N.H. Supreme Court Task Force Addresses Shortage of Public Defenders
Reducing extremely high case loads, increasing funding a priority

By Scott Merrill

The so-called “Great Resignation” that continues to affect businesses and organizations across the country has hit New Hampshire Public Defender—essentially the state’s largest law firm—where 32 attorneys have departed over the past 15 months.

New Hampshire Public Defender contracts with the state of New Hampshire to provide representation to indigent clients in criminal, juvenile, and involuntary commitment proceedings throughout the state.

“We’re losing an attorney every two weeks,” said NHPD Executive Director Randy Hawkes. “We try to find competent lateral hires but it’s difficult. The job market is favorable for anyone looking right now and the pay rates for private practice far and away outstrip public defender pay scales.”

Attorney salaries at NHPD start at $53,000 with a cap of $86,900 after 11 years. Lateral hires allow attorneys to come in from other firms at the same pay rate they were receiving.

By comparison, Hawkes said most salaries at New Hampshire county attorneys’ offices start in the $60,000 range and attorneys at Committee for Public Counsel Services (the Massachusetts version of NHPD) will be starting at just over $63,000 in December.

“There’s been an outflux, if you will, across our southern border,” he said.

Sarah Blodgett, director of the New Hampshire Judicial Council, agreed.

“We're losing an attorney every two weeks,” she said. “And now we have this pot of money, but as Randy said, we’re competing with better salaries and frankly easier jobs. This is a hard job.”

Supreme Court Task Force

In September, New Hampshire Supreme Court Chief Justice Gordon MacDonald requested that a task force be formed and chaired by Justice Patrick Donovan to address NHPD’s attrition problem, which has led to approximately 2,000 criminal cases in the Circuit Court without appointed counsel.

The task force, made up of attorneys and judges from around the state, released a report with recommendations on Oct. 27.

The report states that NHPD and county attorneys across the state are confronted with “dangerously high caseloads” and recommends increased recruitment efforts, early case resolution, a scheduling pause, public awareness, training and mentoring, rule changes that would allow pro hac vice (allowing attorneys from outside jurisdictions to represent indigent clients), and additional funding.

“This problem is significant. Ultimately, more resources are needed by the public defender’s office and the county attorneys’ offices across the state,” Justice Donovan said. “The private bar needs to step in as well.”

In August, Superior Court Judge John C. Kissinger e-mailed more than 20 attorneys asking for their help in what he referred to as “a crisis in securing representation for indigent criminal defendants in Merrimack County.”

SHORTAGE continued on page 18

New Hampshire Legal Assistance Advocates for Systemic Energy Policy Change
Energy Utility Justice Program helps low-income people pay their bills

By Scott Merrill

As winter approaches and heating fuel prices soar in the Granite State, New Hampshire Legal Assistance is helping those who can’t afford the high costs to stay warm.

NHLA’s Energy and Utility Justice Project (EUJP) advocates for access to affordable basic utility services for low-income people and represents clients who face utility disconnections, as well as utility debts.

While the EUJP concentrates primarily on systemic advocacy, the program also represents individual clients in need.

Last winter they helped “Bill,” a disabled 57-year-old in Grafton County, heat his home. For reasons of privacy, he did not want his real name used in this article.

Bill is a paraplegic who lives in the upstairs unit of a two-unit house that he currently owns.

The EUJP advocates for access to affordable basic utility services and represented Bill in the resulting disconnection.

“Bill” is able to rely on the EUJP for assistance, as it continues to provide representation to 57-year-old in Grafton County, heat his home.

NEXT Issue

Meet James Mulhern: A Portsmouth Renaissance Man

By Kathie Ragsdale

Portsmouth attorney James Mulhern’s credentials are so varied one might think they belonged to more than one person.

He graduated from the Schulich School of Music at McGill University in Montreal, where he was a classical piano performance major.

He earned a master’s degree in Accounting and Finance from the London School of Economics.

He graduated magna cum laude from Harvard Law School, where he served as executive editor of the “Harvard Law Review” and was honored with a Sears Prize, granted to the two students receiving the highest-grade averages in their class.

He has constructed some 20 crossword puzzles for the New York Times.

More recently, he has been working as a new attorney at Mulhern & Scott, the Portsmouth firm founded by his parents, David and Sally Mulhern.

“I had a long journey to the law,” he acknowledges. He sees one unifying ingredient in that smorgasbord of interests and talents – music, and the self-command it requires.

“I like to think that music informs almost everything else,” he says. “Being very disciplined, constantly being forced...
Your Bar Association Is Active at the Legislature

The New Hampshire Bar Association pays close attention to the New Hampshire Legislature. After all, we are lawyers, and the Legislature is an important source of law. We have a great interest in what laws are passed and—within our sphere—in asserting the Bar’s interests regarding specific laws.

Just as I noted the Bar’s vetting of judicial nominees last month, this month I am describing the Bar’s activities at the Legislature. As before, the idea is to keep you informed so that you can participate, provide information, object, or otherwise be involved.

First and foremost, it is important to recognize that the Bar is not free to take on just any issue at the Legislature. We cannot and do not speak for all lawyers on all issues. It would not be right for the Bar to claim to speak on all issues when membership is mandatory. In re Chapman explained that because we are a mandatory, or “unified,” association, the Bar “should limit its activities before the General Court to those matters which are related directly to the efficient administration of the judicial system; the composition and operation of the courts; and the education, ethics, competence, integrity and regulation, as a body, of the legal profession.”

In his concurrence, Justice Souter elaborated that the Bar’s lobbying activities “and transactional objectives,” but may not address “access to the legal system and substantive rights.” Thus, the Bar interacts with the Legislature regarding the fair operation of the legal system and the role of the Bar’s attorneys in that system, but the Bar does not take positions on substantive rights.

The Bar is active at the Legislature through the Bar’s lobbyist and through the Bar’s Legislation Committee. The Bar is represented at the Legislature by the law firm of Bernstein Shur, primarily by Kathy Corey Fox. Kathy reports to me as President, to the Bar’s Executive Director, George Moore, and most importantly to the Legislation Committee chaired by Michael Iacopino.

The work that Kathy, Mike, and the Legislation Committee perform is incredibly valuable to all of us. They track every bill that is being considered at the Legislature. They provide information about the content of every bill that is being considered. They attend legislative committee meetings, and then they report to the Committee which eventually reports to the Board of Governors. When appropriate, the Bar may either provide information to the Legislature on a bill or may even oppose or support a bill if it falls within the scope of Chapman as explained above. For example, a few years ago the Committee recommended support of a bill which overhauled and improved the probate process. In all of these decisions, the Chapman dictates are followed carefully and are routinely discussed before a decision is made regarding whether and how to respond to any specific bill.

In terms of keeping you informed about all of this, last year the Bar began making the summary of pending legislation available to all members online [see below]. We intend to continue that practice this year so that our members will have access to that important information. If you cannot find the information or have trouble downloading it, let us know and we will provide it to you.

There are important issues coming up at the Legislature this year. As one example, we expect legislation proposing to permit non-attorney representatives in domestic and landlord tenant cases. Just this one bill illustrates the difficult and complicated questions that we face. On the one hand, the Bar would want to ensure that representation is handled by qualified, licensed attorneys, for the benefit of the parties and the court system. The concern is that non-attorneys do not have the training, skill, and experience needed to represent someone in court in an important matter. On the other hand, we have a major “access to justice” problem. There are too many pro se litigants. They often have difficulty representing themselves and their struggles make the courts less effective and less efficient. So, if there are circumstances in which a non-attorney could help a litigant, without making things worse and maybe even making things better, then maybe that would be an improvement over a system with so many unrepresented parties. We don’t have an answer on this yet. It is just an example of one of the many similarly difficult issues the Bar will have to address this year.

I hope this sheds some light on what your Bar Association does at the Legislature. If you have questions or concerns about the Bar’s activities at the Legislature, please contact a member of the Legislation Committee, a member of the Board of Governors, or me.

For Legislation Program details, including NHBA’s Final Positions and Comments from March 2021, go to shorturl.at/a0zAP. For access to Legislation Watch, where you can keep an eye on legislation important to the Bar, go to shorturl.at/dwzZ8.
Leadership Academy Kick-Off Retreat at Loon Mountain

The New Hampshire Bar Association’s Leadership Academy held a weekend kickoff retreat and training session for this year’s class at the scenic Mountain Club at Loon Mountain Resort in Lincoln, N.H., on October 22-23.

The event began with an introduction to the NHBA by Bar President Richard Guerriero. He shared the history of how the Bar became unified in 1968 and discussed the limits of its ability to advocate for issues because of the N.H. Supreme Court’s ruling on Chapman in 1986.

President Guerriero also emphasized the importance of joining committees and went on to explain the NHBA’s responsibility to support justice, also providing an overview of its successful efforts to educate and provide ethical standards for attorneys.

Later that morning, Leadership Development Specialist and creator of The Sustainable CFO, Jennifer H. Elder, spoke to the group about the qualities of leadership, the importance of developing a personal leadership style, and “leading up.”

“Leadership is about making others better as a result of your presence and making sure that impact lasts in your absence,” Elder said during her talk. “People don’t follow leaders to help us meet our goals, but because we’re helping our staff meet their own goals.”

Senior Director of Public Affairs at Dartmouth’s REACT Campaign for mental health and former Chief Justice of the New Hampshire Supreme Court, John Broderick, was keynote speaker at the retreat’s lunch break.

He also touched upon key tenets of leadership:

“Leadership is never about you. It’s about what you can do with others. It’s important to surround yourself with people who are smarter and have better ideas than you,” he said. “No one will remember you for what you do for yourself, but they’ll remember what you did for them, to make their life better.”

In the afternoon, participants began work on their group projects which involved updating the lesson plan for NHBA’s Law Related Education (LRE) program, creating a new lesson plan based on the naturalization test, and developing/scripting vignettes for a video for the NHBA’s Professional Development department.

On Saturday morning, the group reconvened to recap the previous day and to finish with their projects.

The consensus by Saturday afternoon was that the 2022 Leadership Academy retreat was a success in many ways: “I was impressed with the Leadership Conference,” said 2022 Leadership Academy class member, Jaqueline Leary, of McLane Middleton. “It helped me identify the type of leader I want to be, as well as provided me with the necessary skills to develop my own personal leadership style. The experiential education portion of this conference was terrific and I am glad I got to work with new colleagues who will hopefully become lifelong friends. After the first day of the conference, I truly felt inspired. I look forward to applying the skills and techniques acquired through this retreat.”

Attorney Gar Chiang, a solo practitioner from Boston and member of the Leadership Academy class of 2022, said the retreat was much more than what he’d hoped for.

“There were good conversations with other N.H. attorneys, insightful advice from Justice Broderick, thought provoking lectures and great food!”

Marta Hurgin of 603 Legal Aid conceived: “The kickoff retreat was an excellent way to connect with the other members of the Leadership Academy. I got to know a lot about everyone as we head into this year together!”

The New Hampshire Bar Association President, Richard Guerriero, speaks at the Leadership Academy retreat held at Loon Mountain Resort in Lincoln, N.H. on October 22-23. Photo: Lynne Sabean
Advocacy in the Time of Covid

To the Editor:

Enforcing individual rights in a climate of fear is not a popular undertaking. Although the right not to wear a mask is nowhere to be found in any original meaning of the Constitution to which Attorney Fojo (“Challenging mask mandates in New Hampshire”) claims allegiance, reconciling the constitutional responsibility to protect the general welfare in a pandemic with the preservation of freedom is a fundamental and challenging legal dilemma from which no point of view should be excluded. Attorney Fojo deserves credit for vigorously presenting one of those views.

However, judging by his column, his problem is not, as he asserts, runaway government or judicial policymaking, but his embrace of a narrow ideology which distorts constitutional history, the proper role of the judiciary, the pandemic, and everything in between into a series of one-dimensional slogans which are substituted for the far more complex reality. He appears to have no appreciation for different points of view. From this distorted perspective, losing is not possible unless the system is stacked against him. Analysis is superseded by adjective discourse replaced by accusation. There is some advantage to having or adopting the same ideology as one’s clients. It means never having to tell them that they are wrong. But it may also make it more difficult to critically evaluate one’s own arguments. Telling the courts to “prioritize intellectually rigorous analysis,” sounds strange in the context of a court lacking in balance, perspective, and nuance.

So long as Attorney Fojo believes that there are only two “salient facts” to the mask controversy, it is not surprising that he blames the courts for losing his cases. Has he even considered the rights of the child with an immune deficiency or respiratory disability who cannot safely attend school without a mask requirement? The possibility that rights may need to be balanced? The interests of public health?

In my own civil rights practice, spanning some 40 years, from Seabrook to Robin Hood, I have also felt the frustration of losing, which is twice as painful when you believe you are representing an important principle. Win and lose, it has been my experience that New Hampshire courts treat claims of individual rights carefully and seriously. But the loudest voices are not always the ones that should prevail, in or out of the courtroom.

Jon Meyer

To the Editor:


According to the New York Times, Oct. 23, 2021, our country is averaging 75,000 new cases of COVID a day. Only three states, Vermont, New Hampshire, and Colorado are averaging more cases now than two weeks ago.

The overwhelming majority of medical professionals advise that masks help to stop the spread of this respiratory plague. Simply put, my mask protects you, your mask protects me.

There is no state or federal constitutional right to spread illness and death among your family and your community. To accept the benefits of a society is to also accept the responsibilities of that society. Anything else is adolescence.

Joseph Caulfield

A Lucrative Resource for Your Shingle

By Tom Jarvis

Hanging your shingle or joining a new firm is exciting but getting people to discover and learn more about your practice is considerably less thrilling. Moreover, finding clients who can pay your fees and present issues that fall within your practice areas is comparable to separating strands of cooked spaghetti.

Enter the NHBA’s Lawyer Referral Service (LRS). Following the departure of former LRS coordinator, Sheila Verma, LRS restaffed and refreshed its business practices for a post-pandemic world. In its current incarnation, Jennifer Greenwald serves as LRS Coordinator. In her first few months, she has been working hard with her staff and the LRS Committee to attract panelists, update promotional materials, and streamline processes. Prior to joining LRS, Greenwald worked as a paralegal for more than 18 years and is currently attending law school. It is the first time that NHBA has had an almost-attorney in her current position.

“My first goal was to make sure that LRS continued to provide uninterrupted exceptional service to callers and web site users as we trained new staff and responded to new COVID-related needs,” Greenwald said. The results in that effort are already showing, with a steady increase in requests and resultant referrals.

LRS Intake and Referral Specialists connect people in need of services with the professionals who can provide them. This may be a referral to one of our attorney panelists or to an outside organization. While LRS specialists don’t give out legal advice, they ask the follow-up questions to make targeted referrals, something that an online search can’t do.

LRS relies on an ample number of panelists to accept the referrals they make at a time when many attorneys have more work than they can handle. The program counts on those who are starting or transitioning their career, as well as those at the peak of their practice, to provide needed services. For more information on Lawyer Referral Service, contact Jennifer Greenwald at (603) 715-3235 or jgreenwald@nhbar.org.

District Hearings and The Constitution

New Hampshire courts treat claims of individual rights carefully and seriously. But the loudest voices are not always the ones that should prevail, in or out of the courtroom.

In my own civil rights practice, spanning some 40 years, from Seabrook to Robin Hood, I have also felt the frustration of losing, which is twice as painful when you believe you are representing an important principle. Win and lose, it has been my experience that New Hampshire courts treat claims of individual rights carefully and seriously. But the loudest voices are not always the ones that should prevail, in or out of the courtroom.

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Joseph Caulfield
MHBA Volunteers Make a Difference – Consider Becoming One

By Misty Griffith

The New Hampshire Bar Association gives thanks for our many dedicated members who volunteer their time and talents to help others through NHBA programs. Currently, 77 attorneys participate in the LRS Modest Means Program, 108 members volunteer for Free Legal Answers-NH, and 48 members have helped with LawLine this year. Additionally, 82 members have volunteered to mentor new attorneys as part of the Mentor Advice Program. Our mentor pool even includes some retired members.

One of the best ways to express gratitude is by giving back. Attorneys have the benefit of years of higher education providing skills and knowledge that is unique to members of the bar. However, everyone has different areas of expertise and differing amounts of time, so it is important to give back in a way that works with your schedule and is most fulfilling to you. The NHBA offers a variety of volunteer opportunities for members who want to make a difference.

The Lawyer Referral Service is experiencing a record number of calls, and there is great need for our Modest Means Program. Modest Means serves people whose household income is between 175% to 325% of the Federal Poverty guidelines; people who do not qualify for pro bono assistance, but who cannot afford an attorney’s full fees. Attorneys who participate in the Modest Means panel agree to charge eligible clients a reduced rate of $80-$125 per hour based upon a sliding scale corresponding to household income.

Joining the LRS Modest Means Program is free and attorneys do not have to participate in the Full Fee Program to be a part of the Modest Means panel. Participating attorneys select the type of cases they are willing to accept and may choose to limit the number of referrals. There is no percentage fee due to LRS for Modest Means cases. For more information about the LRS Modest Means Program, contact LRS Coordinator Jennifer Greenwald. Applications are available on our website nhbar.org/join-lawyer-referral-service.

For the ultimate flexibility and convenience, volunteer for Free Legal Answers NH. FLA-NH is an online legal clinic that the NHBA offers in partnership with the American Bar Association. It provides low-income individuals with free basic legal advice about non-criminal legal matters from a licensed NH attorney.

FLA-NH is ideal for access-minded attorneys at all stages of their careers because participating attorneys may select the questions they feel confident answering. Additionally, attorneys have the flexibility to answer as many or as few questions as they’d like, on their own schedule, from any location with an internet connection. Attorneys may engage in an online dialogue with FLA-NH clients, who can ask follow-up questions, but there is no expectation of a long-term relationship. Because there is no bad time to answer questions, FLA-NH is especially convenient for attorneys who may not have time to volunteer during their regular business hours. The ABA offers malpractice insurance for the limited scope of volunteer attorneys answering questions on the FLA-NH site. To volunteer, sign up online at nhbar.org/volunteer-for-free-legal-answers.

If you enjoy the camaraderie of other attorneys while volunteering, LawLine may be a great fit for you. LawLine is a free public service offered by the NHBA. It is held on the second Wednesday of each month from 6 to 8 p.m. Attorneys and callers are anonymous. Past participants have shared that they feel their time was well spent.

Through the use of call forwarding, the Bar is able to move LawLine to remote sites. As few as four volunteers are needed to operate LawLine – one person to initially answer and direct calls, and three attorneys representing a variety of practice areas to answer callers’ questions. Law firms or local bar associations seeking a simple way to participate in public outreach events are invited to host an evening of LawLine during the coming year. Attorneys unable to host but wishing to participate are also needed to answer callers’ questions. Please consider giving two hours of your time to a worthwhile and popular program.

Calls from the public to LawLine’s 800 number can be forwarded to up to twenty different landlines but not to cell phones. This offers an opportunity for solo practitioners who haven’t been able to participate in LawLine before! If you have a landline and would like to volunteer to answer calls from your office or home providing brief legal advice and information anonymously, please contact LawLine Coordinator Linda Sutton sutton@nhbar.org.

Serving as a mentor is a valuable service to the New Hampshire legal community and can be a fulfilling experience for seasoned attorneys. A big key to the success of the Mentor Advice Program (MAP) has been having an enthusiastic group of well-qualified mentors ready to help guide newer attorneys. Attorneys who have participated in MAP have described the program as “rewarding,” “enjoyable,” and “a great experience!” Mentors have particularly enjoyed sharing their experiences with bright and enthusiastic new lawyers, providing career guidance, and connecting with someone new. One retired attorney shared that being a mentor “felt useful.”

The role of the mentor is to provide ethical, professional, and practical guidance. Mentors do not have any responsibility to supervise or evaluate the work of the advisee. Conversely, the advisee has no responsibility for services performed by the mentor. Mentors should have experience and judgment to obtain the best possible results for our clients. Consider giving back to the profession by mentoring a new attorney. Please contact Member Services Coordinator Misty Griffith mgriffith@nhbar.org to learn more about MAP or to volunteer.

LawLine Thank You

The New Hampshire Bar Association would like to thank the attorneys of Cullen Collimore, PLLC, for taking part in LawLine on Wednesday, October 13th. They fielded 20 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 December 8, 2021, from 6:00pm to 8:00pm. 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 landlines. The Bar also provides a light dinner for all volunteers. For more information, or to volunteer for a LawLine event in 2021, please contact NHBA LawLine Coordinator, Linda Sutton at sutton@nhbar.org.

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Where the Checklists Come Up Short: Key Areas to Dig Deeper on Cybersecurity

By Ande Smith

From global companies to small startups, I see quite the range of cybersecurity. Many organizations follow surprisingly similar paths that rely on operational IT staff to secure their operations, including cloud-based systems or remote sites, where they can only be accessed through tools, and which are not network addressable.

All too frequently organizations pause at this point, satisfied with their ability to recover in a disaster. It is indeed true that most can, but the gaps often lie in understanding the amount of time that will be required. The mere ability to recover data is usually much different than the effort required to return to operation. Surprises arise when computers and other infrastructure (such as Active Directory) are so compromised that they cannot be used to restore data, and even network access. While great faith is placed in the use of the cloud for core business systems, even this can become inaccessible in such circumstances.

IT leaders and their managers should pay close attention to the steps and costs that may come with disaster recovery. Being clear-eyed on the balance between cost and speed for highly expedient recoveries, and practicing the protocols to build confidence, are critical but overlooked elements in preparedness.

Anti-virus. Much like backups, anti-virus products have been around for some time. You are probably aware that there’s a material difference between traditional, signature-based anti-virus (AV) products and so-called “next generation” AV or NGAV. These newer products make rather significant claims, including the ability to stop malware in its tracks, perform remediation, and isolate affected computers and systems. Generally, NGAV products can live up to their claims, though as with anything, there’s often a gap between the marketing and the capability.

Many organizations feel that NGAV brings significant safety. To a large extent, this is true. In the cases of the most obvious and aggressive attacks, NGAV can be quite effective. But it is often overlooked that not all malware attacks are easy to discern. NGAV is often verbose in issuing alerts where it sees something suspicious, but the behavior could be appropriate. Unfortunately, hackers use many of the same tools and processes as your IT team. Despite the hype around artificial intelligence and machine learning, it still typically requires a person to ascertain which is the case.

The often-missed challenge is how to review and respond to these “medium” warnings. Organizations with robust security teams can spend their days checking. Some organizations purchase security monitoring services to perform that function or more recently pair their NGAV with a managed detection and response (MDR) service. Here an MSP or the NGAV provider injects that person-in-the-loop. Unfortunately, many organizations invest in NGAV and hope that a “set and forget” strategy will be sufficient or that their operational IT staff will be watchful. Both of these hopes are often disappointing.

Configuration. Unlike vulnerabilities and patching, which fix defects in software and systems, configuration is the idea removing unnecessary, built-in capabilities. Most software and systems come with many tools that are incredibly useful to hackers, but you may never need. Configuration “hardening” is critical to deprive attackers of some of their weapons of choice.

Software typically comes out-of-the-box in the most permissive and least secure configuration. This enables rapid deployment of key services and, the logic goes, organizations will configure them appropriately. Sadly, most IT teams do some, but not all necessary hardening. The reason is often time (and hence cost), as hardening systems must be done carefully so as not to disrupt applications and other business needs. In other cases, it requires business discussion about applications and how the user experience, both of which can lead to complaints and service requests if not clearly communicated.

The missing step for many organizations is to require IT staff to follow basic hardening guidelines, often available from vendors and from consensus standards, like those published by the Center for Internet Security. If a hacker manages to gain a toehold, proper configuration can sometimes stymie or greatenly limit their attack methods, making them more exposed to your defensive tools.

M365 and Google Workspace Hardening. M365 and Google Workspace are ubiquitous in organizations for their productivity needs. Like configuring your on-premises systems and other cloud services, like AWS or Azure, these workhorses also require hardening, and, unfortunately, they also are largely overlooked. While properly con-

CYBERSECURITY continued on page 17
The Mentor Advice Program Continues to Make a Difference For New Hampshire Attorneys

By Tom Jarvis

You’ve finally done it; you are a lawyer. Now what? Navigating a new career in law or starting a solo practice can sometimes be a daunting experience. Now and then, there is a need for a little guidance.

The NHBA’s revitalized and rebranded Mentor Advice Program is addressing that need.

The Mentor Advice Program (MAP) pairs attorneys (advisees) with experienced practitioners (mentors) to provide guidance regarding ethical, practical, and professional issues.

NHBA Member Services Coordinator Misty Griffith, catalyst of the Program’s rejuvenation, has done an admirable job with matching up over 60 mentors and advisees since its relaunch nine months ago. As a Vanderbilt University Law School graduate, a former Judicial Law Clerk, and a former practitioner of law, she has an exceptional understanding of the need for a program like this.

“I certainly could have used the Mentor Program after I graduated,” Misty said. She goes on to say that it’s a chance to connect with a new attorney and be an ideal fit for my interests. I can’t think of any reason not to participate.”

In addition to serving new lawyers, the MAP also assists lawyers starting a new firm, lawyers returning to practice or changing practice areas, and those new to practice in New Hampshire. Currently, the MAP is supporting a handful of advisees in neighboring states. It can be helpful for an out-of-state lawyer to have someone to discuss the disparities in laws between the states or confer about the NH courts.

The MAP includes an agreement between the mentor and advisee to be available periodically over the course of six months, with the option to continue. There is a lot of flexibility, with members able to meet on their own terms, electronic, in person, or a combination thereof.

Attorneys who have now completed the MAP speak very highly of it. Attorney Michael Salas, who was admitted to the Bar in May 2020, said it allowed him to talk through major decisions with someone who has seen and experienced more than him. “I think it is much needed and that all new attorneys could benefit from it,” he concluded.

Upon completion of the MAP in September 2021, Attorney Gary Boisvert stated that, “having a mentor helped reassure me that I can do this job and that I have the knowledge to make sound decisions.” Attorney Paul Reynolds, a May 2019 Bar admittee, describes the MAP as a wonderful and helpful experience and went on to praise Griffith; “the coordinator worked hard to pair me with someone who would be an ideal fit for my interests. I can’t think of any reason not to participate.”

“Mentors can also learn from advisees,” Griffith said. “And it can be energizing to connect with a new attorney and be reminded of why you got into law.”

Likewise, the MAP seeks to promote positive relationships among members of the NHBA. Attorney Keziah Colleton, who began participation in the Program in April 2021, echoed this sentiment when she said, “I ultimately left with both a mentor and a friend.”

For more information on the Mentor Advice Program, or to start participating as a mentor or advisee, contact Misty Griffith at (603) 715-3227 or mgriffith@nhbar.org.
Work-From-Anywhere: Five Principles for Building an Innovative, Healthy Culture with just the Right Amount of Remote Work

By Ryan Barton

Your organization’s “Work-From-Anywhere” policy will become one of the defining aspects of your culture, your recruitment, and your retention. This one decision will spawn significant, long-term consequences.

Crafting that policy is difficult. Today, we spin in a blender of change, narrative, and counter-narrative.

Headlines roar:

“Remote Work Contributing to the Great Resignation”

“Amazon Allows Indefinite Remote Work for Some”

“Huge Study Suggests Remote Work Creates Silos, Changes Communications”

Because the wrong decision will clearly erode success, I searched for an easy answer by talking to business leaders, reading books, discussing with my team, consuming articles, and digging into studies.

An easy answer proved to be a Sasquatch. Some believe. Some of us raise an eyebrow.

One thing is clear: employee expectation has changed fundamentally since March 2020. Every single employee who worked remotely over the pandemic has new preferences, beliefs, and expectations about their work. But those preferences, beliefs, and expectations are all over the map. Those who hated working remotely will be dismayed if you close your office. Those who thrived while working remotely will likely object to any mandatory days in the office.

And yet, it’s also clear that if you don’t bring people back together, it can drag mental health, stifle communication, and hamper creativity.

The hard right answer is to grind through the necessary questions, blending a policy, tasting, and refining the recipe as needed.

Hard to make a headline out of that. But we aren’t here for headlines.

We are here for a wise decision.

Five principles for how to decide:

Principle 1: Think well.

Banish the easy button. Because the wrong decision will clearly erode success, I searched for an easy answer by talking to business leaders, reading books, discussing with my team, consuming articles, and digging into studies.

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Every single employee who worked remotely over the pandemic has new preferences, beliefs, and expectations about their work. But those preferences, beliefs, and expectations are all over the map. Those who hated working remotely will be dismayed if you close your office. Those who thrived while working remotely will likely object to any mandatory days in the office.

And yet, it’s also clear that if you don’t bring people back together, it can drag mental health, stifle communication, and hamper creativity.

The hard right answer is to grind through the necessary questions, blending a policy, tasting, and refining the recipe as needed.

Hard to make a headline out of that. But we aren’t here for headlines.

We are here for a wise decision.

Five principles for how to decide:

Principle 1: Think well.

Banish the easy button. WFA is not a simple problem. It is not solved with a simple, easy policy. Embrace it as a complex problem.

Cut loose the anchor of the past. Until March 2020, your entire career was spent in a business climate that held certain assumptions about remote work. Question each assumption and recognize our new paradigm. Do you think employees can’t be managed effectively if you can’t see them? That is a myth thoroughly busted.

Do you think everyone prefers coming to the office? Not uniformly, not anymore.

And be suspicious of extreme changes. Before you close the office, think well. Before you mandate everyone’s return, pause. Remember: This is a complex issue. A simple solution will not solve it.

Principle 2: Listen well. Consider what is best for each person.

No one is ever solely an “employee.” We are people: with dreams and anxieties, love and loneliness, families and pursuits. Thanks to video meetings, we have met others’ kids and dogs. Because of this window into their homes, we have learned new things about their lives and passions.

Start with yourself. The only way to ask authentically. How is remote work for you? What do you want? What is healthiest for you? And does your emotional experience of work change when out of the office?

Ask the people who work for you: what do they want? In an ideal world, how much flexibility would they like? What kind of schedule? When away, what do they miss about the office? When in the office, what do they miss about being away?
Ask them about their wellbeing. How is their anxiety and their joy, when working remotely? What is the healthiest balance of WFA? Not the easiest balance, but the healthiest?

**Principle 3: Build well. Optimize for long-term, holistic success.**

Whatever the policy, it must further the most success for the most people over the longest time. It must have the long-term in view.

This means we must consider people and the business. A good business culture encourages creativity. Creativity benefits from random interactions which are difficult to replicate remotely. A famous example is Steve Jobs’ design of the Pixar office. He put the bathrooms in an atrium at the center of the workspace, forcing people to bump into each other and interact. Reportedly, it worked.

A good business culture also includes mentoring. Mentoring remotely must be done intentionally. In the office, it can happen far more organically. Consider this: Who do you talk to when you work remotely? And who do you talk to when you work in the office? For most of us, those are two different answers.

A business is also well served by attracting new applicants, and a flexible WFA policy tops the list of many looking to attract new applicants, and a flexible WFA policy. A famous example is Steve Jobs’ design of the Pixar office. He put the bathrooms in an atrium at the center of the workspace, forcing people to bump into each other and interact. Reportedly, it worked.

**Principle 4: Enable well. Evolve your technology.**

WFA groans and clanks if the technology doesn’t support it well. All aspects of your technology plan should be tuned towards supporting WFA. Infrastructure moves to the cloud. Desktop computers are replaced with laptops. Communication tools are (like Microsoft Teams) are deployed. Phone systems move to the cloud. Business intelligence software becomes more important (measuring outcomes in data).

Of course, security measures must evolve rapidly. Your workforce isn’t behind the firewall anymore! A flexible WFA policy results in connection from unknown and possibly unsafe networks. This puts the emphasis on securing the endpoint (the laptop, smartphone, and tablet), securing the infrastructure (email, applications, and files), and training staff diligently (and then real-world testing that training).

At Mainstay, the IT service provider I lead, we use advanced planning and cybersecurity models to guide our clients through their technology evolution.

**Principle 5: Accelerate well. Seize new opportunities.**

WFA opens new opportunities for the business. Each business leader should carefully think through how WFA can be used to further success. Your clients and potential clients are more understanding of remotely delivered service. This creates new markets for businesses typically bound by geography. Sales can be done more efficiently and to a broader audience. Recruiting opportunities open. Managers can use data in new ways to inform their understanding of team performance.

Team members are more open to wellness initiatives and to benefiting from training for mental wellbeing. Culture can evolve and become deeper and healthier.

Intentionality can increase, as everyone wrestles with new routines, new schedules, and new events. The office can be reimagined to support a changing work landscape.

To facilitate this, all HR leaders must see WFA leadership as a competence to develop. They serve a critical job enabling a healthy culture and supporting each leader through the challenges of WFA.

**What Others are Deciding:**

At Mainstay, we encourage team members to thoughtfully choose their own balance. The offices are a tool to improve their work and their experience. It’s critical that each teammate monitors personal wellbeing. Work isn’t just about being productive and too much alone time is detrimental. Some teammates come into the office daily while others rarely.

We hold events in-person and encourage in-person for deep conversations. We ask team members to try to come in one day per week, on the same day, so we create as much opportunity for random encounters as possible. We support geographic moves but only for teammates already embedded in the culture, and still with some in-person time throughout the year.

The NH CPA firm Nathan Wechsler & Company decided the full team needs to be in the office, but only on Tuesdays and Thursdays, with personal choice MWF. Exceptions are considered for days or roles that have no impact on clients, and they monitor for success.

Basecamp, a popular software company, decided on no office at all. The founders wrote a book on Work-From-Anywhere, called “Remote Work: Office not required.” They are a wildly successful company with a far-flung team who have proven this can work.

However, they also have proven full WFA has downsides. In 2021, internal societal and political discussions went awry over their electronic channels. All-hands meetings to handle the crisis had to be held on Teams. And in a highly publicized way, it imploded, and 1/3 of Basecamp employees quit.

The description of those online meetings (readily available online) is sobering. It’s impossible not to wonder what could have been if they gathered in-person to hash things out. As a team who regularly worked together, face-to-face, and who had held all hard conversations in each other’s presence.

WFA contains great promise and some peril. Don’t limit your team with draconian measures. And don’t hurt your culture with sweeping changes. Decide with care. It’s worth it.

Ryan Barton is the founder and CEO of Mainstay Technologies, a NH-based technology services firm. Mainstay believes technology and business can be powerful forces for good. The company measures its success by its impact on people: Its clients, team, and community. It has received multiple awards, including Best Companies to Work For 4 years running, Business of the Year; 5 years on the Inc 5000 list, Business Excellence, and the Torch Award for Marketplace Ethics. Ryan is a husband, father of three, and an insatiable reader. He loves to write and share about the relationship between our work and meaning. You can reach him on LinkedIn.

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- Maternal death settlement $12,000,000.00
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- Post-surgical infection verdict $10,700,000.00
- Product liability settlement $8,900,000.00
- Birth injury settlement $7,500,000.00
- Construction accident settlement $7,000,000.00
- Surgical error settlement $5,100,000.00
- Prostate cancer settlement $4,500,000.00
- Maternal death settlement $4,500,000.00

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- **CIVICS EDUCATION**
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  603 Legal Aid and more

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The money earned from the IOLTA program helps *tens of thousands* of our most vulnerable NH citizens receive free or low cost civil legal services.
Bernard W. (Bernie) Pelech

Bernard W. (Bernie) Pelech, of Portsmouth died unexpectedly on Tuesday, October 12, 2021.

He was born on May 11, 1949 in Hin

Community Notes

Sheehan Phinney shareholder and President, David W. McGrath, has been named to the Board of Trustees for Straw

In Memoriam

Arthur William Hoover

Arthur William Hoover, age 81, died in Durham, New Hampshire on Sep

New Members of the

New Hampshire Bar Association

The following member were admitt

Donald George Lemieux

Donald George Lemieux, age 86 of Everett, Massachu

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Christopher D. Jones, Newbury, NH

Matthew D. Minuti, Auburn, NH

John Anderson Proctor, Charlestown, NH

The following members were admitted to the New Hampshire Bar Association on October 25, 2021.

Erich P. DeGroot-DiMarzio, Nashua, NH

Zachary A. Host, Nashua, NH

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By Pam Dodge and Elyse McKay

As we approach the seasons traditionally devoted to gratitude and giving, 603 Legal Aid’s Pro Bono Program would like to express our gratitude to our many volunteers and community partners, whose dedication and generosity kept us going through a pandemic, a merger, and two moves. The pandemic has created multiple hardships for New Hampshire’s low-income people, exacerbating the already difficult circumstances in which they live. This past year, Pro Bono Program volunteer attorneys reported over 3,000 hours of service to low-income New Hampshire litigants through the many projects and clinics of the Pro Bono Program.

Carolann Wooding, Pro Bono Program Coordinator, worked closely with our legal services partner, New Hampshire Legal Assistance, in a coordinated response to pandemic-related unemployment appeals. This program delivered issue-specific training on overpayments to complement a prior seminar on unemployment law to volunteers. Volunteer lawyers represented over 25 litigants facing overpayment cases, and provided crucial support to clients during the early months of the pandemic.

As we move towards the new year our traditional services continue. As volunteer attorney David Cole, a lawyer based in the Upper Valley who serves two local mental health organizations as well as individual litigants, says, “I believe it is part of our societal duty as attorneys to assist people seeking justice who are unable to afford legal help.”

David and his assistant, Vicky Prouty, have been helping clients with legal issues they face. The pair recently coordinated a plan consistent with COVID-19 safety guidelines and the client’s inability to travel. A combination of virtual and in-person consultations were key to helping draw up a power of attorney and a will for the client.

Janice Rabchenek, Pro Bono Clinic Coordinator, organized 603 Legal Aid’s Record Annulment Clinic, the model developed several years ago under the stewardship of Ginny Martin, recently retired Legal Services Director of the NH Bar Association. Since 2018, Pro Bono has handled 16 criminal record annulment clinic servings over 250 people. Pro Bono’s long-term community partner, Manchester Community Resource Center, welcomed us back to hold an in-person clinic implementing Janice’s strategic plan to protect both volunteers and the participants. After the presentation by Attorney Donna Brown, the volunteers were able to spend more time with each attendee during the one-on-one meetings.

Increasing capacity in the oft-overlooked North Country is a goal that the Pro Bono Program continues to work towards.

According to Janice, “One elderly gentleman who was adamant about coming to the clinic, despite living in northern New Hampshire, declined my offer to find him help closer to his home. Despite this long drive, he attended and received a consult from Attorney Joe Prieto.”

Barb Heggie, our Low-Income Taxpayer Project (LITP) Coordinator and Staff Attorney, has turned her attention to the measures enacted by Congress to relieve pandemic hardships, including the popular stimulus payments and advance Child Tax Credit payments. Unfortunately, accessing these benefits has proven especially difficult for those with disabilities and others. To address this problem, LITP has taken a two-pronged approach. First and foremost, staff and volunteers have represented dozens of clients before the IRS to resolve the issues that prevented the payments from issuing.

Second, through extensive outreach efforts, LITP has spread the message far and wide that help is available here at the tax clinic, and we’ve used every platform available to explain the ins and outs of pandemic tax benefits for low-income people. In making all this possible, LITP relies enormously from the generosity of our dedicated volunteers.

Pam Dodge, the DOVE Project’s Coordinator, and Elyse McKay, the DOVE Project’s Assistant Coordinator, in line with 603 Legal Aid’s mission, have worked closely with NHLA crisis center partners and other staff. The goal of this work is to develop a process to streamline access, affording holistic legal assistance for survivors and the crisis center advocates that serve them. Our dedicated volunteers have truly risen to the challenges posed by the pandemic. DOVE’s third annual POWER Act collaboration with Hon. Andrea Johnstone of the U.S. District Court District of New Hampshire, along with several veteran volunteers, has helped show the value of pro bono work for domestic violence victims beyond family law. Through their lived experiences, they demonstrated to prospective volunteers how addressing a wide range of legal issues that result from financial abuse—Federal income tax disputes, consumer debt, wills, medical & financial power of attorney, small claims defense, housing—can help survivors stabilize themselves and their families enough to end the cycle of violence.

Along with recruitment by our dedicated, long-term volunteers, the commitment of our funders has been instrumental in meeting the growing need for legal assistance. These include Legal Services Corporation, NH Department of Justice, Violence Against Women Grants Office, Office for Victims of Crime, NH Women’s Foundation, NH Charitable Foundation, NH Bar Foundation IOLTA Grants Program, NH Supreme Court Law Library Pro hac Vice fund, the NH Housing Finance Authority, Governor’s Office of Emergency Relief and Recovery, and the NH Campaign for Legal Services.

Pro Bono staff also thanks the NH Bar Association for its 40-plus-years investment and commitment to legal services programming and its support of members in their service to NH’s most vulnerable through the delivery of legal services. The recent merger of the Pro Bono Program and Legal Advice & Referral Center presents opportunities to expand and build on programming to meet the evolving civil legal needs in our state. 603 Legal Aid looks forward our continued partnership with the NHBA in service to all members.

603 Legal Aid also congratulates our executive director, Sonya Bellefount, Esq. for her tireless efforts to establish 603 Legal Aid as a pillar within New Hampshire’s legal services community. We also extend our appreciation to volunteer partners, and funders, and wish all a peaceful holiday season.

Emma Sisti New Pro Bono Manager

603 Legal Aid has hired Emma Sisti as the new Pro Bono Manager. Sisti currently works as an attorney in the Concord office of the New Hampshire Public Defender, a position she has held for 15 years.

The Pro Bono Manager position is an all-new role that will contribute to the growth of 603 Legal Aid, which was formed in June from the merger of Legal Aid of NH (LARC) and the Pro Bono Program of the NH Bar Association.

“Emma will bring great energy to our new program, and obviously has demonstrated a tremendous commitment to helping low-income individuals achieve access to justice,” said Executive Director Sonya Bellefount.

Sisti recently joined the program as a public defender, Sisti has seen how small obstacles can create long-term problems in someone’s life, including eventual involvement in the criminal justice system.

“If a person misses court because they didn’t receive the notice, or because a ride fell through, a default

Celebrate Pro Bono www.celebrateprobono.org

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603 Legal Aid has a private nonprofit law firm that provides free legal services to eligible, low-income people in New Hampshire. Its attorneys and paralegals provide legal advice by telephone in areas of civil law. 603 Legal Aid offers legal representation by on-staff attorneys as well as referrals to private attorney volunteers.
Attorney Keith F. Diaz has joined the law firm. Keith has 18 years of litigation experience. Keith will continue to focus his efforts litigating personal injury, employment, real estate, construction, and probate matters.

You can reach Keith at keith@nicholson-lawfirm.com
58 N. State St., Concord, NH 03301      (603) 856-8441

Attorney Sabrina Beavens joins our Corporate & Business Law Group.

Throughout her 20-year career, Beavens has been recognized as an accomplished attorney and leader in the legal community.

Beavens advises business clients on matters regarding governance, contracts, finance, general corporate issues, mergers and acquisitions, and more. She is an experienced trial attorney who has litigated complex business and real estate disputes in state and federal courts.

Attorney Roger Turgeon adds his experience to our Personal Injury Group.

Turgeon has focused his practice on personal injury for 40 years, since graduating from Harvard Law School.

Turgeon's personal injury experience ranges from matters involving auto accidents to unsafe premises, product liability, and other general liability matters. He won a record $5.3 million jury verdict on a wrongful death case in New Hampshire.

SABRINA BEAVENS
sbeavens@shaheengordon.com
(603) 225-7262
107 Storrs Street • Concord, NH

ROGER TURGEON
rturgeon@shaheengordon.com
(603) 749-5000
353 Central Avenue • Dover, NH

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The Crisp Law Firm PLLC congratulates

Samantha K. Mills

on being sworn into the New Hampshire Bar.

We are pleased to announce Samantha will be joining the firm as an associate attorney.
own in Ashland. His friend lives downstairs. After applying for heating fuel assistance with the Ashland Community Action Program last fall, he was denied.

“This went back and forth, and we didn’t know why. We’d had assistance four or five years earlier and there was no reason we were denied,” he says, adding that he was made aware of NHLA and applied for assistance in January.

NHLA attorney, Abdoul Fofana, was assigned Bill’s case and quickly discovered the Community Action Program (CAP) in Ashland was denying him because they were misapplying the legal standard for what is considered a household.

Bill’s unit in the house uses heating oil while his friend who lives below him uses natural gas. Each unit has separate accounts—but the CAP was viewing the situation as a shared household.

“He was denied assistance because the CAP was stating that because he was living with a longtime friend, he was functioning as a family unit or that they were basically roommates,” Fofana said. “Once I figured out what was going on—and that they had misapplied the law; it was not the same household—they ended up amending their procedure manual.”

Bill said he’s grateful for the assistance received.

“I was over a barrel,” he said. “I didn’t know why. We’d had assistance for over 15 years in state and federal courts and has firsthand experience with the complexities presented in employment cases.

Resolution of employment cases requires the insight, experience, and full process that a seasoned employment lawyer can provide. Beth looks forward to working with you and your clients to resolve your employment cases.

ANNOUNCING EMPLOYMENT LAW MEDIATION SERVICES

Attorney Beth A. Deragon

In addition to her employment law practice, representing both employees and employers, Beth is now providing mediation services for employment related disputes.

As a litigator, Beth has represented employees and employers for over 15 years in state and federal courts and has firsthand experience with the complexities presented in employment cases.

Resolution of employment cases requires the insight, experience, and full process that a seasoned employment lawyer can provide. Beth looks forward to working with you and your clients to resolve your employment cases.

LAUNCHING A NEW MENTOR ADVICE PROGRAM

The New Hampshire Legal Advice Program (NH-LAP) is a free service that helps individuals with legal problems. The program provides legal advice and referral information to anyone in need of legal assistance.

The program is staffed by volunteer members of the New Hampshire Bar Association who have been selected for their knowledge and experience in specific legal areas. The volunteers are not employed by the program and do not represent the program.

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We recently launched our Mentor Advice Program (MAP) and seek newer attorneys wanting assistance transitioning to the New Hampshire legal community and launching their practices. Dozens of qualified mentors are ready to help!

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to work out little problems, that got drilled into me over and over. It taught me a lot about how to work through difficult problems, work on your own and work towards a deadline, being able to understand what it’s like to see a project through to completion. Transfer that to the workforce, and to law school, and at the end of the day you’d better be able to sit down with that exam.”

There was a time when music was what drew him into the Schulich School in Montreal, where he spent four years. When he graduated in 2008, “it was a very difficult time to try to make a career of that,” he says. “Enjoying playing the piano is very different from making a life that will support you.”

So, he went off to the London School of Economics, which offered a two-year masters degree program. The world was in the middle of a financial crisis “and I saw that aspect of the world up close and personal with all its warts,” Mulhern says. “It seemed an efficient and cost-effective way of getting employment.”

After getting his master’s, he soon joined the Analysis Group, a Boston-based firm providing economic, financial and strategy consulting, and quickly befriended office mate Ali Dahir, who still considers Mulhern one of his best friends. “James is one of the smartest and most driven people I have ever worked with,” Dahir says. “I can confidently say he ranked in the top one percent among his peers.” Personally, “he has been there for me through some of the best and worst times of my life,” he adds.

Mulhern moved on to a New York high-tech firm, Palantir, which worked with the U.S. government and foreign governments – and more recently, the commercial sector – to make data more accessible for non-technical users.

But the job required considerable travel – Mulhern recalls one three-week period where he flew from New York to London to Singapore to Sydney to Los Angeles to Seattle to Boston to Chicago and then back to New York – and he began to wonder if it was the right field for him. “The year before law school, after 200 nights in hotel rooms and 200,000 miles, I was looking into my future and thinking, how long am I going to be able to do this or want to do this?” he remembers. At the same time, his parents were looking to hire someone at their law firm “so there was this confluence of me looking for a new direction and my folks looking for some support.”

Harvard Law ensued, where Mulhern received a grade of “honors” in every class in which he was enrolled, and where he served as research assistant to Professor Robert Sitkoff, regarded as the nation’s leading trusts and estates scholar, whom he assisted in preparing a new edition of the well-known textbook “Wills, Trusts and Estates.”

Throughout law school, Mulhern worked at his parents’ firm and joined them after taking the bar last year, concentrating on trusts and estates, tax and appellate litigation. He did so partly out of “a sense of responsibility for being a good steward for something my parents have created, but there are other things I really enjoy about it,” he says. “It’s very hard, one of the most tricky areas of law, this pile of ancient deep-rooted wings of property law that go back to feudal times, layered with all sorts of modern reform efforts in the field. You have very meaty classic law at the same time as something that’s also very dynamic and changing, when you combine the legal changes with the tax law changes. It doesn’t get old.”

Already, he has served as trustee on several trusts, and takes pride in having maneuvered “an extremely messy will” all the way through probate.

His regular companion at the office is his dog Hugo, a lab mix rescue adopted by Mulhern’s office mates. “He lives the dream,” Mulhern says.

Leisure time finds him working on a hobby he started back in his days at McGill – constructing crossword puzzles for the New York Times. He explains that he starts with a theme, adds three to six answers related to the theme, builds other answers around them and at the end, writes the clues.

“Ultimately you want to make something that’s challenging, but it’s there to be conquered,” Mulhern says. “You want a sweet spot between tricky and disharmonizing.”

Mulhern has a collaborator in his crossword puzzle construction – Ashton Gonder, a friend he met at McGill who remains close with him to this day.

Says Anderson, “he (Mulhern) introduced me to crosswords when, strewn among the general chaos of his bachelor apartment, I saw perfectly filled-out NYT crosswords – things I had only previously associated with my grandmother. We started solving regularly, reading the critical takes in the newly-created crossword blogs, and eventually James dared to dream ‘what if we made a crossword?’”

“Although we didn’t know it at the time,” Anderson adds, “we were part of a whole new generation of crossword enthusiasts who coalesced into a strong community thanks to the internet. We set our minds to getting a crossword puzzle published in the New York Times, and years after that initial spark, we did it, and have been collaborating ever since.”

Anderson says Mulhern’s nimble mind is something that serves him not only with crosswords but with life. “What makes him such a unique talent is his preternatural intuition,” he says of his friend. “He has an incredible ability to consider a complicated thing, divine its essence, and render a quick and accurate judgment on it. This intellectual compass almost always guides him in the right direction, but he will also complement his instincts with deep analysis to ensure the quality of his work.”
Charting the Course for a Legal Career

By Travis Bennett

Most people evaluate the trajectory of their lives and professional careers on a regular basis, if not in a conscious, systematic manner, then at least in a general way: analyzing the current state of their livelihood and perhaps the decisions that have led them to the present. As someone starting out in law school with no clear-cut path to a specific practice area or the type of technical background that may determine the natural direction of my legal career, it’s a somewhat daunting challenge to begin thinking about what area of law to dive into.

Fortunately, as many professors at UNH Law have already highlighted, decisions about what type of law to study—and ultimately practice—will change over the course of our legal education and perhaps later during our professional careers. While most of the NH Bar News readership have likely completed their education, perhaps the expanding nature of my inner wrangling with this challenge will help others give pause to reflect on where they may be going, professionally or otherwise. And perhaps, if for nothing else, to look back at where they’ve been for nostalgia’s sake.

Going even back to when I was applying to law school, I did at least have some direct experience relating to how laws are formed. With my most formative understanding of law rooted in an experience serving as a Congressional Page, during the July 2008 Congressional term, I became exposed to the complex and often convoluted nature of legislatures, as well as the remotest authority on either subject. How do you help establish the International Criminal Court (there’s a fascinating documentary about him called, “Prosecuting Evil”), I agreed with Dean Sirota that my three proposed practice areas to gently drift toward were far removed from the trajectory of Ben Ferencz’ life. However, Dean Sirota was at least pleased I was aiming high.

Rather than settling on a practice area, or a type of employer, or industry, the emphasis in our Legal Profession class was put on the kind of law the classmate who we currently know more about than yourself. Where do you want to live? Does the type of client you work for matter? How many hours do you want to spend in the office? What skills do you want to develop? What do the careers of people who have already completed their education have given you advice on this subject in the past and anyone who does so in the future. Indeed, from all these considerations, and considering my own persuasions, I distilled three practice areas to begin at least drifting towards, if not focusing on: public interest law; criminal, specifically county prosecution; and intellectual property, as, after all, that’s what UNH is known for.

You can imagine my dismay after telling all this to the new interim Assistant Dean of Career Services at UNH Law, Neil Sirotta, when he told me to “stop thinking like that.” In one of our first Legal Profession classes, which Dean Sirota also teaches, he instructed us to choose a person in the legal profession, not necessarily someone famous, but someone successful or influential whom we’d perhaps like to emulate. Having chosen Ben Ference, one of the lead prosecutors at Nuremberg who went on to become judge for international war crimes cases, that’s what UNH is known for.

I wholeheartedly thank all who have given me advice on this subject in the past and to anyone who does so in the future. Indeed, from all these suggestions, and considering my own persuasions, I distilled three practice areas to begin at least drifting towards, if not focusing on: public interest law; criminal, specifically county prosecution; and intellectual property, as, after all, that’s what UNH is known for.

I hope that this food for thought does not give you indigestion on the eve of the holiday! Happy Thanksgiving to all!

A member of the New Hampshire and Maine bars, Ande Smith is President and founder of Deer Brook, an IT and cybersecurity consultancy. Deer Brook provides cybersecurity and IT advisory services, including breach response, to many sectors of the SMB market. It is a CMIC-AB Registered Provider Organization.

Cybersecurity from page 6

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A.J. Kierstead

2021 Rudman Summer Fellows
Shortage

According to the task force report, Judge Kissinger has successfully recruited private practitioners to accept cases in Merrimack County, and one task force recommendation includes investigating how to secure full-practice coverage for retired practitioners willing to accept cases on a pro bono basis.

High caseloads, low pay, taking a toll
NHPD’s contract establishes case limits of 70 open cases per attorney and allows the program to limit the intake of new cases when those levels have been reached. Hawkes said NHPD caseloads have exceeded contractual limits statewide for more than two years.

In August, before the new lawyers started, there were only 123 attorneys on staff who averaged 91 open cases each. This is 30 percent above the maximum set by NHPD’s state contract.

Today a quarter of all public defenders in the state have more than a hundred open cases.

“The new lawyers are all very intelligent, capable, committed lawyers who will become excellent public defenders. But we cannot give them 80 or 90 cases on day one. There is a learning curve, and caseloads must be developed over time,” Hawkes said.

Another factor that keeps attorney caseloads high is attrition. When experienced attorneys leave an office, Hawkes explained, “it’s particularly troubling when we lose experienced attorneys. The criminal justice system, not only public defenders but prosecutors—it behaviors the entire system to retain experienced people because they know how to move cases and they work well together.”

Hawkes explained that the departure of experienced NHPD attorneys presents the “doubly painful” issue of remaining caseloads.

“As our workload is over a hundred cases that have to be absorbed by the remaining attorneys in that office,” he said. “And this exacerbates the caseload crisis.”

The ultimate measure of what constitutes competent and diligent representation, Hawkes continued, is “whether an attorney has sufficient time to meet with all clients, review all discovery (including audio and video evidence), conduct all necessary investigations, consult with experts when necessary, file appropriate motions and conduct pretrial litigation, attend all pretrial conferences and other hearings, explore diversion or treatment options, negotiate with prosecutors, and prepare adequately for trial.”

Current workloads have stressed, “threatening NHPD attorneys’ ability to do those things, and the Rules of Professional Conduct provide no exception for lawyers who represent indigent persons charged with crimes.”

Contract and Assigned Cases

Robin Melone, a criminal defense attorney and president of the New Hampshire Association of Criminal Defense Lawyers, as well as a task force member, described the NHPD, which represents approximately 85 percent of cases coming through the system, as a crucial first line of defense.

“When the NHPD cannot take cases because of conflicts of interest, she continued, cases get pushed to the Judicial Council for assignment.”

The two mechanisms for assigning cases through the Judicial Council are contract and assigned cases.

Contract cases allow an attorney to take a certain number of units of wage each fiscal year in exchange for a flat fee per case. If, at the end of the year, the attorney doesn’t complete his or her contracted units, he or she is required to pay the money back.

The reimbursement rate for fiscal year 2021 was set by the Judicial Council at $300 per unit.

A Class A felony case, which includes serious crimes such as murder or sex crimes, equals 8.3 units, or $2,490. Misdemeanor cases are one unit, or $300.

The other form of contracting through the Judicial Council includes assigned cases.

These often include conflict cases involving situations where Public Defender is unable to accept co-defendants in a criminal case.

In a situation like this, attorneys who have agreed to be assigned cases work for $60 an hour for most cases and $100 for Felony I crimes.

Melone has taken both contract and assigned cases as a criminal defense attorney and said she understands the difficulties that can arise for attorneys in terms of time, money, and work.

She believes the discussion about money and public defenders has often been seen as awkward but that it remains a reality that needs to be addressed.

“If attorneys in bankruptcy or real estate or other practices talk about money, it’s not a problem. But because criminal defense is considered a passion and a drive for most people who do it, talking about money becomes a gauche and inappropriate thing to do,” she said. “But I think that people can both love the law and also be businesspeople, you know. I don’t do this for charity.”

Melone said she thinks public defenders need to be paid better for their time, adding that this is one of the keys to keeping not viable Public Defender’s office in the state, but that money is not the only issue.

“People don’t do this for the money, but the financial piece is becoming more of an issue. Salaries have not been adjusted and I think we need to do everything we can to nurture and show value to the experienced attorneys that we have,” she said. “If we continue to lose them, I have serious concerns about the program.”

Private criminal defense

Richard Guerriero, president of the New Hampshire Bar Association, is currently a private criminal defense attorney but spent 20 years at the Public Defender as its director of training.

While he’s encouraged, the courts and the bar are working to solve the problems with the public defender shortage, ultimately, he believes the solution involves more funding.

“The private criminal defense bar must do all that it can to help, but volunteerism is only going to diminish the crisis, not solve it,” he said. “You have to remember that contract and assigned counsel lose money at the current rates, so although everyone is stepping up to do more, it is a big ask, especially on the heels of the pandemic.”
Guerrero said his firm has accepted as many contract and assigned counsel cases as they are able to, but they are at their limit and he worries that it will be very difficult for untrained volunteer attorneys to provide competent representation.

“Criminal defense is an area of law that requires special training and knowledge, just like family law, tax law, or other areas,” he said. “The good news is that our court and our bar recognize the importance of the right to counsel. I am confident that the problem will be solved and that the bar will do everything in its power to work with the courts towards that end.”

Maintaining balance:  
A prosecutor’s perspective

Strafford County Attorney Thomas Velardi said that Chief Justice MacDonald asked him to join the criminal defense task force to make it a multilateral collaborative effort.

One of the themes he continues to emphasize as part of the task force, and in his day-to-day work, is that the criminal justice system is “a gentle balance between prosecution bar, defense bar, and bench.”

“Any time that suddenly becomes unbalanced with any one of those three legs of the stool, so to speak, you’re going to have problems for the other two legs. It’s simply unavoidable,” he said. “I was very gratified that the chief justice asked me to join. My fellow county attorneys supported my joining the task force as president of our association.”

Velardi said he found the meetings, chaired by Justice Donovan, to be productive. He echoed Hawkes’s concern regarding the lack of experience issue that comes with attrition.

“When you have a significant amount of attrition on either side of the bar, in order to replace those people who are likely to have more experience than the people replacing them, you have a steep curve to educate your opponent,” he said.

Velardi described the defense bar as the inverse of the prosecution bar and said, “One can’t thrive and survive without the other being healthy.”

“The county attorneys are concerned about this because even though we’re widely known to prosecute offenders, the offenders are part of our constituents. We need to make sure we’re minding the constitutional rights of the accused, as well. That’s why prosecutors are part of this dialogue,” he said.

Asked if he was optimistic the gap in counsel for indigent criminal defense will be alleviated in the coming year, Justice Donovan said he has hope that it will be but hesitated to say the problem will be solved in that time frame.

“I am, by nature, optimistic,” he said. “So, will it be alleviated? I hope so. Will it be fixed? Not in 12 months’ time.”

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As approved by local members of the national plaintiff (AAJ) and defense (DRI) bar associations*
An inactive lawyer may not enter into a referral fee agreement with an active New Hampshire lawyer for matters that first arose after the change in status because that would violate the restrictions on the practice of law and present a great risk of misrepresentation.

**ANNOTATIONS:**

The Committee believes that an inactive lawyer may not enter into a referral fee agreement with an active New Hampshire lawyer for matters that first arose after the change in status because that would violate the restrictions on the practice of law and present a great risk of misrepresentation.

The annotations are written by individual Committee members to assist the reader and are not meant to be part of the actual opinion. See e.g., United States v. Detroit Lumber Co., 201 U.S. 321 (1906) (dealing with the syllabus of Supreme Court opinions).

Our first concern in this matter is that the inactive lawyer, by engaging in what will necessarily be at least a somewhat substantive discussions with the prospective client, would be practicing law.

Another concern is that there is a substantial danger that the prospective client could be misled about the status of the active lawyer.

A third concern is that the prospective client may misunderstand the issues of confidentiality and privilege during the discussions.

Finally, permitting payments of referral fees to inactive lawyers would not further the purpose of New Hampshire’s somewhat unique referral fee rule.

**Opinion:**

**A. Facts**

An attorney inquired about amending his New Hampshire Bar status from “active” to “inactive.” The inquirer wanted to ensure that he would be able to receive referral fees for matters he might refer after his status change. He indicated that he would comply with the terms of NHRPC 1.5(f), governing referral fees, which requires that any division of fees between lawyers not in the same firm be:

(1) Either:
   a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or
   b. based on an agreement with the referring lawyer;
   (2) in either case above, the client agrees in a writing signed by the client to the division of fees;

(3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.

Presumably, the inquirer would utilize the provisions of subpart 1(b), an agreement between the active and inactive lawyer, to satisfy this rule since, after the status change, he could not assume any risk or responsibility for the actual representation.

The inquirer relies on language from a prior Committee opinion to support his belief that inactive lawyers should be able to receive referral fees, even if the underlying case arose after the inactive lawyer could no longer practice. He points to Ethics Committee Advisory Committee Opinion #2016-17/01, Fee Sharing/Referral Fees, where the Committee’s annotation provided that “[i]nactive’ members of the New Hampshire Bar are nonetheless lawyers for purposes of fee-sharing and sharing management control with the inactive lawyer’s former law firm.” Id. at p. 1.

He also notes that as an inactive lawyer, he cannot practice law in New Hampshire, and suggests, in all such matters, he would not provide any legal advice to the prospective client and would strictly limit his interaction with the prospective client to the basic facts of the matter. He further asserts that he would treat those facts as strictly confidential and privileged.

The inquirer’s specific questions are: 1. May “inactive” members enter into referral fee agreements with active New Hampshire lawyers? 2. Are fee sharing/referral fees of inactive members only permitted when sharing fees with their former law firms? and 3. Assuming referral fees to “inactive” lawyers are treated differently as between those formerly with a law firm and those without a former law firm, what is the rational basis of treating them differently?

**B. Opinion**

The Committee believes that an inactive lawyer may not enter into a referral fee agreement with an active New Hampshire lawyer for matters that first arose after the change in status because that would violate the restrictions on the practice of law and present a great risk of misrepresentation. This is true, in our opinion, regardless of whether the proposed division is with one’s prior firm. In light of this, the final two questions are moot.

We reaffirm our conclusion in Opinion 2016-17/01 that the inactive lawyer may accept fees from his or her prior firm in cases on which the now inactive lawyer worked, or brought to the firm, before the change of status, even though the fees are paid after the change.

The inquiring attorney relies on addressed both management of a law firm after inactive status and whether the firm can share fees that are paid after the change of status with the inactive lawyer. The opinion holds that both are permissible. However,
that opinion did not address fee sharing for matters that the inactive lawyer brings to a firm after he or she is no longer able to practice law, due to the inactive status, the issue we will address below.

We can see why the inquirer may have been confused about the scope of the opinion. The annotation to which he cited provides that “Inactive members of the New Hampshire Bar are nonetheless lawyers for purposes of fee-sharing and sharing management control with the inactive lawyer’s former law firm.” However, the actual text of the opinion is far more limited in scope.

On page 2, the Committee states: “… [B]oth classes [active and inactive] remain ‘lawyers’ for purposes of this opinion.” (emphasis supplied). Thus, the opinion related only to cases that began when the lawyer was active. The language cited is from an annotation, as opposed to the actual opinion. The annotations are written by individual Committee members to assist the reader and are not meant to be part of the actual opinion. See e.g., United States v. Detroit Lumber Co., 201 U.S. 321 (1906)(dealing with the syllabus of Supreme Court opinions).

As noted above, the distinction we are drawing is not between fee splits within law firms and those outside a former law firm. It is between permissible payments that occur after the change of status but are based on practice of law activities that occurred before the lawyer took inactive status, and the situation posed by the inquirer of a referral made after taking inactive status.

Our first concern in this matter is that the inactive lawyer, by engaging in what will necessarily be at least a somewhat substantive discussions with the prospective client, would be practicing law. These discussions would most often occur because the prospective client knew that the person at one time was a practicing lawyer. See NHRPC 5.5, ABA cmt. 7 (“… admitted … contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status”). Also, the judgment that the lawyer to whom the referral is made is technically admitted is not authorized to practice law, due to concerns about misleading the public.

A third concern is that the prospective client may misunderstand the issues of confidentiality and privilege during the discussion. While it is possible under the Evidence Rules that the conversation with an inactive lawyer might be privileged, this is far from a foregone conclusion. See Rule 502(a)(3) of the New Hampshire Rules of Evidence (A lawyer “is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation). The inquirer’s communication with us reflects his belief that he could protect the information from forced disclosure.

Finally, permitting payments of referral fees to inactive lawyers would not further the purpose of New Hampshire’s somewhat unique referral rule. See Ethics Committee cmt. to NHRPC 1.5. When the Ethics Committee recommended this change to the Supreme Court and its Advisory Committee on Rules, the purpose was to remove any incentive for a lawyer to retain a case that would better be handled elsewhere, and thus to enhance client representation. Since the inactive lawyer is unable to retain the case, allowing a referral fee would do little to guarantee competent representation.

C. Conclusion

For these reasons, the Committee believes that inactive lawyers may not receive referral fees for matters that arose while they were not able to practice law.

N.H. Rules of Professional Conduct:

NHRPC 1.5.
NHRPC 1.5(4)
NHRPC 5.5, ABA cmt. 7

N.H. ETHICS COMMITTEE OPINIONS AND ARTICLES:

Ethics Committee Advisory Committee Opinion #2016-17/01, Fee Sharing/Referral Fees
Ethics Committee Formal Opinion 1988/9-2, Letterhead Listing- Of Counsel if Inactive
Ethics Committee Advisory Opinion 2006-07/02, Identification of Inactive Bar Member Status

SUBJECTS:

Fees
Attorney Client Relationships
• This opinion was submitted for publication to the NHBA Board of Governors at its October 21, 2021 Meeting

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NEW HAMPSHIRE BAR NEWS
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NOVEMBER 17, 2021

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Drafting with an Eye to Litigation: Tips to Safeguard Enforceability of Prenuptial and Postnuptial Agreements at the Time of Divorce or Legal Separation

By Nicole A. Forbes and Patience E. Carlier

In general, parties who enter into a prenuptial (prenup) or postnuptial (postnup) agreement do so to limit risk, manage wealth, provide predictability, and/or minimize statutory consequences at the time of death, divorce, or legal separation. It is imperative for drafters of these agreements to safeguard the enforceability of the instruments from attack during probate or family law litigation. This article will focus on practical considerations in drafting prenups and postnups in the family law context.

Enforceability Standard

Although a properly drafted prenup or postnup is to be presumed valid, enforceability is ultimately dependent on procedural and substantive fairness at the time of execution and at the time of enforcement. New Hampshire courts apply ordinary principles of contract interpretation with heightened scrutiny due to the fiduciary relationship that exists in a marriage. The agreement cannot: (1) be procured through fraud, duress, mistake, or misrepresentation; (2) be unconscionable; (3) violate public policy; or (4) induce separation or divorce; and all material facts must be disclosed. The law as to enforceability of postnups is limited. Accordingly, postnups may be closed. The law as to enforceability of postnups and provisions already in place.

Drafting Tips

1. Draft for Consistency

A drafter must be mindful of the assets of the client but also any instruments that control those assets, like current estate plans and corporation formation documents, to ensure the agreement does not conflict with provisions already in place.

2. Involve Other Professionals as Needed

Depending on the issues involved, a drafter should consult financial professionals or other attorneys, including those that have probate, family law, tax, or corporate knowledge the drafter lacks.

3. Bolster Procedural Fairness

Financial disclosures, independent counsel, time to contemplate the agreement’s terms, negotiations, parties’ bargaining power, and time between execution and the wedding are factors that the court will consider in determining procedural fairness. No one factor is determinative, and these factors are important because they are what can be controlled now. If one fairness factor is lacking, a drafter should consider how to bolster others.

• A minimum of thirty days is often considered best practice for the time between execution and the wedding to avoid arguments of duress. This may be particularly important if there can be any argument that the party with more bargaining power took advantage of the other.

• Complete disclosure of finances is prudent to reduce the likelihood that there will be an allegation of misrepresentations or concealments of material facts. Full disclosure is easy to do and, again, can help overcome any imbalance in bargaining power.

• If one party cannot afford an attorney, the moneyed party can pay for the other’s counsel without providing names of refer- als to maintain independence. The payment of legal fees should be made to the other party, not opposing counsel, to avoid any argument as to whom opposing counsel represented.

• Evidence of these factors and voluntariness is important. Videotaping a signing ceremony with both parties present with counsel, reviewing the document, and confirming his/her agreement to the terms as fair is best evidence, but at a minimum, a drafter should write a memorandum to the file outlining the factual circumstances in relation to these factors that support procedural fairness.

4. Bolster Substantive Fairness

To be substantively fair, the agreement should not be too one-sided.

• The drafter should be familiar with the rights each party is forgoing in the event of death, divorce, or legal separation, like alimony and equitable interests in the other’s assets, including those that are pre-marital, gifts, inherited, only titled in the other’s name, and family businesses.

• If the agreement seems too one-sided or there is a desire to bolster substantive fairness, the drafter should advise the client to consider additional consideration, like a lump sum payment, ratcheted interests over the length of the marriage either in alimony or allocation of assets, or life insurance.

5. Beware the Last-Minute Prenup Request

In part, because prenups can be an uncomfortable and unromantic topic of conversation, it is not uncommon to get a call from a prospective or current client to draft a prenup less than thirty days until a wedding. These last-minute requests, especially without other strong fairness factors, may create a vulnerability concerning enforcement and a malpractice risk. Accordingly, a drafter of such a prenup should advise the client of the risk and explain his/her options, including: (1) not going through with the wedding; (2) rescheduling the ceremony; (3) having a symbolic ceremony but not a legal one until thirty days after an execution of a prenup; (4) getting married and negotiating a postnup; (5) executing a prenup and then having the parties reaffirm after the wedding; and (6) getting married without either agreement and losing protections.

6. Consider Other Instruments

A drafter should consider whether other instruments may further client goals. For example, if the client is concerned with protecting a family business, do the corporate documents already provide adequate protections? If the client is seeking to remove inheritance from the marital estate, are those assets already safeguarded in the relevant estate plan(s)?

Conclusion

Prenups and postnups can be effective tools for individuals seeking to protect assets in a divorce or legal separation. Attorneys drafting these agreements thus need to draft with an eye towards litigation to put the client in the best position to protect the benefit of the bargain at the time of enforcement, when unforeseen changed circumstances may erode the fairness that existed at the time of drafting.

Footnotes


Nicolé practices family law, probate litigation, and employment law at Sheehan Phinney Bass & Green P.A. Patience practices tax, trusts and estates law at Sullivan & Hollis PLLC.

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NEW HAMPSHIRE BAR NEWS

November 17, 2022
Child Support in Equal Time Parenting Schedules

By Honey Hastings

What is the appropriate child support in cases where the parents have equal or approximately equal parenting schedules? Under current law, the answer to this question is not known. RSA 458-C:5 states that there MAY be an adjustment to the Guidelines support, subject to a three-part test. It says nothing about how much the adjusted support should be. In the 15 years since the adoption of the Parental Rights and Responsibilities Act, more families are choosing equal or approximately equal parenting schedules, meaning that more parents are facing this question. As the appropriate support is not predictable, there is more litigation. Legislative efforts to answer this question have failed for many years, but at least three bills on the topic will be considered by the NH Legislature in 2022.

Statutes – Current NH statutes do not explicitly tie child support to the parenting schedule. The Guidelines and USO refer to “obligor” and “obligee,” defined simply as the person paying or receiving support. The Guidelines child support is presumed to be the correct amount. There is no specific formula for child support when each of the parents have the child or children approximately half of the time. Instead, RSA 458-C:5 says that an equal or approximately equal schedule “shall not by itself constitute ground for an adjustment” in the Guidelines. It then gives a three-part test to consider when deciding if the equal time schedule justifies any deviation from the Guidelines: (A) whether the parents agree to an allocation of variable expenses; (B) whether the obligor shows that the parenting schedule reduces the fixed costs of child-rearing for the obligee; and whether the lower-income parent is able to meet the costs of child-rearing in a similar style to the other parent.

“Net the Difference” - In the 1990s, some lawyers and marital masters started using a formula called “net the difference.” I have not been able to document the origin but a report from Cheshire County says that Marital Master Larry Pletcher was an advocate. To “net the difference,” calculate the Guidelines support that parent A would owe parent B, and that B would owe A. Subtract the smaller amount from the larger. The higher-income parent pays the resulting amount to the other parent.

While this method is simple, simple does not necessarily mean fair. After a review of the results of applying the “net the difference” method to families with various incomes, I concluded that when incomes are substantially different, using it is unfair to children. Specifically, when one parent earns 60% or more of the parents’ combined gross income, lifestyles in the two homes would be dissimilar and thus not in the child’s best interest.

For example, if one parent earns $7,083 monthly ($85K per year) and the other earns $3,333 ($40K per year), the higher-income parent earns 68% of the combined, total monthly gross income. For one child, the “net the difference” support amount would be $582. If this method is used in this example, after support is paid and received, the higher-income parent would have $1,751 in gross monthly income (62.4% of their combined total). The lower-income parent would have $671 (37.6% of the combined total). This is $1,080 more in gross monthly income in one household. (Note that after-tax analysis would be helpful, but requires filing status, exemption allocation, and other details.)

This larger ratio and the difference in real dollars each month, would create an insurmountable barrier to achieving a relatively similar lifestyle for the children.

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Civility and Communication in a Hybrid World

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240 NHMCLE min.
Topics:
Federal and State Tax Update
Estate Planning in a Post-Election Year

Part 2
November 19, 2021 – 8:30 a.m. – 12:45 p.m.
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What Troubles May Lurk Ahead When It Comes to Treatment of Trust Interest in Divorce

By Jacqueline A. Leary

In 2017, I wrote an article about the treatment of trust interest in a marital proceeding. It started with the following: “Your divorce client advises you that her parents, who are well off, have likely provided for her in their trusts and she is concerned that her husband may share in her potential inheritance. What do you advise her?” A recent New Hampshire Supreme Court Case further this analysis.

New Hampshire courts use a two-step analysis in making an award of property in a divorce. The Trial Court first determines as a matter of law whether the property to be divided is marital property. Second, the Court determines what division of that property would be equitable. The New Hampshire Supreme Court, in the case of In re Chamberlin and Chamberlin, 155 N.H. 13, 16 (2007), held with regard to an interest in a third-party trust that the court must, (1) determine whether the trust interest is marital property under New Hampshire law, and, if so, (2) in its discretion, apply the various factors of RSA 458:16-a, II, in making an equitable distribution of the marital property between the spouses.

The New Hampshire Supreme Court, in the case of In re Goodlander, 161 N.H. 490 (2011) held that the interest of a beneficiary in a discretionary trust is a mere expectancy and pursuant to RSA 564-B:8-814(b) is not to be considered marital property. The statute specifically provides: “If a distribution to, or for the benefit of, a beneficiary is subject to the exercise of the trustee’s discretion, . . . then the beneficiary’s interest is neither a property interest nor an enforceable right, but a mere expectancy.” The analysis does not change whether there is a discernible standard for the trustee to use in making distributions. If the beneficiary possesses the right to compel distributions, the trust interest will likely be deemed marital property.

A recent New Hampshire Supreme Court opinion was published this past July, Matter of Bournival, No. 2019-0537, 2021 WL 3013456, at *3 (N.H. July 16, 2021). This case is a matter of first impression regarding the relationship between a beneficiary and a trustee when determining whether a party’s interest in a trust is part of the marital estate. On July 16, 2021, the New Hampshire Supreme Court found that a husband’s interests in both of his trusts constitute marital property even though the “trusts may be potentially independent of [Husband] ‘on paper,’” in practice, he has so much control over the trusts that they do not appear to be fully independent ‘discretionary’ trusts.” Matter of Bournival, No. 2019-0537, 2021 WL 3013456, at *3 (N.H. July 16, 2021). In the Matter of Bournival, the husband has interests in two discretionary trusts. The trust was created at the direction of the husband’s parents and funded by his parents. Id. at 1. Husband argued “his interests were too remote and speculative to be included in the marital estate because the discretion afforded the trustees insulates him from having access to trust assets.” Wife countered “the discretion afforded the trustees is illusory because the accountant (the primary trustee) lacks the neutral independence that the law requires, and the other trustee, Husband’s uncle, has had no involvement in the management of the trusts or their assets.” Id.

The Court found the husband’s interests in both of his trusts constituted marital property. The Court then examined the facts and found the interests to be marital property even though the trusts may be potentially independent. The Court found that the husband had so much control over the trusts that they did not appear to be fully independent ‘discretionary’ trusts.

What Troubles May Lurk Ahead When It Comes to Treatment of Trust Interest in Divorce

TRUST continued on page 32
New Legislation Helps Parents in Special Education Disputes

By Holly Vietzke

In July, Governor Chris Sununu signed House Bill 581, which shifts the burden of proof to school districts in due process hearings due to special education disputes. Previously, it was incumbent on the initiating party, which oftentimes is parents, to prove that the services and/or placements that districts were providing or proposing were not adequate or appropriate. This put parents at a bit of a disadvantage as they would have to obtain independent evaluations (frequently paying privately for) and hire experts to help prove their case. New Hampshire joins Connecticut and New Jersey as other states who have placed the burden of proof on school districts.

Now, however, with districts bearing the burden to show that they have delivered appropriate programming to students that allows them to make progress, the playing field has been leveled. A student’s individual education program is to make meaningful and reasonable progress. If the matter cannot be resolved through team meetings or mediation, either party may file a due process hearing request. While parents are not required to hire an attorney, before the enactment of HB 581, it was more difficult to prevail without one. In the five hearings held thus far in 2021 (all before HB 581), for example, school districts have prevailed in all of them, and parents were not represented by counsel in four of them. Now, however, pro se parents should have a greater chance either at hearing or in settlement negotiations after filing depending on the strength of their case.

Special education laws, including dispute resolution, are found in the federal Individual with Disabilities Education Act (IDEA) and state regulations. School districts are required to provide each child with a disability a free appropriate public education (FAPE). This education is measured by the student’s progress in light of his or her ability. A student’s individual education program (IEP) must be calculated to enable that student to make meaningful and reasonable progress. Disputes can arise for many reasons: issues with any aspect of the IEP, failure or refusal to evaluate, refusal to grant a request for an independent evaluation, disagreement with a school evaluation or proposed placement, or failure to provide services, among others. For example, suppose student in 8th grade has dyslexia but is reading at 4th grade level, according to school evaluations and progress reports. Parents ask district to place student in a private school that specializes in language-based instruction across the curriculum. District believes its own programs and specialized reading instruction are sufficient and increases the amount of minutes per week that student receives with reading support in the IEP. Parents reject the IEP and file a request for a due process hearing seeking out-of-district placement. Prior to the legislation, parents would have to prove that the district’s proposed IEP was inappropriate. Now, however, the district has to prove that the IEP and its programs will allow the student to make progress and that the reason the student is reading four years below grade level is not a result of previous IEPs or district programming—which on its face is a high hurdle.

Or suppose during the school closures for COVID, a student was not logging on to the online classes, not submitting assignments, or otherwise not accessing the curriculum. When school resumed in a hybrid model last fall, the student could engage in the classroom (in person), but on the remote days, she was unable to engage. She received her special education services largely remotely, but she would log in sporadically. Missed sessions were not made up from 2020. As a result, last spring, during her IEP meeting, parents asked for extra tutoring. The district refused, claiming that it does not have the staff to deliver “extra” support. Parents file a request for hearing, asking for what is known as “compensatory” services, which can be awarded when a student does not receive all the special education services listed on the IEP. The district would have to prove that it did deliver the services or that parents prevented it from doing so.

Going to a due process can be expensive, time consuming, stressful, and even a little scary for parents. This bill makes it a little easier for parents to fight for what they believe their child needs.

Holly Vietzke-Lynch, Esq., is a special-education law attorney licensed in New Hampshire and Massachusetts. Her firm, Holly Lynch Law LLC (www.hollylynchlaw.com), also provides estate planning, special-needs planning, and probate-administration services.
By Chrissy Hanisco

It is hardly a secret that medical advances in treating infertility and achieving pregnancy and live birth have moved faster than the law. In the past, many state statutes only referred to artificial insemination and assumed a woman and her husband. Although New Hampshire updated its law and now defines artificial insemination outside of the context of marriage, it still assumes the person is a woman. See RSA 168-B:1, I (2014). More importantly, though, it broadly defines assisted reproduction as a “method of causing pregnancy other than sexual intercourse,” thus including artificial insemination along with other methods, and leaves open the definition to include future technologies not yet developed. RSA 168-B:1, II. In doing so the legislature recognized that the law needs to be adaptable to what is yet to be.

Assisted reproduction has resulted in many people creating embryos (“the fertilized egg” RSA 168-B:1, VI) through in vitro fertilization. As technology has improved, the need to transfer multiple embryos to a person’s uterus in order to achieve a pregnancy has decreased. In fact, a single embryo transfer is now considered the standard of care, especially when the embryo is created with an egg from a person under the age of 35. (See American Society for Reproductive Medicine. Guidance on the limits to the number of embryos to transfer: a committee opinion. Fertility and Sterility, 2017;107:901-3.) Further, since 2012 the technology to freeze a person’s eggs is no longer experimental and has resulted in many individuals freezing their eggs in their 20s or early 30s to preserve their ability to have a genetic child in the future, or prior to undergoing medical treatment that may impact their fertility, such as chemotherapy. Similarly, the freezing of sperm for future use has been commonplace for a number of decades. With more eggs, sperm and embryos frozen than ever, inevitably frozen reproductive genetic material could survive the person or persons who froze it. This raises many questions, including who owns the material after the person’s death, who can use the material after the person’s death and whether the posthumously conceived child can inherit from or receive survivor benefits from the decedent.

Most family law practitioners are familiar with the statutory presumptions of who is a parent, i.e., the marital presumption or the holding out provision. See RSA 168-B:2-V (2014). Many however, are unaware that if a person provides eggs, sperm, or embryo(s) prior to death to be used after death and consents to their use with the desire and intention to be a parent of any resulting child, the deceased individual would be a parent to the posthumously conceived child. See RSA 168-B:2, II and IV (2014). It is not necessarily enough to freeze one’s eggs, sperm, or embryos, nor to bequeath the frozen reproductive material in your will or trust. An additional affirmative step is required under New Hampshire law to state in writing that your intention is for the genetic material to be used and that you desire to be a parent.

In 2020 the legislature amended RSA 168-B:2 to set forth how to establish parentage of a child conceived through assisted reproduction (but without the assistance of a gestational carrier). The action can be brought before, during, or subsequent to the birth of the child. One or both of the parents who used assisted reproduction to conceive can bring the action to obtain a parentage order declaring that “the parent or parents are the sole parents of a child resulting from assisted reproduction.” RSA 168-B:2, VII (a)(eff. Jan. 1, 2021). The court shall grant the petition within the standard of care, especially when the embryo is created with an egg from a person under the age of 35. (See American Society for Reproductive Medicine. Guidance on the limits to the number of embryos to transfer: a committee opinion. Fertility and Sterility, 2017;107:901-3.) Further, since 2012 the technology to freeze a person’s eggs is no longer experimental and has resulted in many individuals freezing their eggs in their 20s or early 30s to preserve their ability to have a genetic child in the future, or prior to undergoing medical treatment that may impact their fertility, such as chemotherapy. Similarly, the freezing of sperm for future use has been commonplace for a number of decades. With more eggs, sperm and embryos frozen than ever, inevitably frozen reproductive genetic material could survive the person or persons who froze it. This raises many questions, including who owns the material after the person’s death, who can use the material after the person’s death and whether the posthumously conceived child can inherit from or receive survivor benefits from the decedent.

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PARENT continued on page 33
The State of Affairs – Division of Irrevocable Trusts in Divorce as of 2021

By Jan Myskowski

This article addresses the question of when assets held in an irrevocable trust may be considered the marital property of a trust beneficiary who is a party to a divorce proceeding. In particular, we are here focusing on trusts created (or at least funded) by a person other than the beneficiary who is party to the divorce, e.g. a trust created by a parent for a child who is not getting divorced. I will refer to this type of trust as a “third-party irrevocable trust.”

Within that context, I am addressing only one narrow question: Can a portion of the assets held in such a trust be awarded to a non-beneficiary spouse as part of a property settlement order? Secondary questions, such as whether the assets of such a trust constitute support obligations to the non-beneficiary spouse in a property settlement order can be restated as follows: do the assets of such a trust constitute marital property?

Historically, and by historically we mean prior to the enactment of the New Hampshire Trust Code (RSA 564-B, the “Trust Code”), courts evaluated these various interests to make a somewhat ad hoc determination whether the beneficiary spouse’s interest in the trust. Irrevocable trust beneficiaries often possess distinct property interests such as an interest in future distributions and a remainder interest in the corpus of the trust. The former interest may be mandatory—in the sense that the trustee is directed to make regular or otherwise fixed distributions—or discretionary. The remainder interest may be vested or contingent. The beneficiary may have certain powers of withdrawal or to otherwise direct the trustee to meet the “mere expectancy” protected status of RSA 564-B:8-814(b).

Nevertheless, subsequent to Goodlander, trust drafters had a fairly clear source of authority upon which to rely when designing a trust intended to qualify for the protection of RSA 564-B:8-814(b). As of 2021, trust drafters have even clearer and more reliable guidance. Following the lead of Goodlander, in 2019 the Legislature enacted RSA 564-B:8-814(b). This statute faced its first major judicial interpretation in 2011 in In the Matter of Goodlander & Tamposi, 161 N.H. 490 (N.H. 2011). In Goodlander, the New Hampshire Supreme Court examined a beneficiary’s interest in trust distributions, held that the interest was subject to trustee discretion, and as a result, concluded the interest did not constitute marital property. The court’s Goodlander analysis was much more mechanical than historical examinations of beneficial interests had been.

This is not to say that a drafter’s use of the word “discretion” would necessarily suffice. In In the Matter of Nerbonne, Nos. 2013-0281 and 2014-0003 (N.H. 2014), a JX panel examined the beneficiary spouse’s “extensive rights and powers” over trust distributions in concluding that the beneficiary’s interest was not sufficiently subject to trustee discretion to meet the “mere expectancy” protected status of RSA 564-B:8-814(b).

With the advent of the Trust Code came clearer and more reliable guidance. Following the lead of Goodlander, in 2019 the Legislature enacted RSA 564-B:8-814(b). As of 2021, trust drafters have even clearer and more reliable guidance. Following the lead of Goodlander, in 2019 the Legislature enacted RSA 564-B:8-814(b), which states that if a trust distribution is subject to trustee discretion, “it is neither a property interest nor an enforceable right, but a mere expectancy.”

Areas of focus include:
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NEW HAMPSHIRE BAR NEWS  www.nhbar.org  NOVEMBER 17, 2021
By Moira O’Neil

September 2021 marked a full year for the Office of the Child Advocate under New Hampshire Chapter RSA 21-V. That is the law that clarified the Office’s firm independence from any other agency and expanded its jurisdiction to oversight of all State child-serving agencies. It is instructive to look back and explain what the Office is and what characteristics situate it to promote children’s best interest going forward.

In 2018, RSA 170-G:18 established the Office as independent oversight of the Division for Children, Youth and Families (DCYF) in the Department of Health and Human Services (DHHS). RSA 170-G relates to DHHS’s services for children and families. Being in RSA 170-G placed ambiguity on independence from DHHS. Connotation of expanded jurisdiction of the Office further underscored the need to move out of the DHHS statute.

Why is independence so important and why expand jurisdiction of the Office? Independence is at the core of an effective, credible role. It reinforces impartiality and freedom from undue influence in carrying out the duties of the Office. Assurance of independence kindles trusting relationships, thus enhancing accessibility and confidence in the Office. The Office was created, in part, for transparency in government. In the near-four years of its existence, independence has proven important in the ability to speak and report freely. It has further served to build trust with constituents, especially children, seeking assistance from the Office. Statute adjustments further solidified independence for the Office to be free from any apparent conflict or influence by inserting 21-V:2, I., “Notwithstanding any other provision of law, operate with full independence from any state official, department, or agency in the performance of its duties.” To be sure, full independence is only the privilege of performing the Office’s duties.

RSA 21-V:2, II mandates the Office to, “Provide independent oversight of executive agencies to a) Ensure that children involved with an agency, or in particular children served by the child welfare or juvenile justice systems, receive timely, safe, and effective services and that their best interests are being protected...” Under 21-V:1, I., “agency”, means any department, institution, bureau, or office of the state, as well as other public and private children and youth service organizations providing services under contract or agreement with an executive agency; provided that ‘agency’ shall not include the judicial council or any entity for which the council provides services.”

There were several reasons for expanding the jurisdiction of the Office. First and foremost, in addition to oversight responsibilities, the Office is mandated to promote the best interests of children. In its first year of existence with jurisdiction limited to DCYF, the Office encountered broader systems serving children, or that should have been serving children. Often, children become involved with DCYF because other systems are not equipped to meet their needs. For example, the inability to access mental, behavioral health, disability, or special educational services has historically led some families to child protection or juvenile justice services. Those same limitations of services may impact the length of time children remain in the care of DCYF.

The Office implements RSA 21-V through four main roles:
1) Review of services and care, provided that case-specific complaints about DHHS services are referred to the DHHS ombudsman. This includes reviewing critical incidents involving children in the care and custody of DCYF. Significantly, it also includes meeting with children.
2) Review and collaborate on program and policy development in the interest of children
3) Regularly consult with and advise the governor, agencies, and the public
4) Provide outreach and education on systems, childhood, and child development.

The authority and power of the Office lies in RSA 21-V:4, access to information. Access to all a child’s records may provide more comprehensive information than even a child’s attorney or providing judge receives. For example, this past year the Office produced an Individual Child Case Review for a child in a residential facility. Juvenile Justice Services placed the child, however there was extensive child protection history. When we met, the child was hopeless for the future. The Review brought to light information for both sides as well as the child’s provider that effectuated positive changes in the child’s permanency plan. The child has since graduated from high school and reunited with extended family. Trends emerged from that case that identified opportunities to strengthen the system and improve child outcomes overall. The Office’s authority to share information with the public establishes transparency and allows learning from children’s experiences while maintaining confidentiality of children. The Office continues to evolve to best promote the interests of children.

Concerns about a child who is or should be receiving services may be shared with the Office of the Child Advocate, via E-mail, phone or in person. Please provide your name and contact information, the child’s name, and date of birth if available, and a brief summary of your concern.

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By Jessica Ecker and Dana Prescott

The book is intended to be a helpful resource for clients or parties going through the divorce process, but also for attorneys who are new to the practice of law, or new to family law, who want a basic introduction to the process and concepts of New Hampshire family law.

My co-author Dana Prescott wrote a similar book for the State of Maine and asked me to work with him on a similar book for New Hampshire in 2020, just a few months after the pandemic hit. Courts were closed and business had slowed, and I thought it would be a good opportunity and project to fill my time while the world shut down. Little did I know that my “free” time would be so short lived! Even before courts reopened, the challenges of the pandemic hit divided families hard. People struggled with co-parenting decisions in a strange new world—was it wrong if your ex-husband took your child to the grocery store during a state of emergency? If your ex-wife was an ER nurse and at high risk of contracting COVID-19, should she give up her parenting time? If you contract COVID-19, do you still get to exercise your parenting time?

What about if a parent wanted a child to fly on an airplane in 2020 to visit you in California for court-ordered parenting time? Then came debates between parents about masks and whether children should be vaccinated. Further, couples spent more time together than ever during the pandemic, and so cracks in relationships often got deeper and once things reopened with the courts, the backlog has continued to grow. New opportunities have arisen for mediation, collaborative law, and settlement in the face of the delays faced with court access. On the other side of the COVID-19 shutdowns came more family law work than we had before, and we have recognized how fortunate we are in that regard, as we know that many other types of law did not fare as well.

What that meant in terms of the book-writing process, however, was that it was slower going than initially anticipated, and fit in between Zooms, making sure the children were on their Zooms, and later, between hearings and on weekends.

I have been so grateful for the support of my family, my partner Ken Weibrecht, my co-author Dana, our publisher, and the staff at my firm who picked up some slack so we could accomplish this task. The book is available for sale on Amazon.

Jessica Ecker is a partner at Weibrecht & Ecker, PLLC. She is a Certified Marital Mediator and trained collaborative law practitioner who practices law in New Hampshire and Maine.

Dana E. Prescott has been licensed to practice in Maine and Massachusetts since 1983 and is a partner with Prescott, Jamieson, & Murphy Law Group LLC, Saco, Maine.

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features a team of attorneys who are skilled and experienced at resolving family disputes with a balance of expertise, efficiency, creativity and sensitivity. Our lawyers are accomplished and well-regarded advocates who customize their approach to each case to meet the client’s goals, needs and expectations. The depth and experience of the Orr & Reno corporate, trust, real estate, employment and tax law groups adds significant value for clients, resulting in well-informed and cost-efficient approaches to litigation and alternative dispute resolution.
in each home. Note that if Guidelines support was agreed or ordered, the higher-income parent would still have $1,550 more in gross income, but the ratio of the parents’ income would be 57.4% to 42.6%. This is a more equitable difference between parents supporting a child in two separate households.

An additional factor in divorce cases is the alimony formula under the 2018 law. Lowering child support may mean more alimony. These types of payments have different modification standards and termination dates. Consider the outcome for your client.

Case Law – In the 2019 case, IMO Silva & Silva, the Supreme Court analyzed RSA 458-C:5 and concluded that the trial court made insufficient findings to justify a Guidelines deviation. As to each of the three tests, the trial court failed to connect the facts it found to justify support of less than Guidelines. Without explaining how it justified less support, the trial court concluded that less than Guidelines. Without explaining how it justified less support, the trial court concluded that less than Guidelines were reduced by father’s paying for a list of expenses that were mostly variable ones. Thus, the Supreme Court found the findings as to test B insufficient. Additionally, as to test C (lifestyle), there were insufficient findings supporting the conclusion that mother could meet child-rearing in a similar style.

Since Silva, some parties in contested cases have found deviations harder to come by. Agreements appear to be subject to an easier test, but in contested cases, the shadow of Silva has made downward adjustments harder to get.

Legislation - The 2022 NH legislature will see at least three bills proposing an answer to the question of appropriate child support in equal or approximately equal schedules. One has a presumption that “net the difference” produces the correct support in every equal or approximately equal schedule case. Another revises the test for adjustment, focusing on the child’s interest in a similar lifestyle in both homes, and using “net the difference” only where the parental incomes are similar. A third is based on HB 161 from the 2021 session and the UNH report tying support adjustments closely to the specific parenting schedule. Stay tuned!

Practice Tips
1. Review Silva & share with your client
2. Compare expenses to income
3. Get an agreement
4. If litigating, draft findings & rulings precisely

Honey Hastings is an inactive/retired member of the Bar and a practicing Certified Family Mediator. She operates Amoskeag Continuing Education, drafts legislation, and advocates for family law reform.

Trust
from page 26

not independent of the trusts for several reasons: Requirements of the trusts were not being followed, there were no annual accountings, one of the two trustees did not play any role in administering the trust which made the accountant the effective sole trustee, the trustee acted on behalf of the husband (beneficiary), and the husband was managing the assets of the trust.

Id. at 1-3. The Court cited several examples of how the accountant, trustee, acted on behalf of the husband, rather than independently, including:

- the accountant’s refusal to provide an accounting to Husband’s estranged adult child, despite the child’s entitlement to one,
- the accountant’s decision to invest all of the trust funds with Husband’s investment firm,
- discussions between the accountant and Husband about sharing clients,
- discussions between the accountant and Husband about distributions,
- the fact that Husband is the broker of all portfolio amounts of the trusts,
- Husband’s active role in the investment of trust funds,
- Husband’s admission on cross-examination that the accountant does not know how any of the trust funds are invested jointly before Wife could claim it.

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Parent from page 28

30 days if it finds that the child was conceived through assisted reproduction and with an intent to parent. Id. This new provision provides the path for those who wish to clearly establish their legal parenthood when donor gametes are used and/or when a child is posthumously born through assisted reproduction.

Despite this statute however, a posthumously conceived child is still unable to inherit or receive social security survivor benefits. The New Hampshire Supreme Court’s analysis and holding in Khabbaz v. Commissioner, 155 N.H. 798 (2007), sets forth in detail the reasons why a posthumously conceived child is not “surviving issue” under New Hampshire’s intestacy statute and accordingly, that a child is not entitled to receive a portion of her father’s estate or receive social security survivor’s benefits. Mr. Khabbaz was diagnosed with a terminal illness in 1997 and “began to bank his sperm so that his wife could conceive a child through artificial insemination. He also executed a consent form indicating that the sperm could be used by his wife “to achieve pregnancy” and that it was his “desire and intent to be legally recognized as the father of the child to the fullest extent allowable by law.” Id. at 799. Two years after his death, his wife gave birth to a daughter who was conceived with his sperm. Although, the current version of RSA 168-B:2, IV was not in effect at the time, Mr. Khabbaz did exactly what the current statute contemplates; he put in writing that he consented to his wife using his sperm after his death and that he desired to be the child’s parent.

Despite the legislature enacting RSA 168-B:2, IV in 2014 and RSA 168-B:2, VII in 2020, the outcome would be the same today, because a posthumously conceived child is not surviving issue. The New Hampshire Supreme Court held that “children may be conceived posthumously several years after an individual’s death, and waiting for the potential birth of a posthumously conceived child could tie up estate distributions indefinitely.” Khabbaz at 803.

In a persuasive and empathetic concurrence Chief Justice John Broderick urged the legislature to do more to effectuate the clear intentions of a person who desires to be a parent, even after his or her death, and to protect the financial future of their issue.

I write separately to respectfully urge the legislature to examine, within the context of the state’s intestacy statute, the confluence of new, ever-expanding birth technologies and the seemingly arcane language and presumptions attendant to the settlement of decedents’ estates. I believe that with time and further technological advances, this confluence will engulf more and more of our state’s families and the children produced as a consequence of such advances. Id. at 806.

Despite Chief Justice Broderick’s urging, over 14 years later, posthumously conceived children in New Hampshire remain unable to receive social security survivor benefits or inherit from their parent’s estate. While it may not be practical to leave an estate open indefinitely, the legislature could amend the statute to permit a reasonable period of time for the genetic material to be used for conception. Mr. Khabbaz’s daughter was born a mere two years after his death. In reality, the majority of these cases will be with parents who are presently undergoing assisted reproduction at the time of one parent’s death or while the child is in utero.

In the meantime, it is still important for those freezing their gametes or embryos to make it clear whether they consent to the use of those gametes after the death and wish to be a parent of the posthumously conceived child. If they do, and they comply with RSA 168-B:2, IV, that evidence of intent may be able to be used if the child is a resident of a different state. At a minimum though, the child will be able to have two parents named on the birth certificate and for many, that can provide much comfort.

Chrsity Hanisco is an attorney at the Stein Law Firm, PLLC in Concord, where she focuses her practice on third-party family formation through adoption and assisted reproductive technology in both New Hampshire and Massachusetts. She serves on the NHBA Board of Governors Governor at-Large. She can be reached at chhanisco@steinlawpllc.com.

Divorce from page 29

of a spendthrift provision appears to mandate an even more mechanical analysis than Goodlander, precluding any judicial authority to evaluate the specifics of the design of the beneficiary’s interests.

Two of the New Hampshire Supreme Court’s decisions in 2021 confirm this rigid interpretation. In In the Matter of Earley, No. 2020-0005, at 3 (N.H. 2021), the court disregarded beneficiary-held withdrawal rights and a testamentary power of appointment (features that would have likely given pause to divorce courts historically). Because the statute at issue contains a valid spendthrift pause to divorce courts historically). Because the statute at issue contains a valid spendthrift provision, the court rejected any possibility that the beneficiary was entitled to receive a portion of the marital estate. In addition, any given trust interest that was sufficiently vested to warrant division of the trust assets as part of the marital estate.

This does not mean that the historical treatment of third-party irrevocable trusts can be ignored. The third case on this topic issued by the New Hampshire Supreme Court (so far) in 2021 involved a trust that mandated inter vivos distributions under Massachusetts law (which currently uses standards similar to those applied in New Hampshire prior to enactment of the Trust Code). In the Matter of Bourne-vale, 2019-0537, (N.H. 2021). The Supreme Court affirmed the trial court’s application of the Massachusetts standards and its determination that the beneficiary spouse’s interests were sufficiently vested to warrant inclusion and division of the trust assets as part of the marital estate. In addition, any given trust may not include spendthrift language, which would take the analysis out of RSA 564-B:5-502(c).

In that event, either Goodlander, or perhaps even the authorities that predates the Trust Code, may govern the interpretation of the beneficiary spouse’s interest. Nevertheless, the Earley and Merrill cases signal a very favorable environment for designing New Hampshire trusts that are intended to avoid the reach of the beneficiary’s divorcing spouse, especially if the divorce occurs in New Hampshire, where New Hampshire law will clearly govern the definition of the marital estate.

Jan is an attorney in Concord, N.H. at Myers Matthews PLLC. He was a founding member of the New Hampshire Chapter of the National Academy of Elder Law Attorneys and is a Fellow of the American College of Trial Counsel. He is a frequent author and lecturer on trust and estate topics for members of the New Hampshire Bar Association and in other settings.
Samantha Elliott Responds to Questions at Senate Judiciary Committee Hearing

By Scott Merrill

On Nov. 3, Samantha Elliott took the next step—sitting in front of the Senate Judiciary Committee—on her journey to becoming a federal judge.

Elliott was nominated in Sept. to fill a seat on the U.S. District Court for the District of New Hampshire by President Biden.

At the hearing, Elliott was introduced by Senators Jeanne Shaheen and Maggie Hassan, and questioned by Senator Ted Cruz.

Hassan referred to Elliott as an “exceptionally qualified candidate” with a “passion for justice.”

Cruz questioned Elliott about comments she’s made in support of John Curran’s nomination for the New Hampshire Circuit Court in March 2020. Curran, a former law partner with Elliott, was confirmed to the New Hampshire Circuit Court in April of 2021.

Cruz read from a transcript, that can be found on the committee for the judiciary website, of a video where Elliott endorsed Curran.

“You stated that Curran reads the people, he reads the facts, he’s not overly focused on the law, and he understands what the jury might be thinking about, and those same qualities that

Elliott continued on page 35

Court Rules: Welcome Changes

Giving Thanks for Summary Judgment Amendments

Looking for an interesting holiday read between the turkey and the pumpkin pie? If you’re a civil litigator, consider the latest version of the summary judgment procedure set forth in Superior Court Rule 12(g). The current procedure, which took effect on July 1, 2019, created a new requirement for summary judgment motions: parties must submit a single document that identifies undisputed and disputed material facts.

But the July 2019 revised rule was really a work in progress. When it adopted this new procedure, the New Hampshire Supreme Court ordered that the Advisory Committee on Rules should begin in June 2020 “to evaluate how the rule has worked in practice and as soon as possible thereafter, . . . recommend whether the rule should remain in effect or should be amended further.” After both the Committee and the Court solicited public comment on its workability, the Court adopted amendments to Rule 12(g) that will take effect on January 1, 2022, and these make the best reading of all.

So, what’s new? Loquacious writers will give thanks for the extra pages! The page limit for motions for summary judgment and supporting memorandum has increased from 20 double-spaced pages to 25. (A similar limit of 25 pages will apply to any objection and supporting memorandum.)

And if you welcome the serving of additional pages you might also appreciate a helping of extra exemptions: the revised rule now contains good cause exemptions for qualifying cases from the requirement to submit a single document identifying disputed and undisputed material facts.

The current rule excuses the requirement for transmission by email of the statement of material facts when the moving or opposing party is self-represented, a party’s attorney does not have access to email, or “the parties believe that the process outlined herein will be unworkable due to particular circumstances in their case and receive advance approval from the Court for filing separate documents.” Superior Court Rule 12(g)(2)(b)

However, beginning January 1, 2022, exemptions from the requirement to submit
Judicial Branch Offers Free Eviction Mediation Programs Statewide

Free service to help residential landlords and tenants resolve disputes before they file.

To help residential landlords and tenants resolve their differences before eviction cases are filed in court, the New Hampshire Judicial Branch is launching a new, no-cost mediation program. The eviction diversion mediation program will be administered by the Office of Mediation and Arbitration and the New Hampshire Circuit Court and is supported by federal funds administered by Governor’s Office for Emergency Relief and Recovery.

Before an eviction case is filed, residential landlords or tenants can request a remote mediation process through the Office of Mediation and Arbitration to help explore the issues causing their dispute. A neutral third-party mediator will help them to reach an agreement on issues such as paying back rent, or applying for rental assistance, among other issues, and will assist the parties in drafting a contract to resolve their dispute. Importantly, the new eviction diversion mediation program will only mediate cases before a court case is filed. By targeting disputes upstream of the court, our goal is that the eviction diversion mediation program will save people time and expense. Additionally, we are able to offer these mediation services remotely across the state.

Circuit Court Administrative Judge David King, who oversees the courts responsible for hearing eviction cases, noted that eviction diversion will benefit landlords, tenants, and the courts. King explained, “When parties can resolve a dispute without filing an eviction, everyone wins. Landlords save time, landlords and tenants avoid the black mark of an eviction on their records, and the courts see fewer new cases.”

King also stated that eviction diversion complements the Circuit Court’s ongoing efforts to connect landlords and tenants to rental assistance, noting that, “Eviction diversion will help landlords and tenants work together to apply for rental assistance, which can get landlords paid and keep tenants housed.”

Commissioner Taylor Caswell, Executive Director of the Governor’s Office for Emergency Relief and Recovery, applauded the new program, stating, “To date, thanks to successful partnerships all across the state, we have been able to provide approximately $60M in relief to Granite State households in need. We very much appreciate the New Hampshire Circuit Court expanding its pilot program and working with us statewide to connect Granite State families impacted by COVID-19 with the resources provided by the New Hampshire Emergency Rental Assistance Program (NHERAP).”

To request the assistance of the eviction diversion program, a residential landlord or tenant should either call the Office of Mediation and Arbitration at 603-271-6418 or send an email to evictiondiversion@courts.state.nh.us.

Additional Information:
- Note: A request for mediation does not automatically pause a landlord and tenant case. If a tenant is served with a Landlord and Tenant Writ, the tenant must file an Appearance with the court which issued the Writ no later than the “return date” listed on the Writ. If the tenant does not file an Appearance, the court may evict the tenant even if the tenant has requested mediation.
- To learn more about eviction diversion or landlord and tenant cases generally, visit the Circuit Court’s landlord and tenant website at: https://www.courts.nh.gov/our courts/circuit-court/district-division/landlordtenant.
- Landlords and tenants with questions about their specific case can call the Court’s Information Center at 1-855-212-1234.
- For more information about the New Hampshire Emergency Rental Assistance Program and to start an application, landlords and tenant can go to CAPNH.org or call 2-1-1 to be connected to their local Community Action Program, which will process their application.
- Low-income individuals who may need legal advice or assistance should contact 603 Legal Aid at: https://nhlegalaid.org/get-help or 1-800-639-5290 (weekdays, 9 AM – 1 PM).

In accordance with Supreme Court Rule 37(4)(a), the Supreme Court appoints Attorney Jesse L. Renauld-Smith to the Hearings Committee of the Attorney Discipline System, for a three-year term commencing November 1, 2021, and expiring November 1, 2024.

Issued: October 22, 2021

ATTEST: Timothy A. Gudas, Clerk of Court

Supreme Court of New Hampshire

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

Superior Court Rules – Summary Judgment

This amendment shall take effect on January 1, 2022.

Date: October 29, 2021

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

NH Supreme Court Orders

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, and upon the recommendation of the Bar Association in light of the Bar Association’s concerns regarding the public health situation, the Supreme Court authorizes the Bar Association to elect to offer a virtual practical skills course in the month of December 2021 in lieu of an in-person course. An admitted attorney’s admission to all required sessions of the virtual practical skills course offered in the month of December 2021 shall be deemed to satisfy the “personal attendance” requirement of Rule 42, XIII(c).

Issued: November 10, 2021

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

Court Rules from page 34

mit a consolidated statement of material facts will be governed by the more generous Rule 12(g)(4), which will state:

(4) Exemption for Submission of a Consolidated Statement of Material Facts. The requirement for transmission by email and filing of a consolidated statement of material facts shall automatically be excused if (i) the moving or any nonmoving party is self-represented, (ii) the moving or any nonmoving party is incarcerated, (iii) the attorney for any party certifies in an affidavit that he or she does not have access to email or the attorney for the moving party certifies in an affidavit that an opposing party’s attorney has no email address or has not disclosed his or her email address. In addition, prior to the obligation to electronically transmit and file a consolidated statement of material facts, any party may file a motion to excuse the obligation to submit a consolidated statement of facts setting forth any circumstances establishing good cause to relieve the parties’ obligations to comply with Paragraph (g) (3)(b) and (e). Good cause to excuse the requirement for a consolidated statement includes, without limitation: (1) that the process outlined herein will be unworkable due to the involvement of multiple parties in the summary judgment process; (2) that the process outlined herein will be unnecessary or unduly burdensome, as certified by the parties; (3) that the issues to be determined on summary judgment are solely issues of law and not fact; (4) that costs of compliance with this rule do not warrant its enforcement, as certified by the parties.

To fully savor all the nuances of these changes, once the leftovers are stashed, settle down with your laptop, and check out the Supreme Court’s October 29, 2021 order on the Judicial Branch website at: Order adopting amendments to Superior Court Rule 12(g) - Motions for Summary Judgment.

Elliott from page 34

make him an incredible trial lawyer will make him a fantastic judge. Why do you think it is a beneficial trait in a judge to be, as you put it, not overly focused on the law?”

Elliott said she never intended to give the impression that judges don’t need to follow the law and that she would follow the precedent faithfully and without any bias” if confirmed.

“What I intended to say about John Curran, who was my law partner and who is now on the circuit court in NH, is that he is not overly formal. I didn’t mean to suggest that he doesn’t follow the law,” Elliott said. “There are two different types of trial lawyers, as I’m sure you’ve seen, and some of them are focused...on explaining the law in a dry, borderline, pedantic way and attorney Curran was much more about connecting with the judge and the jury and the parties in the court room.”

Curran said he can’t think of a better candidate than Elliott for the position and finds it interesting that the letters written in support of her nomination were both Democrats and Republicans.

“Chuck Douglas is an ardent Republician,” Curran said. “We’re one of the few states left where bipartisanship is alive and well. It may not be as robust as it once was, but it’s what makes us special in New Hampshire and I hope that stays.”

As of Nov. 1, there were 76 vacancies out of 890 active federal judicial positions in the United States.

This amendment shall take effect on January 1, 2022.

Date: October 29, 2021

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

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, and upon the recommendation of the Bar Association in light of the Bar Association’s concerns regarding the public health situation, the Supreme Court authorizes the Bar Association to elect to offer a virtual practical skills course in the month of December 2021 in lieu of an in-person course. An admitted attorney’s attendance at all required sessions of the virtual practical skills course offered in the month of December 2021 shall be deemed to satisfy the “personal attendance” requirement of Rule 42, XIII(c).

Issued: November 10, 2021

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

Need to schedule a Mediation?

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Criminal Law

State of New Hampshire v. Steven M. Clark, No. 2019-0682
October 22, 2021
Affirmed in part and remanded.

- Whether the trial court erred in admitting evidence of the victim’s minor nephews’ change in gender identity after the sexual assaults were disclosed, in admitting evidence of the defendant’s display of pornographic images to his minor nephews around the time of the sexual assaults and in withholding some confidential records provided for in camera review?

The defendant was charged with seven counts of aggravated sexual assault, one count of attempted aggravated sexual assault and one count of felonious sexual assault. The victims were the defendant’s two minor nieces. After the sexual assaults were disclosed, the youngest victim changed their gender identity from female to male, began using male pronouns and a new name. The defendant appealed his conviction on the ground that the trial court erred in admitting evidence of the minor nephews’ change in gender identity and withholding some confidential records provided for in camera review.

The State of New Hampshire v. Daniel Davis, No. 2020-0167
October 28, 2021
Reversed and remanded.

- Whether the trial court erred in denying the defendant’s motion to suppress evidence obtained during a warrantless entry into the enrolled porch of his residence, a later warrantless entry into the interior of his residence and evidence seized during a search of his residence based on a warrant obtained based on information acquired during the two prior unlawful entries into his home?

The defendant was arrested in his home and was indicted by a grand jury on one count of possession of a controlled drug (marijuana) with an intent to sell based on part in evidence seized during a search of his residence pursuant to a search warrant. The defendant moved to suppress evidence obtained from the officers’ warrantless unlawful warrantless entry into his enrolled porch and the interior of his home and the search warrant obtained based on those unlawful entries. The trial court denied the defendant’s motion to suppress finding that the evidence seized pursuant to the search warrant was lawfully obtained because the officers’ entry into the defendant’s porch was lawful because there was no legitimate expectation of privacy in the porch and the defendant’s display of pornographic images to his minor nephews was admissible to corroborate the victim’s testimony and because the evidence described the nature of the assaults, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. The Court remanded the case for the limited purpose of the defendant’s right to make an evidentiary objection regarding the view of the inside of his home. The Court found that the defendant had a subjective expectation of privacy in the porch because he took steps to limit access to the enrolled porch by having a closed wooden exterior door and by limiting the public’s ability to view inside from the street due to windows which only occupied the top third of the porch to protect its interior from public view. The Court held that the fact that the defendant never testified that he had a subjective expectation of privacy in his porch was not fatal. The Court also found that the defendant’s expectation of privacy in the porch was not that society is prepared to recognize as reasonable as the evidence demonstrated that the defendant used the enclosed porch for recreation and storage of his home. The Court found that the defendant had both a subjective and objective expectation of privacy in the porch, and therefore, a warrant or an individual’s consent was not required for the officers to lawfully enter his porch.

NH Supreme Court Hearings Committee

The New Hampshire Supreme Court Hearings Committee is considering Joshua N. Mesmer’s Request for Reinstatement to the New Hampshire Bar. Mr. Mesmer was suspended on February 21, 2020. Anyone who wishes to comment on his request may do so in writing within twenty (20) days of the publication of this notice by sending such comments to Barbara Guay, Legal Assistant, New Hampshire Supreme Court Hearings Committee, 4 Chelten Drive, Suite 102, Concord, New Hampshire 03301 bguay@nhattyreg.org

November 4, 2021

Note: The full text of the opinion below will be available on the Bankruptcy Court’s website at www.nh.uscourts.gov.

In re Hopkins, 2021 BNI 004, issued Nov. 5, 2021 (Hood, C.J. unpublished) (sus- taining the chapter 13 trustee’s objection to the debtor’s claim of a homestead exemption under NH RSA 480:3-a on account of his deceased spouse’s interest in the homestead, as RSA 480:3-a(a)(7) allows a survivor to claim a homestead exemption on account of his ownership interest in the property pursuant to RSA 480:1).

Affirmative

At-a-Glance Contributor

Sarah E. Lavoie
Partner at Burns, Bryant, Cox, Rockwood & Durkin, Dover, NH

The New Hampshire Supreme Court seeks applications from attorneys and non-attorneys interested in serving on the Attorney Discipline System’s Complaint Screening Committee. Beginning January 1, 2022, there will be openings for two attorneys to serve on the Complaint Screening Committee for three-year terms, and one opening for a non-attorney member to serve a three-year term. The Court encourages volunteers who have not previously served on the Committees of the Supreme Court to apply.

The Committee, established by New Hampshire Supreme Court Rule (“Rule”) 37, considers and acts on requests for reconsideration filed by grievants following a decision by the Attorney Discipline Office of General Counsel not toocket a matter as a complaint. In addition, Committee members will consider and act on reports by Attorney Discipline Office staff members with respect to docketed complaints; remove from the docket matters that the Committee determines are not within the jurisdiction of the Attorney Discipline System or that do not meet the requirements for docketing; recommend that matters be docketed; and refer complaints to disciplinary counsel for further investigation and potential hearing.

The Committee members attend one meeting per month. This is a volunteer position. A complete description of the Attorney Discipline System, the role of the Complaint Screening Committee, as well as the Application to serve on the Committee, can be found on the Attorney Discipline System website: www.nhattyreg.org. Appointment of Committee members are made by the Supreme Court.

Individuals interested in being considered for appointment to the Committee should complete the Application and submit it to the Attorney Discipline Office by December 8, 2021. Applications should be mailed to the Attorney Discipline Office at the following address: NH Supreme Court Attorney Discipline Office, Attn: Kathy Cleveland, 4 Chelten Drive, Suite 102, Concord, NH 03301 or emailed to the Attorney Discipline Office at the following email address: info@nhattyreg.org. Please contact Brian Drougheagan, General Counsel, at (603) 224-5828 if you have any questions. Thank you.

US Bankruptcy Court Opinion Summary

Note: The full text of the opinion below will be available on the Bankruptcy Court’s website at www.nh.uscourts.gov.

In re Hopkins, 2021 BNI 004, issued Nov. 5, 2021 (Hood, C.J. unpublished) (sus- taining the chapter 13 trustee’s objection to the debtor’s claim of a homestead exemption under NH RSA 480:3-a on account of his deceased spouse’s interest in the homestead, as RSA 480:3-a(a)(7) allows a survivor to claim a homestead exemption on account of his ownership interest in the property pursuant to RSA 480:1).

In the Matter of Ali Morris and Dustin Morningstar
October 19, 2021
Reversed and remanded.

- Whether the trial court erred in awarding custody and school placement of a father’s biological child with the father’s ex-wife (and the child’s stepmother) because the court erred in awarding custody to the stepmother based solely upon a best interests standard when there was no finding that Father was unfit. The Court held that a best interests of the child standard could not be constitutionally applied to determinations of parental rights and responsibilities between a stepparent and a fit natural or adoptive parent. Father was never found unfit under RSA 169-C or RSA 170-c and stepmother was neither the father’s natural nor adoptive parent. The Court assumed without deciding that the
Brodie test was the correct standard to apply. Under the Brodie test, an award to a step parent or grandparent over the objection of a fit natural or adoptive parent would normally be unduly restrictive on parental rights only if the petitioning party can show by clear and convincing evidence that (1) the step parent or grandparent was the child’s best interest because of a significant psychological parent-child relationship, (2) the family unit would remain intact, and (3) there is some additional overriding factor justifying intrusion in to the parent’s rights such as a significant deviation from the plan in the dispositional orders. The Court referenced the personal relationship of mother and child, and found that the evidence was sufficient as a matter of law to satisfy all factors of the Brodie test. The Court found that the trial court was still in the best interest of the child’s adoptive parents did not neglect the child.

In re G.B., No. 2020-544 and 2020-0554
October 20, 2021
Affirmed.

• Whether the trial court erred in entering a neglect finding while also holding that the minor child’s adoptive parents did not neglect her?

The circuit court entered a finding of neglect but failed to attribute the neglect to the child’s adoptive parents. The circuit court refused to enter a finding of neglect in the child’s home after a hospitalization following the child’s physical act of aggression toward a caretaker because they did not feel safe with the child in their home. The child was removed from DCYF and ordered the child to be placed in foster care temporarily while DCYF sought out a residential placement for the child. At the dispositional hearing, the trial court declined to order reunification as the primary case plan goal but ordered conditions that would allow the child to meet before the child could be returned to their custody and ordered guardianship with an appropriate party as the concurrent plan without identifying a prospective guardian. DCYF appealed the circuit court’s order arguing that the court erred in entering the dispositional order allowing the court to enter a neglect finding without assigning that neglect to any action taken by the child’s adoptive parents. The court found that the child’s adoptive parents did not neglect the child when they refused to take her home following her discharge from the hospital. CASA, the child’s appointed Guardian Ad Litem, and DCYF together also argued that the circuit court erred by failing to identify legally permissible primary and concurrent case plans. CASA also argued that the circuit court erred when ordering the child to be placed in an out of state residential treatment facility in violation of less restrictive options in New Hampshire. The Court held that the circuit court erred as a matter of law in finding that the child was neglected by the child when they refused to return her from the hospital. The Court did not address DCYF’s argument that the court erred by failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred as a matter of law in finding that the child was neglected by the child when they refused to return her from the hospital. The Court did not address DCYF’s argument that the court erred by failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred in failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred in failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred in failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred in failing to identify legally permissible primary and concurrent case plans.

The State Agency’s finding of neglect was not supported by the evidence. The court found that the child’s adoptive parents did neglect the child when they refused to take her home following her discharge from the hospital. CASA, the child’s appointed Guardian Ad Litem, and DCYF together also argued that the circuit court erred by failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred as a matter of law in finding that the child was neglected by the child when they refused to return her from the hospital. The Court did not address DCYF’s argument that the court erred by failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred in failing to identify legally permissible primary and concurrent case plans. The Court held that the circuit court erred in failing to identify legally permissible primary and concurrent case plans.

The State Agency’s finding of neglect was not supported by the evidence.

Right to Know Law

Tejasinha Sivalingam v. Frances Newton et al., No. 2020-0216 and No. 2020-0352
October 1, 2021
Affirmed in part and Reversed in part.

• Whether the trial court erred in granting summary judgment to the defendants and in denying the defendant’s motions for judgment on the pleadings and attorney’s fees?

The plaintiff sued the town of Ashland Board of Selectmen for injunctive relief and two of its current selectwomen. The court found that the Board was not entitled to summary judgment and that the plaintiff was entitled to preliminary injunctive relief against the Board. The court found that the Board had exceeded its authority to make the 2017 reassessment when the Board assessed the property at $86,549,400. Four years later, in 2017, the Board decided that they had severely undervalued the property and reassessed it at $134,149,500. The plaintiff argued that there were no physical, zoning, or ownership changes in the property to justify the increase. The Board argued that there was no evidence to show that the property was misvalued at a meeting that the Board had previously held. The plaintiff individually for their dismissal. The Court held that the taxpayers failed to prove that the omission of their signatures and certifications on their tax abatement applications was due to reasonable cause and not willful neglect.

The Court agreed with the trial court which found that the taxpayers had not met their burden of proof to establish reasonable cause or due diligence. The taxpayers’ petition for review of the Board of Tax and Land Appeals (BTLA) erred in dismissing the taxpayer’s appeal in finding that the taxpayers did not meet their burden of proof to establish reasonable cause or due diligent. The Court dismissed the petition agreeing with the defendants’ motion to dismiss because the plaintiff’s claim failed to state a claim upon which relief could be granted by the trial court. With regard to the defendants’ motion for attorney’s fees, the Court held that the motion for judgment on the pleadings should have been granted by the trial court.

The plaintiff argued that the plaintiff had an easement in a current road, which was formerly a class V highway, with a new private road. The current road abuts the Settlers’ Green outlet shopping center and operates the North Conway Grand Hotel which abuts the Settlers’ Green outlet shopping center.

The plaintiff argued that the plaintiff had an easement in a current road, which was formerly a class V highway, with a new private road. The current road abuts the Settlers’ Green outlet shopping center and operates the North Conway Grand Hotel.
The plaintiff in this action brought a claim against an insurance company after setting its in- surance policy period that expired before obtaining an assignment of the insured’s rights under the policy. The insurer removed the case to federal court for jurisdiction.

The plaintiff moved to remand, arguing that its claim is a “direct action” within the meaning of 28 U.S.C. § 1332(a)(4) and, therefore, the insurer must be deemed to be a citizen of New Hampshire where its insured was based. The court denied the motion, holding that a “di rect action” within the meaning of the diversity statute, considering that the plaintiff is asserting rights against the insurer that it acquired by assignment from the insured. 2 pages. Judge Paul Barbadoro.

WORKPLACE DISCRIMINATION & HARASSMENT

10/25/2021 Inesencio Baez Samora v. UPS-USCS

Inesencio Baez Samora sued UPS Supply Chain Services for workplace discrimination and harassment in violation of New Hampshire and federal law. UPS moved to dismiss the complaint because Samora did not exhaust his administrative remedies under Title VII and New Hampshire’s Law Against Discrimination. Samora claimed that UPS discriminated against him because he is a Mexican American and since 1983, was barred by the statute of limitations.

The court agreed and dismissed the complaint. Six pages. Judge Paul Barbadoro.
ASSOCIATE ATTORNEY – Seeking Part Time Associate for law firm practicing Criminal Defense Throughout New Hampshire. Main office in Manchester. Position includes handling full caseload of client intake through trial. Must have good client relationship skills and be able to travel to numerous courts. Must be admitted to practice in N.H. Willing to train ideal candidates. Interested attorneys should send cover letter and resume to nhanhSubmit@gmail.com.

ASSOCIATE ATTORNEY – Braucher & Arnam, PLLC, seeks an associate attorney, ideally for our Laconia, NH office; remote work arrangement possible as we work in our North Andover, MA office. Business litigation experience preferred. Must be licensed in NH - MA license helpful, 3-5 years of experience. Commitment: commercial; with experience; health benefits and 401(k) offered. Please send cover letter, resume and writing sample to wamann@bala-lawgroup.com.

REAL ESTATE PLANNING AND REAL ESTATE ASSOCIATE – Concord firm seeking lawyer with 5+ years experience handling closings, purchase and sale agreements, leases, financing and title matters. Flexible arrangement available (of counsel, associate, remote work). Health insurance and 401(k) available for full-time employees. Please contact Anne-Maire Guerin at amguerin@allonawolfcōm, 4 Park Street, Concord, NH 03301 or 603-333-2210.

REAL ESTATE ASSOCIATE ATTORNEY – Concord firm seeking lawyer with 5+ years experience drafting wills, trusts and powers of attorney, as well as handling titles and closings. Flexible arrangement available (of counsel, associate, remote work). Health insurance and 401(k) available for full-time employees. Please contact Paul Allison at paul@allonawolfcōm, 4 Park Street, Concord, NH 03301 or 603-333-2210.

LITIGATION ATTORNEY – Getman, Schultz, Steere & Paul, P.A., seeks a full-time attorney with preferably 2 years of litigation experience, and insurance defense familiarity. Must be admitted to the NH Bar with admission to the Maine, Massachusetts or Vermont Bar a plus. Please email cover letter, writing sample, resume and references to Administrators at law@gssp-lawyers.com. All inquiries held in strict confidence.

LITIGATION ATTORNEY – Getman, Schultz, Steere & Paul, P.A., seeks a part-time attorney with preferably 2 years of litigation experience, and insurance defense familiarity. Must be admitted to the NH Bar with admission to the Maine, Massachusetts or Vermont Bar a plus. Please email cover letter, writing sample, resume and references to Administrators at law@gssp-lawyers.com. All inquiries held in strict confidence.

ATTORNEY – Established law firm seeks an attorney licensed in New Hampshire. Areas of law include commercial and residential lending, probate and business counseling. Candidate must have excellent communication skills, be detail oriented, organized, and self-motivated. All replies are confidential. Salary commensurate with experience. Qualified candidates should forward a resume, cover letter and references to J. Kel & L. Couturier, 681 Walls Road, Rye, NH 03870 or jkel@lycosaltd.com.

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

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

DIRECTOR OF ACADEMIC SUCCESS AND PROFESSOR OF LAW - The University of New Hampshire Franklin Pierce School of Law (UNH Franklin Pierce), a national leader in legal education and active participant in the legal community in New England and beyond, invites applications for the position of Academic Success Director and Professor of Law, to begin in August 2022. The candidate will be a practicing attorney. The position is tenure track and the candidate will have an opportunity to teach both at the law school and the School of Law (UNH Franklin Pierce), a national leader in legal education and active participant in the legal community in New England and beyond.

Professor of Legal Writing - The University of New Hampshire Franklin Pierce School of Law (UNH Franklin Pierce), a national leader in legal education with a commitment to inclusion, diversity, and quality engagement for all, seeks to hire two professors to teach in the JD Legal Writing Program to begin in August 2022. The candidates will be a full-time faculty member involved in teaching and faculty governance. If interested, please apply to Professor Roger Allan Ford, co-chair of the Faculty Appointments Committee, by submitting a Resume, Cover Letter, Diversity Statement, and a list of three references (https://jobs.unh.edu/postings/43496). Review of applications will begin immediately.

PROFESSOR OF LEGAL WRITING - The University of New Hampshire Franklin Pierce School of Law (UNH Franklin Pierce), a national leader in legal education with a commitment to inclusion, diversity, and quality engagement for all, seeks to hire two professors to teach in the JD Legal Writing Program to begin in August 2022. The candidates will be a full-time faculty member involved in teaching and faculty governance. If interested, please apply to Professor Roger Allan Ford, co-chair of the Faculty Appointments Committee, by submitting a Resume, Cover Letter, Diversity Statement, and a list of three references (https://jobs.unh.edu/postings/43496). Review of applications will begin immediately.

LEGAL SECRETARY – Nixon Peabody LLP seeks a full-time Litigation Practice Assistant (Legal Secretary) to join our busy Manchester office. To apply directly, please visit https://www.nixonpeabody.com/careers.
Labor & Employment Department Attorney

Our Labor & Employment Practice Group is seeking to hire a Department Attorney to join our Boston, Providence or Manchester office.

The ideal candidate will have at least four years of experience in employment litigation and other aspects of labor and employment law.

Our full-service L&E practice delivers creative, specialized, and real-world solutions to keep our clients’ businesses moving forward. Our diverse team of more than 60 labor and employment attorneys cover every angle of the workplace: from safety regulations to employee use of social media. Whether it’s a routine hire gone awry, wage and hour class actions, or a precedent-setting labor dispute, Nixon Peabody has it covered.

At Nixon Peabody, our priority is to attract, retain, and promote talented individuals who have an array of racial, ethnic, social, economic, religious, and personal backgrounds, genders and sexual orientations. Therefore, we encourage talented individuals with diverse backgrounds and experiences to apply.

Please visit our website at www.nixonpeabody.com/careers to view and apply.

Nixon Peabody LLP is an Equal Opportunity / Affirmative Action Employer. Disability / Female / Gender Identity / Minority / Sexual Orientation / Veteran.

Corporate Associate

Our Corporate Practice Group is seeking to hire a mid-level associate to join our Manchester, NH office.

The ideal candidate will have two to six years of experience working on complex mergers and acquisitions and other major business transactions.

NP is an industry leader in corporate transactions. Our firm has over 200 business lawyers who work together to handle the full range of mergers, sales, acquisitions, investments, joint ventures, licensing, and strategic transactions for both private and public clients – from structure and strategy to negotiation and documentation.

At Nixon Peabody, our priority is to attract, retain and promote talented individuals who have an array of racial, ethnic, social, economic, religious, and personal backgrounds, genders and sexual orientations. Therefore, we encourage talented individuals with diverse backgrounds and experiences to apply.

Please visit our website at www.nixonpeabody.com/careers to view and apply.

Nixon Peabody LLP is an Equal Opportunity / Affirmative Action Employer. Disability / Female / Gender Identity / Minority / Sexual Orientation / Veteran.

Legal Coordinator

NH Department of Health & Human Services
Position Number: # 16086
Salary Range: $58,636.50 to $83,869.50

Duties include: Serves as client counsel to the DHHS providing legal advice to the DHHS on a wide-range of legal issues. Functions as general counsel, administers, and coordinates legal activities for the Department in various program areas including administration of public assistance programs, elderly and adult services and human resources. This position also provides primary legal resource coverage as directed. The person in this position works under the general direction and supervision of the Chief Legal Counsel.

Requirements: J.D. from a recognized law school, N.H. Bar membership, a driver’s license and/or access to transportation for statewide travel and five years’ experience in the practice of law.

How to APPLY: Please go to the following website to submit your application electronically through NH 1st: http://das.nh.gov/jobsearch/employment.aspx. A paper application may be sent to: New Hampshire Dept. of Health and Human Services, 129 Pleasant Street, Concord, NH 03301. Please reference the position number that you are applying for: #16086 Legal Coordinator. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE

For questions about these positions please contact Frank Nachman, Chief Legal Counsel at (603) 271-9228.

Associate

Portsmouth – Growing Seacoast law firm seeks associate attorney with 3-5 years of experience handling civil litigation and/or business matters. Position requires business formation and transaction experience (real estate helpful), as well as experience in drafting pleadings, discovery and court appearances. Excellent interpersonal skills to develop client relationships, outstanding writing skills, attention to detail and ability to manage a busy and varied practice. New Hampshire Bar Admission required; Maine or Massachusetts admission a plus. Compensation commensurate with experience.

Please send resume via email to: Kim Memmesheimer (kmemmesheimer@hpgrlaw.com) Hoefl, Phoenix, Gormley & Roberts, PLLC.
**Assistant City Attorney**
The City of Keene is seeking a highly motivated, self-starter to serve as Assistant City Attorney! This position will serve as a member of the City’s legal team, with a primary responsibility for assisting the City police department, City Attorney and City Clerk. Salary range from $73,365-$92,050 annualized, with an attractive benefits package. Qualified applicants should be a graduate of an accredited law school with a Juris Doctorate and admitted to the New Hampshire Bar, and have at least 1-3 years of relevant experience. Applications will be accepted until an adequate pool of candidates is reached. For a full job description and to apply visit: https://keene nhgov jobs. EOE.

**MERRITT & MERRITT – VT**

**Corporate Paralegal**
Merritt & Merritt seeks an experienced & intelligent individual to fill full-time paralegal position. Tasks include organization of bus. entities, maintaining corp. records, related filings, patent, trademark & copyright filings/ calendaring, and generally assisting the Firm’s lawyers with their transactions. Candidates for this position preferably have a 4-year degree & prior work experience. Successful candidates must have a strong work ethic, be well organized, detail oriented, and possess excellent oral/written communication skills.

Prior paralegal experience is a plus but not required. Candidates must be proficient with Microsoft products. Please send resume & references to ldissinger@merritt-merritt.com.

**Rath Young Pignatelli**

**LITIGATION ATTORNEY**
Rath, Young and Pignatelli, P.C. seeks to add an associate attorney to its busy and growing commercial litigation team. Candidate should have 3 or 5 years of litigation experience, including drafting and arguing motions and pleadings before state and federal courts, taking depositions and other discovery, and pre-trial opportunities to grow your career. The candidate may also have the opportunity to be involved in the Firm’s other practice areas including Health Care, Financial Institutions, Labor and Employment, and Taxation. Send resume and letter of interest to Diane Vlahos, Director of Operations, at djv@rathlaw.com. Please send resume & references to djv@rathlaw.com.

**Douglas, Leonard & Garvey, P.C.**

**Family Law Attorney**
Douglas, Leonard & Garvey, P.C. has the opportunity for a family law attorney with 3+ years’ experience in family law and divorce cases to join our family law practice. Douglas, Leonard & Garvey offers a workplace where you are supported in a team-based environment.

Douglas, Leonard & Garvey offers a competitive compensation and benefits package including health insurance, life and disability insurance, and 401(k).

Please submit your cover letter and resume to mail@nlawoffice.com or by mail to Hiring Partner, Douglas, Leonard & Garvey, P.C., 14 South Street, Concord, NH 03301. All inquiries will be held in strict confidence.

**Administrative Assistant**
Rath, Young and Pignatelli, P.C. is seeking an experienced Administrative Assistant to support the attorneys who work on a wide range of tax, financial, banking and insurance matters. The ideal candidate will possess the intellectual curiosity to understand the legal work that is being performed and anticipate support needs proactively. Excellent organizational skills, ability to prioritize, professionalism with clients and maintaining confidentiality are crucial. EXPERIENCE: Associates degree and some college preferred. Experience in business administration or a professional services environment with law firm experience beneficial. See website at www.rathlaw.com for a detailed description of the position. Send resume and letter of interest to Diane J. Vlahos, Director of Operations, at djv@rathlaw.com.

**MERRITT & MERRITT – VT/NH**

**Corporate/Securities Associate**
Boutique B-Corp corporate law firm located on the waterfront in Burlington, VT seeks an experienced corporate/securities associate to join our team. The ideal candidate has 3+ years of hands-on general corporate and private and public securities law experience, including drafting public company filings, structuring mergers, acquisitions and other sophisticated corporate transactions, and commercial contract negotiation and drafting. Must be able independently to advise clients and their financial and accounting advisors on strategic transactions. The right candidate will possess a genuine interest in business and economic activity demonstrated through participation in multiple business-related organizations and/or legislative initiatives on behalf of clients. Must be exceptionally client-focused and thrive in a face-paced, entrepreneurial environment. The right candidate will find this position an exceptional opportunity for growth. Ability to waive in or take the Vermont bar exam preferred, but will consider candidates working remotely.

If you are interested in expanding your career in a beautiful city and state with outstanding cultural and recreational activities, please contact Linda Dissinger with a cover letter and resume: ldissinger@merritt-merritt.com.

**Rath, Young and Pignatelli, P.C.**

**Real Estate Paralegal**
Rath, Young and Pignatelli, P.C. is seeking an associate attorney with 3 to 5 years of experience as a corporate lawyer involved in real estate transactions, entity formations and structuring, mergers and acquisitions, bank lending, contract drafting and negotiation, and other skills normally expected of a corporate/transactional attorney. Visit our website at www.rathlaw.com for a more detailed description of the position. Send resume, letter of interest and writing sample to Diane Vlahos, Director of Operations, at djv@rathlaw.com. The firm will not accept the submission of candidate resumes from search firms without a signed fee agreement.

**Associate Attorney Position**
LITTLETON, NH

**Live, Work & Play in New Hampshire’s White Mountains**
Ward Law Group is seeking an associate attorney for our Littleton office. The ideal candidate will have at least 3 years of experience in one or more of the following practice areas: civil, criminal, estate planning and family law. The associate attorney will be working with an experienced attorney looking to reduce his case load. We are willing to train the right person, but our ideal candidate will have strong leadership and management skills as the expectation is that this attorney will take on a management role over the next few years.

This position offers competitive compensation and benefits commensurate with qualifications and experience. Interested candidates should submit a cover letter and resume to ljuszczak@wardlawnh.com.
RECEPTIONIST/Legal Administrative Assistant - Concord, NH

McLane Middleton is looking to hire an experienced receptionist to serve in a dual role. This individual is often the first person people interface with on behalf of the firm and proactively promotes the firm’s client-first approach.

Responsibilities include, but are not limited to: opening/closing the office daily, greeting/routing callers and visitors, scheduling and maintaining appointments and conference room calendars, answering questions and addressing issues, processing cold calls and following internal policies and intake procedures, performing administrative/clerical and meeting support (including food and beverage needs), daily conference room and kitchen organization including stocking and maintenance of supplies and cleaning along with other tasks as assigned. Strong interpersonal skills and prior receptionist experience a plus. Commitment to teamwork and interdepartmental flexibility a must. Top-notch technical skills with proficiency in MS office products.

High School Diploma or equivalent with 3-5 years of experience working in a professional office environment preferred. Proven ability to operate with discretion and tact.

LEGAL ADMINISTRATIVE ASSISTANT(S) – CORPORATE – REAL ESTATE - TRUSTS AND ESTATES - ADMINISTRATIVE LAW

Several excellent opportunities in our Manchester office for Legal Administrative Assistants. Areas of focus include the firm’s Corporate Department, Real Estate Department, Trusts and Estates Department, and Administrative Law Department. Ideal candidate(s) will have previous legal secretarial experience and specific experience in any of the above mentioned practice areas.

Excellent technical skills and proficiency with Microsoft Office is necessary. Must have strong organizational skills, proofreading skills, attention to detail, ability to communicate with clients in a professional manner, ability to handle sensitive and confidential matters and the ability to work independently, as well as part of a team.

TRUSTS & ESTATES PRACTICE ANALYST – MANCHESTER, NH

The Trust Services Practice Analyst supports the firm’s Trusts and Estates Department by coordinating business critical tasks and data management with the Department’s Trust Officers. Key responsibilities include serving as the primary gatekeeper of service requests and updates to and from Trust Services, logging tasks and keeping records of completed actions in accordance with standard procedures, along with other related projects assigned by the Senior Trust Officer. Additionally, operational responsibilities include reviewing and processing complex trust instruments prior to vaulting, entering and maintaining data in the Department’s primary practice tracking system, attending to long-term projects in support of the modernization of practices and other special projects. Must have a strong attention to detail, the ability to follow detailed procedures, possess solid work ethic, work well in a fast paced environment, and the ability to support the Department’s exceptional level of client service and responsiveness. This position is ideal for a professional seeking to focus on trust administration services or for a recent paralegal graduate who is highly interested in a career in Trust Services with a potential growth path into a Paralegal or Assistant Trust Officer.

LEGAL ADMINISTRATIVE ASSISTANT (float) – MANCHESTER, NH

McLane Middleton is seeking a full time experienced Legal Secretary/Administrative Assistant for our Manchester, NH office. This float position requires excellent technical skills, specifically in Microsoft Office. Strong organization and communication skills, ability to think outside of the box and the ability to work independently as well as part of a team. In this position, said candidate would have the ability to work in numerous practice areas throughout the firm. Position will also involve other administrative tasks. Prior Legal Secretarial and/or Paralegal experience is a must.

ACCOUNTS PAYABLE SPECIALIST – MANCHESTER, NH

McLane Middleton Professional Association, is seeking an Accounts Payable Specialist. The Accounts Payable Specialist will report to the Director of Finance and the Accounting Supervisor and will be responsible for the accounts payable processing cycle including: invoices, expense reimbursements, client disbursement payments, corporate cards, responding to employee and vendor requests, opening and distributing accounts payable mail and 1099 reporting. Other responsibilities will include assisting the Accounting Team with other projects.

The individual will work with all levels of firm personnel and must exercise discretion in executing essential functions and be able to work independently, following through on assignments with minimal direction.

Qualifications include an Associate’s Degree in Accounting and a minimum of three (3) years of accounting experience. Strong problem-solving skills and an exceptional work ethic as well as excellent verbal, written and interpersonal communication skills are essential. Experience using a sophisticated accounting system and proficiency with Microsoft Office, especially Excel is required. Must have the ability to multi-task and meet deadlines.

McLane Middleton offers competitive compensation and a comprehensive benefits package.

Qualified applicants should direct resume and cover letter to: Pamela Ouellette, Director of Human Resources, pamela.ouellette@mclane.com.

COMMERCIAL REAL ESTATE ATTORNEY – MANCHESTER, NH

McLane Middleton is seeking a commercial real estate attorney with 10+ years of experience for the Manchester, NH office. Admission in Massachusetts is a plus. Focus is on commercial financing and purchases; experience in land use and title matters will be helpful. The successful candidate must possess superior academic credentials, communication and writing skills.

CORPORATE ATTORNEY – MANCHESTER, NH

McLane Middleton is seeking a corporate attorney with at least 4 - 5 years of relevant experience for our Manchester, NH office. The successful candidate must have transactional experience and superior academic credentials, communication and writing skills.

TRUSTS & ESTATES ASSOCIATE – MANCHESTER, NH

McLane Middleton has an excellent opportunity for an associate based in our Manchester, New Hampshire office. This candidate should have a strong academic record and excellent written and oral communication skills with a focus on estate planning, tax planning, and trusts and estates administration.

PATENT ATTORNEY – MANCHESTER, NH

McLane Middleton is seeking an experienced patent attorney (5+ years) for our Manchester, NH office either as an employee or on a contractual basis. Ideally, this individual will have an existing client base with a focus on patent drafting and U.S./foreign prosecution experience. Prefer technical expertise in the areas of biotechnology, chemistry, materials science software and/or electrical.

McLane Middleton presents an opportunity for professional development and personal satisfaction in a fast-paced and stimulating work environment. Competitive compensation and benefits package offered.

Qualified applicants should direct resume and cover letter to: Jessica Boisvert, Attorney Hiring Coordinator, jessica.boisvert@mclane.com.

CORPORATE PARALEGAL

McLane Middleton has an excellent opportunity for a full-time Corporate Paralegal with experience in entity formation, business transactions, and corporate governance. Knowledge of SOS, IRS, and UCC filings along with keen attention to detail and the ability to work independently are required. Ability to manage multiple assignments and projects is essential. Familiarity with corporate databases and data rooms are additional strengths. Candidates must have at least an associate’s degree with paralegal studies emphasis, a Bachelor’s Degree from an ABA approved paralegal program is preferred but not required. Minimum of 3 years’ experience required. Certification from NALA or NFPA is a plus. We offer competitive salary and benefits. Position will be based in Manchester, NH or Woburn, MA.

TRUSTS AND ESTATES ADMINISTRATION PARALEGAL

McLane Middleton has an excellent opportunity for an experienced Trusts and Estates Administration Paralegal. We are seeking an individual with a broad base of experience including probate and trust administration, working knowledge of the Probate Court rules and procedures and probate accountings, Federal gift and estate tax returns, and familiarity with trust accounting computer programs. Ideal candidate will be a self-starter, able to work independently and have previous paralegal experience in the administration of trusts and estates, including the preparation of U.S. Estate Tax Returns (Form 706). Candidates must have at least an Associate’s Degree with paralegal studies emphasis, Bachelor’s Degree from ABA approved paralegal program preferred. Certification from NALA or NFPA is a plus.

Qualified applicants should direct resume and cover letter to: Pamela Ouellette, Director of Human Resources, pamela.ouellette@mclane.com.
Assistant County Attorney
Sullivan County
The Sullivan County Attorney’s Office is currently seeking innovative and creative attorneys with an interest in public service and a desire to serve their community. Multiple Opportunities are available.

Essential Job Responsibilities include:
- Working with news media when appropriate
- Provides advice and guidance to local law enforcement during non-office hours
- Represents the Sullivan County Attorney’s Office on other boards or committees as determined by the County Attorney
- Collaborates with community and other local government agencies
- Maintains a professional demeanor and exhibits good judgment
- Assists with the management of the office

We offer a competitive salary and benefits package that includes health, dental and life insurance, as well as a generous time off package.

Submission Requirements:
- Cover letter
- Resume

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. Please indicate job title in subject line.

LITIGATION ASSOCIATE
Manchester law firm has an immediate opening for an experienced litigation associate to join our team. The successful candidate will have 3-5 years of experience in personal injury and be a member in good standing of the NH Bar. Experience in NH workers’ compensation is a plus but not required. We are looking for a results-oriented self-starter with the ability to work independently and collaboratively with our team.

We offer a competitive salary and benefits package including health insurance, flexible spending account, generous paid time off, and 401(k) with employer match. For confidential consideration, please direct resumes to nhassociateatty@gmail.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.
ATTORNEY OPENINGS

Sulloway & Hollis, PLLC, continues to grow our regional practice, with opportunities for talented associates with three to five years’ experience to join our Trusts and Estates and Medical Malpractice 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. Current openings include:

**Trusts & Estates** - At our Firm, we assist clients with the important decisions involved in protecting their families and preparing for the future. We are seeking Associate Attorney level candidates for our Concord, NH location. 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.

**Medical Malpractice** - For more than a half-century, our Firm has been a leader in medical malpractice defense, hospital and physician advocacy, and health care litigation. Our lead attorneys in this area have decades of experience representing hospitals, physicians, professional practice groups and other health care providers and medical institutions across New England. We are seeking Associate Attorney level candidates to join our team in our Concord, NH location.

Qualified applicants should submit resume and cover letter to: Jennifer L. Iacopino, Human Resources Manager, jiacopino@sulloway.com
Legal Assistant (Immigration Law)

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time Legal Assistant in their Manchester, NH office responsible for supporting attorneys who practice immigration law.

Contributions and Responsibilities

• Field phone calls in English and Spanish, addition to other languages
• Conduct basic prospective client intake
• Open, manage, and close files
• Manage attorneys’ calendars
• Monitor filing deadlines
• Obtain documents, domestically and internationally
• Answer phones
• Translate oral and written communications
• Communicate with clients, agencies, courts, other parties

Qualifications

• Must be fluent in Spanish and English
• Must have excellent communication skills via email, phone, and in person
• Must be highly organized
• Must pay close attention to detail, have the ability to multi-task, thrive in a fast-paced work environment, and possess strong proofreading skills
• Competency in Microsoft applications including, Word, NetDocuments, Centerbase, Outlook, Excel, Adobe, scanning and maintaining electronic files
• Accurate filing and copying

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

Applicants must possess a high school diploma or equivalent and a minimum of 1 – 3 years of legal assistant or comparable office experience. The ability to work independently under time pressure and prioritize multiple tasks is required. We look forward to welcoming someone who takes pride in their work, is enthusiastic, and will thrive in a fast-paced, nurturing, positive environment. Experience in immigration law is a significant plus.

Shaheen & Gordon presents a pleasant, supportive, challenging, non-smoking work environment. Salary commensurate with experience, with excellent benefits including a 401(k) Plan. Please email your cover letter, resume and references to recruiting@shaheengordon.com.

In addition, excellent secretarial skills, the ability to multi-task and work independently and under pressure, communicate clearly, as well as being organized and able to prioritize is required. Attention to detail and proofreading skills are a must have. We look forward to welcoming someone who takes pride in their work, is enthusiastic, flexible and who will thrive in a fast-paced environment. Experience is required.

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

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

No phone calls or agencies please. EOE

Legal Intake Specialist

Shaheen & Gordon is seeking full-time Intake Specialists to join our team. We are seeking energetic people with outstanding customer service skills. The intake specialist is often the first point of contact with our firm, so candidates must be understanding and compassionate.

Essential Duties and Responsibilities

• Respond to live calls and emails from potential new clients and call back potential new clients to learn about their situation and provide information about the firm.
• Conduct phone and occasional in-person interviews of the potential new client to learn about their situation and provide information about the firm.
• Communicate with attorneys about potential new clients and outside referrals
• Record information received from potential clients

Job Requirements

• Experience in a legal setting preferred, but not required. We are willing to train the right candidate.
• Excellent Communication Skills – written and verbal, with previous telephone and office service experience a plus.
• Prior data entry experience helpful.
• Basic skills and experience with Outlook, Word, Excel and a willingness to learn
• Excellent attention to detail, including spelling.
• Highly organized and able to work independently and assure client confidentiality.

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

Candidates must be compassionate, reassuring, patient, empathetic and have a positive team first attitude. The ability to work independently, under time pressure and prioritize multiple tasks is required. We look forward to welcoming someone who takes pride in their work, is enthusiastic and who will thrive in a fast-paced environment.

Shaheen & Gordon presents a pleasant, supportive, challenging, non-smoking work environment. Salary commensurate with experience, with excellent benefits including a 401(k) plan.

Please email your cover letter and resume and recruiting@shaheengordon.com.

Education/Experience

• High School diploma or equivalent required.
• Have at least 1 year experience in an office environment

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

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No phone calls or agencies please. EOE

Personal Injury Legal Assistant

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a Personal Injury Legal Assistant responsible for supporting trial attorneys in State and Federal Court in their Dover, NH office. The ideal candidate will have at least 3 to 5 years’ experience. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

Responsibilities

• Management of Personal Injury Files
• Preparation of general correspondence
• Preparation of Motions and Objections
• Requesting Medical Records
• Organization and review of Medical Records
• Have solid knowledge of Court Rules and all discovery deadlines
• Have NH Superior Court and U.S. District Court filing experience
• Strong computer skills, Microsoft Office, Outlook, Excel, Adobe, Centerbase, NetDocuments, scanning and maintaining electronic files
• Must have excellent communication skills via email, phone, and with clients, court staff and opposing counsel
• Must be highly organized with an ability to prepare case files for attorneys to use at court hearings

In addition, excellent secretarial skills, the ability to multi-task and work independently and under pressure, communicate clearly, as well as being organized and able to prioritize is required. Attention to detail and proofreading skills are a must have. We look forward to welcoming someone who takes pride in their work, is enthusiastic, flexible and who will thrive in a fast paced environment. Experience is required.

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Receptionist/Clerical Assistant (Bilingual English/Spanish)

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time Receptionist/Clerical Assistant to work in the Manchester, NH office, working Monday through Friday 8:30am – 5:30pm. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently. Being fluent in Spanish would be beneficial, but not a requirement.

Responsibilities

• Greet clients and maintain the reception area
• Open and distribute incoming mail
• Take the mail at the end of the day
• Order all office supplies
• Requesting medical records and bills
• Organization of medical records and bills
• Assist legal assistants/paralegals with personal injury files

Required Skills/Abilities

• Must have excellent phone skills, inter-office
• Must have excellent organizational skills
• Must have excellent typing skills
• Must have computer skills using Microsoft Word/Outlook, Excel
• Must have strong attention to detail and be able to multi-task
• Must be able to meet deadlines
• Must have a professional and friendly attitude

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

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

Junior Business Law Associate | Burlington, VT
We are looking for a junior associate to join our dynamic corporate/commercial practice. The ideal candidate would have a strong interest and aptitude in business transactions. DRM’s business law group is engaged in a wide variety of transactions locally, nationally and internationally, including debt and equity financing transactions, sales of businesses, acquisitions, intellectual property transactions and joint ventures. The ideal candidate has 1 to 5 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 PLLC seeks an experienced and knowledgeable 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 ESOs, B-corps or other focused practices would be highly valued. Apply here.

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.

ATTORNEY

The Office of the Merrimack County Attorney is currently seeking a highly motivated attorney to fill a full time Assistant County Attorney position.

SEE JOB DESCRIPTION FOR ADDITIONAL DETAILS: https://www.governmentjobs.com/careers/Merrimack/classspecs

REQUIRED EDUCATION & EXPERIENCE: Candidate should have at least 5 years of experience litigating criminal cases in District Court and/or Superior Court. Felony cases preferred. Applicant must have Juris Doctor from an accredited law school and be a member in good standing of the NH Bar Association.

ADDITIONAL ELIGIBILITY QUALIFICATIONS: Background check will be required of all conditional hires.

APPLICATIONS MAY BE FILED ONLINE AT: http://www.merrimackcounty.net Position #2021-00065

Municipal Services Counsel (Attorney)

The New Hampshire Municipal Association (NHMA), a nonprofit, nonpartisan, membership organization, is looking for a dynamic, highly motivated attorney with an interest in local government to fill the position of Municipal Services Counsel.

The Municipal Services Counsel’s primary role is providing legal advice and training to local officials in New Hampshire’s cities and towns as part of NHMA’s Legal Services team, but the position also serves as an ancillary role to the Government Affairs team. This position presents a unique opportunity to engage with and support local officials, while following the state legislative process and its impact on local government. Prior experience with municipal law is a plus, but is not required.

NHMA offers an excellent benefits package. The position reports directly to the Executive Director. This is a salaried, exempt position.

Visit www.nhmunicipal.org to learn more about the services the New Hampshire Municipal Association provides.

PROFESSIONAL QUALIFICATIONS

• J.D. Doctorate degree
• Member of the New Hampshire bar in good standing. (Must be licensed in the State of New Hampshire prior to date of hire.)
• 1 – 5 years of experience as an attorney required. Newly admitted attorneys with relevant experience encouraged to apply.
• Strong public speaking ability required.
• Ability to represent NHMA to members and legislators and other stakeholders.
• Strong interpersonal/communication skills and an ability to work both independently and in teams.
• Strong motivation and an inquisitive mind.
• Strong organizational skills.
• Prior work with local governments, either in a professional or volunteer capacity, is a plus.

For the full job description and information on how to apply, please go to https://www.nhmunicipal.org/classifieds/municipal-services-counsel

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Riverstone, a global insurance industry leader specializing in the acquisition and management of insurance portfolios, has created a team tasked with changing the future of national mass tort and pollution litigation through thoughtful, creative solutions to the problems facing the industry. Located in Boston, Massachusetts, Riverstone is looking for Claims Analysts to join the team.

Prospective team members should:

- Be creative, effective advocates with excellent oral and written communication skills
- Be comfortable challenging the status quo for the better
- Prefer to work in a collaborative, multidisciplinary team toward a common goal

Successful candidates will:

- Negotiate directly with attorneys, policyholders, and co-counsel representatives
- Observe and participate in court proceedings with defense attorneys
- Analyze and use data to drive better results
- Evaluate complex coverage and liability issues that impact the litigation
- Identify potential exposures to the company and report to senior-level management on significant pending matters
- Devise and implement creative strategies aimed at improving long-term results for all stakeholders, including policyholders, affiliate insurers, and injured claimants
- Receive individualized training to:
  - Develop claim specific skills and knowledge
  - Understand and evaluate complex coverage issues
  - Implement and integrate those skills to impact the course of litigation

Experience in pollution, mass tort litigation or insurance coverage is preferred but not required.

Riverstone offers an exceptional health benefits program, paid maternity leave, company matching 401(k), tuition reimbursement, employee stock purchase plan and additional site specific perks (on site gym, yoga classes, personal trainer and more). For additional information, and to apply online, please visit www.trg.com/join-us.
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