

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.



NHPD Executive Director, Randy Hawkes.

vices (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, which provides funding for the Public Defender, the Indigent Defense Fund and the Contract Attorney Program, said the council recently received \$900,000 in federal funding for the next two years that can be used for lateral hires.

“Randy has been aggressively recruiting lawyers from across the country to come to Public Defender’s office and has had some success,” 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 confronting “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.”

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NHLA Paralegal Advocate, Abdoul Fofana, works on the Energy Utilities Justice Project. Photo: Scott Merrill

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

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Sarah Blodgett, director of the New Hampshire Judicial Council. Photo: Scott Merrill

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 Ser-

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 receiv-



ing 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

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Periodical Postage paid at Concord, NH 03301

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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 may address “access to the legal system and efficient vindication of substantive rights and transactional objectives,” but may not generally address “any issue of substantive law, however strongly a majority of the As-

President’s Perspective



By **Richard Guerriero**
Lothstein Guerriero,
Concord, NH

sociation may feel about it.” 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 which might affect the practice of law. They question and provide information to individual Legislators. They attend legislative committee meetings. 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 we often face. On the one hand, the Bar would want to ensure that all litigation 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/aozAP. For access to Legislation Watch, where you can keep an eye on legislation important to the Bar, go to shorturl.at/dwzZ8.

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(ISSN 1051-4023)
An official monthly publication of the
New Hampshire Bar Association.

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Subscription price: \$160/year to non-members; members, included in annual dues; \$80/year to students. Advertising rates on request. Periodical postage paid at Concord, New Hampshire 03301. Postmaster: send address changes to New Hampshire Bar News, 2 Pillsbury Street, Suite 300, Concord, NH 03301.

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Leadership Academy Kick-Off Retreat at Loon Mountain



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

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 concurred: "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!"

"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."

Former NH Supreme Court Justice, John Broderick



FRI, FEB 18, 2022



VIRTUAL MIDYEAR MEETING

Yes, it's online again this year. And while we won't be in person together, it will still be a day filled with useful CLEs, interesting speakers, inspiring awards, and networking opportunities.

**FEATURING SPECIAL GUEST SPEAKER
KENNETH R. FEINBERG**

Special Master of the September 11 Victim Compensation Fund and the focus of the recent Netflix movie "Worth".



Kenneth R. Feinberg is one of the Nation's leading experts in alternative dispute resolution, having served as Special Master of the 9/11 Victim Compensation Fund, the Department of Justice Victims of State-Sponsored Terrorism Fund, the Department of Justice Boeing 737 Max Crash Victim Beneficiaries Compensation Fund, the Department of the Treasury's TARP Executive Compensation Program and the Treasury's Private Multiemployer Pension Reform program. He was also Special Settlement Master of the Agent Orange Victim Compensation Program. In 2010, Mr. Feinberg was appointed by the Obama Administration to oversee compensation of victims of the BP oil spill in the Gulf of Mexico. Most recently, he has served as Administrator of the New York State Dioceses' Independent Reconciliation and Compensation Funds, the One Orlando Fund, the GM Ignition Switch Compensation Program, and One Fund Boston Compensation Program arising out of the Boston Marathon bombings. He is currently the Court-appointed Settlement Master in the Fiat/Chrysler Diesel Emissions class action litigation in San Francisco. He has been appointed mediator and arbitrator in thousands of complex disputes over the past 35 years.

Watch nhbar.org, *Bar News*, and *E-Bulletin* for additional details and registration information.

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 column 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:

I am responding to attorney Fojo’s “Challenging Mask Mandates in New Hampshire,” printed in the Opinions section of the Oct. 20, 2021 *Bar News*.

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 Vermacy, 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.

AVAILABLE @ NHBAR.ORG



This digital commemorative booklet features the NHBA Leadership Academy Class of 2022 and recognizes the program’s history and alumni.

Download your copy today at nhbar.org/2021-leadership-academy-booklet

Proceeds from ad sales provided needed scholarships to Class of 2022 participants. A limited number of module sponsorships are still available; for details, contact dparker@nhbar.org





We the People: The Citizen and The Constitution
District Hearings & State Finals

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District Hearings
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 Friday, January 7, 2022
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To volunteer, go to
<https://www.nhbar.org/civics-education/we-the-people-volunteer-form/>

For more information about Law Related Education Programs, or how to volunteer for WTP Hearings, contact LRE Coordinator Robin E. Knippers at reknippers@nhbar.org.



NHBA 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 jgreenwald@nhbar.org. 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 loca-

tion 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 lsutton@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, and mentors assume no responsibility for services performed by the advisee. 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 din-



ner for all volunteers. For more information, or to volunteer for a LawLine event in 2021, please contact NHBA LawLine Coordinator, Linda Sutton at lsutton@nhbar.org.

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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 cyber security. Many organizations follow surprisingly similar paths that rely on operational IT staffers for their cyber execution, usually internal staff or managed service providers (MSPs), and standard-based or best practices for key controls.



But operational IT is primarily focused on making things work with minimal friction and security frequently is a distant second. Standards and best practices often aren't fully understood, and I commonly see organizations – great and small – miss key steps. Here are a few to consider.

Backups and Disaster Recovery. For as long as computers have been around, backups and how you recover your systems have been an important topic. In the age of ransomware, backups are now a high-priority target as well.

Most understand that backups should be stored “off-line.” That generally means locations and on media that are not directly connected to your network. Common schemas still include backup tapes or digital drives. The employee who drives the tapes home every night continues to be more common than you might think. Those relying on

MSPs often have their backup data written to cloud-based services 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 gap often lies 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 expeditious 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 disappointed.

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 capabilities or can affect 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 guidance, 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 greatly 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



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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 experienced attorneys willing to answer career questions and that, "it can be awkward to ask someone in your own firm questions like how to set boundaries with clients and how to communicate with senior

partners or the courts. It can be much easier with someone outside."

Executive Director of the NHBA, George Moore, said, "the Program helps with the stuff they don't teach in law school, like how to negotiate, how to approach things professionally and ethically, and even the business side of law." He lauded the recent success of the MAP and emphasized the advantages of it by saying, "it's a valuable asset to new attorneys and solo practitioners who don't have other lawyers to learn from about how to practice law."

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 Reyns, 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."

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 is also beneficial to the mentors themselves. It is a chance for them to give back on their own terms, at their own convenience.

"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.




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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"

"68% of Large Companies Plan to Downsize Office Space"

"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.

WFA is not a simple problem. It is not solved with a simple, easy policy. Em-

brace 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?



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OFFER \$0	Wrongful Death IA 2021 E.Coli poisoning from packaged food results in paralysis	SETTLEMENT \$16 MILLION
OFFER \$0	Medical Malpractice MT 2021 Birth Injury results in child suffering from Cerebral Palsy	SETTLEMENT \$11.5 MILLION
OFFER \$0	Wrongful Death SD 2021 Walgreens cutoff prescription tapering instructions causes death	SETTLEMENT \$5 MILLION
OFFER \$0	Wrongful Death IA 2021 Nonverbal 14-year-old girl died under nonprofit care	SETTLEMENT \$4 MILLION
OFFER \$0	Medical Malpractice MA 2021 Loss of bowel segment due to negligent appendix surgery	SETTLEMENT \$3.5 MILLION

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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 for a new job. Team members who move out of the area can be retained with WFA.

A balance must be struck between flexible remote work options and necessary time together in-person.

Principle 4: Enable well. Evolve your technology.

WFA groans and clanks if the tech-

nology doesn't support it well. All aspects of your technology plan should be in tune 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 benefitting 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 reimaged 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 teammates 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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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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Arthur William Hoover

Arthur William Hoover, age 81, died in Durham, New Hampshire on September 6, 2021.



Art was born in San Luis Obispo, California on April 4, 1940. He graduated from Dartmouth College in 1962 and earned a law degree from the University of Notre Dame in 1965. While at Notre Dame, he met his wife, Susan (Ellis). They settled in New Hampshire, living in Rochester until 1988 and then in New Durham. In January 2020, they moved to River Woods in Durham.

Art practiced law for more than 50 years, first in Rochester and then in Alton, before retiring in 2016. Two common themes characterized his personal and professional interests over the course of his life: action and community. He was in motion much of the time. He played football and baseball at Dartmouth and rugby at Notre Dame and began jogging on a daily basis in the early 1970s, continuing until just a few years before he died. He ran his first marathon at age 66, played competitive baseball until he was in his early 60s, and was an avid hiker and skier into his 70s. One of his proudest athletic achievements was climbing Mount Kilimanjaro, the highest peak in Africa, at age 65. Art was extensively involved in civic activities across a wide range of areas and interests in the region. His belief that athletics helped instill important values of teamwork, collaboration, responsibility, and dedication motivated him to support opportunities for young people throughout his life. They guided his work as a lawyer and his community involvements. He coached youth baseball and football in Somersworth, Rochester and New Durham for many years and was part of a core group of local residents who conceptualized and created Roger Allen Park in Rochester in the 1980s. He was inducted into the Rochester Sports Hall of Fame in 2011 as a coach and contributor.

He was a member of Kiwanis, Lions and Rotary clubs in Rochester and Alton for decades. He served on the board of directors at Frisbie Memorial Hospital and the school board at St. Thomas Aquinas High School and was the first president of Great Waters Music Festival.

Art also found relaxation and peace in his Catholic faith and was an active participant in St. Mary Parish in Rochester and St. Katharine Drexel Parish in Alton.

Art was a voracious reader, especially of military history and biographies. His interest in World War II led him to visit several key sites, including Pearl Harbor, the D-Day landing beaches in Normandy, France, and

the Churchill War Rooms in London. For decades, he and Susan spent two weeks of vacation every year in Key West, Florida, where they were annually joined by a large group of friends from around the country.

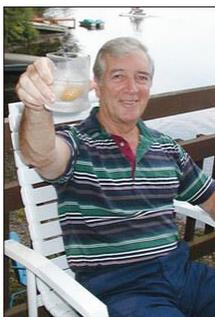
Art touched many lives and he will be greatly missed. In addition to Susan, his wife of 56 years, he is survived by four children, Jennifer Hoover of Durham; Jeffrey Hoover of New Haven, Connecticut; Matthew Hoover of Dover; and Patrick Cash-Peterson of Reykjavik, Iceland; five grandchildren and two great-grandchildren. He also leaves behind two brothers, Jack of Grover Beach, California and Harry of Pismo Beach, California and a sister, Jill, of Twin Falls, Idaho. Art was predeceased by his daughter-in-law, Karen Hoover.

The family wishes to thank Brookhaven Hospice for its gentle care of Art at the end of his life.

Donations in Art's name can be made to the Michael J. Fox Foundation for Parkinson's Research, P.O. Box 5014, Hagerstown, Maryland 21741, www.michaeljfox.org.

Donald George Lemieux

Donald George Lemieux, age 86 of Everett, Massachusetts died of Multiple System Atrophy on August 23, 2021, at Concord Hospital in Concord, New Hampshire. He is survived by his wife of fifty-three years, Carol Lemieux, his children Kathleen Lemieux VanPelt, Michael Lemieux, and Suzanne Lemieux; his grandchildren Caitlin, Kelsey, and George; his brother Laureat, and sister Ellen. He will be lovingly remembered by his many nieces and nephews, cousins, and friends.



He is preceded in death by his parents Laureat and Jean Lemieux as well as his brother Edmund and his sister Marie Ange.

Don graduated from Boston College in 1962 with a degree in accounting and in 1972 he obtained a degree in law from American University. Don maintained a private law practice in Falls Church, Virginia until his retirement in 1995.

Don was a great family man and a loving father. He married Carol Lemieux in 1968 and the couple raised their three children in Falls Church while spending summers with their extended family in New Hampshire.

Don was a social, active man who maintained close relationships with his childhood friends all his life. He was deeply involved in the Knights of Columbus and the Elks Club and enjoyed golf, fishing, skiing, and traveling, particularly cruising. Don was also a lifelong fan of the Boston Red Sox. His family and friends will always remember him

as an honest, considerate, and funny person who was an example of great integrity to all who knew him.

Bernard W. (Bernie) Pelech

Bernard W. (Bernie) Pelech, 72, of Portsmouth died unexpectedly on Tuesday, October 12, 2021.



He was born on May 11, 1949 in Hinsdale, NH to Bernard P. and Pauline Lerna-towitz Pelech.

Bernie was a 1967 graduate of Hinsdale High School. He received his B.A. from the University of New Hampshire in 1971 and his J.D. from New England School of Law in 1978.

After graduating from the University of New Hampshire, Bernie served the city of Portsmouth for eight years as a teacher at the New Franklin Elementary School and as an eight-year member of the School Board. Shortly after the birth of his daughter in 1976, he enrolled in the New England School of Law in Boston, attending classes at night, while teaching sixth-grade during the day.

After graduating from law school in 1978, he became a member of the NH and ME Bar Associations and a partner of Wholey and Pelech Law Office with his father-in-law, John J. Wholey. In that office, he supported the community for 40 years, eventually specializing in land use, zoning, and real estate acquisition law. He appeared before local and land use boards in excess of 2,000 times, obtaining approvals for numerous commercial and residential development

projects of all types, including the Portsmouth Regional Hospital. In 2018, he joined Bosen & Associates and continued his work supporting local land use and zoning projects.

When not practicing law, Bernie was an avid fisherman, a gourmet cook, and a fine woodworker. He loved spending time with his wife, children, and six grandchildren. Despite living in New Hampshire his whole life, he was an avid fan of the New York Yankees, a love he shared with his son, John, and his grandchildren. Well-loved by many local youth baseball players, he coached various teams including Little League, Babe Ruth, American Legion, and AAU. He was also a long-term member of the Portsmouth Elks. He enjoyed vacationing in his favorite fishing spots: Pine River Pond, Key West, and the Miramichi River in New Brunswick. Just last month, he claimed the title for the longest trout ever caught in Lake Champlain, a 38.75" mammoth.

Bernie was preceded in death by his parents, Bernard and Pauline, and by a sister, Josephine Qualters.

He is survived by his devoted wife of 50 years, Shawn Wholey Pelech; his sister, Terri Rubeor, and brother-in-law, Roger Rubeor, of Dover, NH; sister-in-law, Gail Wholey, or Portsmouth; his son, John, and daughter-in-law, Jenna, of Greenland, NH; daughter, Cate, and son-in-law, Roshen Menon, of Newton, MA; two nephews, two nieces, and six grandchildren.

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

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

New Members of the New Hampshire Bar Association

The following members were admitted to the New Hampshire Bar Association on October 7, 2021.

- Eric P. DeGoosh-DiMarzio, Nashua, NH
- Zachary A. Host, Nashua, NH
- Erin E. Ferry, Laconia, NH

The following member was admitted to the New Hampshire Bar Association on October 25, 2021.

- John Anderson Proctor, Charlestown, NH

The following members were admitted to the New Hampshire Bar Association on October 27, 2021.

- Kyle W.T. Amell, Laconia, NH
- Katheryn E. Benvie, Laconia, NH
- Oliver T. Bok, Stratham, NH
- Alexandra N. Brewer, Meredith, NH
- Michael D. Brown, Manchester, NH
- Mason R. Carr, Portsmouth, NH
- Pietro A. Conte, Boston, Mass.
- Sofia C. Cunha-Vasconcelos, Keene, NH
- Daniel T. Divis, Manchester, NH
- Philip H. Elbert, Tamworth, NH
- Johanne C. Egeland, Manchester, NH
- Angela M. Errico, Lebanon, NH
- Michael A. Fazi, Nashville, Tenn.
- Sydney M. Gillis, Manchester, NH
- Jay T. Jarosz, Manchester, NH

- Christopher D. Jones, Newbury, NH
- Jessica F. Kallipolites, Concord, NH
- Sophie A. Karpf, Atlanta, Ga.
- Cynthia S. Keeley, Concord, NH
- Luke E. Kraus, Hanover, NH
- Benjamin F. Lewis, Concord, NH
- Matthew M. Livi, Manchester, NH
- Vasilios Mantos, Newfields, NH
- Samantha K. Mills, Concord, NH
- Claire P. Minuti, Concord, NH
- Matthew D. Minuti, Auburn, NH
- John Mirabello, Belmon, NH
- Taylor E. Morgan, Manchester, NH
- Justin R. Pelletier, Woburn, Mass.
- Jackson D. Place, Exeter, NH
- Jacob M. Rhodes, Concord, NH
- Javier E. Rivera, American Fork, Utah
- Janine T. Salameh, North Haverhill, NH
- Jordan E.M. Sessler, Oklahoma City, Okla.
- Eltjon Skendaj, Boston, Mass.
- Brandy P. Small, Exeter, NH
- Matthew D. Smith, Tewksbur, Mass.
- Towanda N. Smith, Bryn Mawr, Pa.
- William W. Strehlow, Portsmouth, NH
- Ariel O. van't Hoff, Concord, NH
- Brandon M. Vallie, Manchester, NH
- Dagan S. VanDemark, Dover, NH
- Brian S. Young, Amherst, NH
- Helen D. Yurchenco, Nashua, NH
- Solal Wanstok, Manchester, NH
- Alexander E. Weinstein, Keene, NH
- Nicholas T. Zazzi, Concord, NH

In the News

Community Notes

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

Sheehan Phinney shareholder, Katherine M. Hanna, was honored with the New Hampshire Hospital Association's Les-

lie A. Smith President's Award for work championing revisions to New Hampshire's Advance Directive laws.

Sheehan Phinney attorney, Michael P. Panebianco, has been elected a Fellow of The American College of Trust and Estate Counsel (ACTEC).

Pro Bono Program 2021 Recap: Gratitude and Giving

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 consults were key to helping draw up a power of attorney and a will for the client.

Janice Rabchenuk, 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 held 16 criminal record annulment clinics serving 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 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 most in need of them. 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 has benefitted 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 DOVE volunteers have truly risen to meet 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, 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. Thank you to 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 for 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 staff congratulate our executive director, Sonya Bellafant, 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 volunteers, partners, and funders, and wish all a peaceful holiday season.

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Instructions:
 Each ingredient is crucial to the recipe's success.
 Methodology to suit the need.

Email probono@603legalaid.org to join us in the kitchen.




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 the Legal Advice and Referral Center (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 Bellafant.

Working 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

will issue and that could result in the individual losing a driver's license," she explained. "If they lose a driver's license, someone who needs to get to work will almost always get stopped for driving with a suspended license. If we can enroll the defense bar into programs assisting individuals in resolving defaults, we can save them from losing their house, or losing their children. People don't realize how quickly something like this can snowball unless you've seen it happen."

The criminal annulment clinic is another spot where Sisti believes 603 Legal Aid can bring in new criminal defense attorneys who will accept pro bono cases.

"We'll be offering expanded training and resources to attorneys in an effort to get them to volunteer more, because if they feel like they are supported by the program then they are going to be more likely to volunteer."

603 Legal Aid is 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.

NICHOLSON

LAW FIRM

is pleased to announce
Attorney Keith F. Diaz
has joined the law firm.



Attorney Diaz has 18 years of litigation experience. Keith will continue to focus his efforts litigating personal injury, employment, real estate, construction, and probate matters.

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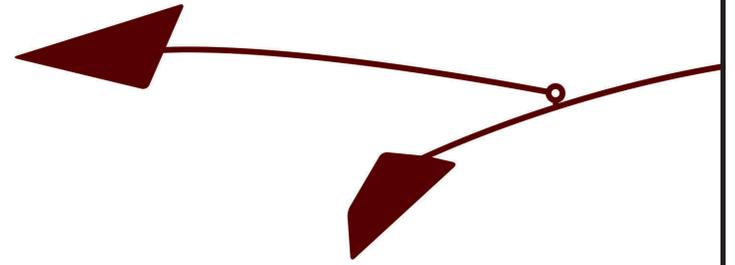
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*on being sworn into the
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*We are pleased to
announce Samantha
will be joining the firm
as an associate attorney.*



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Proud to Welcome Attorneys Sabrina Beavens and Roger Turgeon

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.



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Justice from page 1

owns 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 couldn’t afford the fuel and I’m also disabled; that’s where Abdoul helped me out quite a bit.”

New Hampshire Campaign for Legal Services Director, Sarah Palermo, says Bill’s case was a good illustration of the

type of advocacy work on system change the Utility Justice Project does.

“While the project doesn’t do a lot of individual representation,” she says. “This case led to a systemic change.”

Because of Bill’s case, the State of New Hampshire Fuel Assistance Program Procedures Manual was amended to include a clear definition of separate households and heating systems under the Shared Housing – Roommates section.

Systemic Advocacy Work

The systemic advocacy work done by the EUJP before the Public Utilities Commission (PUC), involves advocating for a certain position or changes to programs on behalf of their clients.

The project addresses a number of issues related to utility services, programs and rates, and how they affect low-income households in New Hampshire.

State Consumer Advocate, Don Kreis, says he’s pleased with the utility justice work being done by NHLA.

“Most legal aid organizations aren’t doing this type of work; they aren’t focused on energy,” he says. “NHLA deserves a pile of credit for doing what they do. Their effectiveness is excellent.”

NHLA attorney, Stephen Tower, who works on the EUJP, says a lot of the work involves reviewing dockets that come before the PUC, rate cases for Eversource and Unil, and issues involving the Electric Assistance Program, a bill discount for low-income customers.

One of the energy efficiency programs Tower works on is the Home Energy Efficiency Program, funded through a system benefits charge that is part of everyone’s electric bills.

In 1996, legislation was passed that

authorized the creation of a system benefits charge (SBC) to support energy efficiency programs and energy assistance programs for low-income residents.

“The Home Energy Assistance Program funds the utilities through the Community Action agencies across the state, sending folks into low-income households to do energy efficiency upgrades, with the goal of reducing the energy demand in the state,” Tower said. “We are trying to advocate expanding the Home Energy Assistance Program as much as possible where it is cost-effective so these homes, that otherwise would be left out, can be helped through this program.”

According to Tower, the cost benefit analysis also includes non-energy impacts such as health.

“There have been a number of studies to assess approximately the dollar value of the health benefit, how many fewer sick days are used by employees who live in these homes, how many days of school are not missed, fewer hospitalizations, and reduced deaths,” he said.

Director of NHLA’s Energy and Utility Justice Project, Ray Burke, says the pandemic has “shined a light” on the ways the program is administered, and his hope is that moving forward people will be able to easily access services.

“When Covid forced offices to shut down, it created challenges for people submitting applications,” he said. “The Community Action Programs have done a great job in creating online apps for some of the Covid relief funding through the Federal government, and it’s our hope we can learn from that. There is talk in the works for doing an online app program, or a portal to upload materials.”

As for Bill in Ashland—and many



Smoke rises from chimneys last winter in Berlin, N.H., where the poverty rate is nearly 19 percent.

around the state—the need for heating fuel assistance continues.

Palermo says NHLA is anticipating fuel and heating costs to be burdensome for many people around the state this year.

Fuel costs for home heating oil have risen over 50 percent from this time last year and the cost of propane and natural gas are also on the rise in the Granite State where over 37,000 rental households are experiencing extremely low income, meaning they are at or below the poverty guideline or 30% of their area median income (AMI).

Nearly half of the entire population were cost burdened before the pandemic, spending over 30 percent of income on rent, according to NH Fiscal Policy Institute.

“I felt bad because I knew there were people who would need heating oil more than me,” Bill says. “But if I hadn’t received the assistance I wouldn’t be able to heat my house last winter or this winter either.”

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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.

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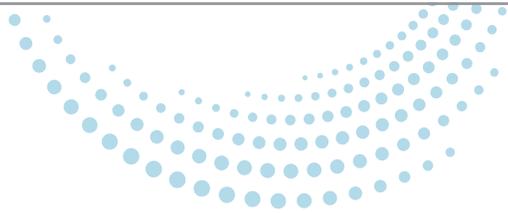


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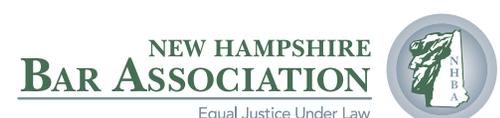


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to work out little problems, that got drilled into me over and over. It taught me a lot about how to work through difficult problems, work on your own and work towards a deadline, being able to understand what it's like to see a project through to 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."

His love of music is what drew him to 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 gov-

ernments – 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 adored 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 disheartening."

Mulhern has a collaborator in his crossword puzzle construction -- Ashton Anderson, 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 en-



James Mulhern has a leisure moment with one of his favorite pastimes, crossword puzzles. Courtesy Photo

thusiasts 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."

LOTHSTEIN GUERRIERO, PLLC

APPELLATE SPOTLIGHT

If a person involved in a case but not as a witness at trial transitioned to a different gender identity *after* the events at issue, could that ever be relevant evidence? The NHSCt grappled with that issue last month in *State v. Clark*, a case where two minor victims had accused a man of sexual assault, but only one testified at trial. After the assaults, the younger victim, who did not testify, "changed their gender identity from female to male, and began using male pronouns and a new gender-affirming name." (Query: Is this the first time the Court used the pronoun, "their"?)

Clark sought to exclude from evidence the non-testifying victim's change in gender identity, concerned that jurors would infer the alleged sexual assaults may have influenced that victim's decision. The Court, however, found the victim's transition in gender identity to be relevant because older sister would have difficulty testifying effectively if she were prohibited from mentioning the new name and gender. As to prejudice, the trial court had inquired into jurors' biases related to gender identity, an inquiry that led to the dismissal of some prospective jurors. Affirming Clark's convictions, the Court distinguished a prior decision: 20 years previously, in *State v. Woodward*, it reversed a conviction based on the trial court's admission of evidence of the defendant's same-sex relationship, "based upon juror bias concerning homosexual conduct."

Cases like *Clark* and *Woodward* remind litigators that when we try a case, we cannot assume that jurors have the same biases and prejudices that we have, nor can we assume that jurors lack certain biases and prejudices that which we hope society has rejected. We must step out of our own selves and imagine how the evidence will be perceived by people of wildly different backgrounds and perspectives on life.

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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 expounding 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 legalese and procedures of Congress, in addition to the myriad of laws and types of law that are proposed in Washington. Having more recently served for two terms as a NH State Representative, beginning during my undergraduate studies at Plymouth State University, then for an additional term after graduating in 2016, I became further and more deeply exposed to legislation, albeit at the state level. However, the labyrinthine nature of legislatures, as well as the complexity of certain bills introduced—and their subsequent constitutionality, or lack thereof—presented more challenges and questions to a prospective law student, than to aid my decision of what exactly it is I'd like to do as a lawyer.

For better or worse, prior to coming to law school, I did get some advice from the inevitable lawyers one meets in state government. One person told me to get into wills and estates, another suggested real estate law, another prosecution with a subsequent 'switch to criminal defense,' and yet another suggested I move towards business law. For

the record, 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.

You can imagine my dismay after telling all this to the new interim Assistant Dean of Career Services at UNH Law, Neil Sirota, 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 Ferencz, one of the lead prosecutors at Nuremberg who went on to 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 what we'd like our lives to look like. Does one value money more than social impact? Where do you want to live? Does the type of client you work for matter? How many hours a week do you want to spend in the office? Thankfully, Dean Sirota did not have us answer these questions via the Socratic method. They and many others were posed to us to help us identify our broader goals. Setting those goals based on the more holistic idea of what you want out of life struck a sharp chord in a room full of students, more or less prepared to devote their entire lives over the next three years, and indeed the remainder, to the study and then practice of law. Admittedly, I don't precisely know what I want my life to look like in three years, much less ten or twenty. However, it was wisely posited to our class that we currently know more about what we want out of life than what we do about the law.

While I have no doubt that the vast majority of this publication's readers know far more about the law than myself, it's a rare occurrence to put those grand philosophical questions regarding the meaning of life completely to rest. It's certainly not my intention to dole out career advice (I'll leave that to Dean Sirota), or even philosophical advice, nor do I presume to have even the remotest authority on either subject. However, I hope that relating my own preparation for a maiden voyage over the vast ocean of the modern legal world, will help give others pause who may be looking for calmer seas.

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 CMMC-AB Registered Provider Organization.

Cybersecurity from page 6

figuring a server is mostly an IT job, many of these configuration choices significantly revolve around business needs. Do you want users to share documents in Teams? How long should a link to a file be active if shared? There are recommendations, but a number of those choices involve how you're using these expensive platforms to get the best value from them. For the same time and money reasons, these discussions are often skipped, and systems left vulnerable.



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- Hunter Yancey, JD '03 and Martha Yancey, JD '03

Shortage from page 1

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 malpractice 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, that office must absorb the cases the departing attorney leaves behind.

"As caseloads have risen, public defenders have gone above and beyond their obligations because they don't want defendants to go unrepresented. But burgeoning caseloads

have taken a toll on our staff," he said. "Public Defender has seen unprecedented attrition over the past year and a half."

Prior to the pandemic, Hawkes said about 10 to 12 attorneys left NHPD.

"Unfortunately, the situation today is a challenge for us at a time when we need every able body in the indigent defense system we can maintain," he said. "It's particularly troubling when we lose experienced attorneys. The criminal justice system, not only public defenders but prosecutors—it behooves 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.

"When our experienced counsel leave, they often have 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 investigation, 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, he stressed, "threaten 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 allows 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 1 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 a 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."

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Guerriero 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



NH Supreme Court Justice Patrick Donovan at the Manchester District Court. Photo: Scott Merrill

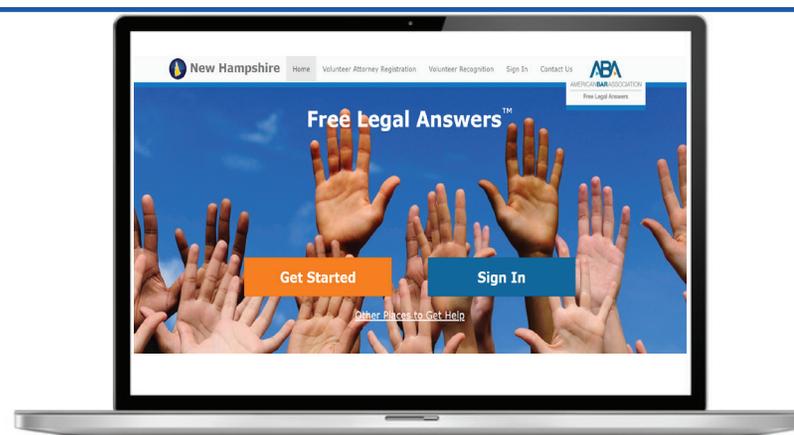
attrition on either side of the bar, in order to replace those people who are likely to have more experience than the people replacing them, you have a steep curve to educate your opponent,” he said.

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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Inactive Lawyers and Referral Fees

Ethics Committee Opinion #2021-22/01

ABSTRACT:

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.

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 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 inactive lawyer.

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

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. But as noted above, that is not the case presented by the inquirer.

The opinion 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,

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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 competent to handle this particular matter is a legal judgment. See e.g., *Tormo v. Yorkmark*, 397 F.Supp. 1159 (D.N.J. 1975) (denying summary judgment in a negligent referral claim within a legal malpractice action).

Another concern is that there is a substantial danger that the prospective client could be misled about the status of the inactive lawyer. We have issued two prior opinions on this. See Ethics Committee Formal Opinion 1988/9-2, *Letterhead Listing- Of Counsel if Inactive* (stating that it is misleading under Rules 7.1 and 7.5 to list an inactive member as of counsel); and Ethics

Committee Advisory Opinion 2006-07/02, *Identification of Inactive Bar Member Status* (cautioning a firm about including an inactive lawyer on its website or letterhead, even with a designation that he or she is inactive, 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 fee 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(f)
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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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



Forbes



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 Standard¹

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 subject to more scrutiny than prenups.

There is no guarantee that an agreement enforceable at the time of execution will remain enforceable. If circumstances change to such a degree that enforcement of the agreement would “shock the conscience,” the court may invalidate the agreement. Clients should be aware of that at the outset.

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 referrals 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 premarital, 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

1. E.g. RSA 460:2-a; *Estate of Wilber*, 165 N.H. 246 (2013) (postnups); *McFarlane v. Rich*, 132 N.H. 608 (1989) (prenups).

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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 \$6,501 in gross monthly income (62.4% of their combined total). The lower-income parent would have \$3,915 (37.6% of the combined total). This is \$2,596 more in gross monthly income in one household. (Note that an 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

CHILD SUPPORT continued on page 32

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Guess Who's Coming to Court w/ Stuart Teicher
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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 furthers 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 was

TRUST continued on page 32

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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 over 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 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 commensurate with their cognitive ability, it levels the playing field a bit and affords parents a better chance of prevailing without having to hire an attorney. The standard of proof is preponderance of the evidence.

Each year, there are approximately 35 to 40 requests filed for special education due process hearings in New Hampshire. Of

those, only three to five actually proceed to hearing. Most are resolved prior to a hearing either through mediation or settlement. So while the bill may affect only a handful of matters, it can influence how many parents now decide to file and strategic decisions with negotiations after filing.

Special education disputes arise when there is disagreement between what the parents believe the child needs and what the school believes or offers. 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 refus-

"Each year, there are approximately 35 to 40 requests filed for special education due process hearings in New Hampshire. Of those, only three to five actually proceed to hearing."

al 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.

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Frozen Eggs, Sperm, and Embryos: Becoming a Legal Parent after Death

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, that 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

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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 the non-beneficiary spouse in a property settlement? Secondary questions, such as whether the trustee of such a trust can be compelled to make distributions to the beneficiary spouse to satisfy that spouse’s alimony or child support obligations to the non-beneficiary spouse, or whether the assets of such a trust can be taken into account when dividing the couple’s marital assets other than those held in the trust, are not addressed here because of space limitations.



those decisions with historical context.

The question of whether assets held in a third-party irrevocable trust can be awarded to a non-beneficiary spouse as part of 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 applied a fairly dynamic analysis of 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 distributions. Prior to the enactment of the Trust Code, courts evaluated these various interests to make a somewhat ad hoc determination whether the beneficiary spouse’s interest had sufficient indicia of vesting to make division of the assets equitable. See e.g.: *Lawlor v. Lawlor*, 123 N.H. 163, 165 (N.H. 1983), *Flaherty v. Flaherty*, 138 N.H. 337 (N.H. 1994), and *In re Chamberlin*, 155 N.H. 13 (N.H. 2007).

With the advent of the Trust Code came RSA 564-B:8-814(b), which stipulates that if a trust distribution is subject to trustee discretion, “it is neither a property interest

nor an enforceable right, but a mere expectancy.” 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 3JX 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). 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:5-502(e), which states that if a beneficiary’s trust interest is subject to a spendthrift provision, it is simply not part of the marital estate. The existence

DIVORCE continued on page 33

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The 411 on RSA 21-V

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. Contemplation 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 presiding judge receives. For example, this past year the Office pro-

duced 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.

childadvocate@childadvocate.nh.gov
603-271-7773 Childadvocate.nh.gov

Moira O'Neil is the first Director of the NH Office of the Child Advocate. She earned Master's degrees in Nursing and Public Health and a PhD at Yale University. As the Director of the NH Office of the Child Advocate, Moira sets the mission, vision and priorities for the oversight of New Hampshire's child protection and juvenile justice services.

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Book Review: “Divorce in New Hampshire: The Legal Process, Your Rights, and What to Expect”

By Jessica Ecker and Dana Prescott



Ecker



Prescott

Each and every time we sit down with a new potential client, we answer many of the same questions: What is a petition for divorce? What is the mediation process in New Hampshire and is it required? Is there alimony in New Hampshire? How quickly can one get a divorce? Who decides who gets the cars, the pets, and the house? What actions might influence parenting rights and responsibilities? How are bills divided and paid during the divorce? How much will a divorce cost? Will a spouse have to pay some or all attorney fees?

The driving force behind writing this book was to provide an affordable and accessible way for anyone to obtain some of these answers without incurring the expense of an attorney and even to help those who do have attorneys more clearly understand the process and potential outcomes.

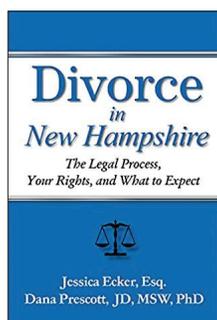
The book is structured in a question-and-answer format to assist the reader in understanding the complicated and emotional divorce or parenting case process. This divorce handbook provides clear and concise responses to help the reader build understanding and confidence and give the peace of mind needed to meet the challenges of a divorce proceeding.

The book begins with an overview of understanding the process of divorce, providing practical advice on how to manage the stress of divorcing, how to work with an attorney, the discovery process, mediation and negotiation, domestic or interpersonal violence, parental rights and responsibilities, child support and medical care, spousal support, division of property, how retirement and health insurance benefits are addressed in divorce, debts, income taxes, advice on going to court and the appeal process.

New Hampshire resources are provided for the reader to reference.

Much of the book identifies and defines common terms and theories used in the divorce process. On some more complex topics, the discussion goes deeper into thorough explanations of statutory factors that the court will consider in making decisions about issues like property division and spousal support.

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 Kim 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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Child Support from page 23

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 sharing of certain variable expenses was insufficient. The trial court concluded that mother's *fixed* expenses 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, and
- the inference from Husband's testimony and the accountant's deposition

testimony that the accountant encouraged and facilitated Husband's early tax filing in 2017 to claim a \$20,000 overpayment that the parties had made jointly before Wife could claim it.

Id. at 3. The Court further held the husband "probably has been significantly involved in the investment of trust funds and [has] provide[d] [the accountant] with input on related trust decisions" and "the accountant 'lacked the neutral independence, required of a trustee, to whose discretion [Husband] pointed as preventing [Husband's] access to trust assets as a matter of right.'" *Id.* "[The lower court] [h]aving found that the trusts are for Husband's benefit, the class of beneficiaries of the trusts is limited to Husband and his children, the accountant trustee lacks independence, and Husband exerts control over the trust assets and has a power of appointment over any assets of the GST that are not exhausted during his lifetime, the court determined that Husband's interests in both trusts constitute marital property." *Id.*

This case has broad implications. Estate planners and divorce practitioners should take note.

Jacqueline Leary is an Associate in McLane Middleton's Litigation Department and is Vice Chair of the firm's Family Law Practice Group. She is a participant in the 2022 Leadership Academy class. She can be reached at (603) 628-1178 or jacqueline.leary@mclane.com.



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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 parentage 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 in-

dicating that the sperm could be used by this 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 opined 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.

Chrissy 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 cmhanisco@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. 2020-0051, 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 trust at issue contained a valid spendthrift provision, all derivative trust interests were excluded from the analysis and the trust assets were excluded from the marital estate. A similarly mechanical analysis was applied in *In the Matter of Merrill*, No. 2020-0009, (N.H. 2021). Notably, in both cases the Su-

preme Court overruled the trial court's determination that the beneficiary spouse's interests were 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 interpretation 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 Bournival*, 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(e). In that event, either Goodlander, or perhaps even the authorities that predate 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 Myskowsky 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 Trust and Estate 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.

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Collaborative Law

10/6/2021 – 60 NHMCLE min.

This seminar is a discussion of the Collaborative Law process and the new Collaborative Law Act that was recently signed into law that will govern the Collaborative law process in NH.

Traps for the Unwary: An Introduction to the Divorce Process in NH

4/14/21 – 60 NHMCLE min.

This session is intended for new practitioners in family law who are looking for a general overview on the divorce process and specific points of information that are useful at each step.

Taking Evidence Abroad For Use in Family Law Cases

5/11/21 – 80 NHMCLE min.

Obtaining evidence abroad for use in US family law cases is a challenge that may be necessary when assets or witnesses are located outside the US. The Hague Evidence Convention allows for extrajudicial discovery for countries that are signatories, while other countries may not allow discovery or require different procedures.

Tools & Tips for Neutral Case Evaluation

12/4/19 – 120 NHMCLE min.

The Neutral Case Evaluation (NCE) process for divorce/parenting cases has been available throughout New Hampshire for a few years. How is it working? What is the best way to utilize this process? What are some practice tips for making the most of the NCE session?

Essentials for Applying the New Alimony Law

5/7/19 – 60 NHMCLE min.

This program will discuss the top 10 things to know about the new alimony law, how to apply it to your current cases, and updates since its application on January 1, 2019.

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Restoring Trust in Democracy: Former Solicitors General Speak at Dartmouth College

By Scott Merrill

Former U.S. Solicitors General Gregory Garre and Neal Katyal were at Dartmouth College on the evening of Oct. 22, where they discussed the role of the courts in a democratic society as well as the so-called culture war cases involving abortion, guns, and affirmative action the Supreme Court faces in coming months.

The event, Restoring Trust in Democracy: The Role of Courts, was moderated by Laura Knoy, former host of New Hampshire Public Radio's The Exchange.

Knoy started the night off in a full Filene Auditorium by asking Garre and Katyal what they believe the Supreme Court's role is in "these troubled times," where a widespread lack of trust exists in the political system, the media, and amongst the general population.

"Greg and I come at this from the tradition of the rule of law and there is something different between law and politics," Katyal said. "You can vehemently disagree politically, but still come to the same result legally. And the Supreme Court at its best is that ... it's Chief Justice Roberts ruling to uphold the Affordable Care Act in 2012 at a time when he had to have known it would be hard for President Obama to win re-election, but he still voted to uphold it."

Garre said the Court serves as a model for civil discourse that can help repair breaches in trust.

"I think in a broad sense you can think of the Court as the ultimate guardian of our nation's laws, ideals, and principals," he said. "The dialogue they're having amongst themselves can be a lesson to all of us in terms of civil discourse. Having said all that, the Court has a lot to do to keep its own insti-

tution working and the onus on some of this should fall on the other political branches. I really do think we've seen an uptick in the rhetoric on the Supreme Court coming out of Congress and from the president that is having a real damaging effect."

One of the first big questions of the evening regarding a specific case coming up for the Court was directed to Katyal, who was asked what it would mean if *Roe v. Wade* were to be overturned.

Roe v. Wade was decided in 1973, with a 7-2 vote in the Supreme Court, and secured a "right to privacy" under the 14th amendment and a woman's choice whether to have an abortion.

In May, the Supreme Court agreed to consider whether state laws that ban abortions before fetal viability are unconstitutional. The test case was brought by Mississippi, which has a state law banning abortions after 15 weeks of pregnancy, and the case is set to be heard in December.

Katyal pointed out that seven of the nine justices in *Roe v. Wade* were Republican, before he turned his remarks to the two abortion cases out of Mississippi and Texas challenging *Roe* that will soon be before the Court.

The recently passed law in Texas restricts abortion after six weeks and deputizes private citizens to enforce the law.

The Mississippi case, Katyal said, is requesting the Court overrule *Roe v. Wade* and will be heard Dec. 1, while the Texas case is currently mired in procedural issues.

"They don't want to overrule *Roe v. Wade*, particularly right before a midterm. The Mississippi case might allow them to dance around it and say, 'Well, we're not going to overrule *Roe* but we're going to uphold the Mississippi law,'" Katyal said. "But



Neal Katyal, right, who served as Solicitor General from 2010-2011, responds during a discussion at Dartmouth College to a question from former NHPR radio host Laura Knoy about the Mississippi abortion case that will be heard by the Supreme Court on Dec. 1. Gregory Garre, who served as Solicitor General from 2008-2009, is in the center of the photo. Photo: Scott Merrill

the Texas law is impossible. You can't write around that problem. So, they may just delay the Texas case for a while."

The last time *Roe v. Wade* was in danger was 1992, when the Supreme Court took up the case of *Planned Parenthood v. Casey*, a Pennsylvania case focused on how and when a state may regulate abortion. At the time, abortion rights advocates feared the court would overturn *Roe*.

"In that case a trio of conservative justices, Justices O'Connor, Souter, and Kennedy, came together and said, 'This decision is too important, social expectations have crystallized around this decision, and we can't overrule it. It would undermine the legitimacy of the court,'" Katyal said. "I do think even if they want to overrule *Roe*, that kind of thinking is going to make it hard—not impossible—but I do think *Roe* is on very, very thin ice. And I do think it may influence the

timing of when *Roe* is overruled."

The discussion was attended by New Hampshire Supreme Court Chief Justice Gordon MacDonald, as well as former Superior Court Justice John Lewis.

Lewis said the discussion emphasized in a clear way the challenges faced by the country and the Supreme Court over the next year.

"It was a good high-level discussion that focused on the role of civility. It was one of the best I've seen," he said. "The Supreme Court has a big challenge over the next year to make sure the rule of law isn't undermined by allowing ideologies to predominate."

The event was presented by the Rockefeller Center at Dartmouth College, the Warren B. Rudman Center at the UNH Franklin Pierce School of Law, and the New Hampshire Institute for Civics Education.

Samantha Elliott Responds to Questions at Senate Judiciary Committee Hearing

By Scott Merrill

On Nov. 3, Samantha Elliott took the next step—by 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."

"I am confident she will be a fair-minded, balanced, and intellectually curious judge with a deep commitment to justice, and she will serve Granite Staters with distinction on the U.S. District Court for the District of New Hampshire," Hassan said.

There are five key steps in the va-

cancy process: a presidential nomination, a U.S. Senate committee hearing, a vote by a U.S. Senate committee to report the nominee to the full Senate, a confirmation vote by the U.S. Senate, and a confirmed nominee taking their judicial oath and receiving their judicial commission.

The confirmation process can be political in nature, with nominees often moving through the process at different speeds and confirmations sometimes depending on which party is in power.

Senator Cruz questioned Elliott about comments she'd 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 2020.

Cruz read from a transcript, that can be found on the committee for the judiciary website, of a video where Elliott is endorsing 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 ad-

Welcome Changes



ditional 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 sub-

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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 an eviction case (also known as a Landlord and Tenant Writ) is filed with the court, and a request for mediation does not automatically halt the eviction process. Parties in cases where an eviction seems likely, or where an eviction notice has been served, must act quickly to request mediation from

the eviction diversion program. Mediation after an eviction case is filed will only be available at limited Circuit Court locations.

The new statewide program builds on the success of a pilot project this past winter at two court locations, noted Margaret Huang, Alternative Dispute Resolution Coordinator. Landlords and tenants in the pilot were able to reach agreements in more than 70 percent of cases that went to mediation, and a follow-up survey found 91 percent of landlords and tenants who responded reported being satisfied with the process.

"The pilot project demonstrated that mediation in eviction cases works," Huang said. "In this new program, we will be offering free mediation to landlords and tenants 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 avoid the time, expense, and uncertainty of going to court, tenants avoid the black mark of an

eviction case 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 their 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).

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 Republican," 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.

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 (iv) 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; or (4) that the 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.

NH Supreme Court Orders

In accordance with Supreme Court Rule 37(4)(a), the Supreme Court appoints Attorney Jesse L. Renault-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 amends the procedure for filing motions for summary judgment and responses thereto in superior court.)

1. Amend Superior Court Rule 12(g) as set forth in Appendix A.

Effective Date

This amendment shall take effect on January 1, 2022.

Date: October 29, 2021

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

Pursuant to its constitutional authority and powers of general superintendence over the New Hampshire Bar Association and its members, and upon the recommendation of leadership 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 admittee'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?

FEBRUARY 2022

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

Fast-track scheduling at www.NHMediators.org

October 2021

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 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 felonious sexual assault, one count of attempted aggravated felonious 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 trial court denied the defendant's motion in limine to preclude any reference to the victim's gender identity change and provided instructions to the venire panel and in later jury instructions. The defendant appealed his convictions of five counts of aggravated felonious sexual assault, one count of attempted felonious sexual assault and one count of attempted felonious sexual assault. On appeal, the defendant argued that the trial court erred in admitting evidence of the victim's 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 Court held that the trial court did not err because it had addressed the evidence of the victim's gender identity change through voir dire and jury instructions. The Court also held that the evidence of 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 said evidence was not substantially outweighed by the danger of unfair prejudice. The Court remanded the case for the limited purpose of reviewing the withheld confidential records because the trial court, in conducting in camera review of the confidential DCYF records in this case, did not have the benefit of the recent *State v. Girard* holding providing the standard for determining when confidential records reviewed in camera must be disclosed.

Office of the Attorney General, (Zachary L. Higham, on the brief and orally), for the State. Thomas Barnard, Senior Assistant Appellate Defender, of Concord, on the brief and orally for the defendant.

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 of the enclosed 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 intent to sell based in part on evidence seized during a search of his residence pursuant to a search warrant. The defendant moved to suppress evidence obtained from the officers' unlawful warrantless entry into his enclosed porch and the interior of his home and the search warrant's reliance on evidence obtained during 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

At-a-Glance Contributor



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Partner at
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lawful because there was no legitimate expectation of privacy in the porch and that the warrantless entry into the home was justified under the exigent circumstances exception to the warrant requirement. The defendant appealed arguing that evidence obtained during the officers' warrantless entry into his porch and inside his home and any evidence seized pursuant to the search warrant obtained therefrom should have been suppressed under the applicable provisions of the New Hampshire and Federal Constitutions. The Court reversed and remanded because it agreed with the defendant that he had exhibited a subjective expectation of privacy in the porch because he took steps to limit access to the enclosed porch by having a closed wooden exterior door and by limiting the public's ability to view inside it 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 one that society is prepared to recognize as reasonable as the evidence demonstrated that the defendant utilized the enclosed porch as a living space, or extension 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 exception to the warrant requirement was needed for the officers to lawfully enter his porch.

Gordon MacDonald, Attorney General, (Zachary Lee Higham on the brief and orally), for the State. Stephen T. Jeffco, of Portsmouth, (Stephen T. Jeffco on the brief and orally) for the defendant.

State of New Hampshire v. Matthew Gedney, No. 2020-0053

October 8, 2021

Affirmed.

- Whether the trial court erred in ordering a defendant to pay restitution for the counseling of the victims when a jury found only

that the defendant conspired to commit a robbery and did not find that he participated in the robbery itself?

The defendant was charged with armed robbery and conspiracy to commit armed robbery. A jury convicted the defendant of conspiracy to commit armed robbery but was unable to reach a verdict on the robbery charge. The trial court granted the defendant's motion for a mistrial on the robbery charge. The Court ordered the defendant to make restitution to the victims finding that it was obvious that the crime as committed by the defendant and a co-conspirator had a large and ongoing negative impact on the victims. The defendant argued that the victim's need for counseling was not directly caused by the conspiracy crime he was convicted of. The Court disagreed under the principle that a conspirator is liable for the acts of his co-conspirators undertaken in furtherance of the conspiracy. Therefore, the Court found that the state met its burden of proving a sufficient causal connection between the defendant's criminal act and the victim's economic loss by a preponderance of the evidence.

Gordon J. MacDonald, Attorney General, (Elizabeth Velez, on the brief and orally), for the State. Stephanie Hausman, Deputy Chief Appellate Defender, of Concord, on the brief and orally for the defendant.

Family Law

In the Matter of Alli Morris and Dustin Morris, No. 2020-0125

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)?

Father and mother had a child in 2005. Natural mother died in 2008. Father and Stepmother began a romantic relationship in 2010, married in 2013, had 3 natural children together and separated in 2016. Stepmother had raised the father's first child as her own but had not adopted the father's first child. Father argued that the trial court erred in awarding custody of the child to 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 child's natural nor adoptive parent. The Court assumed without deciding that the

New Hampshire Supreme Court Attorney Discipline System

Seeking Volunteer Members of the Complaint Screening Committee

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's general counsel not to docket 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 diverted; and refer complaints to disciplinary counsel for further investigation and potential hearing.

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. Appointments to the Committees 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 can be mailed to the Attorney Discipline Office at the following address: NH Supreme Court Attorney Discipline Office, Attn: Kathy Cleveland, 4 Chenell Drive, Suite 102, Concord, NH 03301; or emailed to the Attorney Discipline Office at the following email address: info@nhattyreg.org. Please contact Brian R. Moushegian, General Counsel, at (603) 224-5828 if you have any questions. Thank you.

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 said comments to:

Barbara Guay, Legal Assistant
New Hampshire Supreme Court
Hearings Committee
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
bguay@nhattyreg.org

November 4, 2021

US Bankruptcy Court Opinion Summary

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

In re Hopkins, 2021 BNH 004, issued Nov. 5, 2021 (Harwood, C.J.) (unpublished) (sustaining 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 applies to protect surviving spouses who do not have an ownership interest in their residence at the time of the homeowner's death; here, the debtor was only entitled to claim a homestead exemption on account of his ownership interest in the property pursuant to RSA 480:1).

Broderick test was the correct standard to apply. Under the Broderick test, an award to a step parent or grandparent over the objection of a fit natural or adoptive parent is not unreasonably or unduly restrictive on parental rights only if the petitioning party can show by clear and convincing evidence that (1) the custody award would specifically be in the child's best interest because of a significant psychological parent-child relationship; (2) the family is already in the process of dissolution, and (3) there is some additional overriding factor justifying intrusion in to the parent's rights such as a significant failure by the opposing parent to accept parental responsibilities, and (4) the custody award is necessary for the state to enforce its compelling interest in protecting the child from the emotional harm that would result if the child were forced to leave the significant psychological parent child relationship between the child and step parent or grandparent. The Court found that the evidence was sufficient as a matter of law to satisfy all factors of the Broderick test. The Court found that the trial court erred in applying solely a best interest of the child standard to determine the parental rights and responsibilities as between Father and stepmother with regard to the child.

Alli Morris, the petitioner; filed no brief. Bedard & Bobrow, of Eliot, Maine (David J. Bobrow on the brief) for the respondent.

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

Affirmed in Part, Reversed in Part, Vacated in Part and Remanded.

- 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 who refused to take the child home after a hospitalization following the child's act of physical aggression toward a caretaker because they did not feel safe with the child in their home. The court awarded legal custody to 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 the parents were required 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 interpreting RSA 169-C:3, XIX(b) as allowing the court to enter a neglect finding without assigning that neglect finding to any action taken by the child's adoptive parents and that the court also erred in finding 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 court 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 rather than less restrictive options in New Hampshire. The Court held that the circuit court erred as a matter of law in finding that the adoptive parents did not neglect the child when they refused to retrieve her from the hospital. The Court did not address DCYF's argument about whether a neglect finding could be made without attributing fault for the neglect to actions of the parents. The Court referenced the child's medical providers who had identified out of state institutions that would best service the child's significant needs in finding that the record supported the circuit court's finding that the out of state residential treatment facility was the least restrictive and most appropriate placement. Despite this finding, the Court agreed with DCYF and CASA that the circuit court failed to identify a legally permissible primary and concurrent case plan in the dispositional orders. The Court explained that absent a finding that it would be vain to pursue reunification, the circuit court should not have rejected reunification as a primary case plan goal when it had determined that reunification remained a possibility. The Court vacated both the primary and concurrent case plans and remanded

for the issuance of another dispositional order because the circuit court failed to identify a legal permissible primary case plan.

John M. Formella, Attorney General (Laura E. B. Lombardi, senior assistant attorney general on the brief and orally), for the New Hampshire Division for Children, Youth and Families. Nixon Peabody of Manchester (Mark Tyler Knights and W. Daniel Deane on the brief and Nathan P. Warecki on the brief and orally) and CASA of New Hampshire (Betsy Paine, Caroline Delaney and Sarah E. Warecki on the brief) for Court Appointed Special Advocates of New Hampshire. Bianco Professional Association of Concord (James J. Bianco, Jr. and Lisa M. Bianco on the brief and Brendan L. Wile on the brief and orally) for the respondents.

Public Employee Labor Relations Board

Appeal of New Hampshire Department of Transportation, No. 2020-0416
October 28, 2021
Affirmed.

- Whether the New Hampshire Public Employee Labor Relations Board erred in finding that the New Hampshire Department of Transportation (DOT) committed an unfair labor practice when it implemented a new commercial driver's license (CDL) medical card requirement for certain current DOT employees?

The State Employees' Association of New Hampshire SEIU Local 1984 (Union) filed an unfair labor practice complaint against DOT alleging that by adopting a new requirement for a CDL medical card for current employees if they were promoted, demoted or transferred to a different position requiring a CDL medical card, the DOT failed to negotiate a mandatory subject of bargaining and improperly implemented a unilateral change in terms and conditions of employment for certain employees. The DOT argued that the requirement was a matter of managerial prerogative and a prohibited subject of bargaining. On appeal, DOT argued that the new CDL medical card requirement was a prohibited subject of bargaining and alternatively that it is a permissive subject of bargaining. DOT argued that RSA 273-A:1, XI reserved the new CDL medical card requirement to its exclusive managerial authority and therefore said requirement was a prohibited subject of bargaining. DOT argued that the Court should overrule Appeal of Nashua Board of Education (1997) and the Court declined to overrule that case using a four factored stare decisis analysis. The Court agreed with the Union that the new CDL medical card requirement is a mandatory subject of bargaining. The Court also found that the new CDL medical card requirement primarily affected the employee's terms and conditions of employment rather than managerial matters. Finally, under the third step in the managerial policy exception analysis, the new CDL medical card requirement must not interfere with public control of governmental functions. The Court agreed with the PELRB's finding that the DOT did not demonstrate that the CDL medical card requirement for current employees was necessary to protect employee health and public safety actually served those goals. Therefore, the Court agreed with the PELRB that the DOT failed to establish that treating the requirement as a mandatory subject of bargaining will interfere with public control of governmental functions. Therefore, the Court agreed with the PELRB that all three steps of the managerial policy exception were met that therefore, the new CDL medical card requirement for current employees is a mandatory subject of bargaining.

Gary Snyder, of Concord, on the brief and orally; for the State Employees' Association of New Hampshire, Inc. SEIU Local 1984. Office of the Attorney General (Jill A. Perlow, senior assistant attorney general and Daniel E. Will, solicitor general on the brief and Jessica A. King, assistant attorney general, on the brief and orally) for the New Hampshire Department of Transportation.

Real Estate

**Bellevue Properties, Inc. v. 13 Green Street Properties, LLC & a., No. 2020-0437
October 8, 2021**

Affirmed.

- Whether the trial court erred in dismissing a petition to quiet title and for declaratory judgment?

The plaintiff, Bellevue Properties owns and operates the North Conway Grand Hotel which abuts the Settlers' Green outlet shopping center owned by the defendant 13 Green Street Properties. The defendant planned to construct a mixed-use development in Settlers' Green including a supermarket and a parking lot on an undeveloped parcel and an abutting lot and in so doing, replace a current road, which was formerly a class V highway, with a new private road. The current road was a part of the most direct means of accessing the North Conway Grand Hotel. The plaintiff appealed the trial court order granting the defendant's motion to dismiss the plaintiff's petition to quiet title to the land underneath the current road. The plaintiff argued that the plaintiff had an easement in the form of a private right of access over the road pursuant to RSA 231:43, III. The trial court dismissed the petition agreeing with the defendant that the plaintiff's property did not directly abut the current road and therefore, they could not assert a statutory right of access over the road under RSA 231:43, III. The Court affirmed the trial court's decision in holding that the plaintiff could not assert a statutory right of access over the current road pursuant to RSA 231:43, III because even without the current road the plaintiff had adequate and reasonable access to its property and therefore a right of access over the current road was not reasonably necessary for the plaintiff's ingress and egress to its property.

Bernstein, Shur, Sawyer & Nelson, of Manchester (Christina A. Ferrari on the brief and Roy W. Tilsley, Jr. on the brief and orally), for the plaintiff. Sulloway & Hollis of Concord (Derek D. Lick on the brief and orally) for the defendants.

Right to Know Law

**Tejasinha Sivalingam v. Frances Newton & a., No. 2020-0216 and No. 2020-0352
October 5, 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 selectwomen individually for their dismissal. The plaintiff argues that the selectwomen violated their oaths of office by causing information to be divulged at a meeting that the Board had previously voted to withhold and that adversely affected his relationship with members of the community. The Court agreed with the defendant selectwomen that the plaintiff failed to adequately allege that the disclosed information would adversely affect his reputation as required to state a claim under RSA 42:1-a, II(a) and therefore held that their motion for judgment on the pleadings should have been granted by the trial court. With regard to the defendants' motion for attorney's fees, the Court discussed that the general rule in New Hampshire is that parties pay their own attorney's fees with two judicially-created exceptions: the bad faith litigation and substantial benefit theories. The defendant argued that both exceptions applied to their motion for attorney's fees. The Court disagreed and affirmed the trial court's conclusion that the selectwomen were not entitled to attorney's fees under either the bad faith litigation or substantial benefit theories. The Court reversed the trial court's decision denying the Board's Motion to Dismiss because the plaintiff's complaint failed to include allegations that the Board failed to comply with RSA 91-A:2, II's notice requirements. The Law Office of Martin & Hipple, of Concord (Stephen T. Martin on the brief and orally), for the plaintiff. Gallagher, Callahan & Gartrell, of Concord (Charles P. Bauer and Anne E. Jenness on the brief and orally) for the defendants Frances Newton and Leigh Sharps. Mitchell Municipal Group, of Laconia (Laura Spector-Morgan on the brief and orally) for the defendant Town of Ashland Board of Selectmen.

Tax Law

Merrimack Premium Outlets v. Town of Merrimack, No. 2020-0358

**October 1, 2021
Reversed and Remanded.**

- Whether the trial court erred in ruling that the Town of Merrimack had statutory authority to make the 2017 reassessment when there had been no changes to the property and whether the trial court erred in dismissing constitutional claims with prejudice as a discovery sanction?

The plaintiff owned a large property in the Town of Merrimack that it leases to the Merrimack Premium Outlets Center. The Town learned that the property had been valued at \$220,000,000 in conjunction with a loan in the same year the Town had assessed the property at \$86,549,400. Four years later, in 2017, the Town believed that it had severely undervalued the property and reassessed the property at \$154,149,500. The plaintiff argued that there were no physical, zoning, or ownership changes in the property or the market to justify the 2017 assessment. The plaintiffs also argued that the trial court erred in dismissing the constitutional claim with prejudice as a discovery sanction for the plaintiffs' repeated failure to answer certain interrogatories. The Court held that the Town lacked statutory authority to make the 2017 reassessment because the reassessment did not occur to reflect a change.

Sassoon Cymrot Law, of Hingham, Massachusetts (Anthony M. Ambriano on the brief and orally), for the plaintiffs. Drummond Woodsum & MacMahon, of Manchester (Matthew R. Serge on the brief and Demetrio F. Aspiras on the brief and orally) for the defendant.

Appeal of Keith R. Mader 2000 Revocable Trust & a., No. 2020-0538

October 8, 2021

Affirmed.

- Whether the Board of Tax and Land Appeals (BTLA) erred in dismissing the taxpayers' appeal in finding that the taxpayers had not met their burden of proving 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 proving the omission of their signatures and certifications on their tax abatement application was due to reasonable cause and not willful neglect. The Court had previously construed the reasonable cause and not willful neglect standard to permit an appeal to the BTLA without a taxpayer signature and certification if the taxpayer can show that despite exercising ordinary business care and prudence, it was not reasonably possible to submit the application with the taxpayer's signature and certification and can also show that he or she was not recklessly indifferent to the signature and certification requirement in preparing the application. The Court upheld the BTLA's holding that the taxpayers failed to prove that the omission of their signatures and certifications was due to reasonable cause and not willful neglect. The Court also rejected the argument the taxpayers' argument that the BTLA exceeded its authority by adopting Rule 203.02(d).

Cooper, Carghill & Chant, of North Conway (Randall F. Cooper on the brief and orally), for the petitioners. Donahue, Tucker & Ciandella, of Exeter (Christopher T. Hilson on the brief and Brendan Avery O'Donnell on the brief and orally) for the respondent.

Shaw's Supermarkets, Inc. v. Town of Windham, No. 2020-0275

October 20, 2021

Affirmed.

- Whether the trial court erred in denying the Town of Windham's motion to dismiss the tax abatement appeal of the plaintiff, Shaw's Supermarkets for lack of standing and in

AT-A-GLANCE continued on page 38

October 2021

* Published

ATTORNEYS' FEES AND COSTS

10/14/2021 *Wells Fargo Bank, NA v. David B. Moskoff, et al.*
Case No. 17-cv-136-JL, Opinion No. 2021 DNH 164

Following a jury trial in favor of the plaintiff in this judicial foreclosure and declaratory judgment action, the court granted the plaintiff's motion for attorney fees and costs in part and denied it in part. The parties' operative mortgage provided the basis for an award of reasonable fees and costs, however, the amount of fees and costs requested by the plaintiff was excessive. While counsel's hourly rates were appropriate, the amount of hours sought were excessive because they included redundant, duplicative, otherwise unnecessary, or overworked or unrelated tasks. The court reduced the total hours requested accordingly and denied the plaintiff's request for certain other unrecoverable costs. 17 pages. Judge Joseph N. Laplante.

CIVIL RIGHTS; CONSTITUTIONAL LAW

10/6/2021 *McCoy v. Town of Pittsfield, NH*
Case No. 20-cv-362-JL, Opinion No. 2021 DNH 158

In this civil rights claim involving a town's application of a zoning ordinance against a resident, the court granted the town's motion for summary judgment. Plaintiff sued the Town of Pittsfield over the Town's order that he remove a 52-foot trailer on his property that depicted the word "TRUMP." Summary judgment was appropriate on the plaintiff's content or viewpoint discrimination claims because the plaintiff could not point to specific, competent evidence that town officials discriminated against him based on the expressive content on his trailer. Similarly, the plaintiff's as applied vagueness claim suffered the same fate because no reasonable fact finder

could conclude that the Town's application of the ordinance failed to provide a person of ordinary intelligence fair notice of what was prohibited, was so standardless that it authorized or encouraged seriously discriminatory enforcement, or even led to discriminatory enforcement in the plaintiff's case. Finally, the court dismissed the plaintiff's "class of one" equal protection claim because he did not meet his burdens of production and persuasion to identify similarly situated landowners, demonstrate that the Town treated him differently than these alleged comparators, or prove that the Town did not have a rational basis for its enforcement of the ordinance against him. 30 pages. Judge Joseph N. Laplante.

DISABILITY; ADEQUACY OF A COMPLAINT

10/6/2021 *Michael A. Doyle v. Mount Vernon Company d/b/a Constitution Apartments LLC*
Case No. 21-cv-111-PB, Opinion No. 2021 DNH 159

Michael Doyle brought his lawsuit under the Americans with Disabilities Act against "Mount Vernon Company d/b/a Constitution Apartments LLC." He claims that Mount Vernon, who owns the apartment complex he lives in, is violating the ADA by failing to accommodate his disability. The court held that Doyle's complaint was defective because he improperly alleged that the apartment building was a place of public accommodation. Privately owned apartment buildings are not places of public accommodation, even where the property accepts tenants receiving federal housing subsidies. The court did not take a position on whether Doyle could assert a viable claim under the Fair Housing Act. Three pages. Judge Paul Barbadoro.

INSURANCE COVERAGE

10/13/2021 *TRT Development Co. v. ACE American Insurance Co.*
Case No. 19-cv-851-PB, Opinion No. 2021 DNH 162

This case arose out of a fuel storage tank incident at the Omni Mount Washington Hotel in Bretton Woods, New Hampshire. The hotel's owners sought a declaratory judgment that their insurer ACE must provide coverage for that incident under a claims-made liability insurance policy. The policy covered remediation costs arising out of a storage tank incident that is discovered and reported to the insurer during the policy period. A separate reporting requirement embedded in the policy required the insured to provide notice to the insurer within seven days of discovering such an incident. TRT gave notice to ACE within the policy period but more than seven days after discovering the incident. Although ACE suffered no prejudice, it denied coverage because of the late notice. The issue raised by the parties' cross-motions for summary judgment was whether, under New Hampshire law, proof of prejudice is required to deny coverage in these circumstances. The court concluded that the New Hampshire Supreme Court, if faced with the issue, would hold that the notice-prejudice rule applies when an insured reports a claim under a claims-made policy during the policy period but fails to provide notice within the time specified in a notice-of-claim provision. Because TRT reported the storage tank incident during the policy period and ACE was not prejudiced by the reporting delay, the court held that ACE may not deny coverage due to late notice. 20 pages. Judge Paul Barbadoro.

PROPERTY; TRESPASS

10/13/21 *Evelyn Rivera v. Jimmy Ducharme*
Case No. 21-cv-221-PB, Opinion No. 2021 DNH 163

After holding an evidentiary hearing, the court granted a preliminary injunction against Evelyn Rivera, her family, and her tenants. The injunction sought by her next-door neighbor, Jimmy Ducharme, prevents Rivera from parking on property Ducharme alleges is his. The court determined that there was no easement by implication and relied on survey plans in determining that Ducharme met the elements necessary to

receive a preliminary injunction. Three pages. Judge Paul Barbadoro.

DIVERSITY JURISDICTION

10/20/2021 *Hutton Construction, Inc. v. Continental Western Insurance Co.*
Case No. 21-cv-706-PB, Opinion No. 2021 DNH 167

The plaintiff in this action brought a claim against an insurance company after setting with its insured for performing defective masonry work and obtaining an assignment of the insured's rights under the policy. The insurer removed the case to federal court based on diversity jurisdiction. The plaintiff moved to remand, arguing that its claim is a "direct action" within the meaning of 28 U.S.C. § 1332(c)(1)(A) and, therefore, the insurer must be deemed to be a citizen of New Hampshire where its insured is based. The court denied the motion because the case is not a "direct 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 *Inosencio Baez Samora v. UPS-SCS*
Case No. 21-cv-0596-PB, Opinion No. 2021 DNH 169

Inosencio 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's remaining claim, brought under Section 1983, was barred by the statute of limitations. The court agreed and dismissed the complaint. Six pages. Judge Paul Barbadoro.

At-a-Glance from page 37

granting Shaw's requested tax abatement?

The plaintiff, Shaw's Supermarkets leased land from a property owner in Windham. The lease required Shaw's to pay the property owner its pro rata share of the real estate taxes assessed on the entire parcel and the Owner was required to pay the taxes to the Town. If the owner received a tax abatement, Shaw's was entitled to its pro rata share of the abatement. Shaw's applied unsuccessfully for a tax abatement and thereafter applied to the Superior Court for a tax abatement. The Town moved to dismiss arguing that Shaw's lacked standing to request a tax abatement for property it did not own, but the trial court denied the motion. The trial court granted Shaw's requested tax abatement after a bench trial. The Court held that it was immaterial whether Shaw's owned the property but instead focused on whether Shaw's was aggrieved by the Town's neglect or refusal to abate a tax in accordance with RSA 76:16 because it was responsible under its lease for paying the amount assessed. The Court also held that a reasonable person could have reached the same conclusion of the value as the trial court and therefore, upheld the decision to grant Shaw's its requested tax abatement.

Alfano Law Office, of Concord (John F. Hayes on the brief) and Mark Murphy Law Offices, LLC, of Norwood, Massachusetts (Mark F. Murphy on the brief and orally) for the plaintiff. Beaumont & Campbell, of Salem (Bernard H. Campbell on the brief and orally) for the defendant.

Workers' Compensation

Appeal of Estate of Peter Dodier, No. 2020-0185 October 14, 2021
Reversed and Remanded.

- Whether the Compensation Appeals Board (CAB) erred in denying the estate's claim for workers' compensation and death benefits following the claimant's suicide?

The decedent was employed as a branch manager at OL International Holdings, an international shipping and logistics company. The decedent had expressed stress related to his work and other factors in 2016 and early 2017. Thereafter, the decedent committed suicide. The decedent's estate provided a notice of accidental injury or occupational disease to his employer which stated that the decedent had developed severe depression and anxiety from the stress of the job. The workers' compensation insurer denied the estate's claim for benefits and the estate challenged the finding at the Department of Labor and the CAB, both of which upheld the workers' compensation denial. The CAB found that the estate failed to prove by a preponderance that the decedent's anxiety and major depression were causally related to his employment. The Court held that an employee may receive workers' compensation benefits for depression induced in part by employment-related stress even if the employee suffers from pre-existing depression and other mental health issues. The Court discussed the standards for legal and medical causation in a case when an employee suffers from a pre-existing condition. With regard to legal causation, the employee must show that his work-related conditions presented greater risks than those he encountered in his non-employment

activities. As to medical causation, the employee has the burden to demonstrate that work-related activities probably caused or contributed to the injury as a matter of medical fact. The Court remanded for the CAB to apply the chain-of-causation test that places the burden on the claimant to prove by a preponderance of the evidence that there was an unbroken chain of causation between the work-related injury, the disturbance of mind and the ultimate suicide. That is, the Court remanded the case to the CAB to determine whether the decedent's death by suicide was a direct and natural result of his initial compensable injury of anxiety and depression such that the suicide is compensable under RSA 281-A:26.

Law Office of Manning & Zimmerman, of Manchester (Maureen Raiche Manning on the brief and Anna Goulet Zimmerman on the brief and orally) for the petitioner. Trombley & Kfoury, of Bedford (J. Kirk Trombley on the brief and Paul R. Kfoury, Jr. on the brief and orally) for the respondents.

Appeal of Pelmac Industries, No. 2020-0605 October 13, 2021
Affirmed.

- Whether the Compensation Appeals Board (CAB) erred in awarding workers' compensation benefits to the respondent, the decedent-employee's estate, after the decedent committed suicide following a severe workplace accident?

The decedent was severely injured in a single vehicle accident which occurred when he was driving back from a work site in the Berlin area. The decedent suffered from multiple head lacerations,

a fractured neck, a concussion, a serious tear to his left rotator cuff and multiple fractured ribs. The workers' compensation carrier accepted the injuries arising out of the single vehicle car accident. When the decedent later committed suicide, the workers' compensation carrier terminated payment of the claim indicating that the decedent's death was not causally related to the work injury and did not arise out of and in the course of his employment. The CAB determined that there was an obvious cause and effect between the June 5 car accident and injuries and the suicide and that the decedent's widow was entitled to death benefits. The Court found that the decedent was a traveling employee and that his injuries arising out of the June 5 car accident involved risk directly associated with his employment and that his injuries arose in the course of his employment because the travel to and from Berlin was necessitated by and integral to the nature of the decedent's employment such that the June 5 injuries occurred within the boundaries of time and space created by the terms of his employment. The Court explained that the chain of causation test is the proper standard for determining the compensability of a death by suicide under New Hampshire's Workers' Compensation law. The chain of causation tests provides that an employee's death by suicide is compensable under RSA 281-A:26 if the claimant proves by a preponderance of the evidence that the suicide resulted from a disturbance of mind of such severity as to override normal, rational judgment and that such disturbance of mind resulted from the employee's work-related injury and its consequences.

Bernard & Merrill, of Manchester (Gary S. Harding on the brief and orally) for the petitioner. Moquin & Daley, of Manchester (Terrence J. Daley on the brief and orally) for the respondent.

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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@nhlawoffice.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.

RATH YOUNG PIGNATELLI

REAL ESTATE PARALEGAL

Rath, Young and Pignatelli, P.C. is seeking a full or part-time real estate paralegal with 3 to 5 years of experience in a law firm or title company, to support attorneys in the Energy and Business practice groups. Duties include review of title documents, surveys, leases, deeds and real estate related documents and the preparation of Estoppels, SNDAs, Amendments, and Title Affidavits for renewable energy projects; assist with corporate transactions involving real estate; research titles; and record documents. Bachelor's degree or paralegal certification preferred. Send resume and letter of interest to Diane Vlahos, Director of Operations, Rath, Young and Pignatelli, P.C. at djv@rathlaw.com.

National Impact. Uniquely New Hampshire.

Rath, Young and Pignatelli, P.C.
www.rathlaw.com
Concord | Nashua | Boston | Montpelier

RATH YOUNG PIGNATELLI

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.

National Impact. Uniquely New Hampshire.

Rath, Young and Pignatelli, P.C.
www.rathlaw.com
Concord (603) 226-2600 Nashua (603) 889-9952 Boston (617) 523-8080 Montpelier (802) 552-4037

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 ljustzak@wardlawnh.com.

 **Ward Law Group, PLLC**

WardLawNH.com

MCLANE MIDDLETON

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 essential; 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 a 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 (floater) – MANCHESTER, NH

McLane Middleton is seeking a full time experienced Legal Secretary/Administrative Assistant for our Manchester, NH office. This floater 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 thru out 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.

MCLANE MIDDLETON

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 immediate opening 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 4-5 years of experience 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.

MCLANE MIDDLETON

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 (COUNTY ATTORNEY'S OFFICE)



The Office of the Grafton County Attorney currently has a full time position available for a highly motivated attorney. The Assistant County Attorney is primarily responsible for the prosecution of cases in the Superior Court with a focus on early case resolutions and alternative sentencing options. Other responsibilities include discussing legal aspects of criminal cases with police, community relations and program development. Applicant must have Juris Doctor Degree and be a member in good standing of the NH Bar. Flexibility with some telework options may be considered.

COME JOIN OUR TEAM!
Salary range \$62,212-\$86,112

**Grafton County offers an exceptional benefit package including
NH Retirement System, Low Deductible Health Insurance plans, 12 Paid Holidays,
Generous Earned Time Package and much more!**

Please send resume and cover letter to:

Grafton County Human Resources
3855 Dartmouth College Hwy., Box 3, North Haverhill, NH 03774
(Apply online, visit: www.co.grafton.nh.us/employment-opportunities)
E-mail: hr@co.grafton.nh.us
E.O.E.

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 available.

Essential Job Responsibilities include:

- Working with law enforcement to support the investigation of criminal cases and prosecuting criminal cases in both the 5th Circuit-District Divisions and Sullivan Superior Court.
- Works closely with the Office of Victim Witness Coordinator to ensure that all victims/witnesses are properly informed, prepared for hearings, and supported throughout the pendency of the criminal process
- Provides advice and guidance to local law enforcement during non-office hours
- Acts as counsel for the State at hearings and addresses post-trial/conviction motions
- Prepare and present investigations and cases to the Grand Jury
- Communicates with news media when appropriate

Starting Salary: \$80, 234.00

Status: Full time/Exempt, Benefits

Submission Requirements: Employment application, resume and writing sample required.

Email Applications: humanresources@sullivancountynh.gov

Mail Applications: 5 Nursing Home Drive, Unity, NH 03743

Equal employment opportunity.

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 l.roy@clrm.com.



GALLAGHER
CALLAHAN
& GARTRELL

Experienced Civil Litigation Attorney

Gallagher, Callahan & Gartrell, P.C. is seeking an experienced civil litigation attorney to join our complex litigation practice and to service a strong base of existing clients. The ideal candidate will have significant experience as lead counsel at the trial and appellate levels, including among the following practice areas: commercial defense, municipal defense and civil rights, employment, property, legal malpractice, and personal injury. We seek to foster a collaborative team based approach to the practice of law, and we are looking for a motivated person with good humor who shares these values. The ideal candidate will also have demonstrated experience leading, motivating, and mentoring associates and staff. Portable business would be a plus, but is not necessary.

Gallagher, Callahan & Gartrell, P.C. is committed to investing in its attorneys' professional growth and development, offering a competitive salary and benefits package, as well as excellent work-life balance. Interested applicants should send their confidential inquiry, resume and cover letter to dietel@gcglaw.com.

Civil Litigation Associate

Gallagher, Callahan & Gartrell, P.C. is seeking a litigation associate to join our complex litigation practice. Our litigation group is engaged in a wide variety of civil litigation matters before the New Hampshire state and federal courts as well as federal and state agencies. The ideal candidate will have experience providing support with all facets of civil litigation and an interest in further developing their skills and building their career under the guidance of the experienced lawyers in the firm. We are looking for a motivated person with excellent academic credentials, strong writing and research skills, and good humor who is excited to work with our collegial and collaborative team.

Gallagher, Callahan & Gartrell, P.C. is committed to investing in its attorneys' professional growth and development, offering a competitive salary and benefits package as well as excellent mentorship, training, and work-life balance. Interested applicants should send their confidential inquiry, resume and cover letter to burrows@gcglaw.com.

Transactional Associate

Gallagher, Callahan & Gartrell, P.C. is seeking a transactional associate to join our commercial transactional and regulatory practice. We handle business formations, mergers and acquisitions, dissolutions, land use, commercial real estate, securities, insurance and financial institution matters. Qualified candidates will have strong academic credentials, a demonstrated interest in transactional work, some private or administrative sector experience, and an interest in further developing their skills and building their career under the guidance of the experienced lawyers in the firm. We are looking for a motivated person with excellent academic credentials and good humor who is excited to work with our collegial and collaborative team.

Gallagher, Callahan & Gartrell, P.C. is committed to investing in its attorneys' professional growth and development, offering a competitive salary and benefits package as well as excellent mentorship, training, and work-life balance. Interested applicants should send their confidential inquiry, resume, and cover letter to leonard@gcglaw.com.

Full-time Real Estate Paralegal

Gallagher, Callahan & Gartrell, P.C. is seeking a full-time real estate paralegal in its Concord, NH office with commercial and residential transactional experience. Candidate must have extensive knowledge of the NH registries, experience conducting title searches, the ability to carefully examine title abstracts, draft real estate closing documents, and issue commercial title insurance policies. Strong communication and organizational skills are a must. High attention to detail, team work, discretion, and independent decision-making are critical. The candidate must be able to prioritize, manage multiple projects, and follow through on issues in a timely manner.

Working knowledge of Microsoft Word and Excel is required. Paralegal Studies certificate preferred or equivalent work experience. In-state travel is required, remote working technology is provided. Competitive salary, health insurance and benefits package available. Please email cover letter and resume to Sandi Babson, Operations Manager at babson@gcglaw.com.



Join our expanding Real Estate Group

Shareholder and Associate Attorney – Portland, Maine

Bernstein Shur is seeking a Shareholder and an Associate attorney to join our Real Estate Practice Group in our Portland, Maine office. We have recently been named one of Maine's Best Places to Work for the tenth time and employ 125+ award-winning attorneys who work and live by our core values. We relish simplifying the complex. We believe that sophisticated doesn't have to mean stuffy, and we're not just accessible—we're approachable. If you desire both challenging work, and a unique approach to the practice of law, please learn more about these positions by visiting bernsteinshur.com/who/careers.

Candidates must have experience in transactional commercial real estate (i.e. the acquisition, development, leasing and sale of real estate and related financing), a proven ability to work simultaneously on multiple projects, and Maine Bar membership. Bernstein Shur has offices in Maine and New Hampshire and offers competitive compensation, an excellent benefits package, and a flexible work environment.



bernsteinshur.com

Shaheen & Gordon

Legal Assistant

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a Legal Assistant responsible for supporting trial attorneys with workers compensation and personal injury cases in State and Federal Courts in their Manchester, NH office. The ideal candidate will have at least 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 to include, but are not limited to:

- Experience with contacting claims adjusters
- Experience with requesting, reviewing and organization of medical records
- Preparing medical evidence for trial
- Scheduling Permanent Impairment Evaluations
- Management of Personal Injury Files
- Preparation of general correspondence, motions and objections
- Have solid knowledge of Court Rules and all discovery deadlines
- Assist with discovery and document management
- Serve and file legal papers in the correct court and familiarity with electronic filing systems in both State and Federal Court
- Strong computer skills, Microsoft Office, Outlook, Excel, Adobe, Centerbase, Net-Documents, 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
- Must have excellent secretarial skills, the ability to multi-task and under pressure, and able to prioritize is required. Attention to detail and proofreading skills are a must have

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.

No phone calls or agencies please.
EOE

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



New Hampshire | Massachusetts | Maine | Rhode Island | Connecticut

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



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, in 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
- Draft forms
- 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 401K plan. Please email your cover letter, resume and references to recruiting@shaheengordon.com.



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.

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.
- 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 customer 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 inde-

pendently 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 401K plan.

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



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, interpersonal and organization 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
- Have a professional and friendly attitude

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.

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.

No phone calls or agencies please.

EOE

Lateral Patent Attorney | Burlington, VT or Lebanon, NH

Northern New England's largest business law firm is seeking an experienced patent attorney having a portable book of business and a strong background in chemical/biochemical arts or electrical arts to join our Intellectual Property Group in either our Burlington, Vermont, or our Lebanon, New Hampshire Office. The ideal candidate will have the following: Six or more years of patent experience, including preparing and prosecuting patent applications in chemical/biochemical arts or electrical arts, or a former U.S. patent examiner in a chemical/biochemical art unit or an electrical art unit, with at least one year of patent experience outside of the U.S. Patent and Trademark Office. The ideal candidate will 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 — one of Northern New England's largest law firms — has an exciting opportunity for a litigation attorney in its Lebanon office. The ideal candidate would have experience litigating in New Hampshire courts and an interest in doing sophisticated litigation.

Corporate/Commercial Attorney | Lebanon, NH

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

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

ASSOCIATE COUNSEL STATE EMPLOYEES' ASSOCIATION OF NH, INC.

Looking for an ambitious Associate to handle union related issues. Duties and responsibilities include: Serves as legal counsel in union grievances, labor arbitrations, and proceedings before administrative agencies and courts, conducts research, provides legal advice to senior management/Board of Directors, works with political staff to draft laws/rules, assists with organizing campaigns as needed. May act as General Counsel in his/her absence. Works and coordinates with outside counsel as needed/directed.

Minimum Qualifications:

Juris Doctorate from an American Bar Association recognized law school. Active license as a member of the NH Bar. Speaks and writes effectively. Minimum of 1+ years of relevant experience. Knowledge of labor arbitrations and matters before the PELRB and/or NLRB preferred. Valid driver's license. Three letters of recommendation.

Salary: \$57,000.00 - \$71,000.00 per year. Excellent benefits.

Forward resume to: eschmuhl@seiu1984.org

Attorney III

NH Department of Health & Human Services

Position Number # 41026

Salary Range: \$63,180 to \$90,772.50

Position is with the N.H. Department of Health and Human Services (DHHS), physically located in Concord at the Department of Justice. The position is under the joint supervision of the N.H. Department of Justice and the DHHS and represent DHHS.

Duties include: Serves as client counsel to the DHHS providing legal advice to the DHHS on a wide-range of legal issues, including employment, policy and administrative matters. Reviews DHHS contracts. May represent DHHS in litigation. Litigation activities include drafting pleadings and motions, conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.

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: #41026 Attorney III. 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.

ASSISTANT COÖS COUNTY ATTORNEY

The Office of the Coös County Attorney currently has an opening for a full-time Assistant County Attorney. The Assistant County Attorney is primarily responsible for representing the State in the prosecution of felony crimes in Coös Superior Court. The position may also involve administering a federal grant, discussing legal aspects of cases with staff and police, and counseling law enforcement on legal matters. Trial or jury trial experience is preferred, and experience prosecuting criminal cases and working with victims of crime is a plus. Other responsibilities may include being available to take calls and to provide advice and guidance to local law enforcement during non-office hours.

Minimum Qualifications: Juris Doctor degree and be a member in good standing of the New Hampshire Bar Association.

Application Process: Please send a resume and cover letter to the address below.

John G. McCormick, Coös County Attorney
55 School Street, Suite 141
Lancaster, NH 03584
603-788-5560 (fax)
sue.corrow@cooscountynh.us

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Rockingham County

ASSISTANT COUNTY ATTORNEY

SCOPE OF POSITION:
Seeks justice with professionalism, excellence and pride, consistent with the New Hampshire Rules of Professional Conduct, American Bar Association and National District Attorney's Association guidelines, as a criminal prosecutor with a concentration in Superior Court.

ESSENTIAL JOB FUNCTIONS:

- Acts as counsel for the State of New Hampshire in criminal matters.
- Works closely with Victim/Witness Coordinators to ensure that all witnesses/victims are properly informed, prepared and supported throughout the prosecution process.
- Presents investigations and cases to the Grand Jury

REQUIRED EDUCATION AND EXPERIENCE:

- Juris Doctor from accredited law school.
- 3 years of experience in criminal prosecution, preferred.
- Must be admitted into the New Hampshire Bar Association.

SALARY RANGE: \$67,077 – \$85,259 Dependent upon experience
STATUS: Full Time / Exempt
SUBMISSION REQUIREMENTS:
 Employment application and resume required.
 Apply online: Careers@co.rockingham.nh.us
 Walk-in / Mail Applications: 111 North Rd, Brentwood, NH 03833
Equal employment Opportunity

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 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

- Juris 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. NHMA is a small, 9-person organization, and staff collaborate continuously.
- Strong motivation and an inquisitive mind.
- Strong organizational skills.
- Prior work with local government, 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/classified/municipal-services-counsel>.

Classifieds

Classifieds from page 39

LEGAL ASSISTANT OR EQUIVALENT EXPERIENCE – Immediate Full time (will consider Part-time) opening for an experienced Legal Assistant or Equivalent Experience to work with two of our attorneys on Contract/Collection Litigation files at a well-established, mid-sized law firm in Southern New Hampshire. The ideal candidate will have 2+ years of experience drafting court correspondence, civil pleadings and other legal documents, filing of pleadings and requests for documents and tracking deadlines. Applicant must be computer proficient, possess excellent organizational / critical thinking skills, and the ability to work independently. Salary commensurate with experience. Excellent benefits package and competitive salary. Email Resume and salary requirements to Veronica Hamilton at vhamilton@lawyersnh.com.

PARALEGAL/LEGAL SECRETARY - Claremont law firm seeks a full-time Paralegal/ Legal Administrator. Strong organizational, computer, administrative and interpersonal skills are required. Experience in the legal field is preferred but not essential. Please submit your resume to: PO Box 829, Claremont, NH 03743.

POSITIONS SOUGHT

EXPERIENCED POLICE PROSECUTOR ATTORNEY, seeking part-time police prosecutor position. Concord / Sunapee region. Cannot exceed 25 hours per week, (or 1300 annual NHRS cap.) Please contact Attorney George Wattendorf, PO Box 509 Sutton, NH, gwatt08@gmail.com, or 603-834-2398.



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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 claim handling, litigation strategies, and system-wide initiatives. RiverStone is looking for Claims Analysts to join the team.

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- Be comfortable challenging the status quo for the better
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- Observe and participate in court proceedings with defense attorneys
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- Devise and implement creative strategies aimed at improving long-term results for all stakeholders, including policyholders, affiliate insurers, and injured claimants
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 - 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 401K, tuition reimbursement, employee stock purchase plan and additional site specific perks (on site gym, yoga classes, personal trainer and more).

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