businesses have inquired about workplace policies for service animals and emotional support animals, many people are unaware of the legal distinctions between the two, says Ashley Taylor, who practices law with Pastori.

"Emotional support animals don't have the same access rights as service animals," Taylor says. "Emotional support is just for housing. The requirements for ser-

vice animals are strict...it's not just, 'my dog calms me down.'"

But Pastori imagines emotional support animals could meet the criteria for reasonable accommodation in certain situations.

"The standards for reasonable accommodations are flexible," Pastori says. "There are entitlements for service dogs, and you wonder about whether emotional support pets could have reasonable accommodations as well."

The legal 'what ifs' of pets in the workplace

Two basic issues arise when advising employers about pet policies and they should be addressed right away, Taylor says.

"In drafting a pet policy, step one should be 'what do you mean by pet?' Step two, 'who will it impact now or in the future?'

Some impacts associated with pets in the workplace are a matter of providing reasonable accommodations for those with disabilities. The ADA defines a disability as anything interfering with a major life activity.

An employee or a client who is allergic to dogs, for instance, could create a problem, Taylor says, and employers can't screen everyone coming into an office.

"Any pet policy needs to clarify the fact that it can be changed or discontinued at the employer's discretion. An allergy issue, or even a phobia in some cases, could be a disability depending on how it manifests," she says. "I think you might find that some smaller businesses haven't had any problems with having pets in the office. But it's important to make sure everything is clearly laid out to employees. What if someone new comes in with a new dog that doesn't fit?"

That situation could lead to workplace retaliation, Pastori says, describing a situation where a person is hired who has a severe allergy to dogs that results in the company issuing a blanket rule against dogs in the office.

"People could become very angry towards the employee who they perceive to have ruined the favorable conditions allowing pets at work," she says. "That is a concern and what we think is the best practice is to anticipate these things beforehand as employers structure policies."

Who let the dogs in?

At Duckfeet USA, on Islington Street in Portsmouth, 13 employees work in a

laid-back open-space-design environment, complete with couches — and for some, their dogs.

On any given day, the Danish shoe company which packages and distributes over 40,000 pairs of shoes a year, has as many as four dogs sleeping or wandering through the office. On a Monday in mid-April, it was just Rue.

"We don't have a formal policy and it has worked out good. People bring their dogs if they want to," co-owner of Duckfeet USA, Justin Brady, says. "Some dogs of course, aren't right for office because of barking, et cetera, but Rue is the perfect dog."

Rueifer "Rue" Huxtable is a seven-year-old pug named after the character Rudy from the Cosby show.

"I'd have a hundred pugs if I could," says Brady's wife, Briggs, the company's customer support specialist.

"That's a 'Grumble,'" says Meghan Lien.

"That's right, a pack of pugs. I think it's just three or more to make a grumble," says Brady, joking with Lien.

Down on Bow Street, CEO of Seascape Capital Management, Monica McCarthy's six-and-a-half-year-old yellow lab Chloe sprawls on the red carpet next to a large window overlooking the Piscataqua River tugboats.

"I felt guilty about putting her in daycare," McCarthy says. "I discussed this with a friend who had a publicly traded firm that allowed dogs and he said, 'well, it's your company, so you can bring her in if you want.' And it just developed from there."

Seascape doesn't have a formal pet policy, but McCarthy says there are some basic rules and that she always checks with clients coming into the office to make sure they're not allergic.

"They have to like people, be house trained, and can't bark all day long. Other than that, we've had a great response from clients and our team loves being able to bring their dogs."

McCarthy, who is on the board of NH SPCA, says shelters emptied out when people went home to work.

"They're great for reducing stress, they get us up out of our chairs, away from screens into fresh air, and they keep us grounded, it's really nice."

Richard Fradette, an attorney in Manchester, has been bringing his 13-year-old chocolate lab, Lincoln, to work for years with no formal pet policy.

Named after the town in northern

New Hampshire, Lincoln spends most of his time these days laying in the sun on his window bench seat, but in his younger days, Fradette says, he could get into anything.

"We're a small and very family-oriented firm," Fradette says. "There's no formal policy but we do make certain the pet is not disruptive to the office staff or clients."

Fradette enjoys having Lincoln by his side during the day and says he's never had a client object.

"I always ask clients if they mind my dog being there before I bring them in the office. To date, I have never had a client object. Usually it's the opposite – clients look forward to seeing him and have sent him treats."

Making a return to work a smooth transition

Animal Care Specialist at Cilley Veterinary Clinic in Concord, Paul Bourget, says the return to work has already created a steep uptick of people seeking day care for their dogs as well as veterinary care.

"Everyone in veterinary and animal care is slammed right now. That's because so many people have gotten pandemic puppies," Bourget says. "If you can work from home that's good. Unfortunately, there isn't a lot of doggy day care in the Concord area. In rural New Hampshire, it's tough to find a place at all. And some dogs aren't equipped for being in the office."

For Taylor and Pastori, who have been thinking about making the transition back to in-office work smoother for employees and employers, coming up with 'what if' scenarios regarding liability and a host of other issues related to pets in the workplace, is key.

"It's helpful to work through scenarios that could pose challenges," Pastori says. "As an employer you are going to want to have a process for people to apply when bringing a pet to work — vaccination history, temperament history, et cetera — so the company can approve or deny the application."

For businesses that choose to not allow pets for practical reasons, Taylor suggests some employers could offer workplace perks, such as doggy daycare, access for pet insurance, discounted pricing, pet walkers allowances, or even gym memberships.

"For many people your pet is a part of the family," Pastori adds. "These are just some ideas that might not be as nice, but they acknowledge that pets are a part of people's families."

Professional Announcements

Sarah Landres, Esq.

Domestic Relations | Criminal Defense

Attorney Sarah Landres has joined the law firm of Primmer Piper Eggleston & Cramer. After twelve years as a trial attorney with the New Hampshire Public Defender, Sarah brings a wealth of knowledge and experience providing client-centered representation to the domestic relations and criminal defense practice groups.



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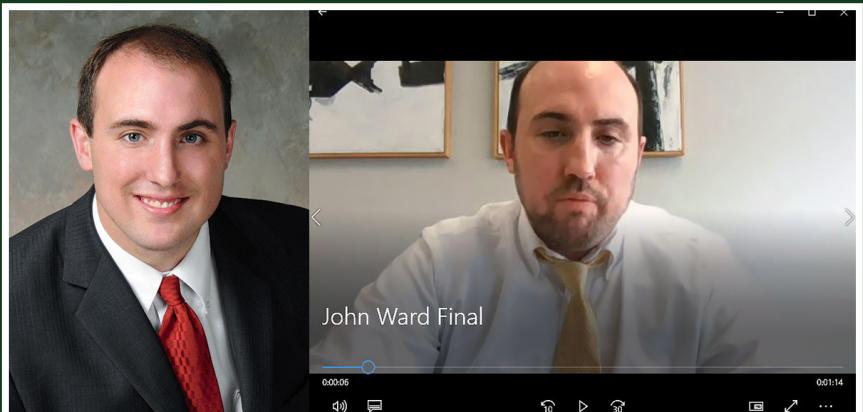
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The New Hampshire Bar Association would like to thank attorneys Teresa Mahoney Mullen and Peter Minkow, from the law firm of Minkow & Mahoney Mullen; Christine Tebbetts, from the law firm of Rock & Tebbetts; and Michael St. Louis, for taking part in Lawline on Wednesday, May 12. They fielded more than 35 calls from the public on a variety of legal issues, including family law, probate, landlord/tenant, and criminal law.

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 landlines. 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.



Clockwise from top left:
Attorneys Chris Tebbetts
of Rock and Tebbetts, Pe-
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Municipal Representation and Potential Conflicts of Interest

Ethics Committee Opinion #2019-20/02

Abstract:

An Attorney who represents a municipal Planning Board and provides advice to the Planning Board on interpreting the Zoning Ordinance in a particular matter, should use extreme caution and carefully evaluate the possibility that a conflict of interest may exist in providing advice to the Zoning Board of Adjustment on the same matter on appeal to the Zoning Board of Adjustment.

Annotation:

Attorney A represents a municipal Planning Board with respect to a subdivision application that requires the Board to interpret the Zoning Ordinance. The Attorney provides the Planning Board with advice regarding the interpretation of the Zoning Ordinance. The Planning Board makes a final decision, and an appeal is taken to the Zoning Board of Adjustment pursuant to RSA 676:5, III regarding the interpretation of the Zoning Ordinance. Attorney A provides advice to the ZBA regarding the interpretation of the Zoning Ordinance. Does Attorney A's representation of the Planning Board and the ZBA constitute a conflict of interest under these circumstances?

The lesson to be learned from the above fact pattern is this: if you are unsure whether a particular situation presents a conflict of interest, the prudent course of action is to decline the representation. In short, if you have to ask it is probably a bad idea.

Although you may think you know the answer, an adjudicative body such as the Professional Conduct Committee or the Supreme Court may take a different view. Despite debating the above fact pattern over a period of months, based on some of the competing opinions described below, the Ethics Committee has been unable to arrive at a clear consensus as to whether Attorney A's representation of the Planning Board and the ZBA constitutes a conflict of interest. So, the short answer is: having represented the Planning Board and being unsure if representing the ZBA in the same or a related action would constitute a conflict of interest, Attorney A should not, out of a surfeit of caution, represent the ZBA.

Applicable Rules:

Rule 1.7 (a) Except as provided in paragraphs (b) and (c), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that

the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing....

Rule 1.9(a) provides in relevant part as follows:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Conflict of Interest Analysis:

In considering the above fact pattern, Committee members essentially fell into two camps. Both camps started with some preliminary assumptions. Assumptions are required because the question presented includes few facts. Conflict analysis is fact intensive and it is difficult to draw categorical lines in any but the most obvious cases. It is presumed that no member of the Planning Board and ZBA has a disqualifying financial stake in the outcome of the application. Such conflicts are a matter of municipal law and town policy and would be outside the scope of this opinion. It is also presumed the attorney has no direct financial stake in the application. Finally, in the absence of contrary evidence, it is presumed that the respective boards and the municipal attorney attempt in good faith to make decisions or render advice consistent with applicable law, the zoning ordinance, the master plan (if any), and relevant considerations of public interest. At the same time, the fact pattern presented is unclear as to whether the attorney is representing the municipality or the board. The scant authorities related to this topic suggest that the client is the municipality, but that is not made clear. If the attorney is representing the planning board and not the municipality, the difficulties of client identification complicate the entire analysis, particularly because in this fact pattern the different entities of the municipality have, or appear to have, differing interests.

With those assumptions in mind, the first camp's analysis follows:

The examining Committee members in the first camp perceive no direct adversity between the Planning Board and the ZBA on the limited facts presented. Rule 1.7(a)(1). Neither board has a financial interest in the outcome of the application. The applicable statutes give the ZBA final authority (as between the ZBA and the Planning Board) over interpretation of the zoning ordinance. The possibility of disagreement between the boards is inherent in the process, and no criticism should necessarily be implied in the event differing interpretations arise. The question then becomes whether there exists a significant risk the lawyer's ability to represent one or more clients will be materially limited by the lawyer's responsibilities to another client, former client, or the lawyer's personal interests. Rule 1.7(a)(2).

The lawyer's responsibility to the Planning Board is to advocate for the Board's interpretation of the zoning ordinance; accordingly, those Committee members believe no conflict necessarily arises merely because the attorney maintains before the ZBA the advice he or she rendered to the Planning Board. Under ordinary circumstances, there seems no sound reason to presume the attorney would knowingly perpetuate incorrect advice. Those Committee members believe there is significant danger in presuming an attorney has a conflict, let alone a disqualifying conflict, merely because they maintain consistent positions before each Board.

Attorneys frequently deal with complex intangible considerations in any representation and the advice rendered is subject to opposing interpretation. The touchstone of the conflict analysis, however, is that there must be a *significant* risk of a *material* limitation on the lawyer's responsibilities to another client or third person or by a personal interest of the lawyer. Although there may be specific factual circumstances under which these considerations might create a conflict under Rule 1.7(a)(2), such a conflict should not be presumed under ordinary circumstances.

On balance, the Committee members in the first camp found no direct or material adversity between the interests of the ZBA and the Planning Board with respect to interpretation of the zoning ordinance. Each board shares a common interest in consistent and lawful interpretation of the ordinance and no financial interest of either board is implicated by the outcome. Under the circumstances presented, no personal interest of the attorney sufficient to raise a conflict is presented. Accordingly, Committee members in the first

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APPELLATE SPOTLIGHT

Last month, in *State v. Luikart*, the NH Supreme Court reversed a trial court's decision to impose a suspended jail sentence because there was not sufficient evidence that the defendant violated his condition of "good behavior." The Court rejected the lower court's finding that the accused had committed "witness tampering," justifying imposition of the sentence.

When a jail or state prison sentence is suspended "on good behavior," this is not good behavior in an amorphous sense, like the kind of good behavior that drives Santa to fill stockings with toys instead of coal. Instead, it's something much more specific: Whether the person has committed a new crime. But in both State and Federal court, the person doesn't need to be *convicted* of a crime to justify imposition of a suspended sentence. Indeed, a person could be acquitted by jury of the new offense, but still sent to prison if the sentencing judge, applying a lower burden of proof, sees things differently than the jury. This is not a mere hypothetical. It actually happened in a previous NHSC case, *State v. Gibbs*.

Luikart confirmed that, although the burden of proof is lower, the prosecution must still prove the elements of a criminal offense by a preponderance of the evidence. Mr. Luikart, believing his ex-wife was the catalyst for a previous unsuccessful attempt to impose his suspended sentence, sent her an email arguably intended to influence her. But there was no official proceeding pending and no reason for Luikart to believe that such a proceeding was about to be instituted. Since the "pending proceeding" element had not been proven, his angry words could not constitute tampering with a witness. So Luikart did not go to jail after all, but his case serves as a sobering reminder that when we agree to a suspended jail or prison sentence, we have in effect waived the right to jury trial for future efforts to incarcerate our client – a very big deal indeed.

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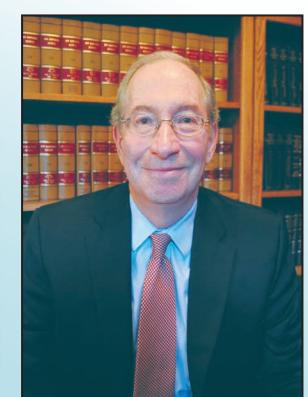
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camp conclude there is no conflict of interest.

On the other hand, Committee members in the second camp raised some hard questions—questions that should represent red flags to prudent attorneys. Those members took the view that, as to Rule 1.7(a)(1), the ZBA is an appellate body to the Planning Board in the fact pattern. Lawyer A's representation of the ZBA in its appellate review of a decision in which Lawyer A counseled the Planning Board, whose decision is being alleged to be incorrect (thus calling into question the viability of Lawyer A's earlier advice) could be considered representation of a client that is directly adverse to representation of a prior (and probably ongoing) current client. In looking for further support, turning to Google, an impeccable source of certitude only slightly behind Wikipedia, and Googling “can someone who participated in the initial decision be a hearings officer,” the focus seems to be on due process. In the Alaska APA manual, the section on due process states that the hearing officer should not be advised by agency staff, including an attorney for the agency staff, who has acted as an advocate in the matter before the hearing officer. Similarly, the Social Security website states: “The first step in the appeals process is called a reconsideration determination. You will receive a new decision by someone who had no part in the first decision. We will send you a letter explaining how we made the decision.” In the words of one second camp Committee member, “If I was an applicant, I would feel my right to a second independent decision maker had been undercut by the powerful lawyer’s role in this process, especially on a largely legal question.”

Second camp Committee members also raised concerns that the representation might run afoul of Rule 1.7(b)(1). Those members asked how Lawyer A could reasonably believe he or she would be able to provide competent and diligent representation to each client when Lawyer A would naturally be affected by his or her natural preconception that his or her original advice given to the Planning Board was correct. There is an adage that a person who represents himself or herself has a fool for an attorney. Second camp Committee members felt that it appears Lawyer A is taking it upon himself or herself to render an impartial and considered opinion as to whether his or her original advice was flawed or sound. In that situation, Lawyer A seems to be effectively representing himself or herself by defending his or her decision because it would be troublesome at best to now reverse position and opine that Lawyer A's original position was incorrect. Lawyer A gave advice leading to the Planning Board's decision that is being appealed. Now Lawyer A is volunteering to give an opinion as to whether his or her own original advice should have been followed. The second camp Committee members feel that in this situation, as a matter of human nature Lawyer A simply cannot be impartial; therefore, he or she cannot provide competent and diligent representation to each client.

Based on that premise, the second camp Committee members were of the opinion that a lawyer who is asked to render supposedly impartial legal advice as to an earlier opinion rendered by that same attorney faces an inherent, non-waivable conflict because it is doubtful the attorney can overcome his or her natural bias to affirm the research, analysis, and conclusion the attorney already reached after, one assumes, thoughtful consideration. Assuming that is true, Lawyer A is unable to adequately represent his or her client because it is likely he or she cannot render impartial advice.

The second camp Committee members also looked to Rule 1.9(a) in their analysis. That rule holds, “A lawyer who has formerly represented a client in a matter shall not

thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” Second camp Committee members believe that the above fact pattern presents the same or a substantially related matter as to the ZBA appeal. Although one can argue that both agencies have the public's interests at heart, that argument overlooks the fact that the second agency is being asked to declare the first agency's decision incorrect. It can easily be argued that if one agency is being asked to declare another agency's decision to have been incorrect and overturn it, the interests of the two agencies are adverse.

Finally, second camp Committee members were of the opinion that the analysis in favor of claiming no conflict exists is flawed when it asserts that because the attorney is acting as an advisor, but not as a decision-maker, the attorney “appears to have no personal interest in the advice they offered the planning board regarding the zoning ordinance.” Those members feel that in the above fact pattern, the attorney's personal interest in the advice he or she is offering stems from the fees he or she is charging for Lawyer A's advice. To be blunt, the very question posed by the scenario at hand is a result of Lawyer A's desire to continue representing both agencies so (1) he or she can collect fees from both, and (2) he or she can avoid the risk of a second attorney being brought in who may disagree with Lawyer A's initial advice to the Planning Board, impugning Lawyer A's legal competence and possibly even endangering Lawyer A's continued representation of those clients.

Conclusion

Be wary of potential conflicts of interest. They are not all black and white, as exemplified by the above fact pattern. Regardless of whether a potential conflict may be eventually adjudicated in your favor if you are brought to task, prudence dictates you are better off avoiding the potential conflict. If you are unsure if prospective representation presents a conflict, ask yourself if you want to put yourself at risk of having to later defend yourself (or hire a lawyer to defend you) in front of the Attorney Discipline Office or from a lawsuit brought against you by your own client. It bears repeating: “If you have to ask, it is probably a bad idea.”

NH Rules of Professional Conduct:

Rule 1.7

Rule 1.9(a)

Other Authorities: *Nergaard v. Town of Westport Island*, 2009 ME 56; *Johansen v. City of Bath*, 2010 Me. Super. LEXIS 150 (Dec. 14, 2010); *Paruszewski v. Township of Elsinboro*, 711 A.2d 273 (N.J. 1998); *Joovelegian v. West Greenwich Zoning Bd. of Review*, 2007 R.I. Super. LEXIS 84 (June 18, 2007); *A. Aiudi & Sons, LLC v. Plainville Planning and Zoning Comm'n*, 2000 Conn. Super. LEXIS 1173 (May 10, 2000).

Subjects:

Attorney-Client Relationship
Candor to the Tribunal
Conflict of Interest
Joint Representation
Municipal Representation
Planning Board / Zoning Board

• By the NHBA Ethics Committee

This opinion was submitted for publication to the NHBA Board of Governors at its March 18, 2021, meeting.



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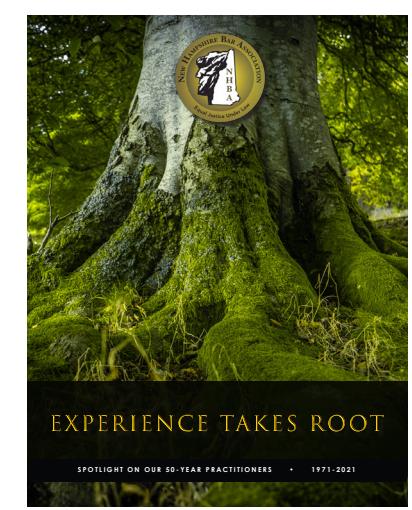
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The cover features the title "NEW HAMPSHIRE BAR NEWS" in large, bold letters. Below it is a circular seal with the state map of New Hampshire and the text "NEW HAMPSHIRE BAR ASSOCIATION". The main headline reads "603 LEGAL AID For Justice". Other text on the cover includes "NH Pro Bono To Merge with LARC June 1", "Bar Center to Reopen Doors Effective June 1, 2021", and "PRACTITIONERS PROFILE: Francis G. Murphy: An Attorney With a Thing for the Past".



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divorce. The attorney wasn't as responsive as I thought she should have been and so I decided I can do her job. I was looking for a second career and I thought 'why not.' I went to law school around the time my daughter was four.

Were you a natural at public speaking?

No. I had always been incredibly introverted, painfully so. Most of my life I'd been introverted. It wasn't until I won a moot court competition in law school that I got over it. From that time forward I decided—no more introvert! At the point, you are no longer nervous going into court, though, you should stop practicing...I use that as my barometer.

Why did you go in the direction of legal aid?

As I was finishing law school, I interviewed with Kalamazoo legal aid in Michigan and I was asked, 'you sure you want to be in legal aid, you appear to be more of a corporate attorney.' But after looking at what legal did, it resonated with me for a couple of reasons. I realized as one of three children raised by a single parent on welfare, I realized my daughter and I easily could have ended up on the other side of my desk. Statistically we should have been. I also realized that some of the things I experienced as a child we may not have experienced had my mother been privy to legal aid and the services they can offer. So then, I became really vested in the mission of legal aid.

Who are some of your heroes and mentors?

That's easy. The two biggest heroes in my life are my parents. My mom was a self-professed victim of domestic violence. She was also a teenage mom with three kids under the age of five before she was 21, and a high

The NHBA Gives Thanks to All Involved in Creation of 603 Legal Aid

Planning the merger of the Pro Bono Referral System of the New Hampshire Bar Association (NHBA) and the Legal Advice and Referral Center (LARC) into 603 Legal Aid was an effort that spanned almost three years. It involved a steadfast commitment and creative vision by all members of a dedicated merger planning committee. However, it could not have been accomplished without the generous help of NHBA members and staff.

The merger planning committee wishes to thank the law firm of Sheehan Phinney, and especially Attorney Brad Cook, who donated time to provide crucial advice and counsel in guiding the Merger Agreement and completing the corporate documents.

Thanks are also due to Attorney Mitch Simon of Devine Millimet, who donated his time to provide substantial guidance on the ethical issues surrounding the merging of two law firms and clearing client conflicts. Additionally, we want to thank Delta Dental and their generosity in funding a branding consultant and Saltwater Collective for their work in designing the 603 Legal Aid name and brand. Finally, thank you to Paula Lewis, Lynne Sabean, and Hank Plaisted of the NHBA staff, who provided advice, assistance, and consultation regarding business transfers, information technology, and public relations.

For any transaction this complicated, it truly does take a village, and we shall be forever grateful for their gracious and enthusiastic support.

We also gratefully acknowledge the tremendous effort and enthusiasm of the Boards of Directors for the Pro Bono Referral System, LARC, and New Hampshire Legal Assistance, which made this merger possible, as well as the willingness of staff members to take this exciting, but unfamiliar, step toward an improved delivery system for their clients.

The merger planning committee included the following people: Dana Bisbee, Samantha Elliott, Breckie Hayes-Snow, Deborah Kane Rein, Virginia Martin, Sarah Mattson Dustin, George Moore, Cathy Shanelaris, and Brian Shaughnessy.

school drop-out. While I was in junior high, she went back and got her GED and when I was a junior in high school she graduated college all while raising three girls in the city of Detroit, and on welfare. So, I've always looked at my mom and said, 'if she can do what she did, there's nothing I can't do.' She was a big proponent of education knowing that this is the only way of changing the trajectory of children born into a poor economic status and she was religious about not missing school. And you always had to be better than everyone else. I credit that to my success and my daughter's. Generationally we changed. My Mom passed away Feb. 27, 2020, at my home. That was the roughest weekend of my life.

The other hero in my life is my father. He's 67, he's a Ford retiree, he is also a journeyman roofer, and he had very low education. He helped support my grandmother and my aunt and uncle when my grandfather died. He's originally from Columbia, TN. And that's where I was in TN. So, those are my two heroes.

What hopes or objectives do you have for 603 Legal Aid?

There's such a good foundation here. We have some amazing staff who have been here for a long time and when we merged with the pro bono staff, we now have what I think is an unprecedented opportunity. My biggest objective is that the centralized intake will increase access statewide and minimize the frustration people generally experience trying to access free legal assistance. The other thing is optimizing resources. Historically, the Legal Advice and Referral Center focused on giving advice and referring applicants to other community partners such as New Hampshire Legal Assistance or the Disability Rights Center, or to the Pro Bono Referral Center. We're looking at making our intake succinct and finite so we can easily dispose of cases. We're also looking to expand the scope of our services in-house so we can create services that exceed just advice and counsel. For instance, we'd like to see more direct representation from the staff we have here. We have some really experienced and highly intelligent staff attorneys and we're looking at how we can optimize resources and assist low income populations throughout the state. We're also looking at how we can have the courts streamline housing docket days to have a legal aid attorney there.

What challenges are you finding so far at 603?

When you talk about merging companies you want to highlight institutional knowledge, and you don't want to lose staff enthusiasm or the identities from each of those companies. You want to integrate them in such a way that they complement one another and are operating more efficiently. Change is difficult. And identifying where inefficiencies are can be difficult. So, we're trying to navigate that land right now. Everyone here is so skilled and committed to the work we do. The goal is prioritizing efficiency and access. What we're looking at doing is making the foundation for 603 so solid that as we begin to build upon it it will be an organization that is sound. That's the objective.

What do you like to do outside of work?

I'm kind of still a nerd in some respects. A lot of the things I like to do don't involve

anyone but myself. My hobbies are crocheting, and I've also taken up quilting as a way to capture all of my daughter's sports memorabilia from high school. I also spend a lot of time with my dogs. They keep me pretty busy. Aside from that I spend a lot of time, I used to anyway, with Sweet Pleadings. I have every kitchen gadget there is and it's nothing to spend eight to 10 hours in the kitchen baking. It's something to do that's just fun. It relieves stress and is often a way to let people know how much you appreciate them. It's just something to do that's mindless and a little bit creative. Not as intense as the law can be.

What books are you reading right now?

I'm reading a novel called Indigo Girl by Natasha Boyd. It's about a young lady who is taking charge of the family farm while her father fights in a war. I'm a big civil history buff. I like to read fiction and non-fiction about the slavery era because I know that history tends to repeat itself and being more cognizant of voting restrictions and voting laws, and other things that were problems back then, keeps me active and motivated. It reminds me of how amazing my life is and how different it could have been.

Sonya Bellafant's Banana Bread

3 cups flour
2 cups sugar
1 cup oil
3 large eggs
1 teaspoon baking soda
1 teaspoon salt
½ teaspoon nutmeg
1 tablespoon cinnamon
2 cups liquid bananas (they must be brown overripe and I liquify them in a blender)
1 Optional add-in*

Optional add-ins include the following suggestions:

About 1 cup frozen berries (blueberries are my favorite so I add more)
1 cup miniature chocolate chips
1 cup butterscotch chips
1 cup toffee chips (with or without chocolate)
1 cups nuts (walnut or pecans)

The great thing with food is you can be creative and add whatever you want.

For instance:

1 cup of peanut m & m
1 cup crumbled Nestle Bar

Divide the batter evenly into two pans and bake at 350 degrees for about one hour. I prefer to bake in stone pans. Be sure not to over bake and begin checking the bread at about 50 minutes. Insert a toothpick or cake tester to determine if the center has completed the baking process. Remove the loaves from pans and allow to cool for about 30-40 minutes.

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The Post-Pandemic Law Practice: What Lawyers Expect

By Nicole Black

Post-pandemic predictions survey

The Report, *Practicing Law in the Pandemic and Moving Forward: Results and Best Practices from a Nationwide Survey of the Legal Profession*, was based on input from 4,200 ABA members “from all geographic areas, practice settings, sizes of firms, corporations, and organizations, levels of experience, age, family status, races and ethnicities, types of gender identity, and types of disabilities.” The results cover a broad overview of topics ranging from the impact of the pandemic on the legal profession to post-pandemic expectations and recommendations for both legal employers and individual lawyers.

Remote work trends and challenges

According to the lawyers surveyed, there were many benefits to working remotely during the pandemic. A top benefit was more time with family and loved ones. Another notable finding was that some lawyers reported that working remotely actually increased their efficiency:

About 70% of lawyers reported spending more time with the people they lived with than a year ago. This result was especially true for lawyers with dependent children at home (approximately 79%). Somewhat to our surprise, lawyers generally reported no meaningful change in their efficiency doing work...”

However, as you might expect, lawyers shared that there were some drawbacks to

working remotely as well:

Over 90% of lawyers are spending more time on video or conference calls, but about 55% are spending less time on developing business or reaching out to clients. The presence of younger children in the household predicts even less outreach to clients... (and) lawyers with young children at home experienced a greater decrease in their efficiency.

According to the Report, the lawyers surveyed emphasized the importance of having well-equipped home offices. Survey respondents emphasized the importance of access to sufficient IT support, high quality computer equipment, and effective remote working software.

The large majority of lawyers report that it is either “very important” or “extremely important” (1) for home equipment to parallel office equipment, such as printers/scanners, computers, and ergonomic equipment (65%); (2) to have “office quality internet access” (86%); (3) to have “excellent access to office online files” (87%); and (4) to have strong IT support (77%).

Last but not least, one of the top challenges that lawyers experienced during the pandemic was business development:

We asked how much harder it was to obtain new business from existing clients or new clients, to get decisions from clients, be responsive to client requests, be productive on client matters, and set up client meetings. The greatest increase in difficulty was getting business from new clients—which 52% of lawyers reported as harder or much harder than last year.

Future-facing remote work trends and expectations

Now let's move on to the learnings from the Report regarding how lawyers think that the pandemic will affect the practice of law both short term and long term. Lawyers shared that they fully expected to continue working remotely post-pandemic at far higher rates than they had before the pandemic struck:

The majority of respondents (66%) believe it is likely or very likely that many lawyers in their particular workplace will continue working mostly or entirely remotely in 2021 and 2022. In that context, a sizable number of respondents—36%—reported that their personal preference is to have the flexibility to choose their own schedule from week to week. The remaining lawyers split roughly evenly between the option of working 4–5 days a week in the office (23%), or 2–3 days a week in the office (21%) or 1 day a week or rarely in the office (19%).

When asked if they were concerned about returning to the office, whether on a full or part-time basis, most lawyers expressed that they had very few concerns about their safety now that vaccines are being rolled out across the country:

Looking to 2021 and 2022, a large majority of lawyers (74%) were either “not at all concerned” or only “slightly concerned” about returning to the office before a safe and effective COVID-19 vaccine is available, and had similarly low levels of concern about adequate safety protocols being put into effect

by an employer; colleagues not following safety protocols like wearing masks and social distancing, or even being inside an office building which may lack good ventilation or have poor security in public places.

Finally, the lawyers surveyed also provided their thoughts on the types of technology support that they would need from their firms once the pandemic ends and they began to split time between in-office and remote work:

(Lawyers reported) it would be helpful in their practice going forward to have guidance about the use of technology for remote working (55%), guidance about law firm technology (50%), and guidance about home office practices (43%).

In other words, lawyers are more than ready to get back to work – but only when the time is right and with the necessary support. Importantly, remote working flexibility will be a must, as will access to the legal technology software and tools needed to enable a flexible work schedule. So that's how the pandemic has shaped lawyers perspectives and expectations about remote work.

Nicole Black is an attorney and the Legal Technology Evangelist at MyCase. Her legal career spans nearly two decades and she has extensive litigation experience. She is also a well known legal technology author, journalist, and speaker. She wrote “Computing for Lawyers” (2012) and co-authored “Social Media: The Next Frontier” (2010), both published by the American Bar Association.

To learn more, visit <http://learn.mycase.com/lp/157/NewHampshireBar.html?sd=MC-Web-Bars-ov15&campaign=70180000001JC6d&ms=converted&partner>NewHampshire> | 800-571-8062



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TUE, JUNE 22 • Noon - 1:00 p.m.

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What Every Lawyer Should Know About Developing a Cybersecurity Plan

- Webcast; 60 min. ethics/prof.

WED, JUNE 23 • Noon - 1:00 p.m.

Pending NH Bills of Importance to all Trust, Estate & Probate Practitioners

- Webcast; 60 min.

FRI, JUNE 25

Annual Meeting 2021: The Accidental Lawyer (Virtual Event) • 180 min.

MON, JUNE 28 • Noon - 1:00 p.m.

The Code of Kryptonite: Ethical Limitations on Lawyers' Superpowers w/Stuart Teicher

- Webcast; 60 ethics/prof. min.

WED, JUNE 30 • Noon - 1:00 p.m.

The Supreme Court 2020-21 Term in Review

- Webcast; 60 min.

JULY 2021

THU, JULY 8 • Noon - 1:00 p.m.

Exit Row Ethics: What Rude Airline Travel Stories

Teach About Attorney Ethics w/Stuart Teicher

- Webcast; 60 ethics/prof. min.

THU, JULY 15 • Noon - 1:00 p.m.

Logic, Argumentation and Persuasion 1:

10 Informal Logical Fallacies w/Lenne Espenschied

- Webcast; 60 min.

THU, JULY 22 • Noon - 1:00 p.m.

The Tech Never Stops w/Stuart Teicher

- Webcast; 60 ethics/prof. min.

THU, JULY 29 • Noon - 1:00 p.m.

Logic, Argumentation and Persuasion 2: Is That a Fact? w/Lenne Espenschied

- Webcast; 60 min.

AUGUST 2021

THU, AUGUST 12

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**THU, JULY 15 – Noon – 1:00 p.m.
10 Informal Logical Fallacies – How to Use Them and How to Refuse Them**

In this program, we'll focus on ten common informal logical fallacies, discussing how they are formulated; how to recognize them; how to use them; and how to refuse them.

**THU, JULY 29 – Noon – 1:00 p.m.
Is That a Fact?**

Classical logic is built upon premises that are presumed to be true, but what exactly is "true" and how does it differ from fact?

**THU, AUGUST 12 – Noon – 1:00 p.m.
Convince Me**

How convincing are you? We'll show you how to use classical logical syllogisms to construct more compelling arguments.

**THU, AUGUST 26 – Noon – 1:00 p.m.
4 Key Elements of a SuperPower Persuasion**

The power of persuasion enables virtually all other pursuits, so it ranks high on the list of preferred superpowers for lawyers. In this program, Part 4 of Logic, Argumentation, and Persuasion, we'll showcase four different methods to enhance your power of persuasion.

ALSO with Stuart Teicher

**MON, JUNE 28 • Noon – 1:00 p.m.
The Code of Kryptonite: Ethical Limitations on Lawyers' Superpowers**

In this program, Stuart weaves together talk of superpowers, superheroes, and other fun stuff to explain important ethics rules and explore the breadth and limitations on a lawyer's power.

**MON, JULY 8 • Noon – 1:00 p.m.
Exit Row Ethics: What Rude Airline Travel Stories Teach About Attorney Ethics**

Join Stuart as he draws parallels between passengers and practitioners and explains key ethics rules that will help every lawyer stay safe in their practice.

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NEW HAMPSHIRE BAR MEMBERS CELEBRATING 50 YEARS OF LAW PRACTICE

—New Admits to the New Hampshire Bar, Fall 1971—



NH Bar Members look back and share advice for the next generation.

Profiles are based on questionnaires sent earlier this year to New Hampshire Bar members marking 50 years of law practice, and those who responded are included. Responses have been edited for length and clarity.

Though perhaps remembered for colorful bell bottom pants and massive collars on bizarrely patterned or striped shirts, 1971 portended significant changes to come over the course of our 50-year members' careers. The 26th Amendment remains one of the most notable events of the year. During World War II, then-President Roosevelt lowered the draft age to 18, and the 26th Amendment followed through on a national desire to acknowledge that those old enough to go to war were also old enough to cast a ballot. Three quarters of the states ratified the 26th Amendment in 1971.

Lawyers in 1971 employed the trusty electric typewriter to conduct much of their business, but our class of 50-year members were on the cusp of a technological revolution that today's new members take for granted: in 1971, Intel released the world's first microprocessor.

Amtrak sprang to life in 1971, just as Americans gained a new destination for vacation adventure in Florida's Walt Disney World, which opened that year. The year also saw Led Zeppelin's release of "Stairway to Heaven," Bill Withers' "Ain't No Sunshine," Rod Stewart's "Maggie May," Marvin Gaye's "What's Going On," and, who could forget, Tony Orlando and Dawn's "Knock Three Times." What a year!

Perhaps topping even Disney World and "Stairway to Heaven," New Hampshire played prominently in the national, and even global, historical events of the year. NASA's Apollo 14 launched on January 31, 1971. Commanding the Apollo 14 crew was the Granite State's own Alan Shepard, born in Derry and a graduate of Pinkerton Academy. Shepard piloted the lunar module that landed on the moon. While he was the fifth person to walk on the surface of the moon, he was the first to attempt to hit golf balls on the lunar surface. There's nothing like low gravity to add distance to a tee shot!

We salute our 50-year members. They came of age and perfected their craft during 50 years of immense change in the world and in the practice of law. They, however, remained keepers of "the New Hampshire way" and propagated it to succeeding generations of New Hampshire lawyers. In the pages that follow, they share their stories. I commend those stories to all of us as poignant reminders of the enduring value of our association and how we do things in New Hampshire as lawyers. Thank you, Class of 1971!

—NHBA President, Daniel E. Will

John B. Andrews
Robert T. Bloomenthal
Paul Buffum
John M. Cunningham
James F. Early
Laurence J. Gillis
Gary W. Holmes
Lawrence A. Kelly
Raymond J. Kelly
Aaron A. Lipsky
Silas Little III
Peter J. McDonough
Joseph F. McDowell
Malcolm R. McNeill
Bruce E. Mohl
James E. Ritzo
Robert H. Rowe
James Q. Shirley
Robert S. Span
Rodney L. Stark
Robert A. Stein
Frederick C. Tedeschi
Mary Ellen Tedeschi
Arthur L. Trombly
James C. Wheat

John B. Andrews



"Take every opportunity you can to network with your peers and others in all occupations and professions through the Bar and community groups."

City/town of residence: Rochester, NH

Hometown: Born in Bridgton, Maine; raised in Yarmouth, Maine

Family: Spouse: Sharon B. Andrews; Children: Elizabeth Andrews Parker, Dover, N.H., John D. Andrews, Boxborough, MA, Matthew J. Andrews, South Portland, ME, Grandchildren: 9



Education: B.A. in Political Science, University of Southern Maine, 1968; J.D., University of Maine School of Law, 1971. Admitted in Maine and New Hampshire and US District Court

Military Service: In 1965, I was in the USMC Platoon Leaders' Class and spent 8 weeks in Quantico, VA. I went back for the second summer of the program in 1967 but left for physical reasons. That was probably a blessing in disguise as 1968 wasn't a good time to be in Southeast Asia.

Past law firms or employers: Maine Municipal Association, New Hampshire Municipal Association

John B. Andrews, who received his J.D. from the University of Maine in 1971, didn't practice law "in the traditional sense," or ever have a case "per se." That's because Andrews has spent his career working as a Municipal Law attorney in Maine and New Hampshire where the work plays out in the form of policy and legislation.

"I never had a "case" per se, but my most memorable experiences were the two State-wide referenda that I won and the creation of the insurance pools for local governments. The insurance pools have saved taxpayers tens of millions of dollars and guaranteed an insurance marketplace for their member governments."

Andrews has had jobs with the Maine Municipal Association, where he served as their first full-time lobbyist, and drafted legislation and amendments on municipal issues. He also represented Maine municipalities before the Maine Legislature and the Congressional Delegation.

In 1975 he moved to New Hampshire and was appointed Executive Director of the New Hampshire Municipal Association from which he retired in 2009.

"My greatest accomplishment was the creation of four pooled, mutual insurance programs for municipalities, counties and school districts. Almost all government entities now belong to the unemployment compensation, workers' compensation, health or property-liability insurance pools that I started beginning in the early 1980s," Andrews says.

Andrews became an attorney after working with Barney Shur of Bernstein, Shur, Sawyer & Nelson in Portland, ME. Barney was the Corporation Counsel/Acting City Manager for the City of Portland when he was an Intern and, later, Administrative Assistant for the City manager's office.

In New Hampshire, Andrews says his mentors and heroes were Martin Gross, Dave Nixon and Kimon Zachos.

Andrews is proud to have received the New Hampshire Bar Association's award for "Having Contributed the Most to the NH Bar Association" one year for his work on the Board selling the old Pleasant Street building and acquiring the bar association's current offices on Pillsbury Street.

In addition to the work he has done for the Maine and New Hampshire Municipal Associations, Andrews has also served on the Board of Governors of the NH Bar Association, the Maine & NH labor boards, the board of directors of the National League of Cities, the NH Center for Public Policy Studies, and the New England Municipal Center.

"After 50 years of 'practice' and 75 years of life, I'm just pleased to reach this 50-year milestone," Andrews says. "I had always expected to enter a traditional law practice but learned that a legal education opens up a wide variety of possible careers. I never imagined I'd end up doing what I did."

Paul Buffum



"What goes around comes around."

City/town of residence: New London, NH



Hometown: Providence, RI

Family: Wife: Bevan; Children: Tina and Lori; six grandchildren

Education: Dartmouth College and Boston University Law

Military Service: US Army, Infantry

Areas of Practice: General Business

Current law firm or employer: Retired

Past law firms or employers: Herrick and Smith, Boston, MA; George C. Perkins-New Bedford, MA; Nashua Corp.; Joann Fabrics Corporation

Paul Buffum retired nearly four years ago, and while he says he doesn't miss the worrying about "what could go wrong" any longer, he has many fond memories of the good times spent with people he otherwise would never have met.

After graduating from college, Buffum says he was thrust into a leadership position as a 2nd Lieutenant in the Army.

"There were good times and bad times, but I wouldn't trade those two years for anything," he says.

After the Army, Buffum considered teaching or the law, and while he chose the latter this didn't stop him from guiding clients and organizations through difficult situations throughout his career.

"I decided I would rather influence older minds rather than younger minds," Buffum says, adding that his proudest achievements professionally involve having helped people on a personal level.

Robert T. Bloomenthal

City/town of residence: Pepperell, MA & Gilford, NH



Hometown: Newton, MA

Family: wife Sandra Bloomenthal, Esq., sons Benjamin and Steven, Grandsons Avner and Aron

Education: Boston University and New England Law

Areas of Practice: Criminal and Family Law

Current law firm or employer: Bloomenthal Law Office

Robert Bloomenthal grew up in Newton, Massachusetts and is still practicing law after 50 years.

Bloomenthal followed in the footsteps of his brothers who were just finishing up law school at the time he was admitted in the late 1960's.

One of his mentors at the time was Father Robert Drinan, the former Dean of Boston College Law School. Drinan, a Catholic priest, was elected to the U.S. House of Representatives from Mass. in 1970 on an anti-Vietnam war platform and held that position for 10 years.

Bloomenthal's most memorable case is *Commonwealth v. Procopio*, 984 N.E.2d 315 (2013), which overturned a 2nd degree murder conviction from the early 1990's.

When not practicing law, Bloomenthal is an active Mason and Shriner. He was also actively involved in the Boy Scouts when his children were young.

John M. Cunningham

"Work hard and find good mentors."

City/town of residence: Concord NH



Hometown: Sacramento, California.

Family: Married to Martha Cunningham for 43 years (and still married to her); two daughters (Grayson (married to James Coale) and Dana (single)); three grandchildren (Charlie, Will and Brooke Coale)

Education: B.A., Fordham College; M.A. (philosophy), Fordham University; J.D. University of Pennsylvania Law School (1971)

Areas of Practice: Heavy focus on LLC law and tax; federal tax (especially under IRC section 199A); general business practice

Current law firm or employer: Self-employed; of counsel to McLane Middleton, P.A.

John Cunningham earned his J.D. from the University of Pennsylvania Law School, in 1971. He works full-time: Forming LLCs and handling other LLC legal and tax issues for his clients; Helping his clients maximize the annual 20% federal income tax deduction potentially available to them under Internal Revenue Code section 199A; Publishing weekly *Concord Monitor* Law in the Marketplace columns on legal and business issues for business owners and others; and Updating Drafting Limited Liability Company Operating Agreements, his LLC formbook and practice

manual, and his treatise on section 199A, both published by Wolters Kluwer.

Drafting Limited Liability Company Operating Agreements is the only limited liability company ("LLC") formbook and practice manual that addresses in a comprehensive and sophisticated manner the entire process of planning, negotiating, and drafting LLC operating agreements and handling LLC formations.

Maximizing Pass-Through Deductions under Internal Revenue Code Section 199A, provides comprehensive guidance to pass-through business owners and their professional advisers about how to obtain Section 199A deductions and how to accomplish the above structuring and restructuring to maximize these deductions.

Cunningham says he decided to become a lawyer after deciding not to continue with philosophy which was his original professional interest.

Over the years and on top of the textbooks he has written, Cunningham has also written dozens of articles for lawyers and the general public. He has also taught legal and tax seminars for the New Hampshire Bar and other groups.

Cunningham helped found the Kent Street Coalition, a neighborhood-based Concord, NH progressive citizen activist coalition.

Asked how he feels to have reached the 50-year milestone, he says he's lucky to be still practicing five days a week and half of each Saturday.

James F. Early

"Give your best effort every day. Remain steady and grounded.
Don't get too high or too low."

City/town of residence: Woodbridge, CT

Hometown: Derby, CT

Family: Wife: Mary Edith Early; Sons: Ethan Early and Brian Early



Education: Harvard College, A.B., 1968; Boston University School of Law, J.D., 1971

Areas of Practice: Personal Injury, Products Liability, Toxic Torts, Asbestos Litigation

Current law firm or employer: Early, Lucarelli, Sweeney & Meisenkothen LLC (New Haven, CT) and The Early Law Firm LLC (New York, New York)

Past law firms or employers: Burns, Bryant, Hinckley, Cox & Shea (Dover, NH); Sklarz & Early (New Haven, CT), Thornton & Early (Boston, MA)

James Francis Early, a graduate of Harvard College and Boston University School of Law, says he is fortunate to have been able to enjoy his life's work.

Early's choice to enter the profession of law came from a desire to help those less fortunate and to gain a broad knowledge across "multiple facets of life."

"I wanted to help others, especially those less fortunate," Early says.

Early's first mentor was noted Dover trial lawyer Bob Hinckley. Also instrumental over the decades has been the counsel and friendship of Michael Thornton and John Barrett (both Burns, Bryant, Hinckley alumni) and the deceased American Association of Justice trial stalwart Ronald L. Motley. Early's career has been devoted to representing plaintiffs against the powerful, the last 42 of which have been mainly devoted to obtaining justice for his clients against the asbestos industry.

When Early isn't practicing law, he can be found out on the golf course enjoying the scenery and probably hitting too many golf shots and contributing to civics organizations such as the Early Family Foundation which provides aid to people in need and scholarship assistance to deserving students.

"I can't believe how quickly time has passed. I'm proud to have represented so many people seeking justice against wrongdoers."

Laurence J. Gillis



"As to the law, you should 'know a little bit about everything, and some things well.' I suggest that you read, scan, or brief every single case that comes out of the NH Supreme Court, on an ongoing basis. Don't kill yourself doing it, of course, but do it. That way, your legal education will continue until the day you die. The alternative is too terrible to contemplate, because you will be rotting in place."

City/town of residence: Cape Coral, FL (since 2008).



Hometown: (Beachmont) Revere, MA

Family: (wife) Marcia Chilson Gillis; (children, by Margaretta Archibald Gillis): Maggie Gillis, Sarah Harrison, Carolyn Gillis, Larry Gillis

Education: Phillips Academy (Andover, 1960); Harvard University (AB, 1964); Boston University (LLB, 1971)

Military Service: Captain, US Army; Commanding Officer, 437th Military Police Company, Orleans France (1964-1967)

Areas of Practice: mostly criminal law (prosecution AND defense)

Current law firm or employer: Professor of Legal Studies (adjunct, online, University of Maryland Global Campus, 2008-present)

Past law firms or employers: Junkins & Gillis (Hampton, 1972-1979); Seabrook Town Prosecutor (part-time, 1973-1974); Concord City Prosecutor (1980-1982); Tetler, Salomon, Gillis & DeKavis (Hampton, 1983-1985); Gillis Law Office (1985-1998); Assistant Strafford County Attorney(1998); trial attorney NH DCYF (1999-2003, Salem office); Instructor in Legal Studies (2001-2008, Kaplan University, adjunct, online); Professor of Legal Studies (2008-present, University of Maryland Global Campus, adjunct, online).

Laurence J. Gillis has been living in Florida since 2008 but most of his career was spent in New Hampshire practicing criminal law as a prosecutor and defense attorney.

After graduating with his LLB from Boston University in 1971, Gillis worked for Junkins and Gillis in Hampton until 1979. While there, he also worked part time as the Seabrook town prosecutor and, in 1980, he became the Concord city prosecutor. From 1985-1998, Gillis ran the Gillis Law Office and from 1999-2003 he was a trial attorney for NH DCYF in the Salem office. He currently teaches at the University of Maryland as an adjunct professor.

Gillis served as chair of the NH House of Representatives Appropriations sub-committee on justice. He recommends getting elected to the House, "where you can meet everyone who is clinically alive in NH, at least at that moment in time."

Throughout his career Gillis has been a part of a number of memorable cases in New Hampshire including *United States v. Mark Huddleston, James Pechewlys v. Winnacunnet School Board* and *State v. Daniel Bramwell*.

Looking back on his career, Gillis says he's "kinda surprised to have made it this far," having never taken a course in legal ethics in law school.

"Specifically, I learned about legal ethics mostly by watching other lawyers get blown up, usually for stealing the clients' money, or for sleeping with them, or both. (I did neither, but thanks for asking.)"

Gilllis chose to make the legal profession his calling because, as he says, "I never seriously considered any other calling other than 'criminal lawyer.'"

"I guess I fancied myself to be a "Luke Skywalker" of some sort, long before there was any such thing. Whether it was a good fit or not really didn't matter."

When it comes to his proudest achievement, Gillis says, it was being on the Board of Governors for the New Hampshire Bar Association. There, he says, he had a chance to work with "some really accomplished 'pezzonovantes.'"

Pezzonovantes is a Sicilian term meaning ".95 caliber" or "big shot."

"Let me put it this way: there is nothing so admirable as a thoroughly competent lawyer at the height of his (or her) abilities, working a difficult problem. Locally, they can be found most easily on the BOG," he says.

And as for what his time serving in the military taught him, Gillis refers to an old army saying "there's the right way, the wrong way, and the Army way."

"I eventually came to respect solving a problem doing it the Army way, 'by the numbers,'" he says, adding. "That was not always the case."

Gary W. Holmes

City/town of residence: Currently of Kittery, Maine (Formerly of Rye Beach, NH)



Hometown: Sterling, Mass

Family: Patricia C. Holmes (Married 52 years); Children: Bennett W. Holmes; Alexander W. Holmes

Education: Boston University (BA 1968); Boston University (JD 1971)

Areas of Practice: General Practice with Civil and trial work, 24 years; Estate Planning for 25 years

Current law firm or employer: Retired, non practicing status

Past law firms or employers: Treat and Tetler (1971-1973; Tetler and Holmes (1973-1983); Holmes and Ells (1983-2018)

Gary W. Holmes earned his J.D. at Boston University in 1971 and began practicing law that year on the seacoast with Treat and Tetler.

While in law school, Holmes says he would often study at the Harvard University law library under the portrait of Supreme Court Justice Oliver Wendell Holmes. Justice Holmes, famous for his opinions on civil liberties and American constitutional democracy.

continued

Gary W. Holmes *continued*

Holmes served as council for the town of Seabrook during the time when the Seabrook Nuclear Power Plant was constructed, and he recalls the demonstrations and changes the plant brought to the region.

"A sleepy little border town was transformed into the world of commerce when the Seabrook Nuclear Plant was constructed," Holmes says. "The intense demonstrations, political notoriety, money and pressure to commercialize brought life changes to the residents and the seacoast and unique challenges to me."

When it comes to wisdom for new attorneys Holmes has the following piece of solid advice.

"Set fast, early in life, the good and really important things, take the time to remember them and if you can, build on them. They will hold you tightly when the times role from the ups and downs."

Holmes says he is no longer practicing law officially but still passes along his "accumulated wisdom" to various charitable organizations that he works with.

"I miss dearly the relationships with my clients and their families and the skills and confidence I gained in my estate planning serve me well in retirement."

Holmes is most proud of helping family members find and hold onto what he refers to as those "thoughtful treasures of both memories and possessions" from their parents or loved ones.

"They hopefully will pass down these memories to future generations with the love still attached."

Over the years, Holmes has participated in competitive sports and been involved with a number of youth sports organizations, Boy Scouts, the Church and Bar and his two long time loves: Operation Blessing, a seacoast relief organization serving the homeless, elderly and children, and Child Voice Int., an organization serving girls and their children in war torn areas of Africa.

Lawrence A. Kelly

"Become associated with a firm of experienced attorneys who are willing and able to spend time with you and become your mentors."

City of residence: West Lebanon, NH



Hometown: I was born and grew up in St. Louis, MO but have lived in the Lebanon area for the past 50 years.

Family: I am married to Lorraine Tompkins Kelly. We have 2 children, Megan Tompkins Kelly and John Sheridan Kelly.

Education: AB St. Louis University, JD Harvard Law School

Areas of Practice: Real Estate

Current law firm or employer: Retired

Past law firms or employers: (In reverse order) Orr & Reno PA; Dartmouth College; Daschbach Kelly Cooper & Hotchkiss PA; Struckhoff & Kelly; Baker & Page; and (in Wilmington Del) Morris Nichols Arsh & Tunnell

Most memorable case: Representing Dartmouth College in the set of real estate transactions which resulted in the assembly of the Dartmouth-Hitchcock Medical Center campus and in the creation of the Centerra Planned Business Park.

Born and raised in St. Louis, MO, Laurence A. Kelly, or "Larry," as he is known, eventually moved east to complete his J.D. at Harvard Law School. Shortly after this, he found his way to Lebanon, N.H., where he practiced real estate law for over 50 years.

"It's hard to believe that it's been 51 years since I graduated from law school," Kelly says, reflecting on his career. "I was blessed with wonderful colleagues and generally enjoyed my practice, but I've been happily retired since 2015."

Kelly says he became a lawyer because the field suited his interests and abilities and that it provided a number of career opportunities.

And over the years of practicing law, Kelly has established a number of close relationships.

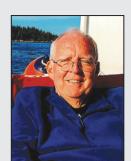
"There are too many to name," Kelly says, "I've had many able, ethical, collegial compatriots over the years. My biggest hope, looking back, is that my clients and peers respected and trusted me."

Kelly has been a solid part of his community, volunteering and serving on numerous non-profit boards, many involving the performing arts.

"The most meaningful involvement turns out to be the latest, the Grafton County Senior Citizens Council," he says.

The Citizens Council operates all of the senior centers as well as the meals on wheels programs, and provides transportation and many other services to seniors across all of Grafton County.

Raymond J. Kelly



City of residence: Needham, Mass.

Hometown: Bronxville, N.Y.

Family: Suzanne (spouse); Kara 46, Ryan 41, (children)

Education: Xavier University, B.A. 1968; Boston College Law School, J.D. 1971

Areas of Practice: Administrative Law, Social Security Disability, Unemployment Compensation

Current law firm or employer: Retired, April 2017

Past law firms or employers: New Hampshire Legal Assistance, 1971-1979; Private practice 1979-2017

Most memorable case: *White v. NHDES*, U.S. Supreme Court

Raymond J. Kelly spent the first eight years of his career working for New Hampshire Legal Assistance before going into private practice.

In the early 1980s, Kelly was part of a case that was heard by the U.S. Supreme Court. *White v. NHDES* initially involved a New Hampshire social security unemployment claim by Richard H. White. After this case was settled in favor of White, he sought an award of attorney fees.

White initially filed a motion requesting an award of attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988. The District Court granted attorney's fees and denied respondents' subsequent motion to vacate the consent decree. The Court of Appeals then reversed the District Court's decision to award attorney's fees under 1988.

The case was argued at the U.S. Supreme Court on November 30, 1981, and a decision to award the plaintiff attorney fees was made March 2, 1982.

Kelly says it was his desire to help others that led to his choice of law as a profession.

"I always admired Thurgood Marshall," he says. "And Doug Crockett of Connecticut was a wonderful mentor."

Looking back, Kelly says time has flown by and that he's the proudest of his time spent working with the National Organization of Social Security Claimants' Representatives (NOSSCR) and with Legal Services.

"I can't believe its been 50 years," he says.

Aaron A. Lipsky

"Put in the extra time to always prepare your cases to the best of your ability."



City/town of residence: Keene, New Hampshire

Hometown: Keene, New Hampshire

Family (partner, children): none

Education: University of Chicago; Keene State College, BA; Boston College Law School, JD

Areas of Practice: General Practice

Current law firm or employer: Inactive Status

Past law firms or employers: Law Offices of William D. Tribble, Jaffrey, New Hampshire; Law Offices of Aaron A. Lipsky, Keene, New Hampshire; Law Offices of Pamela P. Little, (of Counsel), Keene, New Hampshire

Aaron A. Lipsky, a 3 term mayor of Keene, N.H., earned his JD from Boston College Law School and practiced law in Jaffrey and Keene during his long career as an attorney.

Lipsky's choice to become a lawyer, he says, had a lot to do with the fact that he had been around lawyers since he was a child.

"My father, Rubin Lipsky, (also a fifty-year member of the NH Bar) and his best friends were lawyers and I came to believe that the law would be a good way to earn a living while helping people."

Lipsky says he gained valuable training starting out as a lawyer from his father, as well as his first employer, William D. Tribble, who handled a variety of legal issues facing people living in small towns.

These formative experiences formed the backdrop for one of Lipsky's most

memorable experiences as an attorney involving a judgment on a debt owed to the Vermont National Bank. Lipsky's client had been taken to Keene District Court where she had been held until she came up with \$300 cash bail (almost \$900 in today's dollars).

"I asked her if she had ignored a summons or subpoena for a court hearing. She answered that she had not; she had received no notification of any kind and, in fact, no hearing had been scheduled on that day for the missed payments."

After discovering the court had shown no interest in learning the reasons for his client's missed payments or possible inability to pay before issuing the writ for her arrest, Lipsky says he moved to quash the writ of capias and recover the bail.

"It seemed to me like something out of a Nineteenth Century Dickens novel, not something that should be happening in the Twentieth Century."

After the district court denied the motion, Lipsky appealed the decision to the New Hampshire Supreme Court and won. In May 1982, the Court ruled "that the use of ex parte capias writs to initiate collection or civil contempt proceedings before the debtor has been given an opportunity to appear voluntarily for a hearing" violated the defendant's due process rights; moreover, it went on to order that the entire municipal and superior court systems establish rules to prohibit such practices. The court remanded the case, quashed the capias, and ordered the \$300 bail returned.

"I am proud that I helped many ordinary people in my legal career, that I practiced in all the courts, and that I had the opportunity to argue cases before the New Hampshire Supreme Court," Lipsky says.

Lipsky's community service has involved working for various organizations and serving on a number of boards, but "undoubtedly," he says, "the most meaningful was being elected three times by my fellow citizens to be Mayor of the City of Keene."

Silas Little III

City/town of residence: Franconia, NH



Hometown: Franconia, NH

Family: Theresa A. Kirouac-Little, spouse; Anna-Lisa and Katherine, daughters: Wheaton and Amos, sons

Education: Haverford College, B.A.; Yale Law School, J.D.; Boston University, LL.M. in Taxation

Areas of Practice: Small town, small firm civil practice

Current law firm or employer: Fernald, Taft, Falby and Little, P.A.

Past law firms or employers: Devine, Millimet, Stahl and Branch

Silas Little received his J.D. from Yale Law School, his LL.M. in taxation from Boston University and he worked for Devine, Millimet, Stahl and Branch.

Being a lawyer, Little says, gave him some choice in where he could live. "Of course, once there, there was the penalty to change."

His mentors are: E. Donald Dufresne; John S. Holland; J. Michael McDonough; Joseph A. Millimet and Norman H. Stahl.

When considering some of his most memorable cases, three come to mind for Little. There was one involving a pig farm that was going well until the farmer stopped following the NH Co-op Extension Advice, one involving the rescinding of a house purchase after the new owners discovered the upstairs had been used as a litter box for 20 years and the defeat of an asserted right-of-way road across a client's land. To this day, Little says, the tract has been conserved, and not "turned into house lots."

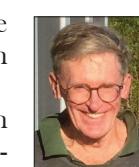
Over the years, Little, who is still practicing law, has served as a library trustee, zoning board member and chair, and the town clock winder.

Asked how it feels to have reached the 50-year milestone, he says:

"I detect a typo - millstone. I am too old to die young."

Peter J. McDonough

It has been a great honor to be a member of the New Hampshire Bar Association. It's hard to believe it's been 50 years since I was sworn in as a new attorney.



My heroes and mentors are my older brother, Attorney Joseph M. McDonough III and my younger brother Attorney Paul A. McDonough. I am most proud of the years I was able to serve the Hillsborough County as the County Attorney and the Department of Safety as a Hearing Examiner.

Both my older brother and younger brother have always been an invaluable source of advice and assistance to me and to whom I am greatly indebted.

Joseph F. McDowell

"Work hard and be fair to everyone."

Try hard to balance your personal life."

City/town of residence: Manchester, NH



Hometown: Manchester, NH

Family: Partner: Elaine St. Cyr; two adult sons

Education: Providence College, 1968; Suffolk University Law School, 1971

Areas of Practice: Personal Injury

Current law firm or employer: McDowell & Morrisette, PA

Past law firms or employers: McDowell & Osburn; Cullity, Kelley & McDowell; Craig, Wenners, Craig & McDowell

Joseph F. McDowell says he became a lawyer because of a desire to help others and that is what he set out to do following his graduation from Suffolk University Law School in 1971.

McDowell has spent his career as a personal injury attorney obtaining compensation for injured victims. One of his most memorable cases involved serving as lead counsel for over 80 women injured by the Dalkon Shield, a brand of intrauterine device found to cause severe injury to a disproportionately large percentage of women.

McDowell, who has been active with the Boys and Girls Club, Catholic Charities as well as local sports teams when his sons were in school, says he feels fortunate to have reached the 50-year milestone. He continues to serve as an active member of the New Hampshire Supreme Court Committee on Character and Fitness.

**McDowell & Morrisette
PROFESSIONAL ASSOCIATION**

Congratulations Joe McDowell on your

50th Anniversary

As a Member of the New Hampshire Bar Association

We congratulate Joseph F. McDowell, III as he attains fifty years in the practice of law.



Joe has expressed that it has been his honor to practice law in the service of his clients. Joe has exemplified professionalism throughout his career through loyalty and dedication to his clients' interests, and he has done so with an unyielding work ethic. Joe's work on behalf of his clients has been determined and he retained his inquisitive style.

Our office is honored to work with Joe and we celebrate his accomplishment.



282 River Road, Manchester, NH 03104
Phone: 603-623-9300 Fax: 603-623-5390

Malcolm R. McNeill

"Be prepared and be honest. Have respect for the Courts and opposing counsel. Keep clients well informed and promptly respond to their questions."

City/town of residence: Durham, N.H.

Hometown: Peabody, Mass.

Family: Vi McNeill (wife), Jenna and Adam McNeill (children)

Education: Tufts University, B.A. 1968; Boston University School of Law, J.D., 1971

Areas of Practice: Land use, Planning and Zoning, Real Estate Development and related litigation

Current law firm or employer: Retired, 2014

Past law firms or employers: Cooper Hall and Walker; Barrett and McNeill; McNeill, Taylor and Gallo



Malcolm R. McNeill received his J.D. from Boston University in 1971 and retired in 2014.

McNeill says he misses the intellectual challenges that come with practicing law as well as the satisfaction of serving clients well.

"I don't miss the very long hours, the deadlines and numerous night-time public hearings," he says.

McNeill says he chose to become a lawyer because he wanted to "be his own boss" and because he wanted to make a positive difference for people.

"Lawyers have a unique role in society and I always felt that being a lawyer was more than just a job."

Some of his heroes include Justices Bill Grimes and Joe Nadeau, and attorney Fred Hall.

Over the years, McNeill represented both municipalities and commercial developers, assisting both in the often-challenging real estate development process that led to the creation of residential and commercial projects that provided hundreds of homes and jobs.

McNeill has been actively involved in his community over the years, serving as a member and Chairperson of the Greater Dover Chamber of Commerce, officer and member of the Board of Trustees of Wentworth Douglas Hospital and a member of the Dover Rotary Club for 38 years.

"Rotary's motto is 'service above self' and I have been privileged to serve and support many Rotary projects both in New Hampshire and internationally. Rotary has been the most meaningful community service to me."

Bruce E. Mohl

"Put in the time to prepare every case and you will be fine."

City/town of residence: Meredith, NH; Bonita Springs, FL

Hometown: Tarrytown, NY

Family: Marian Tucker; children: Jessica & Katherine

Education: Hamilton College, AB; Boston University School of Law, JD

Areas of Practice: Civil Trial Practice; Arbitration & Mediation

Current law firm or employer: Solo Mediation & Arbitration

Past law firms or employers: Greater Boston Legal Services; Assistant Attorney General, Commonwealth of Massachusetts; Deputy Attorney General of New Hampshire; Associate Justice, NH Superior Court



While Attorney Bruce E. Mohl says he didn't have any "earth-shattering moments or lofty goals" determining his decision to become a lawyer, his life's work has demonstrated his strong desire to make a difference in people's lives.

Mohl, a graduate of Boston University School of Law, got to work making a difference early in his career in Boston where he worked on a class-action suit challenging unsafe conditions in public housing in the city. The case, litigated over five years, culminated in 1980 with the Massachusetts Supreme Judicial Court's appointment of a receiver for the public housing agency.

"While I left the case after leading the appeal, the receiver was successful in eliminating the corrosive effects of long-term city patronage and ushered in very significant state and federal resources leading to markedly improved conditions in public housing in Boston over the following decade," Mohl says.

Over his long career Mohl has served as a Supervisory Superior Court Justice for Strafford and Carroll counties. It was in Strafford County, where he retired in 2007, that Mohl says some of his proudest achievements occurred. One of those achievements was the establishment of the first adult drug court in the New Hampshire Superior Court in 2003.

"It could not have happened but for the collaborative work with great court staff, attorneys in the County Attorney's Office and from the Public Defender in Strafford County, dedicated staff and professionals from Strafford County and local mental health providers," Mohl says. "The great success of the Strafford County Drug Court has been in changing the way we look at drug addiction in criminal cases."

The Strafford County Drug Court became the model that has been adopted statewide for the superior court by current Chief Justice Tina Nadeau.

Today Mohl is a solo mediator with an emphasis on complex business, commercial, employment, professional, malpractice, and personal injury cases.

Asked how he feels about reaching the 50-year milestone, he says:

"Extraordinary that it has been a lifetime in practice and on the bench, but only seems like yesterday that it all began."

James E. Ritzo

"Don't write it if you can say it. Don't say it if you don't have to."

City/town of residence: Portsmouth, N.H.

Hometown: Portsmouth, N.H.

Family: Wife of 52 years and four children

Education: UNH, Suffolk Law School

Areas of Practice: General

Current law firm or employer: Retired

Past law firms or employers: Griffin, Harrington, Brigham

James Ritzo retired in 2018, but over his 47-year career he had his share of interesting cases.

There was the murder on Newcastle beach which led to an estate dispute.

There was a sinking Athenaeum building, and a man who had drugs passed to him by his wife through a courtroom kiss, then collapsed while knocking over a pitcher of water on a courtroom table.

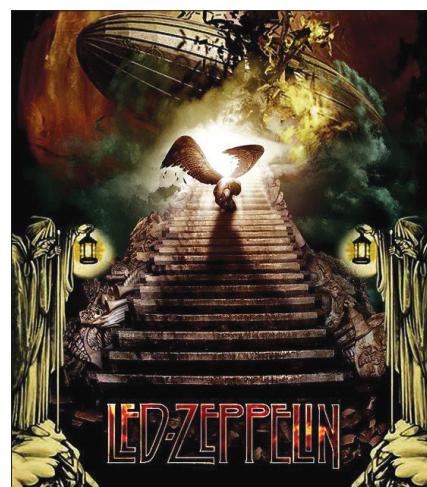
There was the woman who threw her baby off the Interstate 95 bridge before jumping herself. He said both survived and the mother was committed to a hospital.

In a *Portsmouth Herald* article from several years ago, he even spoke of a client who fell into a Seabrook septic tank after a snow plow had knocked off the cover.

Throughout his successful career as an attorney in the Seacoast and all over the state, Ritzo has held on to his class picture from 1971.

"Half of them are gone," he said to a Herald reporter in 2018, recalling his law career began with a private practice and "a lot of title work."

Remember When...



The untitled fourth studio album by the English rock band Led Zeppelin, commonly known as Led Zeppelin IV, was released on 8 November 1971 by Atlantic Records. The album is notable for featuring "Stairway to Heaven", which has been described as the band's signature song.

Robert H. Rowe



"My best advice to all NH lawyers was expressed by Attorney Sherman Horton, long before he was named to the Supreme Court; he said, "the primary job of a New Hampshire lawyer is to resolve disputes, not litigate them."

City/town of residence: Amherst, NH

Hometown: Born on June 18, 1932 in Pittsburgh PA

Education: Educated and early employment with Westinghouse Electric in Pittsburgh until 1961 when I was transferred to Indiana.

Family: Widower (my wife, Helen, of 61 years, died in 2018), son Andrew lives in Amherst.

Education: BBA from the University of Pittsburgh in 1956, received following my military service. JD from Suffolk Law School in 1970.

Military Service: United States 4th Armored Division from 1953 to 1955.

Areas of Practice: General practice of law with emphasis on real estate, family law, probate, and business law. Appointed by Governor Walter Peterson as a special justice.

Born in 1932, Robert H. Rowe began his career at the age of 40 after working for Westinghouse Electric in Pittsburgh and then Indiana.

While Rowe has been retired from the practice of law for over 30 years, he has remained busy, serving in the NH House of Representatives for 19 years, and as a Hillsborough county commissioner for the past five years.

"As a second-career new lawyer at the age of 40 and with a family, passing the Bar was only the first step, the easy one," Rowe says. "As an outsider with no New Hampshire legal or business connections, finding employment was far more difficult."

Thanks to the assistance of retired NH Supreme Court Judge Amos Blandin, Rowe says he was able to find employment with Attorney Charles Sullivan in Wilton, and then David Woodbury with whom he shared a practice in Milford.

His most memorable case over the years as an attorney happened in the early 70s and involved a house collapse that was due to contractor negligence. The case was appealed to the Supreme Court and resulted in the Court setting the law that all insurance policies must be written in clear and understandable language.

Rowe's most memorable case as a Special Justice was in the Milford District Court involving two unemployed individuals arrested for removing rail-road tracks and selling them to a scrap dealer.

"The removal was an arduous and noisy task, and they were certain to be apprehended," Rowe says, "thus establishing the view that the primary motivating fact for most crimes committed by individuals in New Hampshire was stupidity."

Rowe says he feels blessed to have had the opportunity to live in New Hampshire and to have practiced law during a time when there were few practicing attorneys.

"And they were all known to each other, either personally or by reputation," he says. "There was a bond of trust and collegiality between attorneys (except for a few, and we all knew who they were). There were giants in the NH Bar, David Nixon, Jack Middleton, Kim Zachos. These and others set the standards for the practice of law and dealing with the public and clients."

Rowe recalled an experience that illustrates his latter point about setting standards.

"David Nixon, myself and our wives dined out one evening about 10 years ago. As we were leaving the restaurant, a woman seated at a table across the room suddenly rose from her table and rushed towards us and in a, not too soft a voice said, 'Are you David Nixon, the attorney?' I shuddered as to what would come next, but David said, 'Yes, I am.'"

"Her response was: 'you represented my mother 40 years ago. You saved her life. I just want to thank you.'"

"As I look back at that evening, I wonder how many of us would be remembered and thanked decades after a representation? It was a smaller and more personal Bar then."

Rowe says his military service allowed him to visit most of the country and to meet and know men and women from all over the United States.

And his practice in the law, he says, allowed him to serve Amherst as a Zoning Board of Adjustment member for over forty years, as a member of the New Hampshire House of Representatives and as chair of the judiciary committee.

"Retirement also gave me time to write four books regarding the town of Amherst."

James Q. Shirley

"Stay focused on the human interest."

As my partner, Mike Dunn, who relished practicing law, once said to me, "I can't believe I get paid money to do this."

City/town of residence: Goffstown, NH

Hometown: Goffstown, NH



Education: Dartmouth, BA; San Francisco State University - MA; University of San Francisco School of Law - JD

Areas of Practice: Litigation, commercial disputes, professional negligence, product liability, toxic torts, real estate and insurance coverage

Current law firm or employer: Sheehan Phinney Bass & Green - 50 years

James Quincy Shirley's path towards a legal career began with a broken neck.

In 1965, Jim was involved in a surfing accident that resulted in transient quadriplegia that causes a temporary loss of motor and often sensory function in the arms and legs.

It was during his time in the hospital, he says, that his neurosurgeon, concerned that his future might be limited to a life of the mind, required him to memorize the Bill of Rights and recite them on command. And as Jim recalls, "It unfolded from there."

Graduating from the University of San Francisco School of Law with a J.D. Jim eventually went to work for Sheehan Phinney, the only firm he has worked at for 50 years.

Jim is a member of the American College of Trial Lawyers and has been involved in land protection issues over the years, serving on the Piscataqua Land Conservancy Board of Trustees.

Asked how he feels to have reached the 50-year milestone, he says, "Still practicing and still enjoying it."

Congratulations

Sheehan Phinney congratulates
James Q. Shirley
on 50 Years of exemplary legal service.



We are thankful for Jim's unparalleled talents, thoughtful guidance and graciousness. We look forward to many years of the same, as he continues to serve the firm, its clients, and our community. We will also continue to enjoy watching him adroitly manage all of his considerable professional responsibilities while also regularly mountain biking, playing piano and guitar, and skiing moguls, among many other pursuits.

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Robert S. Span



"Always remember you are a member of an honorable profession and an officer of the court; Pay attention to detail; little things do matter."

City/town of residence: Brentwood, NH



Hometown: New York City

Family: Married to Crystal Span for 50 years - we were married two months before the NH bar exam. Son, Evan

Education: Dartmouth College, A.B. 1967; Yale Law School, J.D. 1971

Military Service: National Guard and Army Reserve, 1969-1975

Areas of Practice: Civil Litigation, Aviation Law

Current law firm or employer: Steinbrecher & Span LLP

Past law firms or employers: Normandin, Cheney & O'Neill, Laconia, 1971-1973; U.S. Senator Thomas J. McIntyre (NH), Washington, 1973-1976; Paul Hastings LLP, Los Angeles, 1976-2009

Robert Span attended Dartmouth College and graduated from Yale Law School with a J.D. in 1971.

While still practicing today, Span says he is more selective about what work he takes on.

Looking back on the choice to become a lawyer, Span says he's not sure the exact reason, but recalls that when he was young, he always wanted to be a lawyer. His heroes, he says, were Clarence Darrow and Perry Mason.

And as for mentors that have shaped his career, Span points towards the first attorney he worked with.

"I have worked with many great lawyers over 50 years, but my first, and best, mentor was Paul Normandin in Laconia."

Span is particularly proud of being recognized as one of the leading lawyers nationally in his area of specialization and for being elected Chair of the ABA Forum on Air & Space Law.

He's also grateful for having had the chance to be a senior partner in a top-25 international law firm.

"It is hard to believe it has been 50 years and I still enjoy it," Span says.

Outside of his practice, Span says the most meaningful community service involvement has been serving on the Boards of the Los Angeles and New Hampshire Societies for the Prevention of Cruelty to Animals.

"Both organizations do great work in helping animals and people."

Rodney L. Stark

"Be honest."



City/town of residence: Goffstown, NH

Hometown: Goffstown, NH

Family: Sons: Cory and Mica Stark; Grandsons: Owen and Finn Stark; Granddaughters: Fairen and Sylvia Stark; Fiance: Charlotte Gilman; Trusty sidekick: Bailey, my Cavalier King Charles Spaniel

Education: Purdue, B.A., 1968; UConn School of Law, J.D., 1971

Areas of Practice: My office is a full service law firm, including representation in civil litigation, probate practice, and estate planning. I have a history of representing both contractors and consumers in construction law disputes, defending professional liability claims, and providing advisement on real estate transactions and business organization and management. My paralegal, Marie St. Cyr, has been an integral part of my law practice for the past thirty-nine years.

Current law firm or employer: The Law Office of Rodney L. Stark, P.A.

Past law firms or employers: Wyman, Bean & Tefft; Wyman & Bean; Wyman, Bean & Stark; Stark & Peltonen

Rodney Stark is still practicing law after all these years, and he says he enjoys doing so "on a daily basis!"

Stark graduated from the University of Connecticut School of Law in 1971 with a J.D. and went to work shortly after that where he encountered a number of cases involving construction law disputes as well as probate, civil litigation, and estate planning.

One of his most memorable cases, he says, was *Morgenroth & Associates, Inc. and Seaward Construction v. Town of Hudson, NH*.

Stark represented Morgenroth & Associates in this federal advisory jury trial which began in December of 1981 in the U.S. District Court for the District of New Hampshire. The trial, which lasted six months, was the longest running civil jury trial in the history of the State of New Hampshire at the time. It resulted in combined verdicts in favor of Morgenroth and Seaward in the amount of \$1,800,000.00.

"My first handwritten timeslip regarding the matter is in a frame in my office. It reflects a brief call with the client regarding a simple 'collection case.'"

Before entering the field of law, Stark was headed for a degree in veterinary medicine. But he soon changed majors to political science, and, in retrospect, he says, "it was the right decision because it was my first step to becoming a lawyer!"

After graduating from law school in 1971, Stark was hired by Attorney Stan Tefft and began working for Wyman, Bean & Tefft. His first introduction to the Honorable Arthur E. Bean, Jr., who had not yet been appointed as a Judge, was shortly after he was hired.

"One day, I was doing some research in the conference room. Judge Bean walked in and said, in his matter-of-fact way, 'Who are you and what are you doing here,'" Stark recalls. "From that time forward, the Judge has been an important figure in my legal career, as well as a friend."

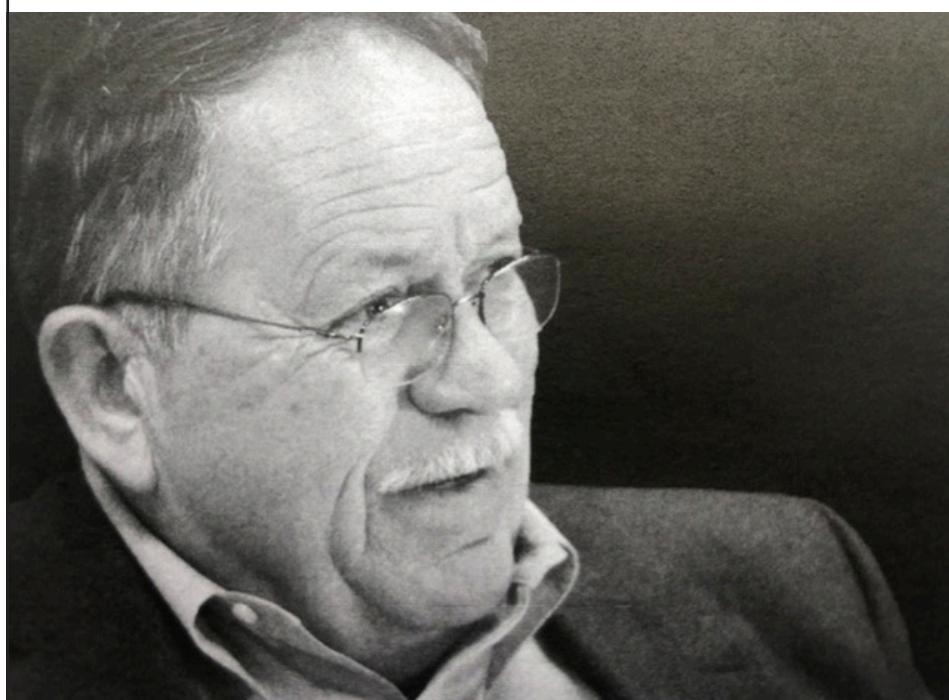
Having been a self-employed attorney for most of his legal career, Stark says he has always treated all of his clients fairly, honestly and professionally. He says a highlight has been receiving simple thank you notes from clients for his services.

Outside of practicing law, civic engagement has been an important part of Stark's life, he says. He has served as the Town Moderator for Goffstown, New Hampshire, for forty years, being first elected in 1980 and was named Volunteer of the Year by the Town of Goffstown in 2020. He has also served on the Goffstown Conservation Commission and as an alternate on the Goffstown Historic District Commission.

"And I have been a proud member of the Goffstown Historical Society, the New Hampshire Historical Society, the Manchester Historic Association, the New Boston Artillery Company, and the Friends of Stark Park."

Congratulations to Rodney L. Stark

on the significant milestone of 50 years practicing law!



From your staff and friends at



**The Law Office of
RODNEY L. STARK, P.A.**

Manchester, NH • (603)627-4111 • www.starklaw.com

Robert A. Stein



"Write down why you went to law school and what you hope to accomplish, and review it yearly."

City/town of residence: Hopkinton, NH

Hometown: Pittsburgh, PA

Family: Two Children, Two Grandchildren

Education: B.A., 1968, Washington Jefferson College; J.D., 1971, University of Michigan Law School



Military Service: U.S. Navy JAG (Inactive)

Areas of Practice: Litigation

Current law firm or employer: The Stein Law Firm, PLLC

Past law firms or employers: Philadelphia Defenders' Association; New Hampshire Legal Assistance; Stein & Viles; Shaheen, Cappiello, Stein & Gordon; Stein, Volinsky & Callaghan

Robert Stein received his J.D. from the University of Michigan Law School in 1971 and continues practicing law to this day.

"I'm still practicing and I'm still loving it," he says.

Earlier in his career, Stein worked for the Philadelphia Defenders' Association, New Hampshire Legal Assistance, Stein & Viles, Shaheen, Cappiello, Stein & Gordon, as well as Stein, Volinsky and Callaghan. His current firm is the Stein Law Firm, PLLC.

Stein has had many memorable cases over the years, including *USA v. Mackie Choice*; *International Criminal Tribunal for the Former Yugoslavia (U.N.) v. Dario Kordic*; and, *Shelton v. Tamposi*.

Asked why he became an attorney, he says it had a lot to do with the cultural climate at the time.

"I was a product of the civil rights and antiwar movements of the 60's," he says. "I became involved with the American Civil Liberties Union during that time, and

it seemed like all the people with whom I was working were terrific lawyers."

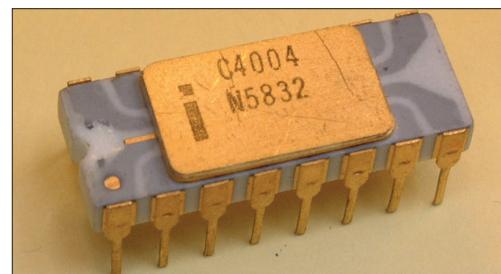
Stein considers former U.S. Senator, Robert Kennedy, one of his heroes and congressman William Singer Morehead, a mentor.

Morehead was a prominent critic of Pentagon cost overruns, a leader in establishing the National Endowments for the Arts and the Humanities, floor manager of freedom of information legislation that opened government documents to the public, and chief sponsor of the bill that established a synthetic fuels corporation.

Stein is proud of the work he has done mentoring young lawyers through the National Institute for Trial Advocacy (NITA), a service organization made up of a volunteer network of lawyers, judges, and advocates across the globe.

Stein has been on the board of the New Hampshire Civil Liberties Union since 1975 and was also part of the Claremont Coalition.

Remember When...



The Intel 4004 was the world's first microprocessor — a complete general-purpose CPU on a single chip. Released in March 1971, and using cutting-edge silicon-gate technology, the 4004 marked the beginning of Intel's rise to global dominance in the processor industry.



Williamsburg Judicial Conference — New Hampshire's delegation to the March conclave (see consensus statement in this issue), standing with hosts, included, front; Supreme Court Justice William A. Grimes, Supreme Court Chief Justice Frank R. Kenison, Judicature Society Assistant Director Donald Perser, and Superior Court Justice John W. King.

Second row; Stanley Lowe and Glenn Winters, Association Director and Director of Judicature, Atty. and District Court Judge Richard F. Cooper of Rochester, N. H. Crime Commission Director Max D. Wiviott, and James Mackintosh of Cornish, Chairman of the New Hampshire Citizens Committee on Court System Improvement.

Missing from the photo is Atty. and Probate Judge William W. Treat of Hampton.



**CONGRATULATIONS
— ROBERT A. STEIN —**



Thank you for 50 years of practice
and your continued commitment
to excellence in the legal profession.
From your colleagues.

The Stein Law Firm, PLLC – One Barberry Lane, Concord, NH 03301 – www.steinlawpllc.com

Frederick C. Tedeschi

"Maintain contact with professional colleagues in your areas of practice with whom you can discuss legal issues arising in the service of your clients and be an active participant in professional associations that focus on those areas."

City/town of residence: Wolfeboro, NH



Hometown: New York, NY

Family: Married my law school classmate as did one of our children

Education: Colgate University - A.B.; St. John's University School of Law - J.D.

Military Service: USAF

Areas of Practice: Corporate; Securities; ERISA; Privacy; Insurance

Current law firm or employer: Legal Department, Liberty Mutual Insurance

Past law firms or employers: Lincoln National Life Insurance Company; Jefferson-Pilot Insurance Companies; The Mutual Life Insurance Company of New York.; JC Penney Company, Inc.; Administrative Office of the US Courts

Frederick C. Tedeschi received his J.D. from St. John's School of Law and was admitted to the New Hampshire Bar in 1971.

As a former member of the United States Air Force, Tedeschi says he provided legal services to service members in much the same way he would in a local private practice. He was also responsible for guiding investigations of violations of the Uniform Code of Military Conduct.

"The experience gave me a bit of an insight into the practice of law as a part of what, in effect, was a small law firm in a moderate size town," he says.

The choice to become a lawyer, Tedeschi says, originated at Colgate University where he studied history and discovered that he enjoyed research.

"I always enjoyed the research and interpretation of historical events and presenting those in both written and oral form," he says, noting that he also took advantage of various career services events where alumni would come to discuss their professions.

"While in law school, I was able to continue the research and writing as a member of the Law Review and decided that being a counselor rather than a court room trial lawyer was more fulfilling."

Tedeschi says the decision to focus on being a counselor was affirmed many times during his first post-law school position as a law clerk to a Federal District Court Judge.

"I not only continued to have the opportunity to research and present the results thereof, but was frequently able to attend court proceedings and observe lawyers presenting their cases and arguing legal issues involved in those cases."

Tedeschi says he's most proud of his work and participation involving the drafting of legislation and in commenting on regulatory proposals, as well as seeing the results of those activities reflected in adopted laws and regulations.

Throughout his career, Tedeschi has served on the boards of directors of several life and health insurance guaranty associations, including serving as Secretary-Treasurer and as Chairman of the New Hampshire association. He has also been active in his community, serving on the board of the homeowner's association and as a member and Chairman of his town's Zoning Board of Appeals.

Asked how he feels about reaching this milestone in his career, Tedeschi, who is still practicing full time, expressed gratitude.

"I am thankful that I chose a life work that was very fulfilling, that provided me with the opportunity to work closely with my business colleagues to run businesses that provided both employment opportunities for many while providing valuable products and services to the society in which we live."

1971

Average Cost of new house...\$25,250.00

Average Income per year...\$10,600.00

Average Monthly Rent...\$150.00

Cost of a gallon of Gas...40 cents

United States postage Stamp...8 cents

Movie Ticket...\$1.50

Mary Ellen Tedeschi

City/town of residence: Wolfeboro, NH



Hometown: New Hyde Park, NY

Family: Husband of 50 years, children and grandchildren

Education: St. John's University, B.A. 1967; St. John's University School of Law, J.D. 1970; Adelphi University MA in Education, 1993

Current law firm or employer: NH Office of Legislative Services

Past law firms or employers: Prentice Hall, Englewood Cliffs NJ; McCormick, Barstow, Shepherd, Coyle and Best, Fresno, CA; sole practitioner; Denton Avenue School, Herricks, NY

Mary Ellen Tedeschi received her J.D. from St. John's University School of Law in 1970 and is currently employed with the New Hampshire Office of Legislative Services.

Tedeschi's interest in the law began when she was a young girl in New York. Her grandmother, she says, had an attorney in Brooklyn specializing in estates whose office left a lasting impression.

"Her office was in her home and to me it was majestic, with beautiful wooden bookcases lining the walls all the way to the high ceilings," Tedeschi says. "My mother said, 'You could be a lawyer someday, too.' I guess that always stuck in the back of my mind. And while I never did have an office with those fabulous bookshelves, I've never regretted becoming a lawyer."

Over the years, Tedeschi has been an active member of the PTA and the American Heart Association, as well as a Sunday School teacher, a volunteer at her children's school library, and the director of the personal service auction at her local church's annual harvest fair.

Arthur L. Trombly

"Listen thoroughly to your clients before offering advice."

City/town of residence: Keene, NH



Hometown: Keene, NH

Family: My wife of 41 years is Raette and we have five children, Ed, David, Mark, Stacey and Jacquelyn

Education: BA UNH, JD Suffolk University, Boston, Mass.

Military Service: US Marine Corp 1958-1962

Areas of Practice: General practice including criminal law and family practice. Assistant Cheshire County Attorney 1974-76

Current law firm or employer: Retired January 2016

Past law firms or employers: Cristiana & Kromphold, Tower and Trombly, Pam Little, Sole practitioner 1978-2014

Arthur Trombly spent the years 1958-1962 serving in the US Marine Corp. before attending the University of New Hampshire and Suffolk University in Boston.

Becoming a lawyer, Trombly says, was a lifelong dream he'd held since childhood. He cites his mentors as attorney Eric Kromphold, Bill Kennedy, Sam Bradley, Peter Espieis and Ed O'Brien.

Trombly's most memorable case involved the successful prosecution of a local gang who had committed several armed robberies, home invasions and five murders in Massachusetts.

"We collaborated in Massachusetts with future US Senator John Kerry, who had just been appointed Assistant District Attorney for Middlesex County," Trombly recalls.

But it wasn't necessarily the big cases that brought the most satisfaction. Helping others in need of an attorney in pro bono cases, "always felt good," Trombly says.

Trombly, who retired five years ago, served four years as a Keene City Councilman, six years as the Keene High School hockey coach and has been a Kiwinian for over thirty years.

Looking back over the past 50 years, he says:

"I'm proud to have worked with so many fine attorneys in the Cheshire County area."

James C. Wheat

"Bring the same energy and commitment to each day as you brought to the practice your first day."

City/town of residence: Hopkinton, NH



Hometown: Pittsfield, Mass.

Family: Spouse Jill Children: Sophia, Olivia & Kelly

Education: Boston University School of Law graduated 1971

Areas of Practice: Trial Lawyer

Current law firm or employer: Wadleigh, Starr & Peters PLLC, Of Counsel as of 1.1.2021

Past law firms or employers: Law Clerk, NH Supreme Court, 1971-72

After graduating from Boston University School of Law in 1971, Wheat clerked for the N.H. Supreme Court for a year before becoming a trial lawyer.

Wheat's most memorable case was his first case and it involved a horse and a car that collided in N. Haverhill, NH. He represented the driver.

"It was a subrogation case worth less than \$1,000 but my client drove all the way from southern Mass. to testify. I was so impressed. And we won!"

As for mentors, Wheat cited former NH Supreme Court Judge Frank Rowe Kenison as the most influential. He credits Kenison as being responsible for his choice to stay in NH after passing the Mass. Bar and intending to return to Boston to practice.

Others whom Wheat holds in high regard include Charlie Dunn, who he says, was "a great man, a great lawyer and a great mentor," and Stan Brown, who he only worked with once but whom he learned a great deal working against.

Looking back, Wheat says he'd like to think he has earned the respect of his colleagues and judges before whom he has appeared and noted that he plans to continue practicing law.

Wheat served as President of the Wm. J. Moore Center when it was known as the Manchester Association for Retarded Citizens at a time when residents were being moved through legislative efforts to group homes in the community from the NH State School.

Remember When...



Apollo 14 (January 31, 1971 - February 9, 1971) was the eighth crewed mission in the United States Apollo program, the third to land on the Moon, and the first to land in the lunar highlands.

**WADLEIGH
STARR & PETERS**
PLLC
Attorneys since 1899



Recognizes

James C. Wheat
as he celebrates 50 years as a lawyer.

We have been honored to have him as a partner, colleague and friend for all these years and continue to value the wisdom, experience and professionalism that he brings to the Firm and to our profession.

Congratulations!



Wadleigh, Starr & Peters, P.L.L.C., 95 Market Street, Manchester, NH 03101 (603) 669-4140 www.wadleighlaw.com

The NH Bar Association recognizes the following members as they reach the milestone of 50 years of law practice.

John B. Andrews
Robert T. Bloomenthal
Paul Buffum
John M. Cunningham
James F. Early
Laurence J. Gillis
Irvin D. Gordon
Gary W. Holmes
Carroll R. Hunter
Lawrence A. Kelly

Raymond J. Kelly
Aaron A. Lipsky
Silas Little III
Peter J. McDonough
Joseph F. McDowell
Malcolm R. McNeill
Bruce E. Mohl
Arthur W. Perkins
Paul C. Remus
James E. Ritzo

Robert H. Rowe
James Q. Shirley
Robert S. Span
Rodney L. Stark
Robert A. Stein
Frederick C. Tedeschi
Mary Ellen Tedeschi
Arthur L. Trombly
James C. Wheat



At the 1971 Mid-Winter Meeting



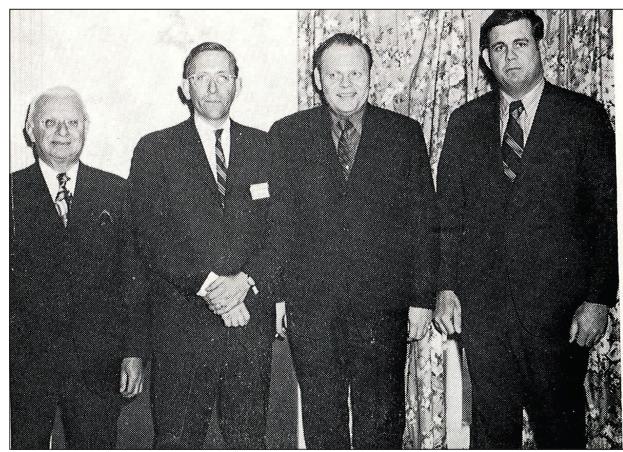
Participating in the Saturday morning panel on "Consumer Protection and the Uniform Consumer Credit Code"; Ass't Atty. Gen. Richard A. Hampe, Atty. Gen. Warren B. Rudman, and Walter D. Malcom, Esq.



Guest of Honor at the Mid-Winter Meeting, U.S. Solicitor General Erwin N. Griswold, chats with N.H. Supreme Court Chief Justice Frank R. Kenison.



Yale Law School Prof. Quentin Johnstone headed the table at that Alumni Association's Meeting. To his right is W. Wright Danenbarger; to his left Paul S. Cleveland, Joseph A. Millimet, and E. Donald Dufresne.



Boston University Law School was well represented by its 'big guns' at the Mid-Winter Meeting; among them, standing with Jack B. Middleton (second from left), were Centennial Chairman Charles M. Goldman, Alumni Association Vice President Earl Cooley, and Prof. James A. Henderson.



Standing for the Journal camera at the Boston College Law School Luncheon: Anthony A. McManus, Massachusetts Superior Court Justice Cornelius Moynihan, and Donald W. Cushing



Principals at the Suffolk Law School Luncheon: J. Leonard Sweeney, Jr., Hon. Martin F. Loughlin, Massachusetts Superior Court Justice Frank J. Donahue and Paul R. Kfoury.

BUSINESS LITIGATION



TUE, SEPTEMBER 14, 2021

9:00 a.m. - 3:15 p.m. • Webcast Only • 300 min., incl. 45 ethics/prof.

This program features a variety of topics pertaining to business litigation including non-competition and non-solicitation agreements; trade secrets; computer forensic issues; electronic evidence issues; ethical issues in business litigation; related criminal and government investigation issues; and business court update. A must for those attorneys whose practice touches upon any area of business litigation!

Faculty

- **Arnold Rosenblatt**, Program Chair and CLE Committee Member, Cook, Little, Rosenblatt & Manson, PLLC, Manchester
- **Hon. David A. Anderson**, Hillsborough County Superior Court Northern District, Manchester
- **James Berriman**, XACT Data Discovery, Boston, MA
- **Peter G. Callahan**, Preti Flaherty Beliveau & Pachios, PLLP, Concord
- **Samantha D. Elliott**, Gallagher, Callahan & Gartrell, PC, Concord
- **Jennifer L. Parent**, McLane Middleton PA, Manchester
- **Edward J. Sackman**, Bernstein, Shur, Sawyer & Nelson, PA, Manchester



From Soup to Nuts APPROACHES TO POST-CONVICTION ISSUES

FRI, 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 Holly 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 Habeas Corpus, Coram Nobis, Coram Vobis, among others. Additionally, a panelist will present on the process for annulments and pardons. Lastly, there will be 60 minutes 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
- **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

WED, 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



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- **The Basics of Toxicology** – from *the Oklahoma Bar Association* A broad overview of what attorneys need to know about the effects of alcohol as well as common street and prescription drugs on the body. – 60 minutes
- **Market Manipulation in the Wake of the GameStop Saga** – from *the Bar Association of San Francisco* - This program explores market manipulation in the age of social media, using the GameStop saga to analyze the various players, laws, and regulations that were implicated. – 60 minutes



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Clash of the Titans: The Copyright Battle Between Google and Oracle

By Lisa Thompson

After more than a decade of litigation, on April 5, 2021, the U.S. Supreme Court issued its highly-anticipated decision in *Google LLC v. Oracle America, Inc.* The Court ruled 6-2 in favor of Google, holding that Google's use of Oracle's Java application programming interface in its Android operating system was not copyright infringement.



The dispute between the two tech giants began in 2010 when Oracle sued Google in the U.S. District Court for the Northern District of California claiming Google's unlicensed use of Java code constituted copyright infringement. Java was originally developed by Sun Microsystems in the mid-1990's as a new programming language to make it easier for computer programs that were written using the Java language to be used on any device. At the time it was revolutionary for developers to write programs that could run on any device. Today, the Java computer programming language is one of the most used programming languages around the world for developing apps and building websites.

By 2005, the Java software platform was used in a wide variety of devices including mobile phones. Looking to expand

its business beyond its PC platform, Google acquired Android, Inc., a start-up that was developing an operating system for mobile devices. Google then spent the next three years developing the Android platform for smartphones. Since the Java platform was known and used by millions of programmers, Google wanted to use the Java interface for its new Android platform so that its programmers would not have to create new code.

Google initially sought a license to use the Java code to create its Android mobile operating system. However, after the companies could not agree on terms, since programmers were already familiar with Java code, Google chose to copy 11,500 lines of Java SE code from the application programming interface (API). An API is a standard package of computer code that permits one program to interface with another program. APIs allow programmers to easily access a library of pre-existing computing tasks for use in their own programs, otherwise they would have to independently create original code to perform the same functions.

In the first trial, Oracle sought monetary damages and requested that Google stop using its Java SE API code. The jury found that Google had infringed the Java SE API code, which was now owned by Oracle. However, the trial court judge vacated the verdict and held that APIs could not be copyrighted because they constitute a "system or method of operation."

On appeal, the U.S. Court of Appeals for the Federal Circuit reversed the district

court's decision, finding Google's use was not a fair use and that the Java API code and its organizational structure were entitled to copyright protection. Google filed a petition for certiorari with the Supreme Court in 2019, asking the Court to review the Federal Circuit's determinations on both copyrightability and fair use. The Supreme Court held oral arguments in October 2020, with only eight justices hearing the case since Justice Amy Coney Barrett had not been sworn in at the time.

It's important to note that while there were two questions before the Court, the Court avoided the question of whether Java API code was eligible for copyright protection and instead focused on whether Google's use of the Java API in the context of creating a new computer program constitutes fair use, stating "given the rapidly changing technological, economic, and business-related circumstances, we believe we should not answer more than is necessary to resolve the parties' dispute. We shall assume, but purely for argument's sake, that the entire Sun Java API falls within the definition of that which can be copyrighted. We shall ask instead whether Google's use of part of that API was a 'fair use.'"

The Court's analysis centered on the four fair use factors under §107 of the Copyright Act: (i) the purpose and character of the use; (ii) the nature of the copyrighted work; (iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (iv) the effect of the use upon

the potential market for or value of the copyrighted work. The fair use doctrine permits unauthorized use of copyright-protected works in certain circumstances such as when the copying transforms the original work into something new.

In analyzing the four fair use factors, Justice Stephen Breyer, writing for the majority, found that Google's use of the Java API weighed in favor of fair use, concluding "where Google reimplemented a user interface, taking only what was needed to allow users to put their accrued talents to work in a new and transformative program, Google's copying of the Sun Java API was a fair use of that material as a matter of law."

Under the first factor, the majority ruled that although Google's use of the API code was commercial in nature, its limited copying was a transformative use. Google's purpose was to create a different task-related system for a different computing environment (smartphones). The majority found that Google copied only those portions of the Java API that were necessary in order to create a new platform (Android), which is consistent with the "creative progress that is the basic constitutional objective of copyright itself."

The Court in examining the nature of the copyrighted work characterized the declaring code distinct from other types of code because the user interface "is inherently bound together with uncopyrightable ideas (general task division and organization) and new cre-

COPYRIGHT continued on page 29

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Notable Privacy Law Developments in the Past Year

By Douglas G. Verge

It's a simple fact – individuals value their privacy. At its core privacy means being free from outside intrusions and keeping our personal information to ourselves. Over the past several years, due in part to pressures from privacy advocates, comprehensive laws designed to protect individuals' personal information have been enacted both in the United States and abroad. One of the most comprehensive and far reaching is the General Data Protection Regulation (GDPR) in the European Union (EU), and extended to the European Economic Area (EEA). Our neighbor, Canada, has among other laws, the Personal Information Protection and Electronic Documents Act (PIPEDA).

The United States does not have a comprehensive general privacy law. Consequently, many states have taken it upon themselves to introduce such legislation, with California being the first with its California Consumer Privacy Act (CCPA). Virginia recently has followed suit, enacting the Virginia Consumer Data Protection Act (VCDPA) this year. Perhaps the most significant operational impact of these priva-



"The United States does not have a comprehensive general privacy law. Consequently, many states have taken it upon themselves to introduce such legislation, with California being the first with its California Consumer Privacy Act (CCPA)."

cy laws for businesses, where applicable, is that they require certain notices to individuals about an organization's/business's personal information collection, use and sharing practices, as well as notifying the individuals about rights they have, which may include the right to know/access, correction, deletion, and opting out of sale or sharing of personal information. Furthermore, failure to comply with the privacy law requirements can lead to substantial monetary and other penalties.

During the past year, there have been three particularly notable developments in the privacy law area. First, with regard to transfers of personal information about persons located in the EEA, the Court of Justice of the European Union (CJEU) (C- 311/18, *Data Protection Commission vs. Facebook Ireland Ltd. and Maximilian Schrems*) (*Schrems II*) invalidated the EU-US Privacy Shield, and called into question the continued viability of other mechanisms for transferring personal information such as Standard Contractual

Clauses. Second, through ballot initiative, California enacted a number of significant amendments to the CCPA via the California Privacy Rights Act ("CPRA"), nearly all of which go into effect on January 1, 2023. Third, Virginia became the second state in the US to enact a comprehensive personal information privacy law. This article briefly discusses each of these developments in the law of privacy – the intent is to raise awareness rather than to provide a detailed analysis.

Schrems II

Under the GDPR, transfer of personal information of an individual located in the EEA (a "data subject") to locations/organizations outside the EEA by anyone other than the data subject is prohibited unless at least one of the lawful bases for such transfer under the GDPR is satisfied. One such basis is what is known as an "adequacy decision," which means that the appropriate EEA authorities have made a determination that a country or organization within

that country ensure an adequate level of protection. Prior to being struck down by the court in *Schrems II*, the United States was the beneficiary of an adequacy decision pursuant to the EU-US Privacy Shield. Under that regime, organizations located in the US could self-certify that they were complying with the standards and practices required under the Privacy Shield. Absent an adequacy decision, most businesses rely on what are known as the Standard Contractual Clauses promulgated by the European Commission, in order to effectuate such transfers. Those clauses set out standard contractual terms, compliance with which satisfy the adequate level of protection requirement. The court in *Schrems II*, however, said that while those clauses are not per se invalid, they might not be available in certain situations, including in particular for transfers to the United States.

The CJEU based its conclusions upon two key findings. First, it concluded that the Privacy Shield did not adequately prevent federal government authorities from accessing the personal information of data subjects. Second, the CJEU concluded that the Privacy Shield, even with its Ombudsperson framework, did not provide adequate remedies for data subjects to enforce their rights. While the court did not outright strike down the Standard Contractual Clauses, it did indicate that by their inherently contractual nature, those Clauses

PRIVACY continued on page 29

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What Should Trademark Owners Know About the Trademark Modernization Act?

By Katelyn Burgess

In recent years, the U.S. Patent and Trademark Office has seen a substantial increase in the number of trademark applications and registration maintenance filings with fraudulent or inaccurate claims of use in commerce.



Although subject to third-party cancellation challenges, inaccurate registrations clutter the trademark register and make it difficult for businesses to adopt and/or register new marks.

Signed into law on Dec. 27, 2020, the Trademark Modernization Act of 2020 aims to improve the accuracy of the federal trademark register. Expected to be fully implemented by the end of 2021, the TMA makes several important changes to U.S. trademark law and provides the USPTO and trademark owners with powerful new tools for challenging problematic applications and registrations.

Third-Party Letters of Protest

The TMA codifies the USPTO's informal "Letter of Protest" practice, allowing third parties to submit evidence regarding a mark's registrability during the examination period. In a Letter of Protest submission, a third party must (1) identify each

valid, legal ground for the examining attorney to refuse registration or issue a requirement, (2) include relevant evidence supporting each ground, (3) provide an itemized index of evidence with a concise, factual description of the evidence, and (4) pay a \$50 fee. Upon submission, the USPTO has two months to decide whether the evidence should be included in the record. Such determination is final and non-reviewable.

If filed properly, a Letter of Protest provides trademark owners with an efficient, cost-effective way to challenge problematic applications by competitors. To meet submission deadlines, trademark owners may consider using a trademark watch service to monitor new applications conflicting with their marks.

Ex Parte Cancellation Procedures

The TMA provides two new *ex parte* procedures for challenging existing registrations on the grounds of non-use: expungement and reexamination. Expungement challenges registration on the grounds that the mark was never used in commerce on or in connection with the goods or services listed in the registration. In contrast, reexamination targets trademarks that were not in use in commerce on or before a specific "relevant date" (e.g., the filing date for a use-based application or the stated dates of first use). An expungement proceeding may be initiated anytime between the third and tenth year following registration. However, a reexamination proceeding must be

brought within five years of the registration date.

Anyone may petition the USPTO to institute an expungement or reexamination proceeding – standing is not required. Petitions must include supporting evidence and a verified statement that the petitioner conducted a "reasonable investigation" to determine whether the trademark was used in commerce with the specified goods or services. If the petition establishes a *prima facie* case of non-use, the USPTO will institute the proceeding and provide the registrant with an opportunity to submit evidence of use or excusable non-use.

Based on the evidence, the USPTO may remove some or all of the challenged goods or services in the registration. This determination is appealable to the Trademark Trial and Appeal Board and the U.S. Court of Appeals. If the registrant establishes use, no new or further *ex parte* expungement or reexamination challenges are permitted against the same goods or services.

These new *ex parte* procedures are more efficient and cost-effective than cancellation proceedings before the TTAB. Unlike existing cancellation procedures, third-party petitioners are not involved in expungement and reexamination proceedings after filing the petition. The USPTO may also initiate these proceedings *sua sponte* upon discovery of information supporting a *prima facie* case.

While these new proceedings provide trademark owners with opportunities

to challenge problematic marks blocking registration, they also expose a registrant's own registrations to opposition from competitors. If a mark is not used on or in connection with all of the goods and services listed, a registrant risks losing part or all of the registration if challenged for non-use. Moving forward, trademark owners should consider archiving evidence of use for each good and service listed in the registration as part of their portfolio maintenance. Although only one use specimen is required per class in registration and maintenance filings, regularly archiving evidence of use could help trademark owners quickly dispose of expungement and reexamination proceedings if the mark is challenged for non-use.

Shortened Response Periods for Office Actions

Applicants currently have six months to respond to an office action from the USPTO. Under the TMA, the USPTO has authority to shorten these response deadlines to a period not less than 60 days. While extensions are available up to the traditional six-month period, extension fees may apply.

This TMA provision intends to increase examination efficiency and quickly eliminate applications that will eventually be abandoned. The USPTO has not determined what issues could trigger a

TRADEMARK continued on page 29

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Benefits of Separable Intellectual Property Documents in Ownership Transfer Agreements

By Chelsea VanderWoude

When businesses or their assets change hands, the issue of intellectual property transfer agreements can sometimes take a back seat. Sometimes relegated to due diligence review and mentioned only briefly in the corporate transfer document itself, intellectual property transfers may be treated the same as a company's physical assets, grouped within the consideration and other sensitive information with language that may be as brief as follows: "All intellectual property identified in attached Schedule C is herein transferred from Company A to Company B along with the goodwill associated therewith." Schedule C is often a table identifying each patent, trademark, and copyright with the relevant registration numbers.

While this approach is certainly streamlined, it can present a number of downstream issues. When such transfer document is sent to intellectual property counsel to record the transfer(s), it can trigger the need for execution of additional and different confirmatory type assignments by both parties, adding to the underlying asset-purchase transaction fees/



costs. Why? A few potential reasons:

Assignments of Intellectual Property Are Public

When intellectual property assignments are filed for recordation with an intellectual property office, such as the United States Patent and Trademark Office, they become public documents. Many businesses clearly prefer that their private terms of sale will not become a matter of public record.

While one can redact information in the transfer agreements, for large mergers or acquisitions agreements, that could involve hundreds of pages and extensive time. When recording a patent transfer at the USPTO, the office is generally interested in only relatively high-level information, such as the party names, patent or application numbers, an identification of the interest conveyed, and dates of execution. (See Manual Of Patent Examination Procedure at § 302). Filing of a relatively long and detailed asset-purchase agreement, with extraneous information, which potentially may provide a delay in securing recordation, may therefore be avoided.

By drafting a separate confirmatory intellectual property assignment including only the information required by the USPTO, the drafter can incorporate the full transfer by reference but without expressly mentioning the terms that may contain sensitive information. That way, the assignment itself may be limited to one or two

pages and can provide the relevant intellectual property offices the ability to more quickly review and record the transfer.

Translation Fees

As mentioned above, intellectual property assignments are recorded with the relevant Patent and Trademark Offices where the entity holds registrations and/or applications. If the entity holds registrations or applications in foreign jurisdictions which do not use the English language in its filings, the recording entity will need to pay for the assignment to be translated into the local language. Therefore, having separable confirmatory assignment documents can save the client translation costs instead of having to pay relatively larger translation fees for a more detailed asset-purchase agreement.

Licensing Issues

In cases where a business is acquired but remains operational, the transfer of property would typically provide for the grant back of intellectual property rights from the new parent corporation to the new subsidiary for any continued use of that intellectual property. Some jurisdictions require written licensing agreements and failure to secure a written license agreement, even between related entities, can potentially disturb the future value of intellectual property rights, especially if the business later expands into new jurisdictions. Moreover, some jurisdictions also

require the recordation of licensing agreements. Therefore, in addition to confirmatory assignment, such written licenses may also be drafted as separate agreements within a larger corporate transfer, for recording purposes.

In the jurisdictions which require recordation of licensing agreements, the failure to document and record licensing agreements with the local trademark office could invalidate a trademark registration. Creating a separable assignment and licensing agreement may remove any ambiguity regarding intellectual property rights and be immediately available for filing in any jurisdiction that requires such information.

Companies dissolve

Many purchase and sale agreements often include trailer clauses which provide that both parties agree to execute any and all documents that may otherwise be necessary to effectuate and record the intellectual property transfers under the agreement. While such clauses are wise additions and important to include, over-reliance on such clauses can create issues in the long term should one company ever dissolve. Indeed, often an assigning entity may dissolve shortly after transferring its intellectual property, leaving a legal grey area should any assignments need to be confirmed or re-executed for filing. And

BENEFITS *continued on page 29*

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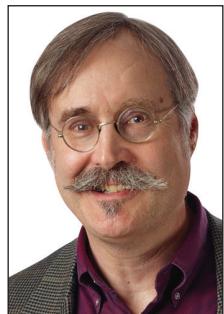
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Using Patents to Protect Your Amazon Sales

By Thomas Kohler

While Amazon.com has long had procedures to address infringement of IP rights by sellers;¹ it has been largely ineffective for resolving cases of patent infringement. This was not necessarily surprising, given the complexity of judging patent infringement. But it also left patent owners without any practical remedy for patent infringement occurring on Amazon because patent litigation in Federal court can be an expensive and lengthy process. Cases typically require more 1-3 years to resolve and, even for cases in which less than \$1M is at risk, a party's legal fees can be in the range of \$700K on average (see, AIPLA Report of the Economic Survey 2019, p. 50.²) Given the nature of Amazon, where many small sellers entire annual revenue is far less than \$700K, and many infringing sellers are outside the US and can change identity or switch products easily, the time and expense of Federal court patent litigation made that option a non-starter for most.

To fill this patent enforcement gap, in 2019 Amazon introduced the Amazon Utility Patent Neutral Evaluation Procedure ("UPNEP"). The purpose of the UPNEP, according to Amazon's own difficult to find documentation,³ is "to efficiently resolve



claims that third-party product listings infringe utility patents." An important caveat there is that you cannot use this process if you believe Amazon itself is selling an infringing product; for that you still need to go to court. Again, according to the documentation, the UPNEP offers a simple, low-cost procedure, which is voluntary, confidential, and allows owners of U.S. utility patents to obtain a fast evaluation of patent claims against products identified by Amazon Standard Evaluation Number (ASIN).

To meet the objectives of the program, the UPNEP employs an extremely streamlined procedure allowing assertion of a single claim from one utility patent and almost no defenses other than arguing non-infringement. There is no discovery, no depositions and generally speaking the rules of civil procedure and evidence do not apply. There is much to be criticized from a legal process standpoint – and plenty has been written about that subject⁴ – but for better or worse it does achieve its stated goals, resolution of the claims in 2-3 months and, in many cases, with legal fees only around \$10K.⁵

The UPNEP uses evaluators, unaffiliated with Amazon, who are patent attorneys with relevant technical and patent experience. Based on briefs filed by the parties, the evaluator makes a determination as to whether or not the patent owner would be likely to prevail on an infringement claim in Federal court. If the evaluator judges it to be likely, then the patent owner prevails and the subject ASIN is delisted. The only defense, other than arguing non-infringement, is to

show a prior sale⁶ of the same or an identical product via self-authenticating evidence, of which just two examples are given: date of sale on Amazon or a webpage obtained from the Wayback Machine.⁷ In spite of the highly abbreviated procedure, so far, it does seem to be working and generally fair results achieved (fair meaning there does not seem to be a bias towards patent owner or accused sellers, or based on location in or out of the US, and the decisions in general reasonably based).

For a patent owner, the process begins by contacting Amazon to request participation. All that is needed at this stage is an email to the UPNEP staff identifying the patent by number, the claim to be asserted and a single ASIN that is believed to infringe. This high-level screening is presumably to ensure the patent is appropriate for the abbreviated procedure. (It appears that claims based on method patents will be screened out, and possibly things like chemical or biotech patents for which resolution may be difficult without expert testimony). But if the patent covers a general consumer product of the type commonly sold on Amazon.com, it is likely to be accepted.

Once accepted, the patent owner must return an UPNEP Agreement form acknowledging the procedure and, among other things, agreeing not to sue Amazon (big surprise). The patent owner at this stage also may list up to 20 accused ASINs. Each of the sellers of the accused ASINs are then informed and have three weeks to submit a similar Agreement form stating an intent to oppose the claim. Sellers who do not return an Agreement within that time have their listings taken down.

If at least one seller responds, then Amazon selects a neutral evaluator and informs the parties. At that point, Amazon takes itself out of the process and correspondence is direct with the evaluator. Each party then has two weeks to make a \$4,000 deposit into a trust account held by the evaluator. Sellers who do not make the deposit have their listings taken down. If no sellers make that deposit, the patent owner's deposit is returned and that is the end of the matter.

Assuming both the patent owner and at least one seller makes the deposit, the evaluator sets a briefing schedule, which is very much like a summary judgment briefing schedule – opening brief, opposition brief and reply brief. There are strict page limits and evidentiary limits as mentioned above. The evaluator typically renders an opinion within about a week of the final brief being submitted.

The prevailing party gets their \$4000 deposit back and the evaluator retains the losing party's deposit as his/her fee. (Things get bit complicated with multiple responding sellers, but the principle is the same, except the evaluator does not get to keep more than \$4K total. Losing parties, however, don't get back the difference; it is donated to charity).

Key take aways:

- For patent owners: An enforcement option that makes patents more valuable to small businesses that face competition from sellers on Amazon
- For sellers: Don't blindly accept assurances about non-infringement from suppliers or you could end up with a lot unsellable inventory
- For both: Get a patent attorney; this is still a patent proceeding judged by patent attorneys and subject to the peculiarities of patent law

1. Amazon IP policy: <https://sellercentral.amazon.com/gp/help/external/201361070>; Amazon IP infringement report form: <https://www.amazon.com/report/infringement>

2. <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey> (membership or fee required).

3. No original Amazon source on-line has been identified for the Amazon UPNEP documentation.

A copy of the procedure, as it existed in March 2021, can be obtained from the author at tkohler@drm.com upon request.

4. See, e.g., Emerson, From Amazon's Domination of E-Commerce to Its Foray into Patent Litigation: Will Amazon Succeed as "The District of Amazon Federal Court?", 21 N.C. J.L. & TECH. 71 (2019). Available at: <https://scholarship.law.umc.edu/ncjolt/vol21/iss2/4>.

5. At small firm/sole practitioner billing rates outside of places like Boston or NYC.

6. Prior meaning more than one year before the earliest effective filing date of the subject patent per 35 U.S.C. ¶ 102.

7. Wayback Machine – Internet Archive, at <https://archive.org/web/>.

Tom Kohler is an experienced, registered patent attorney who has worked with individuals, start-ups, and Fortune 100 companies in diverse technology areas including medical devices, renewable energy and electric power generation, consumer products, Internet and computer products, semiconductor fabrication, and telecommunications. Prior to joining Downs Rachlin Martin, Tom was a partner in a leading IP boutique firm in New York City. He can be reached at (802) 863-2375.



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Frank B. Mesmer, Jr.

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ative expression (Android's implementing code)," and "its value lies in its efforts to encourage programmers to learn and to use that system so that they will use (and continue to use) Sun-related implementing programs that Google did not copy." The Court concluded that "the declaring code is, if copyrightable at all, further than are most computer programs (such as the implementing code) from the core of copyright," and that finding fair use would be "unlikely to undermine the general copyright protection that Congress provided for computer programs."

As for the third factor, the amount and substantiality of the portion used, the Court noted that the 11,500 lines that were copied constituted only 0.4 percent of the entire Java API and found that the use was fair where the amount used was "tethered to a valid, and transformative, purpose."

Under the final factor, the effect on the market, the majority did not consider the market effect of Google's copying by looking at Oracle's lost revenue. Instead, the majority cited to evidence that Sun itself "was poorly positioned to succeed in the mobile phone market" and that "Google's new smartphone platform is not a market substitute for Java SE." The record also showed that Java SE's copyright holder would benefit from the reimplementation of its interface into a different market."

In a dissenting opinion, Justice Clarence Thomas, joined by Justice Samuel Alito, argued the majority was wrong to skip the step of determining whether APIs are copyrightable because jumping to the fair-use analysis "distorts" the outcome. The dissent further

stated that "Oracle's code at issue here is copyrightable, and Google's use of that copyrighted code was anything but fair."

Numerous amicus briefs were filed in the case. Unsurprisingly, IBM and Microsoft, the Computer & Communications Industry Association, and other groups representing software innovators and startups submitted amicus briefs arguing against the copyrightability of computer interfaces. While the Motion Picture Association, Recording Industry Association of America and other organizations representing the interests of copyright owners submitted amicus briefs arguing that if Google's approach to "transformative use" were applied to expressive works, it would unduly impair copyright owners' exclusive rights.

Many who were eagerly awaiting the Court's ruling on whether APIs are copyrightable were disappointed by the decision. The Court's holding finding fair use was highly dependent on the specifics of the case and it is unlikely the decision will dictate the results in future copyright disputes.

Google's triumph over Oracle is also a victory for innovation. Since 2010 when the case was initially filed, more and more technology companies have come to accept open-source software and open APIs because they have seen how openness and interoperability can lead to innovation that benefits everyone.

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shortened response deadline. Following implementation, trademark applicants and practitioners should pay close attention to office action response deadlines and make timely extension requests when applicable.

Restoration of the Presumption of Irreparable Harm

Effective upon enactment, the TMA creates a uniform rule establishing a rebuttable presumption of irreparable harm for plaintiffs seeking injunctive relief in federal trademark infringement actions. In *eBay Inc. v. MercExchange L.L.C.*, 547 U.S. 388 (2006), the Supreme Court eliminated a similar presumption in patent infringement cases. Circuit courts split on whether the eBay rule applied in trademark infringement matters, which led several courts to invalidate the presumption and encouraged forum shopping among plaintiffs. To resolve this issue, the TMA amends the Lanham Act to include a rebuttable

presumption of irreparable harm upon a finding of infringement or likelihood of success upon the merits. This eases the evidentiary burden on plaintiffs and increases the likelihood of obtaining preliminary and permanent injunctive relief in trademark infringement actions.

Looking Forward

While the TMA provides powerful tools and protections for legitimate trademark owners, its provisions also expose applications and registrations to new challenges by competitors. As the USPTO continues implementation efforts in the upcoming months, trademark owners will want to consider how these new rules and regulations may impact their ability to protect and advance their brands.

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unlike patents, trademarks have the potential to survive into perpetuity. Therefore, ensuring a quick and effective recordal of all intellectual property transfers through separable intellectual property assignments will help avoid any contractual ambiguity should one company dissolve and will minimize the continued obligation between the companies to effectuate any necessary intellectual property transfers.

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Privacy from page 25

cannot bind the public authorities of third countries (such as US government agencies), in which case it may be necessary to supplement the guarantees contained in those Standard Contractual Clauses. Unfortunately, the court did not elaborate as to what those supplementations would be, but the European Data Protection Board recently issued substantial guidance, including recommendations regarding encryption. The US Government also issued a white paper, criticizing the CJEU for focusing on US law and procedures in effect in 2016 when the Privacy Shield was adopted, and not recognizing newer US laws and procurements designed to afford more protections and remedies to individuals subject to surveillance laws. The white paper also offers guidance for compliance with the *Schrems II* decision. Needless to say, *Schrems II* has a significant impact on the ability of businesses to conduct commercial activities involving transfers of personal information of data subjects from EEA based businesses to businesses located in the United States.

CPRA amendments to the CCPA

The CCPA applies to a "business," essentially defined to be (a) an entity or individual that does business in the state of California, (b) that collects the personal information of California residents ("consumers"), and (c) that meets at least one of the following criteria:

a. Has annual gross revenues in excess of twenty-five million dollars (\$25,000,000), as adjusted under appli-

cable law

- b. Alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices
- c. Derives 50 percent or more of its annual revenues from selling consumers' personal information

A "business" also includes any entity that controls or is controlled by a business as defined above and that shares common branding with the business. Unfortunately, the law does not define what it means to do business in California. The California authorities likely will interpret that provision broadly so that even limited contact with California could be enough to bring a business within the scope of the law.

The CPRA amended the CCPA in a number of ways. Some of the more significant amendments are:

- Changes the definition of who is a business covered by the CCPA by (i) increasing the threshold under paragraph (b) above from 50,000 to 100,000 or more consumers or households, and removing devices, and (ii) broadening the criteria under paragraph (c) above to include sharing, in addition to selling, consumers' personal information
- Creates a new category personal information ("sensitive personal information") and provides specific rights with regard to collection and use of the same
- Creates a new category of personal information recipients, "contractors," in addition to "service providers" and

"third parties"

- Provides consumers the right to correct their personal information and expands other consumer rights
- Gives consumers a right to know the length of time the business retains each category of personal information (including sensitive personal information)
- Requires the California Attorney General to adopt regulation requiring businesses whose processing of consumers' personal information presents significant risk to consumers' privacy or security: (a) to perform a cybersecurity audit on an annual basis, including defining the scope of the audit and establishing a process to ensure that audits are thorough and independent, and (b) submit to the California Privacy Protection Agency on a regular basis a risk assessment with respect to their processing of personal information
- Imposes data minimization requirements and storage limitations
- Eliminates the 30 day cure period prior to administrative enforcement
- Expands private right of action criteria
- Creates the first dedicated state privacy organization, the California Privacy Protection Agency

VCDPA

Virginia became the second state in the US to enact a comprehensive personal information privacy law. That law, effective January 1, 2023, applies to "persons" (presumably individuals and legal entities) that conduct business in the Common-

wealth of Virginia or produce products or services that are targeted to residents of the Commonwealth and that (i) during a calendar year, control or process personal data of at least 100,000 consumers [as defined below] or (ii) control or process personal data of at least 25,000 consumers and derive over 50 percent of gross revenue from the sale of personal data.

While the law has similarities to the CCPA, it is not identical, and in fact it adopts some of the concepts from the GDPR. In many ways the VCDPA is simpler and more straightforward than the CCPA. One notable distinction is that unlike the GDPR and the CCPA, the VCDPA does not apply to collection of business-to-business or workforce personal information (although the CCPA as amended by the CPRA has limited B2B and workforce exemptions in effect that become inoperative on January 1, 2023). Specifically, it defines a "consumer" to whom the law applies, as "a natural person who is a resident of the Commonwealth acting only in an individual or household context. It does not include a natural person acting in a commercial or employment context." Moreover, unlike the CCPA, there is no provision for a private right of action.

Douglas Verge is co-chair of Sheehan Phinney's Data Privacy and Security Law Practice Group. He also is an integral member of the firm's intellectual property law practice, having previously chaired the IP Practice Group for close to 10 years. Doug's clients range from start-ups to multinational companies, representing diverse business interests, including manufacturing, technology, healthcare, education, and the arts..

Bellevue: Courts Deal Blow to NH Property Owners

By Paul Alfano

In *Bellevue Properties, Inc. v. Town of Conway & a.*, 173 N.H. 510 (2020), the New Hampshire Supreme Court dealt a blow to New Hampshire citizens seeking to defend their property against overreaching local governments. Although not part of the court's ruling, the decision also implicated Part 1, Article 12-a of the New Hampshire Constitution, which prohibits a municipality from taking property by eminent domain from one person and transferring it, directly or indirectly, to another for "private development or other private use." The case arose in the context of a town vote to discontinue a road providing public, maintained access to a hotel.



meeting vote.

An aggrieved party, such as an abutter, may recover damages arising from a discontinuance. RSA 231:48, 49. In other words, the discontinuance of a highway by public authority is a compensable act, similar to the creation of a highway via eminent domain using the layout process. See RSA 231: 8 et seq.

North Conway Grand Hotel

The North Conway Grand Hotel is located toward the back of a large retail development in North Conway called Settlers Green. Prior to the discontinuance vote leading to the *Bellevue* litigation, patrons of the hotel had three methods of access, two over public roads, and one over a private road maintained by Settlers Green. McMillan Lane was one of the public roads, and provided access to Route 16, the

main road through town. The other public access came from the rear of the hotel.

Settlers Green submitted an expansion proposal to the planning board. To accommodate the configuration it desired, the developer requested the municipality discontinue McMillan Lane and replace it with a private road. Settlers Green agreed to maintain. The new, private road would include bike paths, sidewalks and a 10-foot esplanade, "providing a significant upgrade from McMillan Lane."

Settlers Green committed to making the road available to the public, and the planning board made continued maintenance of the new road a condition of approval. Should Settlers Green stop maintaining the road, "anybody" could bring the violation to the attention of the municipality, and the municipality could revoke Settlers Green's certificate of occupancy

and impose fines. "Thus, not only does the evidence demonstrate that [the hotel] currently has access to the now-privately owned [road], it shows that this access will continue given Settlers' significant business and legal interests in continuing to keep the new road open to the public and maintained." Also, "...the trial court found 'no evidence to suggest that Settlers or its successors will cease to maintain the new road once it is built.'" (Brackets and ellipses omitted.)

Conway voted to discontinue McMillan Lane at its 2017 town meeting. The hotel appealed to the superior court. Following a trial de novo, the superior court upheld the discontinuance. The hotel appealed to the supreme court, which issued its decision on August 25, 2020.

Standard of Review

The supreme court first needed to settle the legal standard courts should use when considering a highway discontinuance appeal brought by an abutting landowner. The court upheld the trial court's approach of balancing the aggrieved landowner's interest in the road remaining public against the municipality's interests in discontinuing the road. The court also held a municipality may consider factors other than cost savings when deciding whether to discontinue a highway. (Every discontinuance of a class V road presumably saves the mu-

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Discontinuance? Not So Fast

By Natch Greyes

In 2018, *Casagrande v. Town of Goshen* changed the law of discontinuances fairly significantly. Municipalities across New Hampshire started digging into old records to determine whether those roads that they thought had been discontinued in the 1800s still existed. Last year saw a further refinement of the discontinuance rule, and this year has seen some after-effects that municipal officials may be interested in noting.

Let's start with *Casagrande*. In that case, the town voted in 1891 to "discontinue and throw up" a portion of a highway on the condition that another town would "throw up theirs to meet us." What exactly that meant was unclear to the 2018 Supreme Court, so, as the law favors continuance, the Court ruled that the highway continued to exist, and the town had rights to it. (As an aside, any municipality that wants to discontinue a road should simply state that the road is to be "discontinued completely" in the warrant article pertaining to the road.)

Last year, in *Bellevue Properties v. Town of Conway* the New Hampshire Supreme Court revisited the rule of discontinuances.



In short, the plaintiff owned a hotel that was accessed by a town road that ran through a parcel on which a large retail redevelopment was proposed. The retail developer proposed discontinuing the public highway and providing alternative access with a private road that would remain open to the public and offered an easement to the hotel. The plaintiff sued, claiming that the discontinuance would cause harm to the hotel's business. The Supreme Court upheld the discontinuance stating that the town's decision to discontinue a highway is not limited to ongoing maintenance

costs, but that the town may decide to discontinue a highway for other reasons, and, if challenged, "the trial court may consider those interests in reviewing the town's decision." In this case, it was proper for the town to discontinue the public highway not because of maintenance costs but because there was a proposal for a large retail establishment and alternative access would be provided to properties serviced by the existing public highway.

Together, those two cases more-or-less settle the town's right to discontinue a highway and how they should go about it. But

there are still questions that private landowners like to ask municipal officials, such as, "What rights do I have if the public highway that services my land is discontinued?" Although that answer isn't strictly within the realm of what municipal officials do, it's good to know that there is an answer, and that it can be found in this year's *Lauren Shearer v. Ronald Raymond*.

In *Shearer*, the plaintiff bought a parcel that was landlocked – it was accessible only by "Bowker Road." Bowker Road was laid out as a municipal road in 1766 but discontinued in 1898. It had long served to connect the plaintiff's parcel to another still-existing municipal road. A gate was maintained along Bowker Road by the owner of the parcel "locking" the plaintiff in, and that owner claimed that the plaintiff had no right to use the gate to access her property via Bowker Road. The New Hampshire Supreme Court disagreed. The ability of a property owner to access his or her property via a road was not extinguished merely because of the discontinuance of that road if that road is the only reasonable means of reaching that parcel. Instead, the easement for accessing that property continues until such time as it is extinguished. That ruling should put the minds of private property owners at ease. Even though the public may no longer be able to use the road, they – and the subse-

DISCONTINUANCE continued on page 33

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nicipality money.)

Here, the annual cost savings to the municipality were \$7,821. The hotel argued the court should consider only the cost savings, apparently believing the amount too meager to justify the discontinuance.

The trial court did not indicate whether the \$7,821 cost savings alone would justify the discontinuance but gave considerable attention to the hotel's ability to have access over the new, private road, and Settlers Green's interests in continuing to keep

the road open to the public and maintained. The trial court found the continued maintenance of the discontinued road important, yet effectively equated a private promise with a public duty. The court went so far as to conclude "Settlers will not cease maintaining the new road or close it to the public."

The promise of a private person to maintain a road, no matter how convincing, is inherently of a different and inferior character than the obligation of a municipality to maintain a road.

If a municipality fails to fulfill its maintenance obligations, aggrieved citi-

zens have clear, statutory remedies. Mere notification of a deficiency triggers municipal action. See, e.g., RSA 231:90 et seq. If a private party fails to fulfill its maintenance obligations, aggrieved citizens may...what? Bring a third-party beneficiary claim? File a mandamus action against the municipality demanding enforcement of site plan conditions?

The hotel appears to have made arguments along these lines, but it faced the headwinds of a deferential standard of review on appeal. The supreme court will uphold a superior court ruling on a discontinuance if it is "supported by some evidence."

But the *Bellevue* decision invokes an issue perhaps even more threatening to private property rights: a municipality taking property from one person and giving it to another.

An Article 12-a Taking?

Taking privately-owned property from a citizen is an extreme exercise of sovereign power. New Hampshire thus requires municipalities to compensate landowners when taking land for a highway.

In the infamous decision of *Kelo v. City of London*, 545 U.S. 649 (2005), the United States Supreme Court upheld a municipality's use of its eminent domain powers to take land owned by one private citizen for use by another. The court held that taking land for public *benefit* (the promise of a higher tax base, creation of jobs, and revitalization of an economically distressed area) fell within the Fifth Amendment to

the United States Constitution, which permits takings "for public use."

The decision shocked many, and New Hampshire responded quickly by amending its constitution in 2006 to prohibit a "Kelo" type taking. The amend reads: "No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property." N.H. Constitution, Part 1, Article 12-a.

If a third party owned the land on which Settlers Green wished to build its private road, Conway could have taken the land and made it a highway using the layout process, and the private landowner would have been entitled to compensation. Given New Hampshire also recognizes the discontinuance of a class V highway compensable, is discontinuance a taking? The supreme court noted the possibility of an Article 12-a claim in the *Bellevue* decision, and perhaps would have welcomed the opportunity to entertain it, but the issue did come before the court.

Municipalities have powers few citizens can match, thus the need for constitutional protection. Unfortunately for property owners, the *Bellevue* decision weakens the protections available against municipal action.

Paul Alfano concentrates his practice in the areas of real estate law, tax abatements, business law and estate planning. Attorney Alfano can be reached at 603-226-1188 or paul@alfanolawoffice.com.

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quent owners of their property – still can.

As for who maintains that private road? That's an interesting question. There is nothing in either the statutes or case law that clarifies the relationship between "easement" and "private road." RSA 674:41, III defines "Street giving access" as "a street or way abutting the lot and upon which the lot has frontage" and was passed in response to the 1994 New Hampshire Supreme Court decision *Belluscio v. Westmoreland*. The intent of the legislature, therefore, seems to be to distinguish the two terms, but 2019's RSA 231:81-a states, in relevant part, "[i]n the absence

of an express agreement or requirement governing maintenance of a private road, when more than one residential owner enjoys a common benefit from a private road, each residential owner shall contribute equitably to the reasonable cost of maintaining the private road[.]" But, again, neither RSA 231:81-a nor any other statute defines "private road," and there is no clear method to create them. As such, it's somewhat unclear when RSA 231:81-a would operate as there is no bright-line test to distinguish, for example, an easement for a driveway to serve a few houses in common from a private road.

Undoubtedly, the distinction – if any – between easements and private roads will

be further refined in the coming years but, fortunately for municipal officials, that's something that will have to be worked out by the courts, legislature, and, more importantly, private landowners.

Natch Greyes provides both legislative and legal services to NHMA's member municipalities. Before joining NHMA, Natch was a prosecutor in northern Grafton County. Natch received his B.A from Clark University and his J.D. from William & Mary.

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Silver Linings: Post-Pandemic Playbook

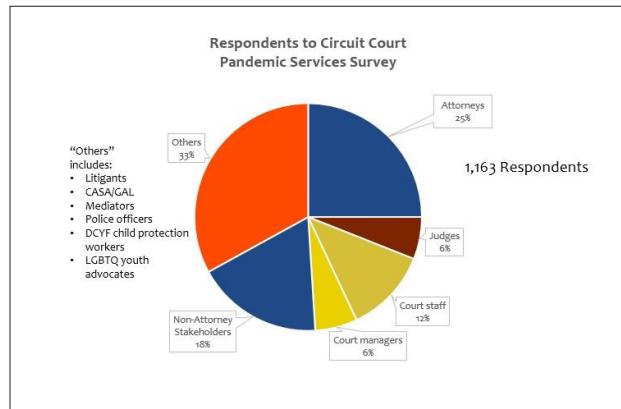
Post-Pandemic Practice Survey Results in the Circuit Court and Lessons Learned

By Hon. David D. King, Circuit Court
Administrative Judge

In April, I wrote an article about the Circuit Court's response to the COVID-19 pandemic. At the end of that article, I asked you to help guide us as we consider post-pandemic practices. We then surveyed multiple stakeholder groups, soliciting their recommendations regarding the pandemic-related court adaptations and innovations. The survey focused on e-mailing documents for urgent matters, telephonic and video conferencing for remote hearings across all major case types, mediation in landlord/tenant cases and remote mediation for parenting disputes, and the overall effectiveness of court operations, from the Information Center to clerks' offices to judges. The goal was not only to evaluate the court's effectiveness in this unprecedented crisis, but also to plan for the road ahead. We asked you to suggest which, if any, of these responses to the COVID emergency should be adopted in the new "normal" operations plan. I am pleased to report that 282 attorneys responded. Thank you. Here is a summary of key survey results. In a future article, I will share with you the changes we are implementing, many of which are informed by these results.

Participants

The respondent pool included 1,163 participants: court staff, court managers, attorneys, judicial officers, non-attorney stakeholders, and litigants—although not as many self-represented litigants as had been hoped. All respondents were encouraged to only evaluate areas in which they have experience and to provide written comments to support their numerical responses. While a broad range of respondents participated, the results are qualitative and should not be considered statistically significant.



General Themes Overall court response

Across the survey pool, several general themes emerged. Circuit Court judges and court staff are roundly praised for their work during this time. People from all respondent groups are exhausted; many recognize that the pandemic—at least the fallout from the crisis—is not over. Most internal respondents believe the court did well maintaining access and moving critical cases forward, but indicate more resources are needed (time, energy, judges, staff, technology support) to manage all cases moving forward. See Figure 1 for an overall view of the effectiveness rating.

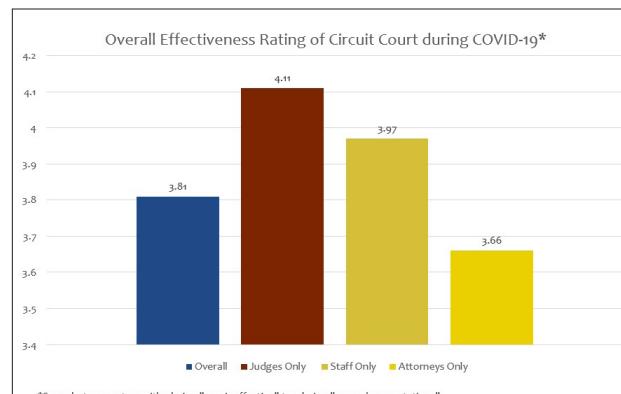


Figure 1. Overall effectiveness rating of the Circuit Court during COVID-19.

Tools Used During the Pandemic

Remote hearings

Since March 2020, we have conducted more than 115,000 remote hearings. The court's pivot to remote hearings was well-received overall, and respondents were grateful for the option. Despite some benefits of judicial discretion about the best medium for a hearing, some respondents were frustrated by the lack of consistency across courts on the types of hearing that were "in-person" versus "remote." Using video technology proved challenging for some groups, including self-represented litigants, court staff, and judges.

While most respondents want to retain the option of remote hearings for some non-evidentiary, non-adjudicatory hearing types, they wanted to return to in-person hearings for some hearing types. The majority of respondents recommend that any hearings that involve establishing credibility, evidence, or multiple participants, should be in-person. Some respondents said they could be offered remote if they were conducted by video. Overall they recommended that the list of hearings that are, by default, in-person should be reviewed.

Stakeholders generally agreed that large-group sessions—including group arraignments, small claims pre-trial conferences, and First Appearance—should be discontinued. This is, in part, due to health concerns but also because parties experience substantial dissatisfaction being scheduled for a certain time, but then having to wait, sometimes hours, for their "turn."

For criminal cases, substantive hearings, including arraignments, should occur in-person. Internal and external stakeholders recommended a staggered, smaller-group, or individual session approach to replace these large group events. For other mass civil or family sessions, consideration should be given to holding them telephonically. Telephonic First Appearance with a case manager is particularly well-rated.

"I think the Court system did a remarkable job in "accelerating" the push towards E-Filing and remote hearings, considering the sudden onset of the COVID-19 pandemic. After getting used to the format and process, I think the combination of E-Filing and remote (both telephonic and Webex) hearings has been efficient, cost-effective, and allowed GREATER access to justice for many low-income and unsophisticated litigants. I wholeheartedly think that this should continue to be the norm (unless parties request otherwise)."

-- Non-attorney stakeholder

COVID E-mail

The pandemic crisis restricted the ability to file documents at court counters. The Circuit Court responded by instituting both a physical dropbox and an e-mail box for each court location. While the COVID e-mail box, which was intended for emergency filings, had its value, the volume of e-mail submitted was overwhelming to most staff, most of the time, possibly because the rules for it were not clear to external stakeholders, nor consistently applied.

About half of respondents expressed interest in retaining the inbox for some types of filings, e.g., DV petitions, emergency child-related petitions, notification of readiness to plea. For courts to provide this service, respondents want clear, public guidelines for its use. Also, more staff are needed to manage the flow, printing, etc.

Alternative Dispute Resolution

Overall response to alternative dispute resolution being offered over phone and video conference was extremely positive. Sixty-seven percent of respondents wanted to keep this option moving forward.

Tools for Post-Pandemic Practice

Respondents were asked to consider what tools or resources would be helpful to maintain or implement as the Circuit Court shifts to post-pandemic practice. Respondents rated each option from 1 (no, we absolutely should not do this) to 5 (yes, we absolutely should do this).

Criminal

As mentioned above, many respondents (weighted average: 2.37) indicated the court should not return to in-person multi-case arraignments, but suggested arraignments should

still be in-person. Status and other non-evidentiary and non-trial hearings were seen as viable hearings to "keep" remote (weighted average: 3.78), with telephonic being the preferred medium.

Civil

For civil cases, all stakeholder groups agreed that remote mediation should remain an option (weighted average: 4.11). There was mixed interest in remote hearings. While most stakeholder groups indicated they prefer some hearings to be telephonic (weighted average: 3.86), respondent groups differed on preference for video, with attorneys strongly requesting video hearings (4.18) and other groups expressing no preference for video.

Landlord/Tenant

In landlord/tenant cases, all groups favored keeping the pilot program that "offer[s] mediation before hearing on the merits" (weighted average: 4.09). No stakeholder group expressed strong preference for keeping telephonic or video hearings.

Divorce/Parenting

In divorce/parenting cases, most of the options instituted during the pandemic were ranked very positively. Remote and after-hours mediation was particularly well-received (weighted averages: 4.67, 4.41 respectively). Only "Return to in-person, multi-case First Appearance sessions with a judge" ranked as "Don't Keep" by all groups (weighted average: 1.94). Video hearings were less preferred than telephonic hearings, but were still slightly preferred to keep as a discretionary medium.

Guardianship, Child Protection, and Juvenile

In guardianship, child protection, and juvenile cases, respondents were in favor of keeping "e-mail for truly urgent filings" (weighted average: 4.68) and "offer remote mediation" (weighted average: 4.19). Though most respondent groups were unsure about keeping remote hearings, judges had the strongest preference for both (3.68 video, 4.03 telephonic).

DV/Stalking

In domestic violence and stalking cases, many respondents want to keep "allow use of e-mail for truly urgent filings" (weighted average: 4.71) and "allow e-mailing of petitions" (weighted average: 4.47). Neither video nor telephonic hearings were favored by respondents based on averages, though some narrative responses indicated parties are less anxious and more able to secure counsel if remote hearings are permitted.

Probate

As with other case types, respondents were positive regarding most of the changes and thought they should be kept including "e-mail for truly urgent filings" (weighted average: 3.93), "offer remote mediation" (weighted average: 4.56) and "holding telephonic hearings" (weighted average: 4.13). Video hearings received mixed support.

Conclusion

The COVID-19 pandemic ushered in a period of unprecedented change and uncertainty within the Circuit Court, yet many of the respondents were complimentary on how the courts adapted. With little forewarning and with great effort on the part of our judges, court staff, and court security officers, courts were kept open and access to justice continued, even under rapidly shifting circumstances and technological hiccups. This survey offers insight into how the adaptations were received and recommendations by various stakeholders on how to leverage the lessons learned during this crisis to effect greater efficiencies and satisfaction in the years after the pandemic has passed. As we work to modify our playbook going forward, we will try and extract the silver linings learned from the pandemic to create efficiencies for court staff and stakeholders. We are grateful for all those who took part in this survey and look forward to working with you to improve access to justice throughout the Circuit Court.

May 2020

Administrative Law

Jane Doe v. Commissioner of NH Dept. of Health and Human Services, No. 2020-0454
May 11, 2021
Affirmed.

- When does the three-day period for providing a probable cause hearing begin to run when a person is involuntarily admitted for mental health because she poses a serious likelihood of danger to herself or others as governed under RSA 135-C:31

This appeal followed a (second) petition for a writ of habeas corpus which was granted by the superior court. The petitioner was involuntarily admitted to an emergency room under RSA 135-C:31. The petitioner was brought to the emergency room at Dartmouth Hitchcock Medical Center and was immediately evaluated by a psychiatrist who was trained to certify involuntary admissions. The psychiatrist conducted a physical and mental evaluation and certified the petitioner's involuntary emergency admission, stating that she posed a serious likelihood of danger to self or others under the statute. The certificate did not identify the "receiving facility" that could best provide the plaintiff with the requisite degree of security and treatment as set forth by the statute.

NHH, the respondent, is a "receiving facility" under the statute. The Court noted that under the plain language of the applicable statute, when a patient's admission is certified, she must be immediately delivered to a receiving facility. However, at the time the petitioner's involuntary admission at DHMC was certified, there were no available beds at any qualifying receiving facility. Therefore, the petitioner remained at the DHMC emergency room.

At-a-Glance Contributor



Laura D. Devine
Civil Litigation Attorney
Boyle Shaughnessy Law Manchester, NH

Over one week later, the petitioner filed her first writ of habeas corpus, seeking release from DHMC. In her petition, she stated that she was being kept in a windowless room in the emergency department against her will and she had been provided neither an involuntary admission hearing before an independent fact finder or any opportunity to challenge whether there existed probable cause for her admission.

Over one week after she filed the petition, she was delivered to the NHH receiving facility. Within three days of her arrival at the NHH, she was given a probable cause hearing, seventeen business days after her involuntary admission to the emergency room at DHMC. At the probable cause hearing, the petitioner moved to dismiss and she argued that her involuntary admission was unlawful because she was held for eighteen business days at the DHMC and therefore, was denied her statutorily mandated three-day hearing and had been denied release within ten days of her initial confinement.

The circuit court denied this motion and found probable cause for the involuntary admission.

The superior court agreed with the petitioner and held that because the petitioner did not receive a probable cause hearing until seventeen business days after the involuntary admission certificate had been completed, her continued confinement was unlawful. The superior court concluded that the three days begins to run once the involuntary admission certificate is complete.

On appeal, the Court agreed with the superior court. The Court observed that the doctrine of constitutional avoidance informs the construct of the applicable statute. In conclusion the Court ruled that the three-day period for providing a probable cause hearing begins to run when the involuntary admission certificate is complete when a person is involuntarily admitted for mental health because she poses a serious likelihood of danger to herself or others as governed under RSA 135-C:31.

Gordon MacDonald, Attorney General, (Anthony Galdieri, Daniel Will, and Samuel Garland) for the petitioner. Gary Apfel, Lebanon, Simpson and Mulligan, for the plaintiff. Gilles Bissonnette and Henry Klementowicz, American Civil Liberties Union of New Hampshire, Concord and Theodore Tsekerides, Aaron Curtis, and Colin McGrath, Weil, Gotshal & Manges, New York, for the class plaintiffs in John Doe v. Commissioner, in their individual capacities and as amici curiae. Joshua Gordon, Law Office of Joshua Gordon, Concord, for National Alliance on Mental Illness New Hampshire, amicus curiae. Michael Ramsdell and James Harris, Sheehan Phinney Bass & Green, Manchester, for New Hampshire Hospital Association & a as amici curiae.

Criminal Law

State v. Richard Soulia, No. 2019-0653
May 5, 2021
Affirmed.

- Whether a defendant is deprived of his right to a fair and impartial jury when a court denies his motions to strike jurors for cause and whether the trial court erred by withholding certain confidential records

The defendant was convicted of three counts of aggravated felonious sexual assault after a jury trial. On appeal, the defendant argued that the trial court erred when it denied his motions to strike for cause three prospective juror and violated his right to an impartial jury under the State and Federal Constitutions and when it failed to disclose certain confidential records following an in camera review.

The Court noted the relevant facts as follows.

The aggravated felonious sexual assault convictions arose from allegations by a family member of the defendant that he sexually assaulted her on several occasions while she was a minor. The confidential documents subject to in camera review were DCYF records.

Regarding his right to an impartial jury, there were three jurors that the defendant moved to strike for cause. The Court observed that the three jurors, who were deemed qualified over the objection of the defendant, participated in the jury deliberations that resulted in his convictions. The Court included the relevant factual background of the jurors and transcripts of the relevant voir dire transcript excerpts. One juror had close family members who were police officers and in the course of her work had to report an instance of child sexual abuse; one juror, a nurse who previously worked with sexually abused minors, was married to someone who was sexually abused by a family member as a child; and one juror was acquainted with one of the law enforcement officer witnesses. Each juror was asked if they could be fair and impartial and the responses varied factually, however, the trial court found that they could be. The Court found that the trial court sustainably exercised its discretion when it denied the defendant's motion to strike. The Court noted that the trial court assessment of the juror's responses included more than the words documented on the record. The Court observed that the trial court could have created a better record by pressing jurors to clarify the meaning of certain statements. The Court noted that if there are legitimate concerns as to whether a juror can be impartial, the trial court has a duty to determine whether the juror can be indifferent. The Court noted that the trial court judge is in the best position to assess and respond to practical challenges encountered during jury selection and therefore, trial court judges are encouraged to probe as necessary for further explanation.

Regarding the in camera review of confidential records, the Court noted that if there are legitimate concerns as to whether a juror can be impartial, the trial court has a duty to determine whether the juror can be indifferent. The Court noted that the trial court judge is in the best position to assess and respond to practical challenges encountered during jury selection and therefore, trial court judges are encouraged to probe as necessary for further explanation.

AT-A-GLANCE continued on page 36

Superior Court Judicial Evaluation Notice

The Chief Justice of the Superior Court is currently in the process of conducting judicial evaluations in accordance with Supreme Court Rule 56 and RSA 490:32 and invites you to participate in this process. The following Justices are presently being evaluated:

Hon. Jacalyn A. Colburn

Hon. Amy L. Ignatius

Hon. John C. Kissinger, Jr.
Hon. James D. O'Neill, III
Hon. Andrew R. Schulman

Hillsborough County Superior Court-Southern District
Carroll and Rockingham County Superior Courts
Merrimack County Superior Court
Belknap County Superior Court
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.

FEBRUARY 2022

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fidential records, the Court decided State v. Girard, which clarified the standard the trial court should apply in determining whether confidential records must be disclosed to a defendant. Therefore, the Court remanded this issue to the trial court with instructions while the appeal was pending. The Court instructed that should the trial court determine that it would have disclosed any of the withheld records before trial had it applied the standard set forth in Girard, and that it must order a new trial unless it determined that its failure to disclose such records was harmless beyond a reasonable doubt.

The Court concluded that the trial court sustainably exercised its discretion when it denied the defendant's motions to strike and did not disclose certain confidential DCYF records after following the Court's instructions on remand.

Thomas Barnard, Appellate Defender, Concord, for the defendant. Gordon MacDonald, attorney general (Elizabeth Woodcock, assistant attorney general) for the State.

State v. Bryan Weston Luikart, No. 2019-0539
May 4, 2021
Reversed.

- Whether the State met its burden proving that the defendant violated the good behavior condition of his suspended sentence by committing witness tampering

The defendant was convicted of various charges and received a suspended sentence. The suspended sentence included: (1) the defendant must complete a batterer intervention program; and (2) be of good behavior. The Court noted the relevant facts as follows. The defendant stopped participating in a qualifying batterer intervention program. The State subsequently moved to impose the defendant's suspended sentence. Shortly thereafter, the defendant re-enrolled in a qualifying intervention program and then sent an e-mail to his ex-wife, in part accusing her of trying to trigger the suspended sentence, and in part accusing her of being the abuser. The State again moved to impose the suspended sentence, this time, it cited a violation of his good behavior obligation. Specifically the state argued the defendant engaged in witness tampering, because of the e-mail to his ex-wife.

The trial court granted the State's motion to impose the sentence, to impose ten of the ninety days. This ruling was stayed pending the appeal.

In its decision, the Court observed that good behavior means conduct conforming

to the law and a violation of good behavior occurs when a defendant engages in criminal conduct, which is conduct beyond a violation level offense. The Court noted that the State's burden in proving a violation sufficient to trigger the imposition of a suspended sentence is to prove the violation by a preponderance of evidence, not beyond a reasonable doubt.

The Court reversed the trial court's imposition of ten days of the suspended sentence. In reaching its decision, the Court noted that the defendant was neither convicted of nor charged with witness tampering. The Court based its decision upon the fact that the trial court record lacked the mental state required for witness tampering. Specifically there was no evidence that the defendant believed the institution of an official proceeding or investigation was probable or pending.

The Court held that the evidence before the trial court, in the light most favorable to the State did not support a finding that the defendant believed an official proceeding or investigation was pending or about to be instituted when he sent the e-mail to his ex-wife. In sum, the State could not meet its burden that by a preponderance of the evidence the defendant had engaged in witness tampering.

Gary Apfel, Simpson & Mulligan, Lebanon, for the defendant. Gordon MacDonald, attorney general (Elizabeth Woodcock, assistant attorney general) for the State.

State v. Teresa Mercon, No. 2020-0163
May 21, 2021
Affirmed and remanded.

- Whether the State must prove, as an element of the offense charged, that the defendant's license was suspended at the time she was arrested because of a prior DUI conviction

The record on appeal contained the following facts: The defendant was convicted of driving with a suspended license following a DUI conviction. Her license was suspended as a result of a twenty-year-old DUI conviction. She was convicted and sentenced to a mandatory seven-day incarceration.

During the prosecution for driving with a suspended license, first, the State filed a motion in limine to admit a certified copy of the case summary documenting the defendant's 1997 DUI conviction and characterized it as "dispositive evidence" of the defendant's conviction and sentencing on this charge. Later, the State altered its position and argued that the 1997 DUI conviction constitutes a sentencing factor, but not an element that must be proven be-

yond a reasonable doubt. The State argued alternatively that the 1997 certified case summary should be dispositive of the prior conviction unless the validity was contested by the defendant. The trial court denied the State's motion in limine, and ruled that the certified case summary was inadmissible. Next, the State moved for reconsideration and the trial court held an in-chamber conference where the State orally moved for a continuance.

The trial court ruled on the outstanding motions at the final pre-trial hearing as follows: (1) it denied the State's motion for reconsideration; (2) it ruled that the State must prove, as an element of operating after suspension that (a) the defendant was previously convicted of DUI, and (b) at the time of her arrest for operating after suspension, it was suspended because of that conviction; and (3) after reconsideration, it ruled that the certified case summary is admissible as non-dispositive evidence of the prior DUI conviction and revocation on that basis.

The Court noted that to be convicted of the misdemeanor driving after suspension or revocation the State was required to prove (1) the defendant's license to drive had been suspended or revoked; (2) the defendant drove after suspension or revocation; and (3) that the defendant did so with knowledge of the suspension or revocation.

The Court held that to convict a defendant for misdemeanor operating after a suspension under RSA 263:64, the State must prove, beyond a reasonable doubt as an element of the offence that the defendant's license was suspended because the defendant had violated one of the specifically enumerated sections of the statute. The Court observed that the State disclaimed and failed to preserve the remainder of its arguments challenging the evidentiary rulings, the Court affirmed the elements for a suspension and remanded the remainder of the evidentiary rulings.

Christopher Johnson, Chief Appellate Defender, Concord, for the defendant. Gordon MacDonald, attorney general (Elizabeth Woodcock, assistant attorney general) for the State.

Family Law

In the Matter of Wm. Michael Earley and Ryan Earley, No. 2020-0051
May 5, 2021
Reversed in part, vacated in part, and remanded.

- Whether an irrevocable life insurance trust established by someone's parents is marital property for purpose of a divorce

The respondent appealed a final divorce decree which awarded the petitioner part of her interest in an irrevocable life insurance trust established by her parents. She argued that the trial court erred in classifying her interest as marital property subject to equitable division.

The Court noted the relevant facts as follows.

The Trust at issue was formed in 2000 by the respondent's parents and named respondent and her two siblings as beneficiaries. The primary asset in the Trust is a flexible premium variable life insurance policy issued to the respondent's parents in 2001. The parents are the insureds and is payable upon the death of the second parent. The Trust is self-sustaining, the interest the policy generates pays for the annual insurance premium. The Trust permits distributions from time to time. The Trustee may exercise this discretion by

making distributions of income or principal to the beneficiaries, for his or her support in reasonable comfort, education, and maintenance in health. The Trust contains a spendthrift provision. The beneficiary's distribution in the Trust passes to his or her living issue, apportioned per stirpes, unless the beneficiary selects someone else.

The parties married in 2002. Between 2001 and 2008, the respondent received five distributions, totaling about \$65,000. In 2017, citing irreconcilable differences, the parties filed for divorce.

In the trial court division of marital property, it held a hearing on whether the petitioner was entitled to any portion of the respondent's interest in the Trust. The respondent conceded that the distributions she received during her marriage constituted marital property, but she argued the petitioner was not entitled to any portion of post-divorce distributions that she may receive. The trial court disagreed and ordered the petitioner one-sixth of the cash value of the life insurance policy, reflecting one-half of the respondent's remainder interest in the Trust as well as one-half of any future distributions the respondent withdraws from inter vivos transfers for five years following the effective date of the divorce decree. The trial court denied the respondent's motion for reconsideration.

In its ruling, the Court noted that if the trial court apportions marital property, in divorce cases, it must do equitably and includes "all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties." Further, the Court noted that this includes any property acquired up to the date of a final decree of divorce.

The Court agreed with the respondent's first argument on appeal. That the trial court's classification of her interest in the Trust as marital property precludes any beneficial interest in a trust that is subject to a spendthrift provision from being classified as marital property.

The Court reversed the trial court ruling that the Trust was marital property and vacated the remainder of the property division determination and remanded the matter to the trial court for further proceedings.

Wm. Michael Earley, self-represented. Christine Rockefeller, Burns, Bryant, Cox, Rockefeller & Durkin, Dover, for the respondent.

Property Law

New Hampshire Alpha of SAE Trust v. Town of Hanover, No. 2020-0034
May 25, 2021
Affirmed.

- Whether the Town of Hanover Zoning Board of Appeals has subject matter jurisdiction to hear a fraternity's appeal from a notice of violation

A fraternity was suspended by its national organization and subsequently derecognized by Dartmouth College. Subsequently, the Town of Hanover served a notice of zoning violation onto the fraternity which stated that it could no longer use its fraternity house as a residence and stated the amount of a daily fine for a continuing violation. The fraternity appealed to the Town ZBA which initially granted the appeal and concluded that the fraternity had a valid nonconforming use. Dartmouth requested a re-hearing and the ZBA reversed its decision and denied the fraternity's appeal. The

AT-A-GLANCE continued on page 37

Supreme Court Orders

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, the Supreme Court assesses each member of the association, as of June 1, 2021, as follows, for the purpose of funding the operations of the New Hampshire Supreme Court Attorney Discipline System, including the Professional Conduct Committee.

Membership category	Assessment
Active (over three years)	\$185
Active (through third year of admission)	\$185
Inactive	\$ 10
Active Military and Active Honorary	\$ 0
Inactive Retired, Inactive Military and Inactive Honorary	\$ 0
Full-time Judicial	\$ 0
Part-time Judicial	\$ 0
Pro bono Active	\$ 0

These assessments are due and payable on or before July 1, 2021. The New Hampshire Bar Association shall collect the assessment for the account of the Professional Conduct Committee and shall report to the court on or before September 15, 2021, the names of members who have not fully paid. If the Board of Governors of the New Hampshire Bar Association grants a member's request for abatement of bar dues, it may grant a waiver of this fee.

Issued: May 12, 2021
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

◆
Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, and pursuant to Supreme Court Rule 53.3, the Supreme Court suspends the assessment of an annual fee to support the operations of the NHCLE Board.

Issued: May 12, 2021
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

◆
Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, and pursuant to Supreme Court Rule 55, the New Hampshire Supreme Court assess each dues-paying member of the association as of June 1, 2021, as follows, for the purpose of funding the Public Protection Fund (PPF).

Membership category	PPF Assessment
Active over three years	\$30
Judicial	\$30
Part-time judicial	\$30
Active three years and under	\$30
Inactive	\$30
Inactive retired	\$ 5
Pro bono active	\$ 0

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, and pursuant to Supreme Court Rule 58, the court assesses each dues-paying member of the association as of June 1, 2021, as follows, for the purpose of funding the Lawyers Assistance Program (LAP).

Membership category	LAP Assessment
Active over three years	\$20
Judicial	\$20
Part-time judicial	\$20
Active three years and under	\$20
Inactive	\$20
Inactive retired	\$ 5
Pro bono active	\$ 0

The members of the association exempted from the PPF assessment by order dated July 22, 1998, are exempted from the assessment for both the PPF and the LAP. These assessments are due and payable on or before July 1, 2021. If the Board of Governors of the New Hampshire Bar Associa-

tion grants a member's request for abatement of bar dues, it may grant a waiver of one or both assessments.

The New Hampshire Bar Association shall collect the assessments for the account of the Public Protection Fund and the Lawyers Assistance Program and shall report to the court on or before September 15, 2021, the names of those members responsible for the assessments who have not fully paid.

Issued: May 12, 2021
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

◆
Attorney Sonya G. Bellafant, Executive Director of 603 Legal Aid, is appointed to the Access to Justice Commission, which was established by Supreme Court order dated January 12, 2007. Attorney Bellafant's three-year term begins June 1, 2021, and expires May 31, 2024.

Issued: May 25, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆
The Supreme Court of New Hampshire, pursuant to RSA 490:4, directs that proceedings in every State court in New Hampshire may be suspended on Friday, June 25, 2021, to facilitate continuing judicial and legal education and to accommodate any judges' meetings being held in conjunction with the annual meeting of the New Hampshire Bar Association. A judge or master may decide not to suspend proceedings if the judge or master and the lawyers on a case do not plan to attend the annual meeting, or if the judge or master, in his or her discretion, decides that the efficient administration of the court or ensuring justice in a particular case compels that a case be scheduled for a hearing or trial, or that a hearing or trial continue to be litigated, on that day.

Issued: May 25, 2021

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

◆
Pursuant to Supreme Court Rule 51(d)(1)(A)(x), the Supreme Court appoints Terri Peterson, circuit court clerk, to the Advisory Committee on Rules, replacing Patrick W. Ryan, who has recently been appointed a circuit court judge. Ms. Peterson's term commences immediately and expires on December 31, 2022.

Issued: June 2, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆
In accordance with Supreme Court Rule 39(2)(a)(1), the Supreme Court appoints Judge Jennifer A. Lemire as an alternate circuit court judge member of the Committee on Judicial Conduct for the remainder of a three-year term expiring July 1, 2021. Judge Lemire is appointed to replace Judge Elizabeth Leonard. At this time, the Supreme Court also reappoints Judge Lemire as an alternate circuit court judge member of the committee with her new term commencing on July 2, 2021, and expiring on July 1, 2024.

Issued: June 2, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆
In accordance with Supreme Court Rule 37(4)(a), the Supreme Court appoints Attorney Kyle David Robidas to the Hearings Committee of the Attorney Discipline System, for a three-year term commencing July 1, 2021, and expiring June 30, 2024.

Issued: June 3, 2021

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At-a-Glance from page 36

fraternity then appealed the ZBA decision to the trial court which affirmed the decision. The fraternity then appealed the trial court ruling to the Supreme Court, which affirmed in part, vacated in part, and remanded for further proceedings.

While the case was pending before the ZBA on remand, the fraternity filed a petition for declaratory judgment arguing that the ZBA did not have subject matter jurisdiction over its first appeal from the notice of violation and the courts did not have the jurisdiction to review the ZBA's decision as a result. In the declaratory judgment action, the fraternity argued that (1) the notice of violation commenced an informal enforcement proceeding against the fraternity; (2) the fraternity's challenge was to the ZBA's decision to enforce, not to the construction, application, or interpretation of the ordinance; (3) the courts, not the ZBA, have subject matter jurisdiction to adjudicate alleged violations of zoning ordinances; and (4) the ZBA violated the fraternity's due process by unlawfully shifting the burden of proof to them. In response, the Town moved to dismiss and requested an award of attorney's fees. The trial court denied the petition for declaratory judgment

and rejected the fraternity's argument that the notice was a discretionary decision to commence formal or informal enforcement proceedings.

The trial court determined that a notice of violation serves to provide notice that one is not in compliance with zoning to give an opportunity to remedy before enforcement. The trial court reasoned that the notice of violation was not enforcement. The trial court concluded that the notice was an administrative decision, not a discretionary decision to commence proceedings, and thus the ZBA had jurisdiction to hear the appeal. The court rejected the fraternity's due process argument, and stated it was not deprived of any ascertainable interest protected by law as a result of the notice or the fraternity's appeal to the ZBA. The trial court denied the Town's motion for attorney's fees without explanation.

In its decision affirming the trial court's rulings, the Court observed that the ZBA's powers and jurisdiction are established by statute. The Court agreed with the fraternity that a municipality seeking to prosecute and impose penalties upon a defendant for a zoning violation must pursue such action in circuit or superior court. However, the Court agreed with the Town that the stage of a notice of zoning violation and subsequent appeal are not a prosecution of a zoning

violation.

The Court concluded that the ZBA had subject matter jurisdiction to hear the fraternity's appeal from a notice of violation because it is an administrative decision, not a discretionary decision.

Regarding the denial of attorneys' fees, the Court noted that the general rule is that each party must pay its own fees. The Court concluded that there was no evidence of

bad faith or intentional delay and the nature of the issue and arguments provide some support in the record for the trial court's determination and therefore the denial of attorney's fees was upheld.

Carolyn Cole, Cole Associates Civil Law, Lebanon, for the plaintiff. Laura Spector-Morgan, Mitchell Municipal Group, Laconia, for the defendant.

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Orders from page 37

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

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire court system, and upon consideration of the guidance of federal and state public health officials, the Supreme Court revokes the July 24, 2020 order requiring persons in State of New Hampshire courthouses and other Judicial Branch workplaces to wear face covers. This revocation order shall take effect at 8:00 a.m. on June 7, 2021; provided, however, that persons who are present in a courtroom or a jury room for a jury trial or grand jury proceeding through June 30, 2021, must wear face covers that cover the mouth and nose.

This revocation order does not apply in the common areas of a building that is used as a courthouse or Judicial Branch workplace if, and to the extent that, the building is owned by an independent entity that requires the wearing of face covers in common areas.

Issued: June 4, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire court system, and upon consideration of the guidance of federal and state public health officials, the Supreme Court revokes the portion of the

April 6, 2021 order requiring persons, other than Judicial Branch employees and judges, who have engaged in international travel or cruise-ship travel to complete a 14-day self-quarantine period prior to entering Judicial Branch facilities and courthouses.

This revocation order shall take effect at 8:00 a.m. on June 7, 2021, at which time any portion of the August 21, 2020 or April 6, 2021 orders restricting entrance to Judicial Branch facilities and courthouses by persons other than Judicial Branch employees and judges shall cease to be in effect.

Issued: June 4, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

In accordance with Supreme Court Rule 39(2)(a)(1), the Supreme Court reappoints Judge James H. Leary and Judge Susan B. Carbon as circuit court judge members of the Committee on Judicial Conduct, with new terms expiring on July 31, 2024.

Also in accordance with Rule 39(2)(a)(1), the Supreme Court reappoints Judge James D. O'Neill, III, and Judge Christina M. O'Neill as alternate superior court and circuit court judge members of the Committee on Judicial Conduct, with new terms expiring on June 30, 2024.

In accordance with Rule 39(2)(a)(6), the Supreme Court reappoints Delton Jonathan Record, Jr., as an alternate public member of the Committee on Judicial Conduct, with a new term expiring on June 30, 2024.

Issued: June 3, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

US District Court Decision Listing

May 2021

* Published

CIVIL RIGHTS; NEGLIGENCE

5/20/21 *Sacco v. Hillsborough County Department of Corrections, et al.*
Case No. 20-cv-447-JL, Opinion No. 2021 DNH 086*

In this civil rights claim arising from the death of a pretrial detainee at the Valley Street Jail in Manchester, NH, the court denied in part and granted in part a motion to dismiss filed by the individual nurse defendants who treated the detainee. Plaintiff – the estate of the deceased detainee – brought claims against the nurses for deliberately indifferent medical care in violation of the Due Process Clause of the Fourteenth Amendment and negligence. After the Plaintiff voluntarily dismissed its claims against two of the nurses, the court Plaintiff granted the motion as to three of the remaining nurses. The court held that the two-part objective and subjective standard applies to deliberately indifferent medical care claims brought by pretrial detainees. It then held that the allegations against three of the nurses suggested that the detainee's serious medical condition was worsening while in their care, there were available treatment avenues to prevent his demise, and they chose not to utilize them. This was marginally sufficient, at the motion to dismiss stage, to state a claim for deliberate indifference and overcome a N.H. statutory immunity defense for negligence claims against government employees. 35 pages. Judge Joseph N. Laplante.

SECTION 1983 and SECTION 1985(3)

5/20/21 *Dominic v. Goldman & LeBrun Professional Association et al.*
Case No. 20-cv-854-PB, Opinion No. 21 DNH 077

Dominic brought this action on behalf of his mother's estate against his mother's lawyer and the lawyer's affiliated law firms, several employees at banks that did business with his mother, and several former officials of the New Hampshire Banking Department, alleging mismanagement of her estate and property. He raised two federal claims – a § 1983 and § 1985(3) conspiracy claim. He failed to state a claim under § 1983 because he attempted to use the statute as an enforcement measure for various requirements of federal banking law but failed to point to any federal banking law that could be enforced under the statute. His § 1985(3) conspiracy claim also failed because it was based upon a non-cognizable class. As his remaining claims arose under state law and the court lacked diversity jurisdiction, the court declined to retain supplemental jurisdiction over the remaining state law claims. 10 pages. Judge Paul Barbadoro.

5/24/21 *Mateo v. FCI Berlin*
Case No. 20-cv-1012-PB, Opinion No. 21 DNH 089

William Mateo, an inmate at the Federal Correctional Institution Berlin, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241. In the petition, Mateo challenges his confinement on the ground that his medical conditions place him at a high risk of severe illness or death from COVID-19. Before the court was Mateo's request for release on bail pending the resolution of his petition, to which the Warden objected. Because Mateo failed to demonstrate that he is likely to prevail on the merits of his petition, the court denied his motion for bail. Specifically, Mateo did not show a likelihood of success on the merits of his Eighth Amendment claim arising out of the risk of harm from COVID-19, because he alleged no facts that could satisfy the subjective component of the deliberate indifference test, that is, that the Warden's response to the pandemic has been so deficient as to amount to criminal recklessness. 10 pages. Judge Paul Barbadoro.

TAX AND FINANCIAL REPORTING

5/18/21 *United States of America v. Annette DeMauro*
Case No. 17-cv-640-JL, Opinion No. 2021 DNH 085*

The defendant, Annette B. DeMauro, moved to amend the verdict and judgment against her under Fed. R. Civ. P. 59(e). After a two-day bench trial and post-trial briefing, the court found, in part, that the United States had proven by a preponderance of the evidence that DeMauro's failure to timely report the existence of nearly \$ 3 million she had hidden away in foreign banks during the 2007, 2008, and 2009 calendar years was willful, as that term is generally construed in the civil context, and was thus subject to enhanced penalties under applicable law. Though DeMauro claimed that this conclusion was "clearly erroneous," the court found that her arguments at best amounted to mere disagreement with how the court judged each witness's credibility and weighed the evidence of record—evidence which DeMauro never objected to (or sought to limit under Federal Rule of Evidence 105) at any point prior to the court's verdict. As such, DeMauro's arguments failed to meet the exacting standard for granting Rule 59 relief, and did persuade the court that it had materially misapprehended the law or facts of this case. Accordingly, the court denied her motion to amend the verdict. 19 pages. Judge Joseph N. Laplante.

COMPASSIONATE RELEASE

5/24/21 *United States v. Scott Farah*
Case No. 10-cr-44-1-PB, Opinion No. 2021 DNH 088

Defendant moved for compassionate release based on his anticipated release in the summer of 2020 that was eventually rescinded by the BOP, his father's declining health, and his weight. His anticipated but rescinded release plan in the summer of 2020 is not a basis for compassionate release. The defendant is also not the only available caretaker for his father and his father's declining health is therefore not a basis for an extraordinary or compelling reason justifying release. Last, without any additional medical conditions, the fact that defendant is overweight is also not enough to create an extraordinary or compelling reason justifying release. While the defendant has made commendable progress while in prison, the court concluded that the Section 3553(a) factors also weigh against his immediate release. 11 pages. Judge Paul Barbadoro.

US Bankruptcy Court Opinion Summary

Judge Peter G. Cary has issued the following opinion:

Note: The full text of the opinion below will be available on the Bankruptcy Court's website at www.nhb.uscourts.gov.

In re Corson, 2021 BNH 002, issued May 21, 2021 (Cary, J.) (published) (in sustaining the chapter 7 Trustee's objection to the priority treatment of the creditor's unsecured proof of claim for guardian ad litem fees under 11 U.S.C. § 507(a)(1)(A) and (a)(1)(B), the court determined that: (1) the creditor, who served as the court-appointed guardian ad litem in the debtor's divorce proceeding, was not a "legal guardian" within the meaning of 11 U.S.C. § 101(14A)(A)(i) and, accordingly, that the claim was not a "domestic support obligation" as defined by 11 U.S.C. § 101(14A)(A)-(D) entitled to priority treatment under 11 U.S.C. § 507(a)(1)(A) and (a)(1)(B)).

SIX-MONTH SUSPENSION, STAYED FOR ONE YEAR, WITH CONDITIONS SUMMARY

On February 16, 2021, the Professional Conduct Committee ("the Committee") deliberated the Stipulation as to Facts, Violations and Sanction.

The Committee approved the facts

as stipulated. It further found that Ms. Wellman-Ally's conduct violated Rules of Professional Conduct 1.2; 1.4; 3.4; and 8.4(a), as stipulated.

The Committee also concluded that a six month suspension stayed for one year with conditions is appropriate. The sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case* 158 N.H. 299, 303 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with the ABA Standards for Imposing Lawyer Sanctions (2005) ("Standards").

An Order is available on our website at www.nhattyreg.org.

May 13, 2021

CORRECTED NOTICE OF MICHAEL BEDARD'S REQUEST FOR REINSTATEMENT TO THE NEW HAMPSHIRE BAR LD-2019-0005

The New Hampshire Supreme Court Professional Conduct Committee is considering Michael Bedard's Request for Reinstatement to the New Hampshire Bar. Mr. Bedard was suspended on June 17, 2019. Anyone who wishes to comment on his request may do so in writing within twenty (20) days of the publication of this notice by sending said comments to:

Barbara Guay, Legal Assistant
New Hampshire Supreme Court
Professional Conduct Committee
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
bguay@nhattyreg.org

May 17, 2021

Wellman-Ally, Lisa A. advs. Attorney Discipline Office, #20-037/#20-003

SIX-MONTH SUSPENSION, STAYED FOR ONE YEAR, WITH CONDITIONS SUMMARY

On February 16, 2021, the Professional Conduct Committee ("the Committee") deliberated the Stipulation as to Facts, Violations and Sanction.

The Committee approved the facts

Classifieds

POSITIONS AVAILABLE

ASSOCIATE – Portsmouth law firm with business, creditor rights, consumer collection and financial institution defense practice seeks litigation associate. Massachusetts or New Hampshire Bar Admission required. Position requires regular court appearances, drafting pleadings, regulatory compliance, attention to detail and strong organizational skills. Entry level to 5 years' experience. Compensation commensurate with experience. Please send your cover letter and resume electronically to: Randall Pratt, Esq., employment@prattlawpc.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. We will be interviewing candidates as resumes are received.

ASSOCIATE ATTORNEY WANTED. Hayes, Windish & Badgewick is seeking an associate attorney to join our team. Preference is given to those with 3-5 years' experience in civil litigation, but those just starting with strong work ethic and motivation will be considered too. We are a small general practice firm with an emphasis on civil litigation, insurance defense, and workers' compensation matters. We seek a candidate who is interested 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.

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.

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.

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.

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 helferlaw@myfairpoint.net.

LITIGATION ATTORNEY – Getman, Schultheiss, Steere & Poulin, P.A., seeks a full time attorney with preferably 5 years of litigation experience, and insurance defense familiarity. Must be admitted to the NH Bar with admission to the Maine, Massachusetts or Vermont Bar a plus. Please e-mail cover letter, writing sample, resume and references to Administrator at law@gssp-lawyers.com. All inquiries held in strict confidence.

LITIGATION ATTORNEY – Getman, Schultheiss, Steere & Poulin, P.A., seeks a part time attorney with preferably 5 years of litigation experience, and insurance defense familiarity. Must be admitted to the NH Bar with admission to the Maine, Massachusetts or Vermont Bar a plus. Please e-mail cover letter, writing sample, resume and references to Administrator at law@gssp-lawyers.com. All inquiries held in strict confidence.

DIRECTOR OF THE YOUTH ADVOCACY DIVISION – The Committee for Public Counsel Services (CPCS), the Massachusetts public defender agency, is seeking a dynamic experienced leader to serve as Director of the Youth Advocacy Division and lead a dedicated, experienced and skilled group of juvenile defenders, social workers, investigators, and administrative professionals in achieving an ever-improving quality of advocacy, deeper engagement with client communities, and steadily improving outcomes for clients. To apply, please go to <https://careers-publiccounsel.icims.com/jobs/2009/director-of-youth-advocacy-division/job>

PERSONAL INJURY /WORKER'S COMPENSATION

PARALEGAL – Immediate full-time opening for an experienced personal injury /worker's compensation paralegal at a well-established, mid-sized law firm in Southern New Hampshire. The ideal candidate will have 5+ years of experience handling medical records review/analysis, tracking deadlines, interaction with clients/medical providers and drafting correspondence, settlement demands, court and Department of Labor filings, other legal documents, and time entry/billing under the supervision of an attorney. Applicant must be computer proficient, possess excellent organizational/critical thinking skills, and the ability to work independently with high volume. Juris software or other billing software experience a plus. Will consider a part-time schedule or hybrid/remote work arrangement for the right candidate. Excellent benefits package and competitive salary. Email resume and salary requirements to Attn: Human Resource Dept., vhamilton@lawyersnh.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.

PARALEGAL – Keane & Macdonald, PC of Portsmouth NH seeks a paralegal to support its commercial real estate, estate planning and business law practice areas. 2+ years of prior paralegal experience preferred. The candidate must be well organized, detail oriented and possess the ability to work independently and with others. Salary is negotiable and commensurate with experience, and the firm offers a competitive benefits package. Please send a cover letter and resume to: doug@keanemacdonald.com.

CLASSIFIEDS continued on page 41

ATTORNEY/RIGHT TO KNOW COORDINATOR CITY OF NASHUA

PRIMARY DUTIES

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

ensure compliance with 33-A and 294-E. This position is unaffiliated. Work schedule Monday-Friday, 8:00am to 5:00pm, and other times as necessary.

QUALIFICATIONS

Attorney admitted to New Hampshire Bar with relevant education or experience necessary to assume responsibility for interpreting and fulfilling legal requirements related to public records management. Administrative experience and sufficient computer literacy to perform the requirements of the position. Solid writing and correspondence skills. Discretion and confidentiality required.

APPLICATION PROCEDURE

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

Estate Planning Attorney

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

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

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

All inquiries are held in the strictest confidence.

ATTORNEYS
AT LAW

PRIMMER PIPER
EGGLESTON &
CRAMER PC

Legal Secretary

Prominent litigation law firm seeking full-time legal secretary to work in our Portsmouth, New Hampshire office. Duties include effectively handling priorities and working with a busy partner to facilitate the daily practice of a professional and dynamic legal team. The position requires the drafting of correspondence, electronic filing of records and pleadings, file organization, coordination and scheduling of calendars.

Requirements:

- Personal Injury litigation experience (preferred)
- Must have excellent oral and written communication skills
- Strong organizational skills with the ability to multi-task
- Ability to independently perform tasks.
- Typing Speed of at least 50 WPM
- Highly proficient in Microsoft Suite, including Word, Excel and Outlook
- Excellent phone etiquette
- Pleasant demeanor and high energy

Excellent Salary and Benefits.

To be considered for the opportunity, please submit a cover letter and resume to jceremeno@ntrialattorneys.com.



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. All inquiries will be held in strict confidence.

ATTORNEY OPENINGS

Sullivan & Hollis, PLLC, continues to grow our regional practice, with opportunities for talented associates and other attorneys to join our Estate Planning, Insurance Coverage and Litigation practice areas. We offer a dynamic and sophisticated practice, a collegial and flexible working environment, and support to our attorneys with mentoring and business development, together with a competitive compensation package and excellent benefits.

ESTATE PLANNING

We are seeking Associate Attorney candidates, with a minimum of two years of experience in Estate Planning for our Concord, NH location. Our Estate Planning group assists clients with the important decisions involved in protecting their families and preparing for the future. Our attorneys handle all aspects of estate planning and trust and estate administration, as well as the federal estate and gift taxation issues that go along with these areas.

GENERAL LITIGATION

Litigation has long been a core strength at Sullivan & Hollis. Since the firm's founding more than 160 years ago, we have continued to build on a legacy of excellence in litigation services, remaining on the leading edge of new technologies and strategies for effective advocacy. Our litigation practice spans a wide range of legal issues. Because these issues often intersect with other practice groups, we provide clients with a well-rounded perspective, enhancing their ability to make informed decisions. We are currently seeking a General Litigation Associate with up to four years of litigation experience for our Concord, NH location.

INSURANCE COVERAGE

We are seeking lateral candidates with seven or more years of experience to join our Insurance and Reinsurance Group ("IRG"). The ideal candidate will have a desire to join a fast-paced, region-wide practice; will have demonstrated business development acumen; and is willing to help us develop our capacity to service clients from our offices in Needham, MA, and Providence, RI. Connecticut licensure is a plus. IRG provides strategic guidance and advocacy to insurers and third-party administrators across New England, in areas that include insurance coverage, extracontractual and bad faith liability, regulatory compliance and related matters. We help our clients fulfill their business objectives and maintain regulatory compliance by providing efficient, creative and timely legal solutions and informed advice.

*Qualified applicants should submit resume and cover letter to:
Jennifer L. Iacopino, Human Resources Manager,
jiacopino@sullivan.com*



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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 (Word format)
EOE

Family Law Attorney – New Hampshire

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

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
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Fax: (603) 223-9060
Email: resumes@orr-reno.com (Word format)
EOE
No phone calls or agencies please

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
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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@sullivan.com



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Classifieds

Classifieds from page 39

FULL-TIME LEGAL ASSISTANT – Getman, Schulthess, Steere & Poulin, P.A. a Manchester, NH law firm seeks a full time legal assistant with 3-5 years' litigation experience. 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.

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.

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.

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If you have missed the deadline for the current issue, your ad will appear on our website, www.nhbar.org, before the next issue date once the \$25 website fee is prepaid.

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Classified Rates

Litigation Legal Assistant

Orr & Reno is looking for an experienced, enthusiastic, and energetic legal secretary to join our litigation group. The successful candidate will possess a professional demeanor and exceptional organization, written and verbal communication skills. The ability to be flexible, multi-task and prioritize is required. Must be detail-oriented, have superior computer skills (to include Microsoft Office Suite, Adobe, scanning and maintaining large, nuanced electronic files), be a team player and have the ability to work independently. This position supports multiple timekeepers. A minimum of 3 – 5 years legal assistant experience is required. This is a full-time, 40 hour per week position.

Orr & Reno offers a competitive salary and benefits package, which includes medical, dental, life, 401(k), paid vacation, holidays and sick leave.

Please send resume and cover letter to:

Orr & Reno, P.A.
Attention: HR Coordinator
PO Box 3550
Concord, NH 03302-3550
Fax: 603 223-9060
Email: resumes@orr-reno.com (please send in Word format only)
No phone calls or agencies please

BUSINESS ATTORNEY

Seeking experienced Business Attorney to join thriving Corporate and Commercial 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 corporate experience and an interest in building a long-term career in the Lakes Region. Commercial and/or residential 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 corporate 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. Kaitlin O'Neil, at koneil@nco-law.com

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

Attorney - Corporate Practice Group

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

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





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.

No phone calls or agencies please.

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.

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

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.

No phone calls or agencies please.

EOE.



Legal Assistant

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a Legal Assistant with personal injury experience in State Court in their Manchester, NH office. The ideal candidate will have at least two (2) years' experience. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently. As to the Responsibilities below, some on-the-job training will be provided.

Responsibilities to include, but are not limited to:

- Must have strong computer skills (programs used by the office: Microsoft Office, Outlook, Excel, Adobe, Centerbase, NetDocuments), scanning and maintaining electronic files
- Must have excellent communication skills via email, phone, and with clients, court staff and opposing counsel
- Must be highly organized with an ability to prepare case files for attorney to use at court hearings
- Experience with contacting claims adjusters
- Experience with requesting, reviewing and organization of medical records and bills
- Preparing medical evidence for trial
- Management of Personal Injury Files
- Preparation of general correspondence, motions and objections
- Preparation of Demand letters
- Assist with discovery and document management

- Serve and file legal papers in the correct court and familiarity with electronic filing systems

We look forward to welcoming someone who takes pride in his / her work, who 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@shaheen-gordon.com.

No phone calls or agencies please.

NH INSURANCE DEPARTMENT ADMINISTRATIVE HEARINGS JUDGE

(Hearings Examiner)
US:NH:CONCORD

Position #10953 – Labor Grade 31
Salary Range: \$65,949.00 - \$79,170.00

Scope of Work: This position will serve as the Administrative Hearings Judge for the New Hampshire Insurance Department (NHID), presiding over administrative hearings and preparing written decisions; planning and carrying out long-term legislative drafting projects for the NHID; and managing the NHID's compliance with document production requirements under RSA 91-A (the Right to Know Law).

Accountabilities: This position is responsible for conducting administrative hearings and related proceedings concerning a wide variety of insurance regulatory matters. This position will involve ruling on motions and issuing procedural and substantive orders consistent with all relevant legal standards; considering credibility and relevance of evidence to determine factual issues; and producing thoughtful and well-organized, written decisions that include factual findings, legal analysis and rulings of all issues in dispute, and application of regulatory remedies. This position will also assist the NHID with long term administrative and legislative drafting projects by formulating strategies to improve insurance regulatory standards; drafting comprehensive rewrites of outdated chapters of the New Hampshire Insurance Code, Title 37; and updating administrative regulations to better reflect current market characteristics and more suitably serve consumers, the NHID's licensees, the insurance market, and the public. This position will manage the NHID's compliance with all RSA 91-A (Right to Know) requests, including legal analysis of each request with special attention to any and all information that must

be kept confidential under the New Hampshire Insurance Code, Title 37; coordinate with and direct support staff in the fulfillment of all Right to Know obligations; and provide written responses to each request in a timely manner. This position will serve on special project teams with NHID staff to plan and execute NHID initiatives relating to administrative hearings, RSA 91-A requests, NHID's legislative and rule-writing projects, and other insurance regulatory matters.

QUALIFICATIONS:

Education: J.D. from a recognized law school.

Experience: Five years' experience as an attorney, two years of which must have been as an attorney involved with administrative law or concerned with regulatory authorities.

License/Certification: Valid driver's license and/or access to transportation for statewide travel.

SPECIAL QUALIFICATIONS: Must be an active member of the New Hampshire Bar Association and in Good Standing.

Apply online at: <https://das.nh.gov/jobsearch/employment.aspx>

For further information please contact:

Hannah Arseneaux
Human Resources Technician
Ins-Careers@Ins.nh.gov
603-271-7075
EOE



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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>.

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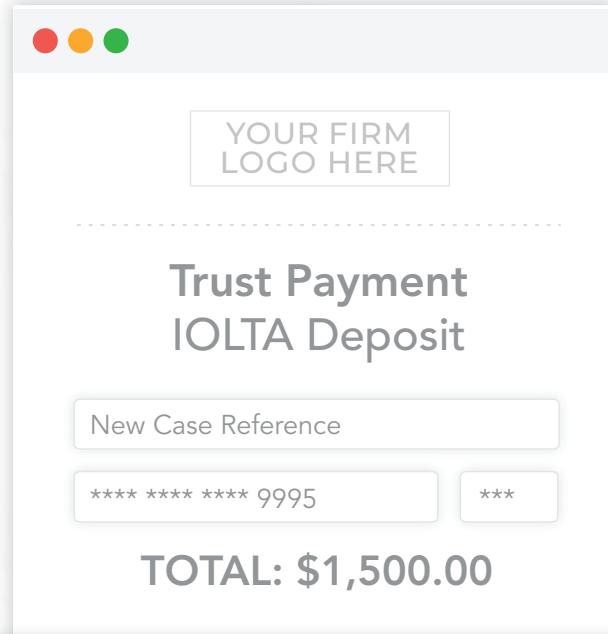
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