Meet the New Executive Director for 603 Legal Aid

Sonya Bellafant started as the Executive Director for 603 Legal Aid in 2021. She is passionate about helping others and bringing access to legal aid to those who need it. She enjoys working at the intersection of law and social change. In her free time, she enjoys baking, reading, and spending time with her family.

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. Schultman 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

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 dog 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 the next season.

“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.

LAW SUIT continued on page 12

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June 16, 2021
Supporting members of the legal profession and their service to the public and the justice system.

Vol. 32, No. 1
I Am Grateful

President’s Perspective

By Daniel E. Will
Solictor 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 benefits mental and physical health, and the persons 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 overlooks 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 a “greater life satisfaction than the latter. So if you’re greater in the grateful personality, 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 help people initiate friendships and alliances – 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 ant sky over Moosehead Lake. It seems that our days are filled with items to populate our gratitude list. 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.  And the support from our membership has been no different. 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 I joined the NHBA. So what is your “to” – we have evolved to be grateful to someone.

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 divinity. 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 “blessing of fruitful fields and healthful skies.” Lincoln certainly 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

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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 2002. 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 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 medium is the message. “While mental health statistics are important to demonstrate the severity of the problem, Cutrell says she believes the medium is the message.”

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 exhibit, Cutrell says she discovered four themes. “One, people had someone in their life who continued to love them; Two, they enjoyed; and Four, 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 John Broderick and his family. Photos/Scott Merrill

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

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.”

When 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.”

“Mental Illness doesn’t choose favorites.”

Actor Glenn Close

Delilah Champagne, chair of the Disability Rights Center – NH’s PAIMI (Protection and Advocacy for Individuals with Mental Illness) Advisory Council, says she was interested in the Many Faces of Our Mental Health exhibit 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.
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-Stower omitted mentioning the BLM “riots” in her February 2021 Bar News article. I will not speak for Ms. Richards-Stower 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. 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
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 in New Hampshire court rooms usually allow only the body’s response to 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.

Several years ago when she was still a Superior Court judge, Justice Carol Ann Cowan 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 that we are used to today.

With the COVID pandemic causing reconfiguration 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.

Fitzgerald from page 4

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 of sexual abuse and render an unbiased verdict.”

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 indifferent. 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.

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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 untrue.

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 tautology.

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

Why?

Because this one represents a new breed of products. An evolutionary vault. 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.

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.

• If Defender senses a malicious activity, it alerts the IT staff.

• It communicates this action to 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 way 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 anti spam 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 tin-tin-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-blind, 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-
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.
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
Adam B. Hescock, Marsicovetere & Levine Law Group PA
Celia K. Leonard, City of Nashua Office of Corporation Counsel
Sarah Mattson Dustin, NH Legal Assistance
Patrick H. Taylor, Unitil Service Corp
Donald H. Sienkiewicz, Estate Preservation & Planning Law
Patrick T. O’Day, O’Day Law Office PLLC
Lisa A. Fearon, Blue Cross Blue Shield of Vermont
Jesse F. Hipple, Hipple Law PLLC
Melissa L. Lyons, Sig Sauer Inc - Newington
Deborah Mulcrone, Mulcrone Law PLLC
Michael J. Ortlieb, Simmons & Ortlieb PLLC
Anthony F. Sculimbere, Gill & Sculimbere PLLC
Kirk C. Simoneau, Red Sneaker Law PLLC

2011-2012
Mark E. Beaudoin, Nixon Peabody LLP
Brookley Belanger, NH DHHS Office of Medicaid
Christopher C. Buck, The Buck Law Firm PC
Kysa M. Cruscio, Cruscio Law Office PLLC
Joel T. Emlyn, Raytheon Technologies
Francesca Hennessy, NH DHHS Legal & Regulatory Services
Suzanne S. McKenna
McEgan T. Munsey, Sun Life Financial
Lyndse D. Paskalis, Stebbins Lazos & Van Der Beken PLLC
Jamie L. Pond, Sun Life Financial
Thomas E. Walker Jr., Niederman Stenzel & Lindsey

2012-2013
Joseph D. Becher, Bernard & Merrill PLLC
Jonathan M. Boutin, Boutin Law PLLC
Darrell J. Ochiester Jr., Ochiester &  Ochiester
Courtney H. Eschbach, NH General Court

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NEW HAMPSHIRE BAR NEWS
Expanding from page 7

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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.

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

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Notable Highlights of 2019

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<tbody>
<tr>
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<td>Radiology error verdict</td>
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<tr>
<td>Neurological birth injury settlement</td>
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$150M+ Recovered in 2019

View more case results at lubinandmeyer.com
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. 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.

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
In the News

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 5:30 pm. 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.nhwb.org/Sustaining-Members.

Coming & Going

Nixon Peabody appointed Stacie Beechner 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 Keeffe 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
Teressa D. Farley, South Portland, Maine
Christopher N. Glueck, Jenks, Okla.
Haley J. Goceckel, 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. Lliangar, Belleville, NJ
Jennifer F. Lyon, Los, NH
Christopher R. Mignanelli, Ossipee, NH
Jennifer P. Lyon, Lee, NH
Autumn H. Kish, Manchester, NH
Kaitlin F. Murphy, Wolfeboro, NH
Ian T. Rossi, Boston, Mass.
Victoria Saxe, Austin, Texas

Kara M. Skogsholm, 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. Schanzine, 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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In Memoriam

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.

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

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

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 those 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 go.”

The state senate voted recently to fund 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 seven percent.

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 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,” Ribsam said.

“I want a declaration of illegality and I don’t think it’s that complicated. It’s a 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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Employment law attorney, Terri Pastori, acknowledges the difficulties many people have faced over the past year and agrees with Hamirek 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 employees’ perception 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 service 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’s it’ 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.

“If you’re going to make a blanket rule against dogs in the office, 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 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 his informal pet policy.

“Lincoln is a smooth transition, Pastori says. “For many people your pet is a part of your family.”

“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.

“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.”

Rue is a seven-year-old pug named after the character Ruddy 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 day care,” 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.”

“Not every company is 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.”

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**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.

**Richard Fradette, Esq.**

Fradette enjoys having Lincoln by his window bench seat, but in his younger days, Fradette says, he could get into anything.

“We’re a small and very family-orient ed 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.”

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**Making a return to work a smooth transition**

**Animal Care Specialist at Gilley 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.”

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“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.”
Lawline

The New Hampshire Bar Association would like to thank attorneys Theresa 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 l Sutton@nhbar.org.

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If you missed our May 5 informational event, you can still view comments by Judge Delker, Richard Guirriero, & Talesha Saint-Marc about the benefits of Leadership Academy participation: vimeo.com/548381330
Municipal Representation and Potential Conflicts of Interest

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.

Annexation:
Attorney A provides advice to the Planning Board regarding the interpretation of the Zoning Ordinance. Attorney A provides advice to the ZBA with respect to a subdivision presented, no personal interest of the attorney involves a conflict of interest, the ZBA would 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 a third person or by a personal interest of the lawyer.

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

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.

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 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 perceived 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 challenge necessarily should 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
On the other hand, Committee members in the second camp raised some hard questions—questions that should red flags for individual situations. Those members took the view that, as to Rule 1.7(b)(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 validity 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 that 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 later 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 has not 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, 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 to 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, Lawyer A would not 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 cannot 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 your self 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)


Subjects: Attorney-Client Relationship

Counsel 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.
FINAL CALL FOR ATTENDEES! JOIN US ONLINE

2021 (Virtual) Annual Member Meeting
Friday, 6/25

TOGETHER TOWARD TOMORROW

AGENDA

8:15 AM - 3:15 PM

JOIN US FOR A FULL DAY OF ACTIVITIES, INCLUDING

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

MORE THAN A YEAR’S WORTH OF ETHICS CREDITS!

AWARDS

PRESIDENT’S AWARDS RECIPIENTS

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

E. Donald Dufresne Award for Outstanding Professionalism
Bill Glahn

Distinguished Service to the Legal Profession Award
David H. Bradley

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

Lifetime Achievement in Legal Services
Virginia A. Martin

COME FOR THE CLE & THE AWARDS CEREMONIES
“THE ACCIDENTAL ATTORNEY”: TERMS OF ENGAGEMENT

Watch it all and earn 180 minutes of ethics/professionalism CLE credits!

How many times has a conversation that’s started out with the seemingly innocuous “You’re a lawyer, right?” turned into trouble (like the possible inadvertent formation of an attorney-client relationship)? This CLE helps lawyers deal with the dreaded sentence “Let me just ask you a quick legal question.” In addition to the national presenters, NH-specific experience and insight will be provided by Russell F. Hilliard, Katherine E. Hedges, Lindsay E. Robinson, and Talesha L. Saint-Marc.

SESSIONS

• Pitfall #1 – Public Places – Where there’s No Escape
  Vignette: “Flakes on a Plane”

• Pitfall #2 – Friends and Relations
  Vignette: “Guess Who Shouldn’t Have Come to (Thanksgiving) Dinner”

• Pitfall #3 – The On-Site Client Visit
  Vignette: “Dude, Where’s MY Lawyer?”

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QUESTIONS?
Call our Member Line at (603) 715-3279 or e-mail registrar@nhbar.org
603 Legal Aid from page 1

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.

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 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.

The other hero in my life is my father. He’s 6’7”, he’s a Ford retiree, he is also aJourneyman roofer, and he had very low educa
tion. He helped support my grandmother and my aunt and uncle when my grandfather passed. And he was originally from Columbia, TN. And that’s where I was in TN. So, those are my 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 the 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 can be difficult, too. 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. 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 that makes 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 salt
1 tablespoon cinnamon
2 cups liquid bananas (they must be brown overripe and I liquify them in a blender)

Optional add-ins include the following suggestions:
About 1 cup frozen blueberries (blueberries are my favorite so I add more)
1 cup miniature chocolate chips
1 cup chocolate toffee chips (with or without chocolate)
1 cup 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 Nutter Bar

Divide the batter evenly into two pans and bake at 350 degrees for about one hour. Pre-
fer 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.
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.

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JUNE 2021

FRI, JUNE 18 • 9:00 - 4:00 p.m.
Approaches to Post-Conviction Issues
• Webcast; 360 min., incl. 60 ethics/prof. min.

TUE, JUNE 22 • Noon - 1:00 p.m.
TECH TUESDAY!
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
• 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
• Webcast; 60 ethics/prof. min.

THU, JULY 15 • Noon - 1:00 p.m.
Logic, Argumentation and Persuasion 1: 10 Informal Logical Fallacies
• Webcast; 60 min.

THU, JULY 22 • Noon - 1:00 p.m.
The Tech Never Stops
• Webcast; 60 ethics/prof. min.

THU, JULY 29 • Noon - 1:00 p.m.
Logic, Argumentation and Persuasion 2: Is That a Fact?
• Webcast; 60 min.

AUGUST 2021

THU, AUGUST 12
4th Annual CLE by the Sea, Solutions for Solos and Small Law Firms
• Up to 420 NHMCLE min.
• Blue Ocean Event Center, Salisbury, MA

In partnership with the Greater Newburyport Bar Association, NHBA•CLE is pleased to offer
Fourth Annual New England CLE by the Sea
Solutions for Solos and Small Firms
Thursday, August 12, 2021
Blue Ocean Event Center, Salisbury, Massachusetts
up to 420 Minutes of NHMCLE Credits
(Maine members receive 7 hours of credit)
Topics include (with faculty from Maine, New Hampshire and Massachusetts):
• How Cybersecurity Can Impact Your Business
• Practicing Family Law on the Borders
• COVID and Employer Liability Claims
• State of the Legal Market and Profession
• How to Build a Virtual Law Practice
• Practicing Elder Law on the Borders: Different Approaches and Current Topics
• Encryption
• Inside Out: How to Manage, Lead and Client Communications in a Brave New World
• Business Ownership: Is It an Asset or Is It a Job?
• Unconscious Bias

For more information and to register:
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Logic, Argumentation, and Persuasion Series with Lenne Espenschied

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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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

“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
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 Association.

“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

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 helping 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 19 years.

Bloomenthal’s most memorable case is Commonwealth v. Picozzi, 984 N.E.2d 315 (2013), which overruled 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 Brookie 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
James F. Early

“Give your best effort every day. Remain steady and grounded. Don’t get too high or too low.”

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.”

He wanted to help others, especially those less fortunate.” Early says. Early’s first mentor was noted Dover trial lawyer Bob Hinchey. Also instrumental over the decades has been the counsel and friendship of Michael Thornton and John Barrett (both Burns, Bryant, Hinchey alumni) and the deceased American Association of Justice trial stalwart Ronald L. Molley. 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 civic 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 hire 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.”

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 Teter (1971-1973); Teter 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 Teter.

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.
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 where 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 tight 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.”

He 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.

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
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 it’s been 50 years,” he says.

Aaron A. Lipsky

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 hearing 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: Francestown, NH
Hometown: Francestown, NH
Family: Theresa A. Kirouc-Little, spouse; Anna-Liisa 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, Fally 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 the tractor. The farmer sued the farmer's tractor and 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 adults sons
Education: Providence College, 1968; Suffolk University Law School, 1971
Areas of Practice: Personal Injury
Current law firm or employer: McDowell & Morrissette, PA
Past law firms or employers: McDowell & Osburn; Callity, Kelley & McDowell; Craig, Werners, 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.
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: Griffin, Harrington, Brigham

James E. 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.

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 1989 with the Massachusetts Supreme Judicial Court’s appointment of a receiver for the public housing agency.

“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.”

Remember When...
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.
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.”
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

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 30 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.”

From your staff and friends at

The Law Office of Rodney L. Stark, P.A.
Manchester, NH • (603)627-4111 • www.starklaw.com

Congratulations to Rodney L. Stark
on the significant milestone of 50 years practicing law!
Robert A. Stein

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

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. States 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.
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

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 courtroom 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 results thereof, but was frequently able to attend court proceedings and observe law Court Judge.

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.
Areas of Practice: General practice including criminal law and family practice.
Assistant Cheshire County Attorney 1971-74, 1974 Retired January 2016
Past law firms or employers: Cristiana & Kronphold, 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 Kronphold, Bill Kennedy, Sam Bradlow, Peter Esplin 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 Kiwanian 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.”

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
Celebrating 50 Years of Law Practice

James C. Wheat

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

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.

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.

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

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!
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


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 Dutroese.

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 Meyrnan, and Donald W. Cushing.

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-compete 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 & Manso, 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

For more information or to register, visit nhbar.org/nhbacle

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

TECH TUESDAYS

Join us for vital programs that take a deep dive into technology for the law office.

What Every Lawyer Should Know About Developing a Cybersecurity Plan

Tue, June 22, 2021 • Webcast • Noon - 1:00 p.m.

Learn the essential elements of a written information cybersecurity plan.

NEW SHARED-IN PROGRAMS in the NHBA-CLE Online Catalog!

We pick the best of the best pre-recorded seminars from some of our online partners (includes state bars, county bars, national providers)

- Recent Developments in Oil and Gas Law – from Rocky Mountain Mineral Law Foundation - The Independent Petroleum Association of America and the American Petroleum Institute will speak on recent oil and gas law, regulatory and other legal developments in the U.S. – 90 minutes
- McGirt and Its Impact on Tribal Rights – from the State Bar of Arizona This seminar describes how McGirt’s endorsement of textualism over policy-driven judging opens up doors for tribal interests to aggressively assert tribal rights. – 60 minutes
- 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

WE DO THE REPORTING FOR YOU!

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

(If you missed any of the previous held programs, they are now available ON-DEMAND)
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 Oracle LLC v. Google. 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 2000, 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 found that the copying transformed the original work into something new.

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 concluded that Google’s use of the Java API code was a fair use and that Oracle did not have a valid copyright infringement claim.

In its highly-anticipated decision in Oracle LLC v. Google, the U.S. Supreme 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.
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).”

“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).”

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 transfers 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 is the standard contractual 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

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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 or in connection with the goods or services listed in the registration. In contrast, reexamination targets trademarks that were not in use in commerce 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 procedures 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 shortened period.
Benefits of Separable Intellectual Property Documents in Ownership Transfer Agreements

By Chelsea VanderWonde

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 documents are sent to intellectual property counsel to record the transfer(s), it can trigger the need for execution of additional confirmatory type assignments, increasing only the information required by the intellectual property assignment included within the transfer agreement. While such clauses are wise in the long term should one company ever rely on such clauses, they become public documents. Many businesses clearly prefer that their intellectual property transfers may be treated 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.

When this approach is certainly streamlined, it can present a number of downstream issues. When such transfer documents are sent to intellectual property counsel to record the transfer(s), it can trigger the need for execution of additional confirmatory type assignments, 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, overreliance 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

Strengthening IP Strategies
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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, 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). 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 are gargantuan for 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 are gargantuan for 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). 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 are gargantuan for small businesses that face competition from sellers on Amazon.

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 pecuniary liabilities of patent law.


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

5. Prior meaning more than one year before the earliest effective filing date of the subject patent per 35 U.S.C. § 102. 6. 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 party also does not get back the difference; it is donated to charity).

Key takeaways:

1. For patent owners: An enforcement option that makes patents more valuable to small businesses that face competition from sellers on Amazon.
2. For sellers: Don’t blindly accept assurances about non-infringement from suppliers or you could end up with a lot unsellable inventory.
3. For both: Get a patent attorney; this is still a patent proceeding judged by patent attorneys and subject to the pecuniary liabilities of patent law.
Copyright from page 24
tive expression (Android’s implementing code), and “its value lies in its efforts to en-
courage programmers to learn and to use that software 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, fundamentally a part of the most important program (such as the implementing code) from the core of copyright,” and that finding fair use would be “unlikely to undermine the general copyright policy 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 will not succeed without a market substitute for Java SE.” The record also showed that Java SE’s copyright holder would benefit from the re-
implementation of its interface into a differ-
ent market.

In a dissenting opinion, Justice Clarence Thomas, joined by Justice Samuel Alito, ar-
gued the majority was wrong to skip the step of determining whether APIs are copyright-
able 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 copy-
right 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 of software innovators and startups submitted amicus briefs arguing against the copyright-
ability of computer interfaces. While the Mot-
ion Country Association, Recording Industry Association of America and other organiza-
tions 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 copy-
rightable 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 tech-
ology 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.”

Lisa N. Thompson is chair of the New Hamp-
shire Bar Association’s Intellectual Property Law

Privacy from page 25
cannot bind the public authorities of third countries (such as US government agen-
cies), in which case it may be necessary to supplement the guarantees contained in the treaty with national law. In the US, the GCMA. Unfortunately, the court did not elaborate as to what those supplemental measures would be, but the European Data Protection Board recently issued substantial guid-
ance to national data protection authorities regard-
ing 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 procedures designed to afford more protections and remedies to individu-
als 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 com-
mercial activities involving transfers of personal information of data subjects from EEA based businesses to businesses located-

CPR amendments to the CCPA

The CCPA applies to a “business,” es-
sentially the same thing as a “covered entity” or in-
dividual 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 ex-
cess 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 commer-
cial purposes, alone or in combination, the personal information of 50,000 or more consumers, or controls or is controlled by a business that does so.
c. Derives 50 percent or more of its annual revenues from selling consumers’ per-
sonal 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 provi-
sion 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 signifi-
cant amendments are:

• Clarification of who is a busi-
ness covered by the CCPA by (i) in-
creasing the threshold under paragraph (b) above from 50,000 to 100,000 or more consumers or households, (ii) removing devices, and (ii) broadening the criteria under paragraph (c) above to include sharing, in addition to selling, the personal information of individuals.
• Creates a new category personal infor-

mation (“sensitive personal informa-
tion”) and provides specific rights with regard to collection and use of the same.
• Creates a new category of personal in-
formation recipients, “contractors,” in add-
in to “service providers” and

• 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 (in-cluding sensitive personal information)
• Requires the California Attorney Gen- eral to adopt regulation requiring busi-
nesses whose processing of consumers’ personal information presents signifi-
cant risk to consumers’ privacy or secu-
ry: (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 thor-
ough and independent, and (b) submit to the California Privacy Protection Agency on a regular basis a risk assess-
ment with respect to their processing of personal information
• Imposes data minimization require-
ments and storage limitations
• Eliminates the 30 day cure period prior to administrative enforcement action
• Expands private right of action criteria
• Creates the first dedicated state privacy organiza-
tion, the California Privacy Protection Agency

VCDPA

Virginia became the second state in the US to enact a comprehensive personal information privacy law. That law, effec-
tive 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 taken in the course of their business in the Commonwealth and that (i) during a calen-
dar 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 de-
vote over 50 percent of gross revenue from the sale of personal data.

While the CPRA, the CCPA, and the VCDPA share some similari-
ties, the CCPA is neither identical, and in fact it adopts some of the concepts from the GDPR. In many ways the VCDPA is sim-
pler and more straightforward than the CCPA. One notable distinction is that un-
like the GDPR and the CCPA, the VCDPA does not apply to collection of business-to-

business or workforce personal informa-
tion (although the CCPA as amended by the CPRA has limited B2B and workforce ex-
terions 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 individu-
al 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 pri-
vate right of action.

Douglas verge is co-chair of Sheehan Phin-
ney’s Data Privacy and Security Law Prac-
tice Group. He also is an integral member of the Man-
chester, NH office with a focus on trademark and copyright law. Chelsea’s work includes strategic and international trademark clearance, prosecution, man-
agement, and enforcement; copyright fil-
ings, management, and enforcement; IP lic-
sensing, and business strategy.

Kathelyn Burgess is an associate in the Cor-
porate Department and Intellectual Prop-
erty Practice Group at McLane Middleton. She can be reached at 603-628-1549 or Kathelyn.burgess@mclane.com.
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 over-reaching 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.

Highway Discontinuances

A class V road, or “highway,” is a local public road a municipality has the obligation to maintain. The entire public have the right to use a highway for all “viatic” (traveling) purposes. Discontinuance of a highway eliminates the right of the public to use the road and terminates the municipality’s interest in the road remaining public against the interest of the municipality in discontinuing it. The court also held a municipality may consider factors other than cost savings when deciding whether to discontinue a highway via eminent domain using the layout process.

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’ 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.”

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 municipality money.

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 municipality money.

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We have proudly served our clients for over 60 years.
By Natch Greyes

In 2018, Casa-grande 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 Casa-grande. 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-
Courts from page 30

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 along 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 citizens 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 New 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 amended 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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Discontinuance from page 31

Quint 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.
Silver Linings: Post-Pandemic Playbook

Tools Used During the Pandemic

Removal 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 hearings that should go “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-attorney, 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 offer 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. Telephonically First Appearance with a case management approach was 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 dissatisfied 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 and electronic filing process 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. In the future, possible solutions could include keeping this box for truly urgent filings” (weighted average: 4.13) and “allow e-mailing of petitions” (weighted average: 4.47). Though most respondents were unsure about keeping remote hearings, judges favored respondents based on averages, though some narrative responses indicated parties are less anxious and more able to secure counsel if remote hearings are permitted.

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-attorney and non-trial appearances were seen as viable hearings to “keep” remote (weighted average: 3.78), with telephonic being the preferred medium.

Civilians

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 respondents indicated they prefer some hearings to be telephonic (weighted average: 3.86), respondents 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 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 indicated during the pandemic were ranked very positively. Remote and after-hours mediation was particularly well-received (weighted average: 4.67 and 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: 4.94). Video hearings were less preferred than telephonic hearings but were still slightly preferred to keep as a discretionary medium.

Guardianship 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).

D/V/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 affect greater efficiencies and satisfaction in the years after the pandemic has passed. As we work to modify our playbook moving 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.

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—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 managing 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.

4.13). Video hearings received mixed support.

Figure 1. Overall effectiveness rating of the Circuit Court during COVID-19.

COVID-19

The pandemic crisis restricted the ability to file documents at court counters. The Circuit Court responded by instituting both a physical and an email filing process for each court location. While the COVID email box, which was intended for emergency filings, had its value, the volume of email submitted was overwhelming to most staff, most of the time. Possible solutions could include keeping this box for truly urgent filings” (weighted average: 4.37) 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.

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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 affect greater efficiencies and satisfaction in the years after the pandemic has passed. As we work to modify our playbook moving 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 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 and noted 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 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 held indefinitely at DHMC; (2) was denied a three-day period for providing a probable cause hearing when the involuntary admission certificate had been completed, her continued confinement was unlawful. The Court noted that 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.


The defendant was convicted of three counts of aggravated 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 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 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 the 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.

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. Jacelyn A. Colburn
Hillsborough County Superior Court-Southern District

Hon. Amy L. Ignatius
Carroll and Rockingham County Superior Courts

Hon. John C. Kissinger, Jr.
Belknap County Superior Court

Hon. James D. O’Neill, III
Merrimack County Superior Court

Hon. Andrew R. Schulman
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 Justice 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 questionnaire.

Your help with this evaluation process is invaluable and we greatly appreciate your taking the time to help us with this endeavor.
the e-mail to his ex-wife. Shortly afterward, the defendant's convictions were vacated, and the State was prohibited from using the vacated convictions in any further proceeding. The Court noted the relevant facts as follows.

The defendant was convicted of various offenses, including witness tampering and driving under the influence (DUI). The State sought to introduce evidence of the defendant's prior convictions to prove a sentencing factor related to the offense of witness tampering. The defendant argued that the prior convictions should not be considered because they were vacated and vacating a conviction is not a sentencing factor.

The Court held that the evidence before the trial court, in the light most favorable to the defendant, did not support a finding that the defendant's convictions were vacated in bad faith. The Court noted that the State had an obligation to disclose any evidence that could affect the defendant's sentence, and that the State's failure to disclose the vacated convictions in violation of its duty to disclose could result in a new trial.

The Court discussed previous cases that had addressed the issue of vacated convictions and sentencing factors. The Court noted that the vacated convictions were not sentencing factors in the defendant's current case because they were vacated without a finding of bad faith.

The Court concluded that the State had not met its burden of proving that the vacated convictions were obtained in bad faith. The Court ordered a new trial unless the State could prove the defendant's guilt beyond a reasonable doubt.

In conclusion, the Court held that the State had an obligation to disclose any evidence that could affect the defendant's sentence, and that the State's failure to disclose the vacated convictions in violation of its duty to disclose could result in a new trial. The Court ordered a new trial unless the State could prove the defendant's guilt beyond a reasonable doubt.

For more information on this and other topics, please visit the New Hampshire Bar Association's website at www.nhbar.org.

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fraternity then appealed the ZBA decision to the trial court which affirmed the decision. The fraternity then appealed the ZBA decision to the trial court which affirmed the decision. The trial court reasoned that the 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 concluded that the notice of violation was not enforcement. The trial court concluded that the notice was 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, Lacosia, for the defendant.
**Orders from page 37**

**NH Professional Conduct Committee**

Forgenary, Lamya A., advs. Attorney Discipline Office, #20-06

CORRECTED PUBLIC CENSURE WITH CONDITIONS SUMMARY

On February 16, 2021, the Profession

al 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. Forgrany’s conduct violated Rules of Professional Conduct 8.1(a) and 8.4(a), as stipulated.

The Committee also concluded that a public censure with conditions is appropriate. The sanction is in accord with the purposes of attorney discipline. See, e.g., Commer v Case 158 N. H. 299, 303 (2009); Richmond’s Case, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with theABA Standards for Imposing Lawyer Sanctions (2005) (“Standards”).

An Order is available on our website at [www.nhattyreg.org](http://www.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 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., Commer v Case 158 N. H. 299, 303 (2009); Richmond’s Case, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with theABA Standards for Imposing Lawyer Sanctions (2005) (“Standards”).

An Order is available on our website at [www.nhattyreg.org](http://www.nhattyreg.org).

May 17, 2021

**US District Court Decision Listing**

**CIVIL RIGHTS: NEGLIGENCE**


*Published

In this civil rights claim arising from the death of a pretrial detainee at the Valley Street Jail in Concord, NH, the plaintiff brought a claim against the jail and granted in part a motion to dismiss filed by the individual nurse defendants who treated the deceased detainee – 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 1983(5)

05/20/21 Dominic v. Goldman & LeBron 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 of 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 § 1983(5) 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 that section. He failed to state a § 1983(5) conspiracy claim. He failed to state a § 1983(5) conspiracy claim. It was based upon a non-cognizable class. As his remaining claims arose under state law and the court lacked diversity jurisdiction, the court deemed its review of the constitutional claims against 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 serious 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 bail. Specifically, Mateo did not show a likelihood of success on the merits of his Eight Amendment claim arising out of the risk of harm from COVID-19, because he alleged no facts that could subject the captive 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 the over- and underenforcement 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(a) at any point prior to the court’s verdict. As such, DeMauro’s arguments failed to meet the 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**

05/24/21 United States v. Scott Farah Case No. 10-cv-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 date in the summer of 2020 is not a basis for compassionate re- lease. 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 compassionate 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.nhbar.uscourts.gov](http://www.nhbar.uscourts.gov).

In re: Corson, 2021 BHN 002, issued May 21, 2021 (Cary, J.) (published) (in sustaining the chapter 7 trustee’s motion to transfer the proceeds 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 “independent contractor” within the meaning of 11 U.S.C. § 101(20C), and thus the claim was not a “domestic support obligation” as defined by 11 U.S.C. § 101(14A)(A)(ii-D) entitled to priority treatment under 11 U.S.C. § 507(a)(1)(A) and (a)(1)(B)).
Estate Planning Attorney

PRIMPER PIGGELTON & 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.

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 office. The position requires the drafting of correspondence, electronic records of files and pleadings, 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
- Typing Speed of at least 50 WPM
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PROBATE PARALEGALS with 5+ years’ experience preferred to assist with trust/probate administration, probate filings, and trust and estate account administration, including statement reconciliations, financial reporting, and tax compliance for outside trust preparers. Bookkeeping experience is a plus.

Upton & Hatfield offers a competitive compensation and benefit package. Please forward a cover letter and resume to PamWalshWoodworth, Administrator, Upton & Hatfield, PO Box 1090, Concord, NH 03302-1090, or via email to hr@uhlawfirm.com. All inquiries will be held in strict confidence.
**ATTORNEY OPENINGS**

Sulloway & 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 Sulloway & 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@sulloway.com

**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.

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Concord, NH 03302-3550
Fax: (603) 223-9060
Email: resumes@orr-reno.com (Word format)
EOE
No phone calls or agencies please

**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 have a desire to join our growing law firm. Qualified candidates with seven or more years of experience to join our Insurance and Reinsurance Group (‘IRG’). 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.

To complement the Firm’s existing strengths, we are seeking a medical malpractice defense attorney with five or more years of relevant experience. Excellent academic qualifications and strong research, writing and communication skills are required.

Compensation is commensurate with the candidate’s experience. In addition, the Firm provides an excellent benefits package. Qualified applicants should submit resume and cover letter to: Jennifer L. Iacopino Human Resources Manager, jiacopino@sulloway.com

**Medical/Litigation Paralegal**

Sulloway & Hollis, PLLC seeks a full-time litigation paralegal with extensive experience and a medical background to support our Medical Malpractice Defense Group and active trial teams. A medical background and prior law firm experience is required.

Essential aspects of the job include compiling, reviewing and analyzing medical records and literature, assisting in written discovery, working with medical experts, and keeping case information current. The ideal candidate will have excellent communication skills, be well-organized and able to work independently, and will contribute to the continued growth of a very active practice group. Preferred applicants will have a degree from an accredited college or university and/or nursing experience.

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

**Medical/Malpractice Defense Attorney**

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

To complement the Firm’s existing strengths, we are seeking a medical malpractice defense attorney with five or more years of relevant experience. Excellent academic qualifications and strong research, writing and communication skills are required.

Compensation is commensurate with the candidate’s experience. In addition, the Firm provides an excellent benefits package. Qualified applicants should submit resume and cover letter to: Jennifer L. Iacopino Human Resources Manager, jiacopino@sulloway.com

Sulloway & Hollis, PLLC seeks a full-time litigation paralegal with extensive experience and a medical background to support our Medical Malpractice Defense Group and active trial teams. A medical background and prior law firm experience is required.

Essential aspects of the job include compiling, reviewing and analyzing medical records and literature, assisting in written discovery, working with medical experts, and keeping case information current. The ideal candidate will have excellent communication skills, be well-organized and able to work independently, and will contribute to the continued growth of a very active practice group. Preferred applicants will have a degree from an accredited college or university and/or nursing experience.

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

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www.nhbar.org
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 litigation 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 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. Donna Depoian, at dedpoian@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 lroy@clrm.com.
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.

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 parental 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, promotion, discipline, compensation, termination, and layoff.

**Bilingual Paralegal**

Shaheen & Gordon, P.A. has an immediate opening for a bilingual paralegal to add to their team in our Dover, NH office. The Bilingual Paralegal performs accounts payable functions, working closely with the Sr. Accountant and Accounts Payable 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.

**Required Skills/Abilities**

- Excellent organizational, 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
- 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 presents a pleasant, supportive, professional, 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.
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 NHID initiatives relating to each request in a timely manner. This position will manage 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 preparing and assisting well-organized, written decisions that include factual findings, legal analysis and rulings on 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 regulations 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 regulatory 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 and 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 on line at: https://das.nh.gov/jobs/search/employment.aspx

For further information please contact:
Hannah Arsenneau
Human Resources Technician
Ins-Careers@Ins.nh.gov
603-271-7075

EOE

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 be a self-starter with 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.

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