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NEW HAMPSHIRE BAR NEWS

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Canine Companions in the Courtroom

Facility Dogs in Court May Soon Become Common Practice

By Tom Jarvis

Testifying in court is an unfamiliar process for most people and can be quite stressful, especially for a child. Having to recall traumatic events during that testimony can exponentially magnify that stress, sometimes causing the phenomenon called re-traumatization. In the last 17 years, courts and child advocacy centers across the U.S. have started to recognize the benefits of support that can be provided to children by trained facility dogs.

Presently, 26 states have developed programs where judicial systems partner with facility dogs to support crime victims. 16 of those states have laws that allow the use of man's best friend in legal proceedings, eight of which have legislation permitting their use to assist witnesses giving testimony in court.

New Hampshire does not currently have any laws regarding the usage of canines in the courtroom and the discussions have been tabled due to the Covid-19 pandemic. However, a national bill, the Courtroom Dogs Act, was recently passed in the Senate. The bill, introduced by U.S. Senators John Cornyn (R-TX) and Dianne Feinstein (D-CA), clarifies federal judges' authority to allow certified facility dogs in courtrooms during legal proceedings and would require the Department of Justice to issue guidelines for consistent practice when using them in court.

Facility dogs are assistance dogs, like guide dogs or emotional support dogs, that are specifically trained to

FACILITY DOGS *continued on page 19*

Astro the facility dog quietly providing comfort during witness testimony. Photo courtesy of Courthouse Dogs Foundation.

Proposed Amendment Calls for Removal of State Court Judges

NHBA Legislation Committee and Board of Governors Oppose Legislation

By Scott Merrill

The legislative administration committee held a public hearing January 13 about a proposed constitutional amendment that would allow for the recall and removal by petition of state court judges.

Judges in New Hampshire are appointed by the governor and serve until age 70. They can only be removed through impeachment.

Constitutional Amendment Concurrent Resolution (CACR) 27 provides that all "state court judges shall be subject to recall and removal from their offices and replacement by other persons by petition and vote of registered voters pursuant to such provisions as shall be established by the general court."

One of the sponsors of the amendment, Republican State Representative Norman Silber of District 2, addressed the committee and said his constituents are "very upset about their treatment in the judicial system."

"Right now, the citizens of our state have no practical way to remove judges whose behavior they think is improper, but that doesn't rise to this supreme level that might justify impeachment," he said. "Essentially, we have a situation with state court judges, many of whom are excellent—but some of whom are not so excellent—but neither category has any responsibility to the people of the state who pays their salaries."

Silber told the committee 40 other states have provisions allowing for the recall of officials, with specific provisions.

"[A] number of years ago the Chief Justice of the California Supreme Court was recalled because she never approved the lower courts' imposition of the death penalty," Silber said. "Several members of the court sided with her and this stirred up a hornet's nest. [In] the case of Rose Bird, she and some of her acolytes were recalled and replaced."

California Supreme Court justices are selected by the Governor but must be regularly reconfirmed by the electorate; prior to Bird, no California appellate judge had ever failed such a vote.

Richard Guerriero, president of the New Hampshire Bar Association, which represents over 5000 active attorneys, told the committee the Bar's Legislation Committee and Board of Governors unanimously oppose this amendment, citing the potential for political pressure.

"The New Hampshire Bar Association strongly opposes this proposal," Guerriero said. "We see this as an effort that would politicize judicial decisions in court cases, and we think that is not proper. If judges are thinking about or pressured by efforts to remove them from office because of their actions in particular cases, that will politicize their

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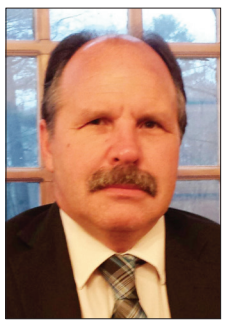
PRACTITIONER PROFILE

Christopher Seufert: Navigating Legal Seas with a Zen-like Devotion

By Kathie Ragsdale

Both the law and saltwater run through Christopher J. Seufert's veins, and both clearly have a tidal pull.



The reception room of his law office in the former Sulloway Mansion in Franklin provides evidence of his jurist bloodline. It contains the original law books – circa 1800s to 1912 – that belonged to his great, great grandfather, Dana Lamond, a Downeast Mainer who was elected to the state's 2nd Congressional District seat, but perished from pneumonia before he could serve.

"My grandmother's story was that he died on the train ride to Washington," Seufert says.

"It may have been the stories my grandmother told, but I had it in my pea brain from high school and maybe earlier

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From The Executive Director

A Lawyer Down the Hall

By George Moore

As we close the books on 2021, let us move forward into 2022 with a positive attitude that we will get past the worst of the pandemic and hopefully our lives will return to what passes these days as normal. Even without the COVID phenomenon, our normal professional lives, particularly for young lawyers, is fraught with anxiety and stress over developing a style and confidence in practice. How to interact with other stakeholders, including clients, and how to navigate the court system with its rules, judges and clerks, are stress for all beginning attorneys. They just don't teach that stuff in law school. Every lawyer, if being honest, has had that bone-chilling sensation of periodically thinking they don't have a clue what is going on.

I was lucky, because I was in a large firm with many experienced attorneys to hold my hand and explain how to handle a particular situation. My particular ground-zero moment of professional despair occurred on the second day of my first-ever jury trial. It was in Rockingham County Superior Court, and I was pressed into service due to the sudden illness of the partner handling the case. The game plan was that I was supposed to keep my mouth shut, take notes, and observe. That all changed after a phone call Sunday informing me that I would be picking the jury on Monday morning. To describe the ensuing hours as a panic attack would be too mild of a commentary.

The presiding judge was Wayne Mullavey, who by reputation, had a penchant for harassing young lawyers. Somehow, I survived picking the jury, but had no idea why I was striking some candidates but passing on others. I was apprehensive that a big mistake was just around the corner as the trial commenced. I had visions of causing a mistrial or worse, but the first few of the plaintiff's witnesses got on and off the stand without incident.

Then on the afternoon of the second day, when I was engaged in a rather ineffectual cross-examination, I perceived physical movement on the bench. A moment later, I heard Judge Mullavey say, in a booming voice with words to the effect: "Hold it right there – stop right this instant." I turned to see him standing, hands on hips, and then pointing a finger at me and continuing with "Mr. Moore, don't you even know Rule 59B?" As he glowered at me, with the jury watching, I had to confess that I didn't know off the top of my head what the rule was that I had obviously violated. He continued, "I suggest you go home tonight and educate yourself on the rule and see me in chambers at 8:45 am tomorrow!"

> Mentors help junior lawyers learn the important skills they need in addition to knowing the law. Mentors can show their mentees how to communicate with different people, in different contexts, for different purposes. They model for starting attorneys the importance of preparation, organization, and time management.

At that moment, I saw my budding career passing before my eyes and my career in shambles. In my naiveté, I hadn't even brought the rule book to court. I despairingly got back to the office and was at loose ends as what to do. I was so panicked; I couldn't even find the rule. Fortunately, I went to my mentor, Don Dufresne. I described what had happened, and Don got a puzzled look on his face and told me not to worry too much because there was no Rule 59B!

He told me that Judge Mullavey had a history of doing things like this to young lawyers and to look at it as a compliment, because he wouldn't have joked with you if he didn't like you. It sure didn't feel like it to me, but Don mentored me to simply be prepared, be myself, and the rest would come. Tell the judge you will comply with the rules in the future. Look at it as a rite of passage.

The next morning in chambers I found the judge with his feet upon his desk with the Clerk of Court, Unwar (Sam) Samaha sitting next to him with a smirk on his face. Judge Mullavey wanted to know if had found and studied the rule. With my new-found confidence, told him I had and would never violate it again. They got a great laugh out of it, and always treated me as a colleague and with respect from that point forward.

The point of this anecdote is that mentoring can play a huge role in the development of young lawyers. Mentors help junior lawyers learn the important skills they need in addition to knowing the law. Mentors can show their mentees how to communicate with different people, in different contexts, for different purposes. They model for starting attorneys the importance of preparation, organization, and time management.

Mentors also help up-and-coming lawyers figure out the best way of doing something or perhaps more importantly why they shouldn't do something. As time goes on, mentors can help developing lawyers figure out what practice areas they are most suitable for. Not every attorney is a fit for family law and the emotional overload that it usually involves. Many law students go through law school thinking they want to be litigators, without understanding the unique stresses of that particular practice.

Mentors can and do teach by example, taking the young lawyers to client meetings, court hearings, and strategy sessions. They can help develop skills in drafting real-life documents and making oral arguments. The value is the transferring—by experience—what works and what doesn't. Mentors also get personal satisfaction out of the process.

In sizable law firms, much of this is handled internally as part of an institutionalized training program. However, the majority of starting lawyers in NH are on their own or in a small firm setting where mentoring opportunities are limited or non-existing. One of the things I'm thankful for in 2022 is the development and expansion of the NHBA's Mentor Advice Program. While many new lawyers have been paired with mentors, we have dozens of senior skilled lawyers who have volunteered their time to be a mentor and are waiting to be matched up with a mentee. So, if you want to have some advice and guidance, and lower your stress level, this program is ready and waiting.

Think of it as a virtual "lawyer down the hall," someone there to help you as Don Dufresne helped me. It is a big part of the real NH advantage.

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Applying Aggressive Self-Care to Your Life

By Sarah Newhall Amorin

I've been thinking about the idea of aggressive self-care. At first I winced at "aggressive" as it sounded fanatical and combative. However, when Jill O'Neill at the NH Lawyers Assistance Program reached out to ask me to write a wellness article, she applied that term to me. Let's be clear, I don't say no to Jill. Not after the many years she spent helping my clients navigate the mental health system. So after we hung up, I started rolling the term over in my mind. Did that term really apply to me, and did I want it to apply to me? I would embrace the term aggressive as to my work; as a career public defender I strive to be a zealous advocate for my clients. We all, as members of the bar strive to aggressively provide our best work for our clients, to the Courts, to the criminal justice system, and to the rule of law. The legal system only works well if we give it our best. If you turn that around and apply it to your life, isn't it the same? You only work well when you give it your best. With that framework, I concluded that from now on I will embrace the idea of being aggressive about my self-care, and I encourage you to do the same.

A major part of my self-care is exercise. My office in Nashua overlooked a grade school playground. Each day I'd see the kids stream out to play on the climber, play soccer, play tag, and just move. I was jealous. In November of 2009, I even posted to social media, "[W]atching the kids at recess. Wishing I had recess." It took a few years, but I finally realized that I didn't just miss movement, I needed it in order to be a better person and a better lawyer. Recess for adults is good. Aside from the obvious physical benefits, researchers have been able to document reduced anxiety and depression in those who exercise more.

In November 2021, Preventive Medicine published the results of a Kaiser Permanente survey, which found that the reduction in the symptoms of these conditions during the initial COVID lock down was higher in those who exercised, but was greatest in those who were not only

able to exercise more, but to do so outside. We've all known since elementary school that outdoor recess was always better than indoor recess.

Practicing in New Hampshire provides an excellent opportunity to get outside because we are surrounded by natural beauty only a few steps away, no matter where in the State you may be. Even in urban areas, you can escape onto a rail trail or a park in a matter of minutes to squeeze in a lunch time walk or run. I started tallying up the outdoor exercises I know my fellow attorneys do "for fun" (aka "self-care.") There are runners, road cyclists, tri-athletes, paddlers, sailors, gardeners, hikers, walkers, fisher-folk, mountain bikers, skiers, swimmers, rock climbers, surfers, soccer players, tennis players, and more. If you can't find something to do outside in New Hampshire, you probably haven't tried.

Not only can exercise help with your physical and mental health, it's also good for keeping your mind sharp. I recently came across the idea of exercise as a cleanser for the brain. In her Ted talk, Dr. Wendy Suzuki, a neuroscientist at NYU, reported that "[E]xercising to increase your fitness literally builds brand new brain cells. ... [E]very time you work out, you are giving your brain a neurochemical bubble bath, and these regular bubble baths can also help protect your brain in the long term from conditions like Alzheimer's and dementia." I love that image of a bubble bath for your brain. If you are stuck writing that brief, give your brain a bubble bath, and come back to it – ready to make new connections.

There are no shortage of articles that tell you self-care is important and there are millions of tips. I'm only going to give you two, along with a parting thought.

Get a Buddy and/or a Cheering Section (or BE one). Sometimes I can coax a colleague or two to join me for a mid-day run. That always makes it better. I also have friends I regularly meet up with for runs. Having that accountability helps me. I can drag myself out of bed when I know there is someone waiting for me, even if the sun isn't up, or it's raining, or cold. Another check-in I have is that my husband and I will ask each other – did you get a bubble bath today, and if not, how can you? It can take time to find a buddy or a group, so try different things such as signing up for a class, asking a co-worker, adding another hashtag to your Peloton account, doing a group ride, or joining a Facebook group. Just as important is the cheering section. Please tell a friend about your goals, no matter how small they may seem to you. They will cheer you on. You could even ask them to join you. That's how it started with me, someone asked me to join them for a run. Then, they told me I could definitely reach that previously seemingly unattainable goal, and they would do it with me. It turned out they were right. Please be that person for someone.

Schedule and Support. In my case, self-care started slowly and I would use my lunch hour to exercise. The nature of my practice as a public defender meant things would come up, so I had to be flexible. I took inspiration from the stories, maybe urban legends, of Judge Art Brennan's runs from the courthouse, he even reportedly fit in a run while a jury deliberated. As I saw the benefits in my improved health and happiness, making sure I had time for exercise became a touchstone of my daily life. These days, whenever possible my runs or gym classes go on the calendar, just like a doctor's appointment, school event, court date, or a client appointment would. They aren't an afterthought. I encourage any attorney I mentor to do the same. Please do that for attorneys in your practice and in your life – ask them what they are doing for fun, what they are doing for themselves. Let's make it the norm. We have the power to build a culture where self-care in the legal profession is accepted, expected, and maybe even aggressive. I strongly believe it will even make us better lawyers.

Sarah is a career public defender, spending more than 16 years at the NH Public Defender before moving to continue her work as a public defender in Massachusetts where she is a Supervising Attorney with CPCS. She enjoys hiking in the White Mountains and ran her first marathon in October of 2021.

The Changes I've Seen

Circuit Court Administrative Judge, David D. King, Reflects on the Court System in New Hampshire

Bench Notes

By David D. King
Circuit Court
Administrative Judge

I still like to think of myself as a younger member of the Bar. Yet, as I write this, all of the Circuit Court judges who were appointed before me have retired—and my wife is quick to remind me that I can't really call myself a "kid from Colebrook" anymore. In what feels like a relatively short career, I have been fortunate to play a role in the two significant structural changes in the New Hampshire trial courts, and to be witness to many other impactful changes.

When I was in law school in the early `80s, the trial courts were funded and supervised at the county and local level. Counties were responsible for funding and managing the Superior and Probate Courts. The District and Municipal Courts were part of town government (district courts had been created in 1963 to replace municipal courts, as they were abolished over time). The 1983 Red Book listed 138 judicial positions: 5 Supreme, 10 Probate, 16 Superior, 87 District, and 20 Municipal. At that time there were 42 District Courts and 15 Municipal Courts around the state.

Following recommendations of a legislatively-created Study Commission, House Bill 200 was introduced in the 1983 legislative session to create a unified court system funded by the state. The bill was sponsored by Representative Donna Sytek, Chair of the House Judiciary Committee. I had the privilege of serving as a State Representative on the House Judiciary Committee that session, and fortuitously had a front-row seat to the debate and ultimate passage of this significant piece of legislation. Supreme Court Justice Chuck Douglas testified in our committee on behalf of the Judicial Branch. The NHBA's support of the bill was presented by Bar President Dick Galway. HB 200 passed with an overwhelming majority vote, creating the unified court system, to be funded with its own budget.

Over the next several years, the municipal courts—created in 1915—closed as the last judges, often non-lawyers, retired. I have fond memories of appearing in front of Judge Ralph Rowden in the Northumberland Municipal Court. Judge Rowden worked at the Groveton Paper Mill and walked across the parking lot to the town library to hold court when the end-of-shift whistle blew. As the municipal courts closed, towns left without a home court lobbied the legislature for a District Court.

I joined the Probate bench in February 1990. All probate judges were part-time and maintained law practices, as did the majority of district court judges. The district court judges practiced in the probate court and vice versa. As my practice was primarily criminal defense, I regularly appeared in front of the six district court judges in Coos County. At that time, it was common for us to try civil cases in Superior Court against each other. The County Attorney was also part-time and had an active probate practice.

Fast forward to 2010, the Probate Court remained unchanged, with 10 judges presiding in each of the county seats. The last municipal court (Greenville) had closed its doors in 2000, and district courts had been consolidated into 31 locations. Many new District Court facilities had been constructed, moving courts out of town halls, libraries, police stations, and even a Legion Hall (where it had once been in Colebrook). The Family Division, which began as a two-county pilot project in 1996, was still being rolled out, assuming its jurisdiction from the other three trial courts. The Judicial Branch was under significant pressure from Governor Lynch to tighten our belts, which prompted Chief Justice Broderick to create the "Innovation Commission" in March of that year. The concept of trial court consolidation quickly became the focus. When the concept of one trial court did not gain traction, the decision was made to combine the limited jurisdiction courts (district, probate and family) into one court.

The concept was simple: collapse redundant management structures and certify judges to hear all cases. A small team spent the fall of 2010 designing the new structure and drafting the enabling legislation. We chose the moniker "Circuit Court" because, as I said at the time, "Supreme Court" had already been taken. In January 2011, House Bill 609 was introduced with bipartisan support and signed into law with lightning speed by Governor Lynch on May 16, 2011. Legislative leadership adopted our proposal to collapse management positions from 118 clerks and deputies to 52, but did not approve of our plan to accomplish the reductions by attrition over 10 years. Instead, we were forced to make the cuts effective July 1, 2011. We posted the 52 new positions in March and invited the 118 clerks and deputies to apply. It was a painful process, as many jobs were lost. The new Circuit Court began operations on July 1, 2011, with 18 clerks (reduced from 52), supervising staff in 35 courthouses around the state.

We continued our pledge to the Legislature to be innovative, created a call center, now known as the Information Center, which has taken 4.4 million calls in ten years, and pioneered e-filing in 2012, with a strong focus on self-represented parties. In 2020, with the closing of the Plaistow Court, we finally completed the 16-year rollout of the Family Division, which is now found in every location where there is a District Division. Since its inception, the Circuit Court has managed more than 1.3 million new cases, as well as tens of thousands of reopened cases.

While the changes in 1983 were significant for court funding and supervi-

BENCH NOTES *continued on page 5*

In 2022, Will America Become a Far-Right Autocracy?

By John M. Cunningham

Far-right state politicians in dozens of states, including politicians in the key Electoral College swing states of Arizona, Georgia, Michigan, Pennsylvania, and Texas, have already enacted legislation that severely restricts the voting rights of non-far right voters in these states, and they intend to complete this comprehensive legislative program in 2022. The relevant legislation includes, for example, laws permitting state legislatures:

- To appoint far-right individuals to key positions controlling state voting procedures and vote counting; and
- To choose electors in Presidential elections with far-right political commitments.

This far-right movement, which may well achieve fulfilment in 2022 in time for midterm state and federal elections, is a shocking and, in its scope and its focus on voting structures, a largely unprecedented legal development in American political history. And 2022 is the year in which, because of far-right opposition, both of the two major federal voting rights bills now pending in the U.S. Congress—the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act—will fail unless the Senate, by majority vote, repeals its filibuster rule as applicable to them.

If the above legislative events occur, the impossible may occur in 2022: America may become a far-right autocracy. And the state legislation establishing that autocracy may well have the support of the current U.S. Supreme Court.

To be concrete: Because of the above legislative events,

- In 2022, far-right control of the U.S. Congress, which is already likely, will be assured.
- In 2024, despite any popular vote to the contrary, Donald Trump or someone like him will become the President of the United States.

In my view, the worst consequence of such a presidency will be that, at least until 2028, the federal government will no longer, as now, seek to combat climate change. Rather, it will effectively promote it.

If you have any doubt about the impact of the above legislative events, I urge you to read the articles in the January/February 2022 Atlantic Monthly by Bart Gellman and George Packer—two beautifully written pieces that are terrifying in their persuasiveness. The title of Gellman's article is "January 6 Was Practice." Packer's is titled "Imagine the Worst." But Gellman and Packer are only two of a large number of sophisticated political commentators in major national public forums who contend that in 2022, the stage will be set for a far-right American autocracy.

New Hampshire lawyers, regardless of party affiliation, are uniquely positioned to understand the meaning of the above legislative events and to take action to prevent the advent of autocracy in our state and our country.

What actions can we take? The answer will be different for each of us, but here are some suggestions:

- Obviously, we must vote, and we must urge everyone we know to vote.

> "This far-right movement, which may well achieve fulfilment in 2022 in time for midterm state and federal elections, is a shocking and a largely unprecedented legal development in American political history."

- Even if, as is true for most of us, our practice does not specifically involve voting rights issues, we must equip ourselves with at least a basic understanding of the federal and New Hampshire constitutional, statutory, regulatory, and case law governing these issues. For many of us, this will require significant study. But it will enable us to far-more effectively defend and expand voting rights.
- If we can, we must make cash contributions to organizations in New Hampshire or other state or national organizations that are fighting to preserve and expand voting rights.
- We can join the above types of organizations and become active in them.
- We can follow, on a daily basis, New Hampshire, regional, and national political developments potentially threatening voting rights, and we can take action, ideally in concert with other concerned New Hampshire individuals and organizations, to expose and combat these threats.
- We can actively support New Hampshire legislation expanding voting rights.
- We can run for public office, and we can seek appointments to positions monitoring and counting New Hampshire votes.

To sum up:

The threat that America will become a far-right autocracy in 2022 because of the above legislative events is so extreme that it may seem impossible to believe. But no threat could be more real or more urgent. We, as New Hampshire lawyers, have a pressing duty to combat this threat.

John Cunningham is a member of the New Hampshire and Massachusetts bars. The views expressed in this article are not necessarily those of any other organization, or any individual, except Mr. Cunningham.

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sion, the creation of the Circuit Court in 2011 was a much more significant structural change. This restructuring, together with the many innovative changes that the circuit court has initiated, has saved the taxpayers of New Hampshire over $60 million dollars in our first 10 years of operation. In retrospect, some of the cuts we made were too deep. We will continue to advocate for appropriate resources in the coming budget cycles, while also continuing to seek new and innovative ways to provide access to justice for the vast majority of litigants who come to court in the Granite State.

NEW HAMPSHIRE BAR ASSOCIATION
2022 Midyear Business Meeting
February 17, 2022 – 3:00 p.m.

REMOTE MEETING

Materials can be viewed at
https://www.nhbar.org/2022-midyear-business-meeting-materials

Please contact Debbie Hawkins for meeting join information
dhawkins@nhbar.org

President Richard Guerriero - Presiding

AGENDA

1. Call to Order
2. Secretary's Report
   - Draft Minutes of the 2021 Annual Membership Business Meeting for approval
3. Old Business
4. New Business
   a. Vote on Proposed Bylaws Change
   b. Vote on Proposed Constitution Change
   (To review the proposed changes to the Bylaws and Constitution, please check here: **https://www.nhbar.org/2022-midyear-business-meeting-materials/**)
5. Adjournment

NHBA Leadership Academy Judicial Module

Members of the NHBA's Leadership Academy met for their Judicial Module at the Supreme Court in Concord on January 6. The event was a chance to interact with members of the Judicial Branch and to learn about the crucial role the court system plays in our state's system of justice.

Participants began the day by discussing their experiences from a judge-shadowing homework assignment they were given. Following this, Hon. William Delker provided opening remarks for a panel discussion with Clerks from the U.S. District Court, the Circuit Court, and Superior Court.

During the Judicial panel discussion, Chief Gordon MacDonald, N.H. Supreme Court; Hon. Landya McCafferty, U.S. District Court; District of New Hampshire; Hon. David Ruoff, N.H. Superior Court, and Hon. Patricia Quigley, N.H. Circuit Court, shared personal stories and discussed practical tips, professionalism in difficult situations, and the future of law practice in New Hampshire.

Superior Court Judge, David Ruoff, a former philosophy major in college, said becoming a lawyer and a judge was "like doing philosophy with closure."

Milford High School Wins "We The People" State Finals January 10

"We the People: The Citizen and the Constitution" State Finals were held on Monday, January 10 after a snowstorm last Friday caused the event to be postponed. The daylong event featured students from John Stark Regional High School, Milford High School and Hollis-Brookline High School, testifying in 'Mock Congressional' Hearings on a number of constitutional and philosophical questions pertaining to the history and formation of the American political system. Students from each class listened to feedback from the judges after their hearings which they used in their final testimonies during the afternoon sessions.

At an awards ceremony, third place went to John Stark Regional High School, under the direction of Mr. Daniel Marcus. Runner up went to Hollis-Brookline High School under the direction of Mr. Trevor Duval. NH State Champion title went to Milford High School (below), under the direction of Mr. Thomas Lundstedt, a 2012 Alum of the We the People program.

The NHBA would like to thank the following Bar members and other individuals who volunteered for the culminating events: Susan Belair, Allison Borowy, Nick Capodice, Tierney M. Chadwick , Donna Daneke, Craig Donais, Rebecca Dowd, Jennifer A. Eber, Ali Gennaro, Susanne L. Gilliam, Randy S. Gordon, Martin P. Honigberg, Mary E. F. Jenkins, Robin E. Knippers, John M. Lewis, Jane Lewis-Raymond, George R. Moore, Hannah McCarthy, Chris Paull, Davi M. Peters, Israel Piedra, Edward D. Philpot, Jr., Bailey Robbins, Talesha Saint - Marc, Richard L. Siemens, MD, Kathleen A. Sternenberg, Arielle Van de Water, Pam Watson, Keri A. Welch, Howard J. Zibel, and Anne Zinkin.

For more information about the We the People program, please visit **nhbar.org/civics-education/we-the-people/** or contact Law Related Education Coordinator Robin E. Knippers at **rknippers@nhba.org**.

We the People State Final Champions from Milford High School hold their first-place trophy following the state final event at the City Wide Community Center in Concord January 10.

John Stark Regional High School "We the People" competitors with their teacher, Dan Marcus (far left).

Judge Martin P. Honigberg and Attorney Donna Danke providing feedback after listening to opening statements from Milford High School students.

Second place finalists from Hollis-Brookline High School with their teacher Trevor Duval (fifth from right, back).

Cybersecurity 101 for Small Law Firm Lawyers

By Nicole Black

Cybersecurity is an issue of great importance to small-firm lawyers. This is no great surprise, since lawyers have an obligation to preserve the confidentiality of client information. And as lawyers increasingly move their data into digital format, that obligation necessarily shifts to the firm's data stored online.

Small law firms take many different security precautions in the name of client confidentiality. But, according to the most recent ABA Legal Technology Survey Report, the types of security measures used vary greatly from firm to firm. For example, the most common type of security tool used by lawyers is email spam filters with 87% of lawyers using it. Next is anti-spyware at 79%, firewall software at 77%, and pop-up blockers at 75%.

The Report's data shows that lawyers take other types of security measures as well, including mandating the use of passwords (71%), scanning desktop/laptops for viruses (70%), scanning e-mails for viruses (69%), scanning firm networks for viruses (64%), and using hardware firewalls (57%).

Of course it's one thing to track what other lawyers are doing to secure their firm's data, but knowing what security steps to take for your firm can often prove to be challenging. Every law firm is different, and each presents its own unique security concerns. It's no easy task to sift through all your options. To save you some time, here are some easy steps you can take today to immediately increase your law firm's cybersecurity.

Secure your online browsing

One of the simplest ways to increase security is to secure your online browsing experience using browser extensions. HTTPS Everywhere – a browser extension that is a joint project between the Electronic Frontier Foundation and the Tor Project – does just that. When whitelisted websites are visited, this add-on automatically rewrites HTTP links to HTTPS, resulting in a more secure online browsing experience.

Also consider using the AdBlock extension. This multi-browser tool removes ads (some of which can include code that tracks your browsing history and raises other privacy concerns) from the websites and social media platforms that you visit. Not only does AdBlock remove ads from your online experience, it will also save you lots of time, since you'll no longer have to wait for the ads to load on the page.

Secure your online communication

These days, lawyers use electronic communication with their clients more often than not. For decades now, unencrypted email has been the communication tool of choice, but that's beginning to change as more secure methods of communication are becoming available. This is especially so since the release of the ABA's Formal Opinion 477 last year, in which the Ethics Committee concluded that unencrypted email may not always be sufficient for client communications. The Committee suggested that for particularly sensitive matters, lawyers should consider using encrypted email or online client portals, like those built into law practice management software.

However, since that opinion was released, encrypted email has been called into question after European researchers discovered major vulnerabilities in the PGP email encryption standard most often used to encrypt email. Fortunately, secure client portals weren't affected and continue to be a secure and convenient way for small-firm lawyers to communicate and collaborate with their clients. So, if you're not already using them in your law firm, maybe it's time to start.

Secure your online accounts

Last, but definitely not least, make sure to secure all of your devices – including all of your computers, smartphones, and tablets – with strong passwords. The easiest way to do this is to use a password manager such as Lastpass, which will ensure that all of your smartphones and other devices are password- protected. These tools will store your passwords via encrypted files, which you can then access from any device. They also automatically populate sites that you visit with the correct passwords and can generate secure passwords for you.

Another important security measure law firms can take is to use two-factor authentication for your online accounts. It's an easy and powerful way to protect your firm's data, because it adds an additional layer of security, making it that much harder for unauthorized users to access your online accounts.

So now that you know how to get started with securing your law firm's data, what are you waiting for? Download a few browser extensions, choose the right client portal for your law firm's communication and collaboration, and rest easy knowing that you're already taking key steps to secure your law firm's data and protect your confidential client information.

This article first appeared in the MyCase Blog.

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

This regular column, featuring a variety of writers, is devoted to cybersecurity and information privacy. Contact **news@nhbar.org** if you'd like to contribute an article on these critical issues facing the profession.

Thank You to Our 2021 *Bar News* Contributors

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NEW HAMPSHIRE
BAR FOUNDATION NEWS

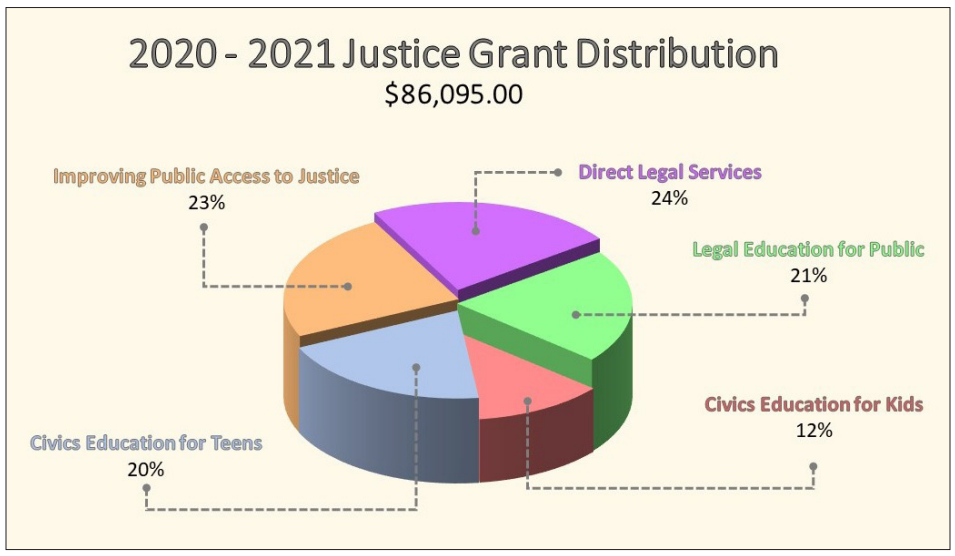
The Bar Foundation's Justice Grants Made an Impact in 2020-2021

For the two-year period of 2020 to 2021, the NH Bar Foundation awarded $86,095 in Justice Grants to various organizations under five categories: Improving Public Access to Justice ($20,045), Legal Education for the Public ($18,300), Civics Education for Kids ($10,000), Civics Education for Teens ($17,000), and Direct Legal Services ($20,750).

These benefaction funds come from the proceeds of 14 Justice Funds that are invested and managed by the NH Charitable Foundation. The funds are intended to encourage innovation in the administration of justice, support community education about the law, and help improve access to the legal system.

Of the recipients in Justice Grants this biannual period, New Hampshire Legal Assistance (NHLA) received the highest amount, totaling $23,825. These funds were split between two of the categories, Improving Public Access to Justice and Direct Legal Services.

From that amount, $10,000 was awarded to their Civil Legal Needs Assessment project that produced an in-depth report that will help guide priority setting and resource allocation by the Access to Justice Commission. $6,750 of the total was received to fund a Tri-State conference for NH, VT, and ME to learn about best practices and develop effective, coordinated responses to elder financial exploitation, and $7,075 for their Access to Property Tax Relief Program which partnered with the NH Municipal Association to increase the public's awareness of the tax relief options available to them.



"We give three cheers to the Justice Grants," Executive Director of NHLA Sarah Mattson-Dustin said. "Our projects would not have been able to move forward without them."

The NHBA was the second-highest recipient of the 2020-2021 grants, in the Civics Education for Teens category, tallying at $17,000. The Beyond High School initiative was awarded $5,000 to further their goal of ensuring that every high school senior will have a book to educate them on their rights and responsibilities. The other $11,000 went to the We the People program, which allowed for the rental of a new facility–the Citywide Community Center–for the programs District Hearings and State Finals.

In the Civics Education for Kids category, the NH Historical Society was awarded a $10,000 grant. This money was allocated to the Moose on the Loose program, a part of the Democracy Project, which is a plan to address the degradation of civics education in social studies and history in public schools. This virtual program is free of charge to all schools in the state and provides a powerful curriculum for kids, as well as support for teachers. National experts on education have proclaimed it's the best program of its kind that they've seen in the country.

William Dunlap, President of the NH Historical Society said, "the financial support of the grant was a great help, but it was also the vote of confidence from the Bar Foundation that is helpful to us in eliciting support from others."

The Bar Foundation is currently accepting applications for the 2022-2023 Justice Grants until the deadline of February 11. Approximately $92,000 has been budgeted for this year's awards. The guidelines and application are available online at nhbarfoundation.org. If you have any questions, contact the Foundation at (603) 715-3210.

Coming and Going

Pierce Atwood LLP is pleased to announce that these attorneys have been named firm partners:

Newell Augur, based in Augusta, Maine, has more than 20 years of government relations and administrative law experience.

Melanie Conroy, based in Boston, focuses her practice on class action defense and complex commercial litigation.

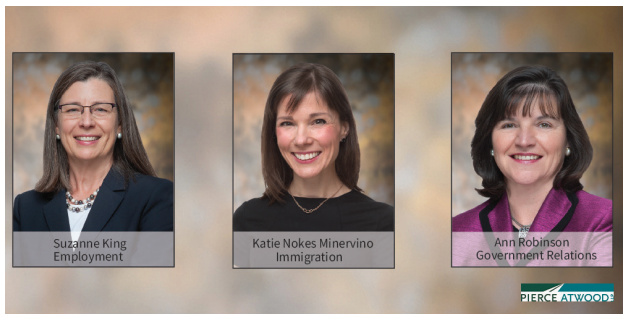
Griffin Leschefske, based in Portland, Maine, focuses his practice on estate planning, charitable giving, and probate, trust, and fiduciary litigation.

Sarah McGarrell, based in Boston, works with emerging, growth, and closely held companies, and advises startup founders on pre-market corporate governance issues and early stage financing from term sheet through closing.

Vivek Rao, based in Boston, focuses his practice on technology transactions, data privacy compliance, IP, brand protection, consumer-facing IP terms, marketing management and compliance, and technology M&A due diligence.

Daniel Strader, based in Portland, Maine, guides clients in complying with the latest legal developments impacting their workforces, and provides counsel on complying with state and federal employment laws.

Andrea Suter, based in Portland, Maine, represents clients in a broad range of industries, including energy, hospitality, real estate development, financial services, manufacturing, and software development.



Pierce Atwood LLP is pleased to announce that the following firm partners have been selected as new practice leadership:

Suzanne King, named Chair of Pierce Atwood's Employment Practice Group, has more than 25 years of experience counseling employers on a wide range of employment practices, including hiring, managing employee performance and discipline, terminations, harassment complaints, reasonable accommodations under the ADA, wage and hour practices, and more

Katie Nokes Minervino will lead the firm's Immigration team, partnering with the firm's Employment Practice Group. Katie has a national business immigration practice where she works closely with employers in a wide range of industries to develop and execute immigration strategies that meet their short- and long-term immigration needs.

Ann Robinson, named Chair of Pierce Atwood's Government Relations Practice Group, is a highly regarded Maine attorney and lobbyist, with an active legislative and regulatory law practice focused in the areas of health care, insurance, and professional regulation.

Community Notes

The Law Firm of Pastori Krans is proud to celebrate their 5th anniversary, opening for business on January 1, 2017. "It has been a successful journey because of our dedicated and hardworking team, valued referral sources, and loyal clients. The firm hope to celebrate later in 2022, when everyone can gather safely and would like to wish the Bar a happy and healthy 2022!"

Join the New Hampshire Women's Bar Association for their Virtual December/January Book Club Meeting Tuesday, January 25th, 2022 at 6:00 PM. The group will be discussing "Becoming" by Michelle Obama.

Those interested can sign up by visiting **https://nhwba.org/event-4604113.**

NH Bar Association Welcomes New Members

The following members were admitted to the New Hampshire Bar Association on Dec. 21, 2021.

Gina L. Fleury, Boston, Mass.
Joseph T. Prive, Boston, Mass.
Nicolas D. Walker, Stratham, NH

GCG congratulates the Hon. Samantha Elliott - friend and former colleague - on her swearing in as the 18th District Judge for the District of New Hampshire.

Judge Elliott began her career with the firm in 2006 and served as president from 2015-2020.

CONGRATULATIONS!

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Professional Announcements

Size Ad	Price	Width	Height
1/8 page horizontal	$290	4.92”	3.25”
1/4 page vertical	$470	4.92”	6.75”
1/2 page horizontal	$675	10”	6.75”
Full page	$1275	10”	13.63”

Rates & Sizes

JANUARY - DECEMBER 2022

If you would like to place an announcement, email **advertise@nhbar.org**

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erinalarconadr@gmail.com

Erin McCoy Alarcon, Esq., NHCFM

MEDIATION ~ ARBITRATION
FAMILY ~ EMPLOYMENT ~ PERSONAL INJURY

Theodore H. Parent Esq. is pleased to announce that Sofia C. Cunha-Vasconcelos, Esq. has joined his practice as an associate.

Attorney Cunha-Vasconcelos is a recent graduate of UNH Franklin Pierce School of Law. She came to the practice of law after a career in engineering in the Aerospace and Defense industry.

Law Office of Theodore H. Parent, Esq.
103 Roxbury Street ♦ Suite 200A ♦ Keene, NH 03431
Telephone: 603-357-3928 sofia@tedparentlaw.com

The law firm of Primmer Piper Eggleston and Cramer is pleased to announce that attorney Brendan O'Brien is now a shareholder at the firm.

Brendan has been with PPEC for six years, focused primarily on commercial and insurance litigation. He represents clients in premises liability, products liability, professional liability, insurance coverage, complex tort, employment, and general commercial disputes.

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bobrien@primmer.com

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Wescott Law is proud to announce that

Sarah N. Rubury, Esq.

has become a Shareholder & Director of the Firm.

Sarah focuses her practice on complex real estate and transactional matters.

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Berman & Simmons

is pleased to welcome
"Chuck" Hehmeyer
to our law firm.

Chuck is a nationally prominent plaintiffs' medical malpractice lawyer, and the newest member of our distinguished trial team.

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HAGE HODES PA

ATTORNEYS AT LAW

Hage Hodes P.A. is pleased to announce that Attorney Grayson M. Shephard has joined the firm's Litigation Group.

His areas of concentration include business and commercial litigation, personal injury, professional malpractice, labor and employment, insurance law, real estate and probate litigation.

He is admitted to practice in New Hampshire, Massachusetts, North Carolina and South Carolina.

1855 Elm Street - Manchester, NH 03104 - 603-668-2222
gshephard@hagehodes.com - www.hagehodes.com

Congratulations

Sheehan Phinney is pleased to announce that Gregory Chakmakas and Andrew Eills have been elected as firm shareholders.

Gregory Chakmakas

Shareholder
603.627.8272

Real Estate | Affordable Housing

Greg is a member of the firm's Real Estate Group with a focus on advising nonprofit and for-profit owners and developers in the preservation and production of affordable housing.

Andrew Eills

Shareholder
603.627.8116

Healthcare Law

Andrew is a member of the firm's Healthcare Group where his practice includes contracts, mergers and acquisitions, and other transactional matters, federal and state regulatory issues, and corporate and non-profit governance.

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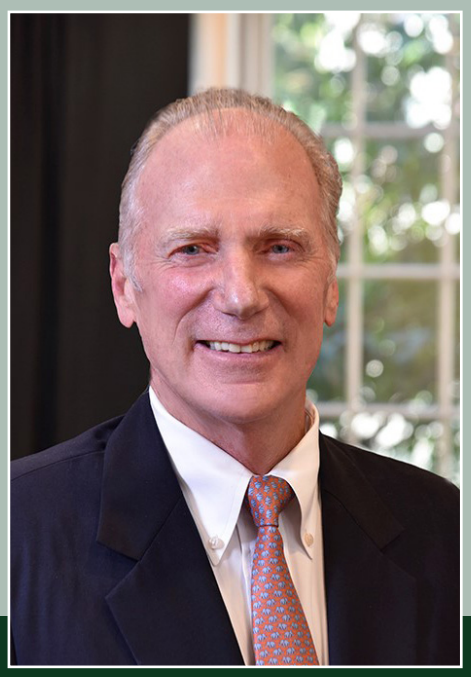

GCG congratulates its colleague and friend, John Funk, on his retirement and remarkable 43 year career with the firm.

Your counsel, drive, and good humor have made a mark on all of us, and we wish you the very best!

CONGRATULATIONS!

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LABOE & TASKER PLLC

A New Hampshire Law Firm for Businesses and Individuals

We are pleased to announce that Attorney Carol M. Stamatakis has joined our firm.

Carol has devoted her career to advocating for our elderly and disabled populations. She has served as Executive Director for both Senior Solutions (VT) and the NH Council on Developmental Disabilities. As Legal Coordinator for Elderly & Adult Services in NH, she provided program guidance as well as legal and legislative representation to State administrators of programs including Adult Protective Services, Long-Term Care Ombudsman, and Long-Term Care Medicaid. She has played a leadership role in many legislative initiatives to improve laws and policies on end of life care, nursing home resident rights, privacy, access to home and community-based care, and the abuse, neglect and financial exploitation of vulnerable adults.

Carol's practice will focus in the areas of estate planning and advocacy for the elderly and disabled populations in New Hampshire. She will serve as *of counsel* with Laboe & Tasker, PLLC.

cstamatakis@laboelaw.com

603.224.8700 Ext. 310

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Concord, NH 03301-5321

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Congratulations to Our New Partners

Diverse Experience, Personalized Attention

Brooke L. Shilo

Brooke represents employers and employees in employment law matters, litigates in state and federal courts, and represents attorneys in ethics and licensing matters. Prior to joining Upton & Hatfield, Brooke served as a law clerk to the Honorable Landya McCafferty of the United States District Court for the District of New Hampshire. Brooke currently serves as the Secretary of the New Hampshire Women's Bar Association, as a member of the New Hampshire Bar Association's Ethics Committee, and as a Board Member of InTown Concord. Brooke is admitted to practice in New Hampshire state and federal courts.

Nathan C. Midolo

Nate has dedicated his practice to assisting municipalities, commercial entities, and individuals in a wide variety of matters in both an advisory and litigation capacity. He is a member of the firm's Municipal, Business, and Insurance practice groups. Nate is admitted to practice in New Hampshire and Minnesota state and federal courts. Nate is a member of the New Hampshire School Boards Association, Municipal & Government Section of the New Hampshire Bar Association, and active in the Daniel Webster-Batchelder American Inn of Courts.

Upton & Hatfield LLP
ATTORNEYS AT LAW

Concord ▪ Hillsborough ▪ Peterborough ▪ Portsmouth

www.uptonhatfield.com

Anu R. Mullikin has been elected President of the firm

Devine Millimet is pleased to announce that Anu R. Mullikin has been elected president of the law firm. She succeeds Charles Giacopelli, who has served as the firm's president for the past four years.

Anu begins her term on January 1, 2022, following the firm's tradition of leadership succession. Anu's diverse background brings a well-rounded preceptive to the role. In her new leadership role, Anu will oversee the strategic direction and growth of Devine Millimet, as well as the firm's operations. Devine Millimet has offices in Manchester, Concord and Portsmouth, New Hampshire, employing 54 attorneys, and 52 administrative staff members.

"Anu will bring valuable experience in leadership positions to the job" says Charles Giacopelli. "She cares deeply about Devine and the people who work here. She is eminently qualified for the job and will lead with her own style and vision for the future."

Anu began her legal career at Devine Millimet as a summer associate in 1990, and joined the firm as a full time attorney in 1991. Anu was elected as a shareholder of the firm on January 1, 1999, and began serving as the Chair of the firm's Trusts and Estates practice group a few years later. Anu has also previously served on the firm's Board of Directors, Shareholder Compensation Committee, Assignment Committee, Budget Committee and Marketing Committee.

Anu will continue her robust Trusts and Estates practice, representing high net worth individuals and families with their estate planning needs and assisting families in the estate and trust administration process after a loved one has died.

Charles will resume his workers' compensation defense practice, representing private and public employers in all areas of workers' compensation law.

Nicole M. Bodoh has been elected Shareholder of the firm

Devine Millimet is pleased to announce that Nicole M. Bodoh has been elected as a Shareholder of the law firm, effective January 1, 2022.

Nicole joined Devine Millimet's corporate team in September of 2019 as an Of Counsel attorney and brings over sixteen years of experience in transactional, M&A, tax and regulatory compliance work. Nicole assists clients with a variety of transactional matters including both stock and asset purchases, conversions, mergers, recapitalizations, and tax-free reorganizations. She also represents clients with respect to employee benefits and executive compensation matters. Her practice includes a diverse group of clients such as financial institutions, regional and national companies, and local businesses.

Nicole is a graduate of the University of Pittsburgh School of Law (J.D.) and Temple University Beasley School of Law (LL.M.). Nicole is admitted to practice in New Hampshire, Vermont, Massachusetts and Pennsylvania.

Nicole is on the Board of Directors of the Alliance of Merger & Acquisition Advisors – New England Chapter, and is a member of the New Hampshire Historical Society, the Music Hall, Strawbery Banke and various other charitable organizations.

Upon Nicole's election, former firm President Charles Giacopelli stated, "Since joining Devine, Nicole has impressed all of us with her legal skills, quality work and willingness to take on difficult matters on short notice. She has become a 'go to' member of our already strong and growing M&A team and has proved invaluable on ERISA matters. Nicole has also taken on administrative responsibilities including serving as advisor to our pension committee. We are very fortunate to have her at Devine."

GCG is pleased to announce the election of Anne Jenness as a shareholder-director of the firm.

Anne specializes in employment law and workplace investigations.

CONGRATULATIONS!

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www.gcglaw.com

WADLEIGH STARR & PETERS PLLC

is pleased to announce

Michael R. Mortimer
as Managing Member of the Firm

Attorney Mortimer practices primarily in the areas of Workers' Compensation law and personal injury and civil litigation. He has tried several personal injury cases to conclusion before juries and has represented litigants before the New Hampshire Department of Labor and the Compensation Appeals Board as well as before the Supreme Court.

and

Stephen N. Zaharias
as Member of the Firm

Stephen joined our team in 2016. Prior to joining the firm, Stephen clerked at the New Hampshire Supreme Court for two years, where he worked primarily for Chief Justice Linda Dalianis and Justice James Bassett. Stephen's practice focuses primarily upon business and corporate law, appellate matters, landlord-tenant law, and other civil litigation.

95 Market Street ~ Manchester, NH 03101
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JacksonLewis

PORTSMOUTH

Congratulations to Marty Van Oot on her Retirement!

We congratulate Marty Van Oot for her 12 years of dedication and service to the firm. Marty practiced law for over 40 years, and since 1995 has earned annual recognitions as one of *The Best Lawyers in America*© in several categories. Marty embodies Jackson Lewis' culture of caring and collaboration, and we wish her the very best.

100 International Drive, Suite 363
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603 LEGAL AID
PRO BONO PROGRAM

Pro Bono Honor Roll – 3rd & 4th Quarter, 2021

The attorneys listed here each accepted one or more cases referred by 603 Legal Aid during July through December of 2021. Gold stars indicate attorneys who accepted more than one Pro Bono case during that time.

BELKNAP
Kristin Fields
Marilyn Mahoney ★

CHESHIRE
Michael Fisher
Marilyn Mahoney ★
Rory Parnell ★
Kenneth Walton ★

COOS
Marilyn Mahoney ★
Philip Waystack

GRAFTON
Leif Becker
Patrick Hayes ★
Robert Hunt
Jack Kauders
Roderick MacLeish ★
Marilyn Mahoney ★
Joseph Prieto
Charles Sheng
James Shepard ★
Aaron Simpson

HILLSBOROUGH (N)
Ann Butenhof
Michael Croteau
James Lombardi
Crystal Maldonado
Robert Moore
Andrew Prolman
Judith Roman ★
James Shepard ★
Eric Sommers
Dennis Thivierge ★
Solal Wanstok

HILLSBOROUGH (S)
Sandra Bloomenthal
Kevin Collimore
Ryan Correia ★
William Driscoll
James Hawthorne ★
Patricia LaFrance
Joseph MacAllister
Penina McMahon
Anthony Naro
Rory Parnell ★
Lyndsay Robinson
Amanda Scheldorf Steenhuis ★
Justin Shepherd ★
Tanya Spony
Amber Talbot
Brittney White
Dawn Worsley

MERRIMACK
John Brandte
Jack Crisp
Kolbie Deamon
John Gasaway
Carol Kunz
Petar Leonard
Kyle McDonald
Thomas Neal
Joseph Prieto
Judith Roman ★
James Sessler
Katherine Stearns
Dennis Thivierge ★

ROCKINGHAM
Leif Becker ★
Donna Brown
Ryan Correia ★
Dawn DiManna
Scott Harris ★
James Hawthorne ★
Marilyn Mahoney ★
RJ Meurin
Rory Parnell ★
Judith Roman ★
James Shephard ★

STRAFFORD
Debra DuPont
Sarah Landres
Judith Roman
Joanne Stella

Pro Bono Honor Roll – Quarterly Firm Recognition 3rd & 4th Quarter, 2021

Our thanks to the following law firms who made it possible for their attorneys to participate in Pro Bono. This list includes firms whose attorneys accepted cases from July through December 2021. This list does not include the hundreds of firms whose attorneys have ongoing cases.

COOS
Waystack Frizell, Trial Lawyers

GRAFTON
Baker & Hayes
Brannen & Loftus PLLC
Simpson & Mulligan PLLC

HILLSBOROUGH (N)
Backus Meyer Branch LLP
Butenhof & Bomster PC
Divine Millimet
Harvey, Mahoney & Bakis PLLC
McLane Middleton PA
Moore Ames Law PLLC
Niederman, Stanzel & Lindsey
Primmer Piper Eggleston & Cramer PC
Sakellarios & Associates
Wadleigh Starr & Peters PLLC

HILLSBOROUGH (S)
Bernazzani Law
Bloomenthal Law Office
Black Vitelli Pennock LLC
CullenCollimore
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Free Legal Answers - NH Honor Roll 3rd & 4th Quarter, 2021

This list represents attorneys who have answered questions on Free Legal Answers in the months of July through December 2021.

Stephanie Annunziata
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Martha L. Davidson
Craig S. Donais
Debra M. DuPont
Christina A. Ferrari
Michael B. Fisher
Randy S. Gordon
Barbara G. Heggie
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Rory J. Parnell
Pamela A. Peterson
Paul C. Reyns
Jonathan Ross
L. Phillips Runyon III
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Catherine E. Shanelaris
Shaughnessy, Brian C
James Shepard
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603 LEGAL AID
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NATIONAL STALKING AWARENESS MONTH
JANUARY 2022

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- 1 in 6 women and 1 in 17 men have experienced stalking at some point in their lifetime.
- The majority of stalking victims are stalked by someone they know.
- Intimate partner stalkers are more likely to follow through on their threats of violence.
- In 2021, more than 2,200 stalking petitions were filed in New Hampshire and the vast majority of litigants appeared *pro se*.

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STALKING IS NOT ROMANTIC!

Seufert from page 1

that it was a worthy profession," he says of his chosen occupation. "Law was locked and loaded pretty young."

Multiple photos reveal his second passion – scuba diving, especially in tropical locales like the West Indies and the Caribbean – and a comfort with water that began in his childhood in East Bridgewater, Massachusetts.

Owner and senior partner at Seufert Law Offices in Franklin, Seufert's childhood home was on a river in East Bridgewater and his father, who served in the Army National Guard, often brought home empty howitzer shell boxes to use for storage.

"When he wasn't looking, my older brother and I would dump them out, caulk the seams and use them as canoes," Seufert recalls. "I grew up boating in howitzer ammo boxes."

That boating interest grew to include outboard motors, motorboats, and sailboats and, eventually, six years in the U.S. Coast Guard, which Seufert joined as an undergraduate at Southern Massachusetts University, now UMass-Dartmouth, and continued serving while a law student at Suffolk University.

Upon graduation and after an honorable discharge from the Coast Guard, he went to work for a large CPA firm, planning to be a tax attorney. But after working there for a couple of years while taking classes toward an LLM degree, he decided the field was not for him and quit, determined to start his own law firm.

Christopher Seufert debates the fine art of conch cracking with a local in Lower Exumas, George Town, Bahamas. Courtesy Photo

> "We looked like the Crumpets. I went in and they didn't ask me if I was still employed. I signed off on the mortgage and the next day I dug two holes in front of the house and put up a sign that said 'Seufert Law Offices.'"

He and his first wife were in the process of buying a home in Andover, New Hampshire, and Seufert remembers driving the 1967 Ford F100 Econoline his father had given him, loaded with the couple's belongings, to the Franklin Savings Bank's main office.

"We looked like the Crumpets," he says. "I went in and they didn't ask me if I was still employed. I signed off on the mortgage and the next day I dug two holes in front of the house and put up a sign that said 'Seufert Law Offices.'"

He started off doing criminal law and family law but found himself drawn "like a moth to a flame" to personal injury and workers' compensation law, now the focus of his practice. He estimates some 25 percent of his work is devoted to cases involving damage from lead paint.

> "He has a broad skill set applicable to all types of personal injury claims, including being New Hampshire's preeminent attorney on lead paint poisoning claims. What I most admire in Chris is that he will take any meritorious case to trial fearlessly."
> Frances G. Murhpy

Francis G. Murphy, a shareholder and director at Shaheen & Gordon, says he and Seufert have shared cases and brainstormed on trial-related strategies for some 20 years.

"He has a broad skill set applicable to all types of personal injury claims, including being New Hampshire's preeminent attorney on lead paint poisoning claims," Murphy says of his friend. "What I most admire in Chris is that he will take any meritorious case to trial fearlessly."

Seufert's most memorable case was before the U.S. Supreme Court – a 1995 appearance he modestly describes as "a country bumpkin lawyer in Washington, D.C." – and involved a couple who was selling their lakeside motel to a man who promised to bring in a large hotel chain to take over the property and provide them enough money to comfortably retire.

The man started taking out loans against the motel without his clients' consent, Seufert says, and eventually lost the property. Seufert filed a lawsuit on the couple's behalf and the case moved through various courts before landing in front of the Supreme Court. Seufert and his clients prevailed and eventually recovered some $300,000, most of the money that was owed. Seufert still has a photo of himself and his mother standing proudly in front of the Supreme Court building.

Former president and longtime board member of the New Hampshire Association for Justice, Seufert has won the admiration of executive director Marissa Chase, who joined the group in 2016.

"Chris's word is gold," she says. "When he takes a project on, or says he'll be somewhere – whether it's to plan a fundraiser for someone running for office, or to testify in front of the legislature on a bill we've worked on – he'll be there. His service to this organization is invaluable and can't be quantified."

Seufert's volunteerism has extended to other areas, and he is a past director of both the Franklin Chamber of Commerce and the Franklin Business and Industrial Development Corp., as well as past president of the Andover Lions Club.

He owns a Kawasaki 1200 motorcycle, though he hasn't ridden it for years, and belongs to a Concord partnership that owns two four-seater planes, but hasn't flown for some time.

Sailing – especially to places with good scuba diving – eclipses most other hobbies, explains Seufert, who has taken his wife and five children to locales ranging from the Isles of Shoals to the West Indies.

"It's more fun in the islands," he adds. "You swear you're in an aquarium, all the colors and sights."

It's a pastime that also informs his legal work, Seufert says.

"I guess you've got to be self-sufficient when you're a sailor," he says. "It carries over. You get into a major litigation and you've got pretty calm nerves. There's kind of a Zen to both of them."

Facility Dogs from page 1

work alongside professionals to assist others, such as child victims.

According to Courthouse Dogs Foundation, "a facility dog should be a graduate from a nonprofit assistance dog school which is accredited by Assistance Dogs International." They typically receive around two years of training before being placed with a professional handler. They can also work with multiple handlers, on or off leash, which provides much-needed flexibility when present in private forensic interviews, medical exams, and courtroom hearings.

Their training includes obedience and resiliency to stress, so as not to be disruptive or distracted by strange noises while performing their duties. They are not protective, and they lack the prey drive of some breeds commonly distracted by fast-moving curiosities like squirrels or cats.

When being placed to work in the legal system, facility dogs undergo additional screening to ensure they are affectionate and comfortable having close physical contact with children. The dog should not be distressed by a child's sudden pull of its tail or unwitting finger in its ear.

In addition to the courthouse, facility dogs work in child advocacy centers and city or county attorney offices. Their handlers are professionals who work in the legal system due to the confidential nature of certain proceedings. When not at work, a facility dog is a loving pet to one of their primary handlers.

Courthouse Dogs Foundation, a nonprofit organization founded in 2012 by former Seattle prosecutor, Ellen O'Neill Stephens, is perhaps the biggest proponent of the placement and usage of facility dogs. The organization has helped several states with drafting legislation and believe that pooches in the courtroom should be a mainstream practice.

In 2003, during her tenure as a prosecutor, O'Neill-Stephens brought her son's service pup, Jeeter, to accompany twin seven-year-old sexual assault victims into King County Superior Court in Seattle to comfort them during testimony against their abusive father. The next year, she worked with Canine Companions for Independence to become the first assistance dog organization in the world to place a trained facility dog, Ellie, to work in a prosecutor's office.

"When under a lot of stress, direct and cross-examination can make a child re-experience their trauma," O'Neill-Stephens said. "The usage of facility dogs helps combat that and enhances the fact-finding process."

Celeste Walsen, Executive Director of Courthouse Dogs Foundation and veterinarian, supports that assertion, saying that "having a dog makes all the difference in the world in keeping witnesses in the right frame of mind to give meaningful testimony."

Walsen, who also holds a BA in Psychology from the University of California Berkeley, says that dogs impact the neurophysiology of humans. "To a vulnerable individual such as a child, the presence of police officers, lawyers, jurors, and a person in a big black robe looking down on them can be very scary," Walsen said. "And when we are struck with fear or anxiety, one of the first things you lose is the ability to talk. But the calming effect of a dog can help raise oxytocin and lower cortisol levels, affecting the neurotransmitters in the brain, to allow the witness to keep talking. This limits re-traumatization and gets the best evidence."

Westin, the Carroll County facility dog, striking a pose in front of his workplace. Photo courtesy of The Child Advocacy Center of Carroll County.

According to Walsen and O'Neill-Stephens, the best breeds for facility dogs are Labradors, Golden Retrievers, or a combination thereof.

Despite the lack of laws in NH, there is one prosecutor's office in the state that occasionally uses a facility dog: Carroll County Attorney's Office.

"The experience has been really helpful," County Attorney Michaela Andruzzi said. "It gives them something to focus on instead of having to look me in the face."

Westin, the Carroll County facility dog, is primarily located at the Child Advocacy Center of Carroll County. His handler (AKA "Westin's Mom"), Executive Director Elizabeth Kelley-Scott, said he greets families as they come into the center and helps calm the anxieties of both the parents and the children. He was trained in 2013 by Assistance Canine Training Services and is set to retire soon.

> "The usage of facility dogs helps combat [trauma] and enhances the fact-finding process."
>
> Ellen O'Neil-Stephens

"Westin is worth his weight in gold," Kelley-Scott said. Recalling an instance where Westin helped a child victim with attention deficit and oppositional defiant disorders open up to her in a forensic interview, she recounted, "I didn't think he would talk to me, but we ended up talking for 30 minutes."

Concord City Prosecutor Tracy Connolly has been involved in a few cases where a victim would bring a dog for comfort, but not while testifying. "If it helps a victim get through their testimony, I'm all for it," she maintained.

Amanda Grady-Sexton, Director of Public Affairs for New Hampshire Coalition Against Domestic and Sexual Violence, said she feels that the imbalance of the interests of crime victims against the rights of the accused in New Hampshire's justice system regularly results in re-traumatization. She said that "if the goal of a criminal trial is to seek truth and determine the accused's innocence or guilt, the New Hampshire legislature should support evidence-based efforts that help victims and witnesses provide clear and coherent testimony, including the use of a discreet service animal in the courtroom."

Conversely, some criminal defense attorneys have concerns with a canine presence in the witness stand.

"I would be concerned that it could bolster the credibility of the witness and render them sympathetic to the jury," Attorney George "Skip" Campbell said. "I would have no problem with the use of one during recess when the jury can't see them, though."

Attorney Sandra Bloomenthal expressed similar concerns saying, "I'm a dog lover, but I feel that the jury seeing a dog in the witness box may elicit unwarranted sympathy."

Interestingly, Attorney Ted Lothstein has a different take on it. He has had direct experience with the usage of man's best friend in court when he represented a defendant in a domestic violence case. He said the plaintiff, with no apparent mental or physical disabilities, brought a huge hound with her into the courtroom and neither she nor the prosecution gave any explanation.

"The jury found in favor of the defendant," Lothstein says. "It was like the proverbial elephant in the room, but in this case, it was a very large dog. The lack of explanation was damaging to the prosecution's case."

Some defense attorneys in other states have included objections to facility dogs in their appeals, but to no avail.

In the Pennsylvania Supreme Court case, *Commonwealth of Pennsylvania v. Sheron Jalen Purnell,* the Court opined, "there is nothing in the record to suggest that the comfort dog was in any way disruptive to the trial."

Likewise, in *Andre Montez Jones v. Georgia*, Jones asserted that the trail court erred in allowing a facility dog to accompany one of the plaintiffs, that it prejudiced his defense by generating sympathy in the jury. The Georgia Court of Appeals answered this by saying, "given the procedures the trial court followed to minimize the dog's presence, we cannot assume that the dog had any impact on the jurors, much less that it engendered sympathy in them."

To minimize potential prejudice against defendants, Courthouse Dogs Foundation recommends that facility dogs be brought in and out of the courtroom while the jury is not present and that the dog remain out of sight under the witness box. It is also recommended the judge inform the jury of the dog's presence (but to convey that it is in no way to be interpreted as reflecting on the truthfulness of the testimony) and that the dog be made available to witnesses on both sides.

It is unclear if or when the Courtroom Dogs Act will pass, or if NH will pass a law any time soon surrounding the usage of facility dogs, but anything is paws-ible.

Book Review

A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice

By David Alan Sklansky

The Belknap Press of Harvard University Press (2021), Hardcover, 336 pages

Reviewed by Patrick Arnold

In mid-December 2021, a vague TikTok post warned of school violence the following day. The U.S. Department of Homeland Security and local law enforcement agencies across the country found no evidence of a credible threat. They nonetheless urged parents and school officials to remain alert. More than a few parents kept their children home, and some school districts canceled the next day's classes altogether. With the tragedies of Columbine and Sandy Hook vivid enough in the collective consciousness, parents process the risk of school violence somberly. Perceived risks outweigh the perceived cost of inaction. This is a recurring theme found in "A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice." Featuring thorough discussions of legal history, economics, and other social science data, Stanford Law Professor David Alan Sklansky convincingly analyzes the complex relationship between violence and the law.

In the first two chapters, Sklansky offers a brief history of violent crime and how societies treat violence as a legal problem. He spends a fair amount of time scrutinizing how lawmakers define violent crimes. Why is burglary classified as a violent crime under federal law when fewer than 5% of burglaries involve actual violence? In addition to federalism issues, Sklansky notes how individual states also struggle with consistency in their definitions. For example, a person who throws a drink in another's face or a half-eaten sandwich at someone's torso has committed simple assault under the New Hampshire criminal code. By causing unprivileged physical contact, the aggressor's conduct invites the same charge as if they had landed a punch with a clenched fist. However, under the state's civil DV framework (RSA 173-B), physical contact is not required to justify judicial relief and the legal definition of "domestic violence" can include unauthorized entry, insults, taunts, and repeated communications of coarse language when directed at a current or former intimate partner. The reasons for the differing definitions are not as simple as one might think. Though the book primarily focuses on U.S. jurisdictions, Sklansky contrasts American definitions and practices with those of other societies around the globe. Such comparisons offer considerable perspective.

Each of the remaining chapters tackles a particular type of violent crime. Police brutality and the quantum of force in law enforcement tactics receive an entire chapter. Though George Floyd and BLM rightfully receive some attention, these developments are part of a larger and much longer discussion – spanning more than a century. Philosophical debates on the purpose of law enforcement and concerns which spurred the militarization of local police departments are especially intriguing. Overall, Sklansky accurately observes the "conflicting intuitions" Americans have about the use of force by law enforcement.

The subject of prison violence also receives its own chapter. In theory, we remove criminals from society and deprive them of liberty to keep the community safe. As a society, we're not looking to punish criminals with corporal punishment (except the death penalty, of course). Right? In practice, however, prisons are violent places. A U.S. appellate judge once theorized this is merely because "[prisons] place dangerous people in close quarters." As with other topics in the book, Sklansky dispels this generalization in favor of nuance. If true, why does a prevalence of prison violence vary so much from state to state? And even then, from prison to prison? The answers in some cases are disturbing.

Another chapter focuses on violence by and among young people. In this chapter, readers will find issues such as bullying, school violence, and gang activities. In the last decade alone, how education administrators treat bullying and on-campus threats has changed dramatically. Today, a thoughtless remark (or social media post) perceived as a threat can land a student suspended or worse. Sklansky incorporates plenty of criminological data in his discussion of the "get tough" era of the 1980s, the myth of the "super predator," trends in youth recidivism, and the efficacy of diversion programs.

Other chapter subjects include the relationship between free speech and violence, evolving efforts to combat domestic abuse, and of course, the Second Amendment. Sklansky distinguishes the book in three ways deserving special note. First, each chapter subject deserves its own book. Sklansky packs a lot into a manageable length and connects varied issues with a coherent theme. Each subject includes relevant theories on the perceived nature of violence and ways in which lawmakers have endeavored (or come up short) to address concerns. Another accolade relates to Sklansky's effort at a reasonable and objective analysis. In highlighting disconnects between intent policy, and outcomes across the ideological spectrum, Sklansky clearly aimed to treat competing perspectives fairly. Lastly, though not a bright line rule for me, I think a good book should leave one with questions. And A Pattern of Violence does this. Can one support safety measures for those serving on the thin blue line while still questioning the cost-benefit of armored SWAT vehicles in our local police departments? What about supporting criminal procedure reforms while opposing destruction of private property during protests? Does the landscape of today's political discourse still allow for such ideological diversity?

Overall, "A Pattern of Violence" is an easy title to recommend for legal practitioners interested in how we ended up here. Policymakers could benefit from the read too.

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

Amendment from page 1

position, which is not what our constitution intends."

Guerriero addressed the importance of finding remedies for "isolated cases" when judges are "far out of line."

"The normal remedy is you appeal the decision to the Supreme Court and they correct that decision," he said. "When you have instances of misconduct by a judge, we do have the Judicial Conduct Committee."

New Hampshire was among the first states to adopt a code of judicial conduct and since 1977, the New Hampshire Supreme Court has overseen the disciplinary process for judges through the Judicial Conduct Committee.

"I would be concerned if the Judicial Conduct Committee was all lawyers and I would feel like it's 'inside baseball' but I can say, as president of the Bar, I just appointed a non-lawyer."

In New Hampshire, the membership of the Judicial Conduct Committee, which investigates judicial misconduct and makes recommendations, consists of eleven members and eleven alternate members who are appointed under Supreme Court Rule 39 (2).

The Judicial Conduct Committee is made up of a combination of judges and lawyers, as well as people who are not lawyers, clerks of court, elected public officials, or judges, and who are appointed by the president of the Bar Association, the governor, and the Supreme Court.

"The non-attorney public is substantially represented on the Judicial Conduct Committee," Guerriero said. "The bottom line is we feel that through the appeal process and the Judicial Conduct Committee, these concerns are all addressed."

Guerriero praised the vetting process for judges in New Hampshire.

"Those people who get through that are fair and honest. And our Executive Council is not a rubber stamp," he said. "We had a recommendation earlier this year where we said that person was 'qualified with reservations' and that person ended up withdrawing their application. It's not a rubber stamp and we think the process works fine the way it is."

Asked whether judges have 'free reign' during their time in office aside from Judicial Conduct Committee investigations, Guerriero said judges also face the appeal of their decisions to another court.

"The reality is that some of the most painful cases that people deal with in court are custody and divorce cases, and that's why a lot of complaints arise," Guerriero said. "The Professional Conduct Committee for Lawyers gets a huge number of complaints against lawyers handling divorce cases because people's feelings are running so deep, and I get that reaction, but I do think it's telling that you don't see those complaints in other areas of the law. So, it makes me think this [proposed amendment] is more attributable to the emotional nature and the personal importance for people in those cases than some systemic problem with judges."

Former Representative Dan Itse, who testified, said his support for the amendment is questionable primarily because of the politization that Guerriero spoke about.

One reason for his testimony, he said, was to address the limits of the Judicial Conduct Committee that can sanction, but not "take [judges] out of play."

"There's only one body that can remove them and that's the legislature," he said.

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Annual Attorney License Renewal Reporting Begins June 1. Are You Ready?

Each year, a number of attorneys lose their right to practice law in New Hampshire and/or are ordered to pay fines for failing to meet their annual licensing requirements under NHSC R. 42A, 50, 53, 55 and 58. The NHBA Attorney License Renewal Team works diligently to keep that number as low as possible.

It takes a village (almost) to make sure that our members remain in compliance with their licensure obligations. Members of the NHBA Attorney License Renewal Team include the Member Records Coordinator, Accounts Receivable Administrator, Accounting Administrator, Database Coordinator, NHMCLE Coordinator, Senior Account and Associate Executive Director for Operations. Their jobs include making sure that our members:

- promptly update their contact information (so that both NHBA and the courts can reliably contact members in a timely manner),
- correctly execute membership status changes,
- pay any required NHBA dues and NH Supreme Court fees,
- file their Trust Account Compliance (TAC) form,
- enter their Continuing Legal Education (CLE) credits and
- accurately file their NHMCLE Affidavits.

They do so by educating members about their annual obligations and following up with members by phone and e-mail multiple times over the license renewal season.

Rules and deadlines can change, so avoid the trap of just "doing what you've always done." Being prepared for June 1 renewal and understanding the compliance requirements, will help you avoid suspension of your license to practice law in New Hampshire. Stay on top of the renewal deadlines and requirements by updating your membership status and contact information (especially e-mail address). Also, visit the NHBA Attorney License Renewal Team booth at the 2022 Virtual Midyear Meeting.". Additional information can also be found at **nhbar.org/resources/stay-in-compliance/** or you may contact the Renewal Team at **billing@nhbar.org**.

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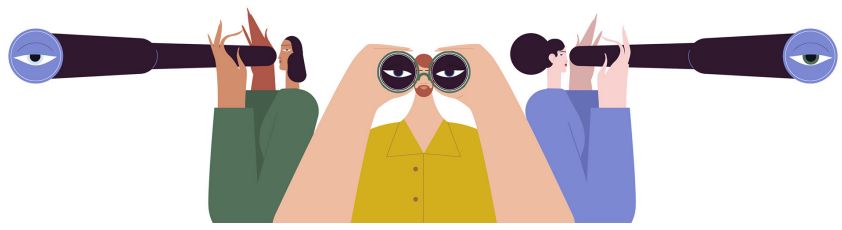

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The New Hampshire Bar Foundation is the charitable arm of the New Hampshire Bar Association. The Associate Director is the liaison between the NHBA, Bar members, and the NHBF Directors. Strong customer service orientation and quick response to member, non-member, grantor, grantee and director requests are a must. Part of the day to day tasks include management of IOLTA funds, funds held with NH Charitable Foundation and other donated and/or awarded funds. The position is responsible for record-keeping, administering fundraising drives, administration of events, grant processing, writing or requesting articles for publication in *NH Bar News* and/or other publications and overall administrative support of the organization. The Associate Director is expected to be a decisionmaker and take charge of the operations of the NHBF on a day-to-day basis.

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JANUARY 2022

THU, JAN 27 – Noon – 1:30 p.m.
Intellectual Property & the Creative Client
- Webcast; 90 NHMCLE min.

FEBRUARY 2022

FRI, FEB 18 – 8:00 a.m. - 5:00 p.m.
Midyear Meeting 2022
- Virtual Event
- 255 NHMCLE min., incl. 75 ethics/prof.

MARCH 2022

THU, MAR 17 – 9:00 a.m. - 4:00 p.m.
Consumer Bankruptcy - A New Hampshire Overview
- Webcast; 360 NHMCLE min., incl. 60 ethics/prof.

MAY 2022

THU, MAY 5 – Time TBD.
Effective and Persuasive Presenation of Damages in a Personal Injury Case
- Webcast; Credits TBD

WED, MAY 18 – 9:00 a.m. - 1:15 p.m.
Intellectual Property for the General Practitioner
- Webcast; 225 NHMCLE min., incl. 30 ethics/prof.

THU, MAY 26 - 8:30 – 10:30 a.m.
16th Annual Ethics Program
- Webcast; 120 NHMCLE ethics/prof. min.

JUNE 2022

THU, JUNE 16 - Time TBD
Arbitration
- Format TBD
- Credits TBD

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(if you missed any of the previously held programs, they are now available ON-DEMAND)

From Our Partners in the Sharing Network

From the Rocky Mountain Mineral Law Foundation

67th Annual Institute: Environmental Justice – What It Is, Whom It Seeks to Help, and How to Address It

Original Program Date – July 23, 2021
50 NHMCLE min.

The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." This concept obviously has many layers, and while it has been around for some time, it may not be familiar to many practitioners. This presentation explores those layers, including the disproportionate environmental burdens shouldered by racial and ethnic minorities, and the regulatory frameworks in place, and contemplated, to address these inequities. Such tools include existing environmental and civil rights legislation as well as constitutional protections. The discussion also examines various communities' diverse concerns that have been raised in the environmental justice framework.

From the Rocky Mountain Mineral Law Foundation

Carbon Capture: Federal and State Legislative Updates and Emerging Policy

Original Program Date – September 22, 2021
90 NHMCLE min.

Carbon capture, storage, and utilization (CCUS) is a cornerstone of President Biden's policies to address climate change, facilitate the energy transition, and revitalize energy communities with carbon retrofits. With the Energy Act of 2020, Congress provided new appropriations and agency mandates around carbon capture projects and extended the section 45Q tax credit. Proposed legislation including the Storing CO_2 and Lowering Emissions (SCALE) Act would further encourage development of CO_2 pipelines and the infrastructure necessary for CCUS. These federal programs have provided new commercial incentives to private developers. State legislatures have also taken action to encourage or require development of carbon capture projects including SB 2065 in North Dakota, HB 200 in Wyoming, and proposed legislation in Colorado that would authorize state agencies to pursue Class VI primacy.

From the Virginia State Bar

A Lawyer's Guide to Technology Related Liability: Issue Spotting Cybersecurity Risk for Clients

Original Program Date – December 7, 2021
50 NHMCLE min.

Cybersecurity risk permeates all areas of the law: from a client's day-to-day contracts to litigation to SEC filings to the board room. No practice area in the law is immune to cybersecurity related issues and risks. This fast-paced session will go beyond the basics and look at how an attorney can issue spot cybersecurity risk for their clients across a range of practice areas.

Learn@Lunch

Intellectual Property and the Creative Client

Thursday, JAN 27 – Noon – 1:30 p.m.
Webcast, 90 NHMCLE min.

New Hampshire's creative economy generates over $115 million in economic activity annually. Given these numbers, it is important for those generating this economic activity to protect their livelihoods. This CLE offers a brief introduction to intellectual property with practical legal advice for general practitioners when you have a creative client.

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Consumer Bankruptcy

A New Hampshire Overview

Thursday, March 17, 2022 • 9:00 a.m. - 4:00 p.m.
360 NHMCLE min., incl. 60 min. ethics/prof. credit

Trustees, practitioners and the US Trustee's office discuss and explore the ins and outs of consumer bankruptcy in New Hampshire. The program will include an informal discussion with Chief Bankruptcy Hon. Bruce Harwood.

Faculty

Edmond J. Ford, Program Chair/CLE Committee Member, Ford, McDonald, McPartlin & Borden, P.A., Portsmouth

Hon. Bruce A. Harwood, Chief Judge, United States Bankruptcy Court, District of New Hampshire, Concord

Michael S. Askenaizer, Law Offices of Michael S. Askenaizer, PLLC, Nashua

Kimberly Bacher, Office of the US Trustee, Concord

Ryan M. Borden, Ford, McDonald, McPartlin & Borden, P.A., Portsmouth

Eleanor Wm. Dahar, Dahar Professional Association, Manchester

Ann Marie Dirsa, Office of the US Trustee, Concord

William M. Gillen, Law Offices of William M. Gillen, Manchester

Lawrence P. Sumski, Sumski Law Office, Manchester

Effective and Persuasive Presentation of Damages in a Personal Injury Case

Thursday, May 5, 2022 • Format TBD

This program is intended for personal injury lawyers of all experience levels, plaintiff as well as defense. This will be a fast-moving interactive format with a large panel of highly experienced tort practitioners, experts, mediators and sitting judges. The program focuses on effectively developing and presenting damage evidence at all stages of a personal injury case, including the demand and negotiation phase, mediation and ultimately trial. A great way to celebrate Cinco de Mayo with fellow tort attorneys, and a can't miss CLE for any injury lawyer who wants to learn the most effective and persuasive ways to present your client's case.

Faculty

Peter E. Hutchins, Program Chair/CLE Committee Member, Law Offices of Peter E. Hutchins, PLLC, Manchester
Hon. Robert E.K. Morrill, Portsmouth
Hon. David W. Ruoff, NH Superior Court, Concord
Gary M. Burt, Primmer, Piper, Eggleston & Cramer, P.C., Manchester
Paul W. Chant, Cooper, Cargill, Chant, P.A., North Conway
Christine Friedman, Friedman & Feeney, PLLC, Concord
Holly B. Haines, Abramson, Brown & Dugan, Manchester
Scott H. Harris, McLane Middleton Professional Association, Manchester
Catharine Newick, Business Decision Services, Concord
Neil B. Nicholson, Nicholson Law Firm, PLLC, Concord
Mary E. Tenn, Tenn & Tenn, P.A., Manchester

More information coming soon!

DID YOU MISS THESE NHBA•CLE PROGRAMS?

Now Available On-Demand

Business Litigation

Original Program Date-September 14, 2021 • 310 NHMCLE min. incl. 45 min. ethics/prof.

This CLE covers a variety of topics pertaining to business litigation including non-competition and non-solicitation agreements; trade secrets; computer forensic issues; and much more.

Planning and Zoning 101

Original Program Date-October 1, 2021 • 360 NHMCLE min.

Planning and zoning law is the bread and butter of the land use practitioner. Whether you're new to the practice or are an experienced attorney looking to refresh your knowledge of the subject area, this CLE is for you!

Juror Investigation Using Social Media

Original Program Date-October 5, 2021 – 60 NHMCLE ethics/prof. min.

This CLE is an overview of the ethical pitfalls that exist surrounding a lawyer's research of jurors via social media. Also discussed is how a lawyer should decide whether juror investigation through social media is ethically required and practical suggestions on how to conduct this research when it is necessary.

Collaborative Law

Original Program Date-October 6, 2021 – 60 NHMCLE min.

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.

20th Annual Labor & Employment Law Update

Original Program Date-October 14, 2021 • 360 NHMCLE min. incl. 90 min. ethics/prof.

This seminar addresses cutting edge developments in employment law over the past year focusing on changes in the new administration and Covid's impact on the workplace.

Legal Issues Associated with Commercial Websites

Original Program Date-October 26, 2021 – 60 NHMCLE min.

This CLE covers what operators of commercial websites need to know about (1) privacy and security risks when handling data; (2) common intellectual property issues arising from the operation of commercial websites; and (3) key provisions that should be in the terms of service government commercial websites.

Developments in the Law 2021

Original Program Date-October 28, 2021 • 360 NHMCLE min. incl. 60 min. ethics/prof.

This annual CLE seminar is a must for all practicing New Hampshire attorneys. This program offers a complete survey of important legal developments affecting NH practice.

Border Law & Confidential Client Information

Original Program Date-November 3, 2021 – 60 NHMCLE ethics/prof. min.

When traveling internationally, attorneys may need or want to bring work with them. But doing so gives rise to unique ethical considerations. This program explores attorneys' ethical obligations when leaving and re-entering the United States, and suggests some best practices to safely navigate those obligations.

Nuts & Bolts of Family Law

Original Program Date-November 5, 2021 • 360 NHMCLE min. incl. 60 min. ethics/prof.

Topics include: starting a divorce case/procedures; discovery techniques; parenting rights/GALs; financial affidavits; child support/alimony; property division; tips from a circuit court judge; and domestic violence.

Withdrawal from Representation

Original Program Date-November 16, 2021 – 60 NHMCLE min.

This program discusses Rule 1.16 of the Rules of Professional Conduct and applicable Court Rules regarding withdrawal from representation, with specific reference to (1) withdrawal for nonpayment; (2) withdrawal for failure to communicate; and (3) ethical limitations on the information that can be included in a motion to withdraw.

For more information or to register, visit https://nhbar.inreachce.com

Withdrawing from Representation – Rule 1:16 Non-Payment and Failure to Communicate – Part 1

Dear Ethics Committee:

One of my clients paid me a retainer and we filed suit on his behalf. The retainer is now exhausted, and the client has not paid my invoice for several months. The client has also not responded to my emails, phone calls, or letters for several months. Can I withdraw under these circumstances?

The short answer is yes, subject to Rule 1.16 and any applicable court rules.

This is the first in a series of corners regarding ethical considerations in withdrawing from representation. This corner will provide an overview of Rule 1.6 and address the issue of withdrawal when the client stops paying the attorney's invoices and/or stops communicating with the attorney. Future corners will address ethical issues relating to motions to withdraw and some considerations regarding withdrawal in the transactional context.

Withdrawing from a matter can be fraught with legal and ethical risk. This article briefly describes the ethics rules relating to withdrawal. Rule 1.16 of the New Hampshire Rules of Professional Conduct describes the circumstances under which a lawyer must or may withdraw.

I. OVERVIEW OF RULE 1.16

A. Mandatory Withdrawal

Under Rule 1.16(a), lawyers are required to either decline to represent a client, or to withdraw, when the representation would result in a violation of the rules of professional conduct or other law; the lawyer's physical or mental condition materially impairs their ability to represent client; or the lawyer has been discharged.

Lawyers have been subject to professional discipline for failing to withdraw when directed to do so. *E.g., In Re Hawthorne*, Docket # 00-145 (N.H. Prof. Cond. Comm. Nov. 18, 2004).

B. Discretionary Withdrawal

Under Rule 1.16(b)(1), a lawyer may withdraw if withdrawal can be accomplished without material adverse effect on the interests of the client. Even if there is an adverse impact on the client's interests, the lawyer may still withdraw under Rules 1.16(b)(2)-(7) if (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes to be criminal or fraudulent; (3) the client has used the lawyer's services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the presentation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.

C. Applicable Court Rules

Under Rule 1.16(c), a lawyer seeking to withdraw must also comply with applicable court rules. *E.g.*, Supreme Court Rule 32(2); Superior Court Rule 17(d) and (g); Rules of Criminal Procedure 5(h)-(j); Circuit Court General Rule 1.3(E) – (I). Rule 5(i) of the Rules of Criminal Procedure provides that unless the case is within 20 days of trial, appointed counsel who must withdraw due a conflict of interest under Rule 1.6(a), 1.9(a) and (b), and/or 1.10(a) may do so by forwarding a Notice of Withdrawal to the court. Rule 5(i) further provides that automatic withdrawal will not be granted if the basis for withdrawal is breakdown of the relationship, failure to pay fees, or any other conflict not specifically set forth in the specified rules. A court may order an attorney to continue representing a client notwithstanding good cause under Rule 1.16.

D. Protecting the Client's Interests

Rule 1.16(d) provides that as a condition to termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, including by giving reasonable notice, allowing time for employment of other counsel, surrendering the client's file and property, and refunding any unused fee. Any termination of an attorney-client relationship may be considered harmful to the client due to the need to establish a relationship with a new attorney. Further, in the case of an hourly fee arrangement, the client may expend additional funds in getting the new attorney up to speed. For these reasons among others the decision to withdraw and the steps required to adequately protect the client's interests should be carefully considered.

We address below the questions of withdrawal when the client stops paying and/or stops communicating. This issue is subject to the specific facts and circumstances of each matter, as well as review and approval by the court with respect to litigated matters. Supreme Court Rule 32(2); N.H. Rules of Crim. Proc. 5(h), (i) and (j); Superior Court Civil Rule 17(f). Under all circumstances of withdrawal or discharge, the lawyer must take reasonable steps to mitigate the consequences to the client. Rule 1.16, ABA Model Code Comment [9]; *Richmond's Case*, 153 N.H. 729 (2006).

II. SPECIFIC CIRCUMSTANCES

A. Can I withdraw from a representation if the client stops paying me?

Yes, but subject to reasonable warning to the client, the potential need for court approval, and the need to protect the client's interests.

Attorneys may withdraw from representation for the client's nonpayment subject to court approval and the specific facts and circumstances. Nonpayment of fees may constitute an unreasonable financial burden or failure to fulfill an obligation. Reasonable warning to the client will be required. The attorney may wish to review the case of *Gibbs v. Lappies*, 828 F. Supp. 6 (D.N.H. 1993). Insurance defense counsel sought to withdraw two months prior to trial because the insurance carrier became insolvent and there was no prospect the firm would be paid. The court found that the insured/client had violated no obligation owed to the law firm, and that her interests would be prejudiced if the firm withdrew under the circumstances. The court denied the motion to withdraw. In *State v. Emanuel*, 139 N.H. 57 (1994), the trial court permitted defense counsel to withdraw six days prior to trial based solely upon a fee dispute. The Court held "a fee dispute may be sufficient 'good cause' to allow a criminal defense attorney to withdraw from representation on the eve of trial", but a trial court must inquire into the facts surrounding the dispute to determine the potential prejudice to the defendant. It must be noted that Emanuel predates the adoption of Rule 5(i) of the Rules of Criminal Procedure and Emanuel may no longer be useful precedent. S*ee also Fidelity Nat'l Title Ins. Co. of New York v. Intercounty Nat'l Title Ins. Co.*, 310 F.3d 537 (7th Cir. 2002) (trial court abused discretion in refusing to permit withdrawal of 4-lawyer firm owed $470,000 in fees and costs). Motions to withdraw in this context are subject to the confidentiality obligations in Rule 1.6, which provides a lawyer may disclose information only "to the extent the lawyer reasonably believes is necessary" to accomplish one of the purposes specified. *See In Re Gonzalez,* 773 A.2d 1026 (D.C. 2001) (attorney admonished for filing motion to withdraw for nonpayment of fees in which the lawyer stated the client had also made misrepresentations to the attorney); ABA Formal Op. 476 (Dec. 19, 2016). This issue will be discussed more fully in the second article in this series. The courts may also be more likely to permit withdrawal in cases where the attorney has expended significant effort with little or no payment, and less likely to permit withdrawal in cases in which the client made significant payments but then ran out of funds.

B. Can I withdraw if the client stops communicating with me?

Yes, but subject to reasonable warning to the client, the potential need for court approval, and the need to protect the client's interests.

An attorney may withdraw from representation if the client ceases communicating with the attorney. From time to time, clients stop communicating with their attorneys and do not respond to the attorney's diligent efforts to reestablish communications. *E.g., Crane v. Crane,* 657 A.2d 312, 318 (D.C. 1995). Crane was a domestic relations matter. Mrs. Crane asked the court to review the files of Mr. Crane's attorneys for evidence of a trust he allegedly created. Mr. Crane, whose last known address was in Nepal, did not respond to the motion. Mr. Crane's attorney filed a motion to withdraw, which the trial court granted over Mrs. Crane's objection. The Appellate Court affirmed. The Appellate Court held that "[w]here a client refuses to communicate with his attorney and makes no arrangement to pay the attorney for past services, the attorney's motion to withdraw will ordinarily be granted." Although Crane arose from a situation where the client both failed to communicate and pay, in principle the attorney may be permitted to withdraw based solely upon the failure to communicate. Such withdrawals create a dilemma for the attorney, who may believe that withdrawing is likely to prejudice the client's legitimate interests, but who may feel unable to adequately serve the client's interests without direction. Withdrawal may be permitted under Rule 1.16(b)(6) because the client has rendered the representation unreasonably difficult or under Rule 1.16(b)(7) as other good cause.

This Ethics Corner Article was submitted for publication to the NHBA Board of Governors at its November 18, 2021 Meeting. The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the Bar News and other NHBA media outlets. New Hampshire lawyers may contact the Committee for confidential and informal guidance on their own prospective conduct or to suggest topics for Ethics Corner commentaries by emailing: Robin E. Knippers at reknippers@nhbar.org

Ethics Corner

Withdrawing from Representation – Motions to Withdraw – Part 2

Dear Ethics Committee:

I represent a client in a litigated matter. Circumstances have developed that make it necessary for me to file a motion to withdraw from the case. Are there limitations on the things I may say in my motion to withdraw?

Yes. You must consider your obligation to maintain client confidences under Rule 1.6 and to take reasonably practicable steps to protect the client's interests under Rule 1.16(d). This requires careful consideration of the circumstances requiring withdrawal, the status of the litigation, applicable court rules, and other factors.

This is the second in a series of corners regarding ethical considerations when withdrawing from representation. The first corner provided an overview of Rule 1.16 and withdrawal for non-payment and/or failure to communicate. This corner addresses some ethical issues in drafting motions to withdraw.

When withdrawing from representation, care must be taken to avoid material adverse effect on the client's interests. Rule 1.16(d). This means the attorney must not unnecessarily reveal information relating to the representation. Rule 1.6(b) ("lawyer may reveal [confidential] information to the extent the lawyer reasonably believes necessary" to accomplish one of the purposes listed in the Rule).

Difficulties arise when the lawyer's withdrawal is triggered by a client demand that the lawyer engage in unprofessional conduct. Rule 1.16, cmt [3]; *see Matza v. Matza*, 226 Conn. 166, 180, 627 A.2d 414 (1993) (counsel permitted to withdraw based upon reasonable belief client's proposed financial affidavit was false or misleading; client not entitled to evidentiary hearing on the issue). "The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation." *Id*. The comments address this dilemma by stating "[t]he lawyer's statement that professional consideration require termination of the representation ordinarily should be accepted as sufficient." *Id*. Best practices suggest that the attorney should include in the prayer for relief a request that any hearing on the motion be conducted outside the presence of opposing counsel in order to protect the client's interests.

Rule 1.16(a)(1) provides that a lawyer *must* withdraw if their representation will result in violation of the rules of professional conduct or other law. This addresses situations where the lawyer knows their representation will be used in the future to perpetrate or facilitate a crime or fraud. See Rule 1.2(d). Rule 1.16(b)(2) provides that a lawyer *may* withdraw if the client persists (presumably, against the lawyer's advice) in a course of action the lawyer reasonably believes is criminal or fraudulent. See cmt. [2] ("[t]he lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct…."). Rule 1.16(b)(3) provides that a lawyer *may* withdraw if the client has used the lawyer's services to perpetrate the crime or fraud. That is, the crime or fraud is complete by the time the lawyer becomes aware it has occurred, and that his or her advice was used to commit it.

Rule 3.3(b) addresses the lawyer's obligations with respect to litigated matters: if a lawyer representing a client in an adjudicative proceeding *knows* that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding, the lawyer "shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." Comment 10 states that "[i]f withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6." What is "reasonably necessary to remedy the situation" can only be determined under the specific circumstances.

Rules 1.6(b), 1.16, and 3.3 frame the issue of attorney withdrawal, but offer no specific guidance as to the extent of information that may be disclosed. Discharge by a client and withdrawal by a lawyer are addressed in Section 32 of the *Restatement (Third) of the Law Governing Lawyers*. Comment d states that "[i] n applying to withdraw …it would not be permissible for the lawyer to state that the client intended to pursue a repugnant objective. A lawyer therefore will often be limited to the statement that professional considerations motivate the application." A court might find this shorthand insufficient, particularly if the case is close to trial. The hope is that courts will be sensitive to the attorney's ethical constraints when considering a motion to withdraw. *See* ABA Formal Op. 93-370, at 4 (1993) (lawyer should not reveal to court limits of lawyer's settlement authority).

The question arises how the attorney should proceed if the court requests additional details. An attorney faced with this difficult issue may consider submitting additional information under seal, requesting an in camera ex parte hearing, attempting to explain the prejudice that might result from further disclosure, and consider requesting the court to recuse itself if prejudicial information is disclosed.

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Surprise! Health Care Providers Must Comply with the No Surprises Act as of Jan. 1

By Mary Elizabeth Platt

Surprises can be good: puppies, birthday parties, or when the person ahead of you pays for your coffee. Conversely, unexpected medical bills are rarely good surprises. A new federal law, the No Surprises Act (NSA), aims to reduce surprise billing in health care and protect consumers through regulation of health care providers (and insurers) regarding billing practice transparency.

Executed in three parts—Requirements Related to Surprise Billing Part I (July 2021), Part II (September 2021), and the Prescription Drug and Health Care Spending Rule (November 2021)—the NSA focuses on prohibiting balance billing, health care consumer protection, pricing transparency, and establishes an independent dispute resolution process for billing discrepancies. Balance billing occurs when an out-of-network provider bills a patient for remaining billed charges after a patient's insurance pays a lower out-of-network rate. Balance billing often comes as a surprise to patients who may see multiple providers in varied settings without a clear understanding of which providers are in and out of their health plan's network. The NSA specifically prohibits balance billing when insured patients receive the following: out-of-network emergency services (45 CFR §149.410), non-emergency services by out-of-network providers at in-network health care facilities (45 CFR §149.420), or air ambulance services by out-of-network providers (45 CFR §149.440).

NSA provisions also protect self-pay patients—those who are uninsured or insured but choose to self-pay for certain services. Pricing in health care may be unclear to self-pay patients and varies between providers resulting in an unpredictable bill. Under the NSA, providers are required to disclose the out-of-pocket cost of health care services prior to treating a patient.

On the topic of surprises, the NSA requires health care providers to implement several regulatory requirements as of January 1, 2022. I may not be able to pay it forward to readers with coffee (or puppies), but can make some sense out of the NSA's January 2022 requirements for already stressed health care providers.

Patient Notice

By January 1, 2022, all providers must give notice of NSA protections regarding surprise billing to all insured patients (excluding federal health plan beneficiaries e.g., Medicare, Medicaid) who currently receive services or during a visit for each episode of care. Notice may be delivered in-person, by mail, or by electronic mail per patient preference and no later than the date a payment is requested, or a claim is submitted to the patient's insurance plan. Additionally, providers must prominently display notice on their website and on-site. 45 CFR §149.430.

Notice must contain a summary of consumer protections, applicable state balance billing law, and contact information to report complaints to state and/or federal agencies. The Centers for Medicare and Medicaid Services (CMS) provides a Model Notice for providers to adapt. (https://www.cms.gov/files/document/model-disclosure-notice-patient-protections-against-surprise-billing-providers-facilities-health.pdf).

Good Faith Estimate

All providers must prominently display, on their website and on-site, a notice to self-pay patients regarding their right to a Good Faith Estimate (GFE) of expected charges. CMS provides a Model Notice (Page 3 of CMS Model Notice for Self-Pay Patients, Appendix 1). (https://www.cms.gov/regulations-and-guidancelegislationpaperworkreductionactof1995pra-listing/cms-10791).

Additionally, the NSA requires providers to furnish a GFE to all self-pay patients prior to scheduled services or when requested by a patient. 45 CFR §149.610. The GFE must be discussed with the patient and provided in writing in clear, understandable language.

The NSA requires the following timeline for delivering a GFE:

- Patient request: must be sent in 3 business days;
- Service scheduled at least 10 business days in advance: 3 business days after scheduling;
- Service scheduled 3-9 days in advance: 1 business day after scheduling;
- Service scheduled less than 3 days in advance: not required; and
- Recurring services: GFE not required for subsequent service, update after 12 months.

The GFE must reflect anticipated charges to the individual and include certain elements and a series of disclaimers as outlined in the CMS-drafted standard form for providers to use when calculating and providing GFEs (Appendices 2 and 11). (https://www.cms.gov/files/zip/

PROVIDERS *continued on page 28*

Government Audit and Enforcement Regarding Pandemic Relief Funds in 2022

By Morgan Nighan, David Vicinanzo, and Kierstan Schultz

Nighan

Vicinanzo

Schultz

Most healthcare providers received stimulus funds from multiple sources to help them combat financial distress caused by the COVID-19 pandemic. The Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent legislation provided trillions of dollars in grants, low-interest forgivable loans, and tax credits through programs like the Provider Relief Fund (PRF), Paycheck Protection Program (PPP), Employee Retention Credit (ERC), and Economic Injury Disaster Loan (EIDL). These funds were allocated at the federal level through government agencies including the Department of Health and Human Services (HHS) and the Small Business Administration (SBA), and—at the New Hampshire state level—through the Governor's Office for Emergency Relief and Recovery (GOFERR).

We are now entering the audit and enforcement phase of these programs, and are beginning to perceive the government's approach. In 2022, we expect that some recipients of pandemic stimulus funds will be audited for compliance, will engage in administrative challenges, and/or will be targeted by whistleblower or government-led enforcement actions. Here, we focus on the two federal programs that constitute the lion's share of pandemic relief in healthcare: PPP and PRF.

For PPP, most successful recipients have received and spent their funds and applied for forgiveness. To make sure that borrowers received their funds quickly, the SBA relied upon borrower certification of eligibility, and did not make an eligibility determination up front. Now, the SBA is retroactively reviewing borrower eligibility. Typically, if the SBA is considering issuing an adverse decision to a borrower, the SBA will send a request for follow up information to the borrower or the borrower's lender. This gives the borrower a critical opportunity to provide the SBA with additional information supporting its application. PPP recipients should take care to monitor for and respond to any inquiries from their lender, the SBA, or any other government agency regarding their PPP loan.

Recently, the SBA has begun issuing decisions finding borrowers retroactively ineligible for a PPP loan they already received, or ineligible for loan forgiveness. Importantly, time is of the essence: a borrower only has 30 calendar days to file an appeal with the SBA's Office of Hearings and Appeals following an adverse decision. After exhausting administrative appeals, a borrower can opt to appeal to a federal district court pursuant to the Administrative Procedures Act (APA). PPP eligibility issues have been hotly contested in litigation throughout the country and, depending on loan size, borrowers may benefit from presenting meritorious arguments for judicial review. Even those borrowers who have succeeded in achieving loan forgiveness from the SBA are not out of the woods yet; there is a six-year statute of limitations during which

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the government could bring a fraud action, even for already forgiven loans, and, as discussed below, whistleblower actions remain a threat. All borrowers, even those who receive forgiveness, are required to retain their PPP loan records for six years.

For PRF, audit and enforcement are still in the very early phases. We will see increased activity on these fronts in 2022. Unlike PPP, Phase 4 of PRF distribution is ongoing. Phase 1 recipients were initially required to report on their use of PRF funds by September 30, 2021, but the government offered a 90-day grace period due to many outstanding provider questions and reporting portal problems. This means that HHS and its Health Resources and Service Administration (HRSA) remain in the early stages of reviewing provider compliance reporting for Phase 1. Reporting for Phase 2 recipients is now open; Phase 3 opens on July 1, 2022; and Phase 4 opens on January 1, 2023. Due to the early reporting stage, HRSA has issued almost no adverse decisions on use of PRF funds, and has pursued very few fraud cases alleging misuse of those funds. We expect enforcement to pick up heartily in 2022 as HHS and HRSA review incoming reporting data, issue use-of-funds decisions, and make referrals to the United States Department of Justice for civil or criminal enforcement.

Importantly, unlike PPP, there is no administrative appeals process for the PRF program. However, recipients may be able to pursue legal challenges or seek judicial review under either the Social Security Act or the APA. Any PRF recipient who receives an adverse determination from HHS or HRSA should consult counsel regarding these relief options.

Pre-pandemic, the federal government had increased its emphasis on enforcement of laws relating to healthcare fraud and abuse. This momentum has continued, and all federal and state pandemic relief funding recipients remain vulnerable to claims brought pursuant to the False Claims Act (FCA) or its state law counterparts—including whistleblower claims—which carry the potential for treble damages. The FCA's qui tam provisions permit private citizens to sue as "relators" on behalf of the United States to recover public funds allegedly obtained through fraud. The government investigates the relator's allegations as the complaint remains under seal and, eventually, elects whether to intervene or decline. Even if the government declines, the relator may continue to prosecute the case on the government's behalf subject to certain restrictions. In either event, the relator may be awarded up to 30 percent of any recovery.

The first settlement of a qui tam, or whistleblower-initiated, action arising out of PPP was announced in August 2021. Since then, our litigation team has observed and closely followed increased whistleblower activity regarding PPP loans. Because whistleblower cases remain sealed for months or even years while the government investigates, we expect that many more cases filed earlier in the pandemic will come to light in 2022. Moreover, whistleblowers are often disgruntled former employees. Given the volatile labor market and the strong financial incentives whistleblowers enjoy, we can confidently presume that some pandemic-era employment separations have resulted in whistleblower claims. Any pandemic relief recipient who receives a civil investigative demand, subpoena, or similar request from the federal or state government should immediately suspect an investigation or enforcement action and consult their compliance team and counsel.

Morgan Nighan is a partner in Nixon Peabody's Complex Commercial Disputes practice who also serves on the firm's COVID-19 Client Response team.

David Vicinanzo, a Nixon Peabody partner, leads the firm's national Government Investigations & White-Collar Defense practice.

Kierstan Schultz is an associate in Nixon Peabody's Complex Commercial Disputes practice group, representing healthcare providers, businesses, and individuals.

Providers from page 26

cms-10791.zip).

Operational Review

To comply with current and future NSA requirements, providers should take a close look at existing operations to ensure compliance. To prepare, providers should:

- Evaluate and revise patient registration and billing processes to identify and provide required notice to self-pay and insured patients;
- Develop a form and response process for required Good Faith Estimates to be sent to self-pay patients at scheduling or upon request; and
- Timelines are important when sending GFEs it is important to make sure that staff and providers understand their role in NSA compliance.

Future Developments

The NSA is still evolving and there will be future requirements that more broadly address Surprise Billing in healthcare. Of note, the NSA will eventually require providers to provide a GFE to insured patients, but this is not required for the January 1, 2022 deadline. NSA updates and resources are provided by CMS here: https://www.cms.gov/nosurprises.

Mary Elizabeth Platt is a health law attorney with Primmer, Piper, Eggleston, and Cramer in Burlington, Vermont. She is not generally a fan of surprises, except puppies and free coffee.

The Complexities of DV Cases and Criminal Defense

By Richard Guerriero, Ted Lothstein and Kaylee Doty


Guerriero


Lothstein


Doty

Domestic violence cases, ranging from misdemeanor and felony criminal charges to civil DV protection orders and civil stalking orders, account for a large share of our caseload. Why? Because domestic violence transcends all social and cultural barriers, all income levels, and all identifiable groups in American society.

Before diving into the complexities surrounding domestic violence cases, we must first acknowledge the recent tragic outcome following the denial of a domestic violence protective order (DVPO) by a circuit court judge. The judge made what she reasonably believed was the right decision under the applicable law. Yet, just weeks after the final hearing, the complainant suffered a near-fatal gunshot wound in a murder-suicide attempt by the defendant. The case has affected the entire criminal justice community and sparked review by a special Committee.

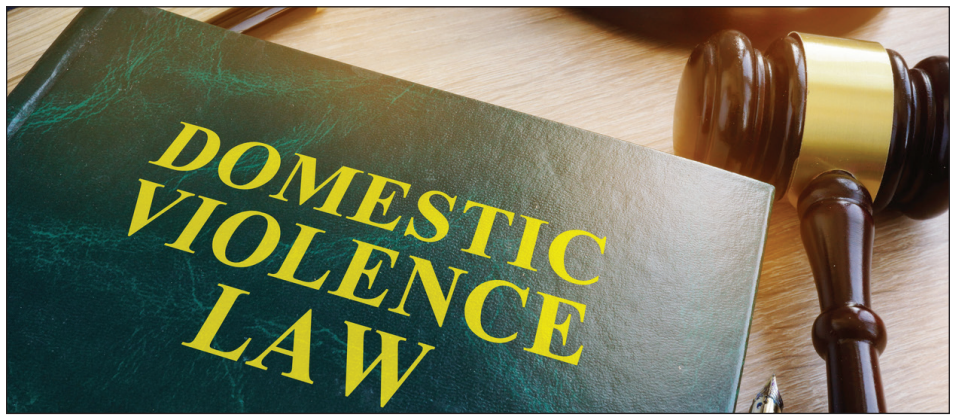
As the Committee's report reminds us, it is critical to recognize that domestic violence is a destructive scourge of our society. Most reports of domestic violence are demonstrably true beyond a reasonable doubt, making the goal in most cases a fair plea bargain and a fair sentence. However, in our experience, there are also a surprising number of false reports, and many more reports that exaggerate the accused's role and minimize the complainant's role in the conflict. Those cases should be dismissed or go to trial so the defendant can be acquitted or convicted of lesser charges. This article is about how the lawyers in our firm defend those cases.

Kaylee, what have you found different about the intake process in these cases as compared to other cases you have handled?

While many criminal cases come in gradually, during an unfolding investigation, domestic violence cases typically come in days or even hours after a traumatic event. NH law provides police with the authority to make a warrantless arrest within 12 hours if there is probable cause to believe that the individual has committed domestic violence. It is not uncommon for officers to make an arrest despite the complainant recanting their statement and/or asking the police to not arrest the other party. Shortly after arrest, the accused may be released with a criminal bail protective order (CBPO) in place, prohibiting contact between the parties. At the outset, CBPOs rarely include any exceptions, even for contact relating to an emergency involving the children or the need to pay a bill to keep the lights on.

This creates tremendous turmoil for the accused, and sometimes even more so for the complainant and/or minor children. It is hard enough to balance jobs and children in a relationship with no major issues. However, when one party is removed from the home, there are serious consequences as far as household income, child custody, and other issues of mutual support. Teenage and adult children take different sides, inflicting further trauma.

Often the CBPO displaces one party who has no friends or family to stay with. The accused cannot retrieve essential items from the home needed for daily life and work requirements without a civil standby, which have often been difficult to schedule during the pandemic. If the accused party's employment requires security clearance or a background check, they may lose their job due to the protective order and pending charges. The accused will have to relinquish any firearms, a major concern for gun owners. With all these issues, the intake process involves quick prioritization and the prompt filing of motions to establish exceptions to the no-contact order so that the accused and complainant can discuss financial and childcare issues, and so that counsel can contact the complainant (although many lawyers assume it does, the RSA 173-B exception for counsel contact in a civil DV hearing does not expressly extend to counsel in a criminal or marital case).



Ted, what special challenges do criminal litigators face regarding case investigation and pretrial preparation in domestic violence cases?

When I plan a defense, I take into account that the defense investigation will likely be much more difficult and time-intensive than other types of criminal cases. Of course, there is the obvious: Get a detailed account of events, counsel the client not to alter or delete messaging or other evidence, take photographs of injuries on successive days to show the progression of injuries, interview witnesses.

But beyond this, in most of these cases, it is the relationship that will end up being on trial. Who was the initial aggressor, and what was it all about? Who was abusing alcohol or drugs? Who suffers from emotional or mental illness that makes their perceptions, recollections, and ability to narrate events unreliable? Who has a motive to make a false claim in order to gain an advantage in some other context?

Usually, the most important information informing all these questions is found in the complainant's and the accused's phones, messaging apps, photo libraries which are dispersed across multiple apps, and social media postings. Cooperative third parties can be a gold mine. We have seen cases won when a complainant makes a claim along the lines that an assault produced a black eye on July 4th, but a third party provides us with pictures taken at the BBQ or fireworks display that show no sign of injury.

Since many couples and their network of friends exchange hundreds of messages and photos a week, this is a painstaking effort. It is also, to say the least, awkward at times given the nature of the content. But it's an essential part of case development. If complainant says that an assault happened on Tuesday night, and client's phone shows that complainant sent an inviting "sexting" photo/message on Wednesday morning, this evidence may sway a jury to acquit.

Richard, what are some of the challenges in representing domestic violence victims charged with crimes?

A sad reality is that many of those accused of domestic violence or other crimes have themselves been victims. Sometimes they were victims as adults. Sometimes they were victims as children. Sometimes they witnessed violence against another person, usually a parent or sibling. Of course, I'm no scientist or social psychologist, but I don't think you have to be either of those to see that exposing a person to violence, either as a witness or a victim, increases the risk that the person will suffer from long-term effects, including that the person is more likely to engage in that conduct themselves.

In these situations where my client, a criminal defendant, is also a victim, I have at least two goals. First, I want to make sure that the prosecutor and court see my client as more than "the defendant." I want to provide information that humanizes my client. I want the prosecutor to see that my client did not just wake up and decide to assault another person. They very often experienced being on the receiving end long before they committed the crime that brought them to court. And they often experienced other compounding issues as well, such as poverty, mental health problems, or substance abuse.

Second, I hope for the prosecutor and court to see that, whatever retribution and punishment are due, the real solution to preventing further crimes will be helping my client overcome what led them to resort to violence. I want the court to see that we will not achieve that goal if the person gets such a harsh punishment that their life is wrecked

COMPLEXITIES *continued on page 32*

State v. Williams: Telephonic Hearings, Due Process, and Access to Court During the Pandemic

By Michael A. Delaney

With the sudden spike of the Omicron variant, New Hampshire courts are again expanding reliance on remote proceedings to avoid disruption of court operations during a public health crisis. At the onset of the pandemic, the New Hampshire Supreme Court issued a series of emergency orders authorizing video and telephonic hearings for certain proceedings during established periods of time. *See* generally https://www.courts.nh.gov/covid-19. Under federal law, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public L. No. 116-136, § 15002, 134 Stat. 281, 527-30 (2020) authorized federal courts to expand the use of video and telephone conferencing for certain criminal proceedings.

On November 24, 2021, in *State v. Williams,* __ A.3d __, 2021 WL 5500541 (NH 2021), the Supreme Court considered the defendant's challenge to a telephonic hearing. The Court affirmed the trial court's denial of a due process challenge to the imposition of a portion of Williams' suspended sentence at a telephonic hearing. Prior to the pandemic, the State had moved to impose Williams' suspended sentence based

on new allegations of theft and identity fraud. On March 2, 2020, the trial court held an in-person evidentiary hearing and issued a narrative order on March 26 finding that the defendant had breached the condition of good behavior of her suspended sentence, which warranted imposition of "a reasonable portion of the suspended sentence." In the interim, the Supreme Court issued emergency orders suspending all in-person circuit court proceedings due to the pandemic, with an exception for "[p]roceedings necessary to protect the constitutional rights of criminal defendants." *See Williams*, 2021 WL 5500541 at * 5 (citing to emergency order).

Two weeks later on April 6, pursuant to the emergency orders, the trial court scheduled a telephonic hearing to decide how much of the defendant's suspended sentence to impose. Before the telephonic hearing began, Williams objected and asserted her state and federal due process rights to be physically present to defend her interests at the hearing related to her incarceration. She requested a continuance until the Courts re-opened for in-person hearings. The trial court denied the continuance, held the hearing telephonically, and imposed a period of incarceration under the suspended sentence.

On appeal, Williams argued that she had a right to be present to defend her interests at a critical stage of the criminal proceeding. She relied on state and federal cases establishing a due process right to be physically present at sentencing hearings and probation revocation proceedings. *See id.* In affirming the trial court's ruling, the Supreme Court noted that the "requirements of due process are flexible." It found that "the imposition of a suspended sentence is not part of a criminal prosecution and thus the full panoply of rights due to a defendant in such a proceeding does not apply." *Id.* (citations omitted). The Court determined that the defendant had misplaced her reliance on due process protections afforded at sentencing hearings because, unlike an initial sentence, the imposition of a suspended sentence is remedial rather than punitive. *Id.* The Court also emphasized that the trial court had held an in-person evidentiary hearing on the State's motion to impose the suspended sentence, the defendant was represented by counsel at the telephonic hearing, and she was allowed to address the Court concerning how much of her suspend sentence should be imposed. The Court thus concluded that "the defendant has not demonstrated that her physical, as opposed to telephonic presence, at the April 6, 2020 hearing 'would have been useful in ensuring a more reliable determination' as to how much of her suspended sentence to impose. *Id.*

Beyond telephonic hearings, there is considerable debate about the expanded use of remote video technologies in the long term. Remote proceedings implemented well can offer substantial benefits in some criminal matters, offering expanded access to justice to indigent clients, avoiding

COURT *continued on page 33*

Prosecutorial Misconduct Chips Away at the Rule of Law

By Donna J. Brown

Many criminal defendants have witnessed their rehabilitative efforts minimized by a prosecutor who urges the court to instead be guided by the principle of deterrence based on the rationale that, "by punishing the individual defendant, others may be deterred from committing crimes." *See State v. Wentworth*, 118 N.H. 832, 842 (1978). The belief that strong penalties deter future misconduct is entrenched in the criminal justice system. Unfortunately, the belief in the value of deterrence does not always extend to prosecutorial misconduct.

Recently, the press has drawn attention to this issue, including editorials in the *New York Times*,[1] *The Atlantic,*[2] and the *Wall Street Journal*.[3] These articles detail how "repeated and egregious" prosecutorial misconduct is usually shielded from "any real accountability for wrongdoing." A recent *Wall Street Journal*[4] editorial explained that "the parade of prosecutorial-misconduct cases marches on, to a drumbeat of public outrage and accusation about justice denied," with the most common problem being the failure to turn over evidence favorable to the accused, an obligation established by *Brady v. Maryland* in 1963.

Recently, a group of law professors in New York City made public their professional conduct grievances filed against a group of prosecutors.[5] These grievances were based on judicial findings of prosecutorial misconduct that included withholding exculpatory evidence and making false statements. The professors published these grievances, despite rules prohibiting such publication, due to their frustration with the lack of accountability for the misconduct. The prosecutors filed suit. It is worth noting that it took law professors, not defense attorneys who work with the prosecutors, to take the prosecutors to task for their misconduct. As observed in the treatise *Prosecutorial Misconduct*,[6] prosecutorial misconduct often goes unreported because even the most vigorous defense attorney may refrain from filing a grievance in the name of "occupational camaraderie."

There will be readers of this article who dismiss this issue as a New York problem. In the last year alone, however, I have been involved in four cases where the judge found prosecutorial misconduct. Although the judges fashioned a remedy for this misconduct, it was not always the remedy sought by the defendant. In the last two years, I had two other cases that had credible claims of prosecutorial misconduct, claims that were only uncovered after extensive litigation and investigation at great expense to my clients. There was no finding of misconduct in those two cases because my investigation led to the discovery of the suppressed items sufficiently in advance of trial to prepare to use the evidence at trial.

My second response to the minimization of the existence of this issue in New Hampshire can be found in a Westlaw search of the term "prosecutorial misconduct." I found more than 20 cases in which

the New Hampshire Supreme Court found that the prosecuting attorney engaged in improper conduct. Seven of these cases were reversed and remanded for a new trial, and the rest were affirmed because the misconduct was found to be harmless.

Likely because N.H. has open file discovery, which makes *Brady* violations less frequent than they are in federal court, the most common form of prosecutorial misconduct in state courts occurs in closing arguments. The N.H. Supreme Court found improper arguments in eleven cases, although they only reversed the convictions in five cases. It is worth noting that the N.H. Supreme Court has been expressing its frustration with improper prosecutorial closing arguments for more than 40 years, starting in 1981 when they warned that "we will take a firmer stand" on this issue in the future. *State v. Preston*, 121 N.H. 147, 151 (1981). Twenty years after Preston, the N.H. Supreme Court admonished prosecutors not to make arguments attacking defense counsel. *State v. Dowdle*, 148 N.H. 345, 348 (2002). Despite these decades of admonishments, in 2019 a prosecutor improperly argued that "the defense team wants to distract you from the truth," and other similar statements. *State v. Stillwell*, 172 N.H. 591, 609 (2019). As *Stillwell* was affirmed without naming the prosecutor, there were no consequences for this clearly improper argument.

I compared the N.H. Supreme Court cases finding prosecutorial misconduct to the published decisions from the N.H. Attorney Discipline System and did not find any cases where the offending prosecutor was held accountable for his or her misconduct. In fact, of the N.H. Supreme Court opinions in which the Court found prosecutorial misconduct, I could not find a case where the Court named the prosecutor in the published opinion. Naming the prosecutor, however, is a remedy with potential deterrent value that has been proposed by some federal courts. *See U.S. v. Modica*, 663 F.2d 1173, 1185 (1981).

Courts justify the reluctance to reverse or dismiss cases of misconduct out of concern for the collateral impact on victims as well as the impact on the court system that must retry these cases. This argument, that courts should consider the collateral consequences of punishment beyond the subject of the punishment, is no less true of the criminal defendant facing sentencing. A lengthy prison sentence will likely cause financial and psychological hardships on the family of a criminal defendant, an argument that is rarely persuasive at sentencing hearings.

Even in the rare cases where trial courts have granted mistrials and appellate courts have reversed convictions, these have been hollow victories for defendants who paid for their own defense and/or sat in jail awaiting a resolution to their case. A few courts have noted the inadequacy of a new trial as a proper remedy, explaining that the government gets a chance to try out its case, identify any problem areas, and then correct those problems in a retrial. *See U.S. v. Chapman*, 524 F.3d 1073, 1087-1088 (9th Cir. 2008) and *United States v. Bundy*, 968 F.3d 1019, 1031 (9th Cir. 2020).

If courts are reluctant to dismiss charges and/or name prosecutors in published opinions and defense attorneys are reluctant to file professional misconduct complaints, what other remedies are available?

In 2011, the U.S. Supreme Court put up additional barriers to wronged defendants seeking redress for prosecutorial misconduct in civil court. *See Connick v. Thompson*, 563 U.S. 51, 62 (2011). Frustrated with the lack of accountability in *Connick*, one law review article[7] suggested that credible claims of prosecutorial misconduct raised in criminal cases be automatically referred to the state attorney discipline committee.

The previously mentioned *Wall Street Journal* editorial proposed numerous reforms, including: 1) doing away with *Brady's* materiality requirement, which requires prosecutors to step into the shoes of defense attorneys and decide what evidence can be useful in defending a client; 2) in federal court, making the default standard "open file" discovery; 3) improving the systems of transferring records from law enforcement to prosecutors to reduce accidental nondisclosures; 4) holding prosecutors accountable for misconduct through the attorney discipline process; and 5) reconsidering prosecutorial immunity from lawsuits.

Most prosecutors who engage in misconduct do not do so for evil purposes, but are instead driven by an "ends-justifies-the-means" approach to justice. Some criminal defendants may justify their legal transgressions because of their need to feed their uncontrollable addictions. Police officers may lie and suppress evidence to get criminals off the streets. Prosecutors may justify their own legal transgressions because of their desire to hold the guilty accountable. The law professors mentioned above may justify their legal transgressions because of their desire to avoid future wrongful convictions. This type of thinking chips away at the foundational premises of the rule of law and erodes the public's trust in our justice system. When such transgressions are acknowledged yet forgiven by the courts, those courts endorse and invite their repetition. I have never really had a good answer for all my clients who asked, "Why does the prosecutor get to break the law and not get in trouble like I did?"

1. Opinion | How Can You Destroy a Person's Life and Only Get a Slap on the Wrist? - The *New York Time*s (nytimes.com)
2. How to Go After Rogue Prosecutors - *The Atlantic*
3. Federal Judge Urges a DOJ Probe of Prosecutorial Conduct in Sanctions Case - WSJ
4. Reining in Prosecutorial Misconduct - WSJ
5. They Publicized Prosecutors' Misconduct. The Blowback Was Swift. - The New York Times (nytimes.com)
6. Lawless, J. F., *Prosecutorial Misconduct*: Law, Procedure, Forms (4th Ed. 2008)
7. *See* Keenan, Cooper, Lebowitz and Leher, *The Myth of Prosecutorial Accountability After Connick v. Thompson: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct,* The Yale Law Journal Online 121:203 (2011)

Donna is a partner at Wadleigh, Starr and Peters, PPLC with a practice focused on state and federal criminal law. Prior to joining Wadleigh, she was a public defender for over 25 years. Donna also does volunteer work with the Manchester NAACP and pro bono annulments clinics.

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and they have even more burdens which they cannot reasonably be expected to carry. Coming up with a plan is not easy because it must protect the victim and the community while still allowing my client to address their issues.

Kaylee, how do you adapt your approach to client counseling to fit the needs of domestic violence related clients?

Domestic violence cases require a unique and delicate counseling relationship with clients. Many clients are facing divorce, the demise of their family, and the feeling of betrayal. They are watching the life they've built crumble. Counseling a client facing domestic violence charges requires a listening ear and bravery in the face of adversity, even when the odds seem stacked against you.

A CBPO or DVPO may also strain parenting relationships. The court can deny the accused's visitation with their children and award sole custody of children to the complainant as part of the orders. In addition, many domestic violence clients are facing financial hardships due to the cost of representation, support orders, and alternative housing.

We must also be careful to adjust our advice to clients as personal technology evolves. With the presence of social media, cell phones, financial apps, etc., there is a real risk of accidental direct or indirect contact in violation of the protective order. An accidental "like" of a photo or friend request on social media, a missed click leading to text the wrong person, or a simple "butt-dial" could result in further charges against a client. These are things that most of us have, admittedly, done by accident. While we've only suffered embarrassment, can you imagine if you were criminally charged for that conduct?

Ted, what are the available defenses in these cases?

The most common defenses are: The physical contact was legally justified - by self-defense, defense of property (restraining partner from throwing another heavy object at the wall), or defense of others (protecting another person in the household). The physical contact was not unprivileged (e.g., restraining someone, with minimal force, who is engaged in self-harm). It was a fight entered into by "mutual consent." The accusation is simply false. What we see most of the time, is an amalgam of these. As Tolstoy wrote, "all happy families are alike, but every unhappy family is unhappy in its own way." The ways in which people in relationships can torment each other are endless.

There are important notice requirements regarding defenses, but, beyond those formalities, we also have important tactical considerations. Sometimes, we want to minimize specificity, especially if most of the facts come from the client, who will have to offer them on the witness stand. Other times, we want to put our whole case on the table, in order to jump start negotiations and make clear to the prosecutor that it's a triable case, not the slam-dunk that is described in discovery.

As discussed in the recent Committee Report, judges sometimes dismiss civil DV petitions after hearing, just as, in our experience, juries sometimes acquit in cases where the prosecution never considers a negotiation to a deferred prosecution or a plea to a non-domestic violence offense. The consequences for a final order in a civil DV case include at least a year-long ban on possession of firearms, and practically every client tells us they live in constant fear of going to the same grocery store by happenstance and then being arrested for violating the civil order. The consequences of a domestic simple assault conviction include a lifelong ban on the exercise of a fundamental constitutional right. And, of course, the potential for incarceration, and loss of employment or an entire career, hangs in the balance.

Kaylee Doty is an attorney with Lothstein & Guerriero in Keene, NH. Attorney Doty focuses primarily on criminal defense work, the defense of civil restraining and stalking orders, and appellate litigation. She can be reached at kaylee@nhdefender.com.

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Richard Guerriero is a skilled and respected criminal defense attorney with over 30 years of litigation experience, in state and federal court, at all levels, from trial courts to state supreme courts, to the United States Supreme Court. He can be reached at richard@nhdefender.com.

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the costs of travel, and allowing for shorter periods of missed employment. But many defense counsel also have serious concerns, including client access to necessary technology and connectivity, the detrimental impact on the attorney-client relationship, the potential effect on the perceived credibility of witnesses, and client disengagement with judges and the judicial process. There is a plethora of ongoing research by psychologists and social scientists on the potential effects of remote proceedings and to what extent they may alter the outcome of cases. *See generally,* Brennan Center for Justice, The Impact of Video Proceedings on Fairness And Access to Justice in Court, (September 10, 2020) (discussing research studies).

Remote participation at court proceedings will no doubt continue to be a vital tool in the midst of this lingering pandemic. But the use of remote hearings raises critical questions about the short-term and long-term impacts, both positive and negative, on the rights of litigants. Members of the NH bar should continue ongoing discussion of potential risks. It will be critical for the bar to remain focused on possible ways mitigate actual, potential and/or perceived harms arising from remote hearings.

Michael Delaney is a director at McLane Middleton and vice chair of the firm's Litigation Department. He can be reached at (603) 628-1248 or michael.delaney@mclane.com.

What's Happening with Court Rules?

The Court is seeking input from members of the Bar on two proposed amendments to Court rules. They are New Hampshire Rule of Evidence 902 (evidence that is self-authenticating) and Circuit Court Family Rule 3.6 (conditions of release that apply to juveniles on probation).

The proposed amendment to Rule 902 would expand the list of items that are self-authenticating to include certified records generated by an electronic process or system and certified data copied from an electronic device, storage medium or file. The proposed amendment to Family Division Rule 3.6 would consolidate and reduce the number of conditions of release that currently apply to every juvenile on probation.

Both amendments were the subject of a public hearing before the Advisory Committee on Rules. After extensive discussion, the Committee voted to recommend that the Court adopt both proposed amendments. The Court now seeks comment from all interested parties.

The Advisory Rules Committee has also been asked to review the New Hampshire Supreme Court Report on the Recommendations of the Criminal Defense Task Force found at **https://www.courts.nh.gov/media/news-releases**

The Rules Committee has established a subcommittee consisting of Supreme Court Justice Donovan, Superior Court Judge Will Delker, and Attorney Susan Lowry to consider whether amendments to court rules could expand the pool of attorneys able and willing to undertake representation of indigent defendants. If you have any ideas, even if you do not currently feel qualified to undertake such representation, please feel free to share them with any member of the subcommittee or by submitting them to **rulescomment@courts.state.nh.us**

Samantha D. Elliot Sworn in as U.S. District Judge

By Scott Merrill

Samantha D. Elliott was sworn in on Dec. 22 as the 18th United States District Judge for the District of New Hampshire.

She will fill the seat vacated by Judge Paul Barbadoro, who took senior status on March 1, 2021.

Elliott was nominated in September to fill a seat on the U.S. District Court for the District of New Hampshire by President Biden. At the time, New Hampshire Sen. Maggie Hassan referred to Elliot 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.

Elliott completed her undergraduate studies at Colgate University, cum laude, and received her law degree from Columbia Law School.

From 2006 until 2021, Elliott was a partner at Gallagher, Callahan & Gartrell, P.C., where she served as the firm president from 2015 to 2020.

She also served as a co-chair of the founding board of 603 Legal Aid, after serving in various capacities as a member of the boards of New Hampshire Legal Assistance and the Legal Advice and Referral Center.

Chief Judge of the U.S. District Court, Landya McCafferty, commented on Judge Elliott's appointment and confirmation:

"The court is grateful to the President and Senators Shaheen and Hassan for selecting someone with the intellect, experience, and character of Samantha Elliott to join our bench. We are confident that she will have a long and distinguished career in service to the country and the State of New Hampshire. And, on a personal level, we are thrilled that she is now our lifelong colleague."

Federal Public Defender

Federal Public Defender for the Districts of Massachusetts, New Hampshire, and Rhode Island To ensure that the United States Court of Appeals for the First Circuit reaches a larger pool of qualified applicants, the Court will accept additional applications through January 24, 2022 for the position of Federal Public Defender for the Districts of Massachusetts, New Hampshire, and Rhode Island. Simultaneously, the Merit Screening Committee will evaluate the applications for this position that have been received to date. An application form may be obtained from the Court's website at **https://www.ca1.uscourts.gov/employment**. Please email completed applications to **ca01_chjobs@ca1.uscourts.gov**. Please direct any questions to: Susan J. Goldberg, Circuit Executive Office of the Circuit Executive John Joseph Moakley U.S. Courthouse 1 Courthouse Way, Suite 3700 Boston, MA 02210 Phone: 617-748-9614 Email: **ca01_chjobs@ca1.uscourts.gov.**

Completed applications must be received no later than **Monday, January 24, 2022**. For a more detailed job description, please visit **https://www.ca1.uscourts.gov/employment**. The Federal Public Defender Office (FPDO) values diversity and a commitment to equality and believes that better representation occurs when members of the defense team have diverse backgrounds and experiences. The FPDO's mission and diversity statements can be found at **https://bostondefender.org**.

Superior Court CaseLines Digital Evidence Center

The NH Superior Court began piloting the CaseLines Digital Evidence Center in September in Rockingham Superior Court and in Hillsborough County Superior Court North in mid-November. CaseLines – a new product acquisition from Thomson Reuters – enables the Superior Court to expand their electronic case file to include exhibits in criminal and civil cases. This addition fulfills the original e-Court vision of efficient end-to-end paperless case processing. CaseLines, in particular, benefits attorneys because:

- All evidence/exhibits are easily accessible online
- Sharing exhibits with practice administrators, opposing counsel, and the court is simple
- The court provides evidence viewing equipment
- Extensive exhibit management tools are available to all litigators
- Exhibits from clients and other case parties are mobile accessible and easily obtained via smartphone

Starting with a familiar implementation process, the project team began by establishing new workflows for handling digital evidence, configuring CaseLines for NH, and integrating Odyssey case information to automate CaseLines case creation. To encourage adoption, the project team promoted training to attorneys by offering free CLE credit, hosting Courtroom Presentation Skills workshops, conducting regular outreach in the NHBA e-Bulletin, and posting extensive website content. The staff even made personal phone calls to encourage attorneys to attend training! Judges and staff also had a chance to learn CaseLines through mock hearings, virtual demonstrations, and in-person training events.

However, the Superior Court's step-by-step rollout process is unique to this project. Rather than a single statewide rollout, the court is holding an extended pilot where the project team is learning how to best use the new digital evidence management platform by taking incremental steps and evaluating outcomes. For example, the Rockingham Superior Court uses Caselines in evidentiary matters and evaluates the "lessons learned." Attorneys are providing feedback via email and online surveys. The project team is in the courtroom witnessing CaseLines in action. Then the team compiles all findings to identify issues and improve processes and procedures for digital evidence. The findings are shared publicly via posted Frequently Asked Questions on the website and in weekly communications included in the NH Bar Association's e-Bulletin.

Incorporating a "feedback loop" into the project has yielded positive results: attorneys appreciate the opportunity to weigh in and have the court address their concerns. Similarly, the court has valuable information to substantively improve the system and the process. Each successful court implementation benefits from the prior pilot court.

"Learning CaseLines as we go may have caused some increased stress initially," said Rockingham Superior Court Clerk and project team member Jenn Haggar. "However, the appreciation expressed by attorneys and the benefits to the court and have made the process well worth the effort."

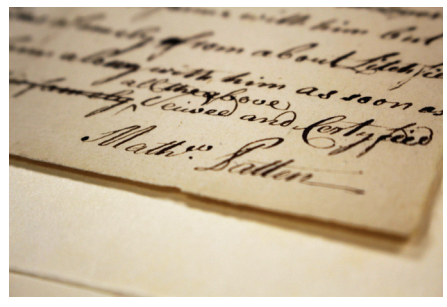
Attorneys are encouraged to learn more about CaseLines at **https://www.courts.nh.gov/our-courts/superior-court/case-lines**. Anyone who would like to provide feedback to the court on digital evidence management, please email **SuperiorCourt-Center@courts.state.nh.us**.

The CaseLines pilot is scheduled to begin in Hillsborough County Superior Court South in early February 2022. The remaining Superior Courts will start using CaseLines throughout the first half of 2022.

"Lying and Libelous Song"

Papers of Matthew Patten and Other Treasures of the Law Library

By Mary S. Searles, Law Librarian



Beyond the familiar public stacks, deep in the recesses of the New Hampshire Law Library is a priceless collection of more than 300 historic New Hampshire legal manuscripts dating from 1737 to 1819. The legal papers of Matthew Patten, Justice of the Peace of Bedford, form the bulk of the collection.

Born in Ireland, May 19, 1719, Patten moved to the United States in 1728. He settled in Bedford (then called Souhegan-East) in 1738 and later served many roles: as a judge of probate, a member of the general court, and a member of the Governor's council.

Among Patten's collection are writs of attachments, depositions, and many complaints and summonses for, among other offenses, poaching deer, stealing hay, and profane cursing. In one complaint, William Caldwell accused David Scobey of singing "with an audible voise … a libelous song … all tending Much to his Defamation and Damage and also promised a reward to have the same song sung in Publick … with an intent to Defame and Scandalize your complainant."

Unfortunately, the lyrics of the song are lost to history.

The handwritten documents, while beautiful, are difficult for modern readers to decipher. Fortunately, Joyce Wajenberg, a retired librarian, historian, and genealogist, volunteered at the Law Library for many years indexing the Patten papers. Joyce persevered through crossed-out passages and non-standard spelling with the help of The Diary of Matthew Patten, first published in 1903. The Diary provided valuable clues to names, places, and events mentioned in Patten's legal documents.

For now, the fragile papers are accessible only by permission of the Law Librarian and only for scholarly study. But someday soon the Library staff hopes to digitize the entire collection and put the electronic versions, including the papers of Matthew Patten, and the index online for the public at large to access easily and enjoy—except, of course, the libelous song.

Supreme Court At-a-Glance

December 2021

Criminal Law

State v. Daswan Jette, No. 2020-0165
Dec. 14, 2021
Affirmed.

- Whether the trial court erred in excluding evidence that the victim had sold drugs to an individual that paid with counterfeit money about a month before her death and whether the trail court erred by failing to order the disclosure of certain redacted records after in camera review.

The defendant was convicted of reckless manslaughter, while being acquitted of first- and second-degree murder charges, after a jury trial. The jury could have found that the defendant arranged to purchase marijuana from the victim. Before completing the purchase, the defendant ran away with the marijuana. The victim believed that the defendant was trying to steal the marijuana and chased the defendant. In an ensuing physical altercation, the victim was stabbed three times, including once in her heart, which caused her death. Witnesses claimed the defendant stabbed the victim, while the defendant denied that claim.

The State moved to exclude evidence of the victim's prior drug activity and information recovered from her cell phone. This included evidence related to a prior drug sale to another party in which the victim was paid with counterfeit money. The defendant argued the evidence was relevant to his self-defense claim. He argued it showed that the victim likely acted more aggressively towards him when she believed he was stealing from her, which made it more likely that he had to defend himself. The trial court excluded the evidence.

The trial court had excluded the evidence as irrelevant under N.H. R. Ev. 401, but, on appeal, the Court interpreted the exclusion to alternatively have been done pursuant to N.H. R. Ev. 403. The Court found that even if the drug sale was relevant to the defendant's self-defense claim, it was properly excluded pursuant to N.H. R. Ev. 403. The evidence only went to the victim's state of mind, which was not a primary element of the self-defense claim; meanwhile, it also could confuse the jury by allowing evidence of an unrelated drug sale to be considered.

The Court also found that it was not an error for the trial court to have denied the defendant's request to compel records it reviewed in camera. The State redacted certain portions of documents related to forensic testing on work product grounds. After in camera review, the trial court ordered disclosure of parts of the records, while allowing others to remain redacted. On appeal, the Court reviewed the information that was not disclosed and found it was work product or otherwise not subject to discovery. None of the withheld information was found to be material or exculpatory. The conviction was affirmed.

John M. Formella, attorney general (Nicole M. Clay, assistant attorney general, on the brief and Benjamin Agati, senior assistant attorney general, orally), for the State. Thomas Barnard, senior assistant appellate defender, Concord, for the defendant.

Disability Law

Patricia Crowe v. Appalachian Stitching Company, LLC, No. 2021-0129
Dec. 23, 2021
Affirmed.

- Whether the plaintiff was a "qualified individual" under the ADA or RSA 354-A.

The plaintiff brought claims against Appalachian Stitching Company, LLC ("Appalachian") for violations of the Americans with Disabilities Act ("ADA") and RSA 354-A. The plaintiff had been employed by Appalachian as an assembler, and she was terminated after she was out of work due to a back injury.

At-a-Glance Contributor

Katherine E. Hedges

An associate at Hage Hodes in Manchester practicing civil litigation and corporate law.

The plaintiff had been excused from work for several weeks due to a non-work-related back injury, and she had provided doctor's notes during that time. Then, a doctor provided Appalachian a letter stating the plaintiff still could not return to work but believed she would be eligible for benefits under the Family and Medical Leave Act ("FMLA"). Appalachian responded that the company was not covered by FMLA, and the plaintiff did not meet the length of work requirements. There was no further communication from the doctor, and, after eight days, Appalachian determined that the plaintiff had voluntarily quit pursuant to its employment policies. The plaintiff did allege she tried to call once during that period. The plaintiff challenged the termination of employment as violating the ADA and RSA 354-A. The trial court entered summary judgment in the defendant's favor.

The trial court found, and the parties did not challenge, that there were no differences between the ADA and RSA 354-A for the purposes of this case. The ADA only protects "qualified individuals," which are individuals that "can perform the essential functions" of a job "with or without reasonable accommodations." 42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(m) (2020). On appeal, the Court agreed that it was undisputed that there were essential job functions that the plaintiff could not perform due to her injury, even with accommodation. Further, the Court found it was proper for the trial court to find that the plaintiff was not a qualified individual because she was not able to return to work, and attendance was an essential function. Finally, the Court found that, as a matter of law, inquiry into eligibility for leave under FMLA did not qualify as a request for reasonable accommodation under the ADA. The trial court's entry of summary judgment in the defendant's favor was affirmed.

Timothy Brock (on the brief and orally) and Benjamin Wyatt and Trevor Brice (on the brief), Law Offices of Wyatt & Associates, Keene, for the plaintiff. Gary M. Burt (on the brief and orally) and Brendan D. O'Brien (on the brief), Primmer Piper Eggleston & Cramer, Manchester, for the defendant.

Landlord Tenant Law

Maia Magee v. Vita Cooper, No. 2020-0472
Dec. 3, 2021
Affirmed.

- Whether the trial court erred in entering judgment for the landlord on the tenant's claim that the landlord willfully violated the tenant's right to quiet enjoyment of a residential property pursuant to RSA 540-A:2.

A tenant alleged that in retaliation for obtaining a continuance on a final hearing in an eviction action, the landlord undertook several activities that disturbed her enjoyment of her

AT-A-GLANCE *continued on page 36*

NH Superior Court Judicial Assignments: January - March 2022

COURT	HILLS NO	HILLS SO	ROCKINGHAM	MERRIMACK	STRAFFORD	CHESHIRE	BELKNAP	SULLIVAN	CARROLL	COOS/GRAFTON
MO/WK	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*
1/24/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Honigberg St. Hilaire Ruoff	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill		+Ignatius	+Bornstein MacLeod
1/31/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Honigberg St. Hilaire Ruoff	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill		+Ignatius	+Bornstein MacLeod
2/7/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Honigberg St. Hilaire Ruoff	+Kissinger Schulman	+Howard Will	+Leonard	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
2/14/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Honigberg St. Hilaire Ruoff	+Kissinger Schulman	+Howard Will	+Leonard	+O'Neill Ignatius	+Tucker		+Bornstein MacLeod
2/21/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Honigberg St. Hilaire Ruoff	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill		+Ignatius	+Bornstein MacLeod
2/28/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Ruoff St. Hilaire Attorri	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill	+Honigberg	+Ignatius	+Bornstein MacLeod
3/7/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Ruoff St. Hilaire Attorri	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill	+Honigberg	+Ignatius	+Bornstein MacLeod
3/14/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Ruoff St. Hilaire Attorri	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill	+Honigberg	+Ignatius	+Bornstein MacLeod
3/21/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Ruoff St. Hilaire Attorri	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill Ignatius	+Honigberg		+Bornstein MacLeod
3/28/22	+Nicolosi Messer Anderson Delker	+Colburn Temple	+Wageling Ruoff St. Hilaire Attorri	+Kissinger Schulman Tucker	+Howard Will	+Leonard	+O'Neill	+Honigberg	+Ignatius	+Bornstein MacLeod

+Supervisory Justice

Assignments commence on the first Monday of each month

Schedule is subject to change.

Effective 12/16/21

The New Hampshire Judicial Branch is committed to ensuring that all victims of domestic violence have full and fair access to the justice system, including proper resources to assist in court cases; knowledgeable advocates, court staff, and judges to explain the court process and legal standards; and a fair and transparent legal forum in accordance with the principle of equal justice for all.

Pursuant to its supervisory obligations, the Supreme Court has established a multidisciplinary Task Force, membership identified at https://www.courts.nh.gov/news-and-media/new-hampshire-judicial-branch-releases-internal-review-denial-final-domestic, to conduct a systemic review of domestic violence in the New Hampshire court system.

The Task Force is hereby charged with the following responsibilities:

1. Review existing court practice and procedure in cases involving domestic violence allegations, whether in circuit court, superior court, or both, and identify the resources needed to better support victims of domestic violence throughout the legal process;

2. Analyze the current status of New Hampshire law regarding domestic violence, including the legal definition of "abuse" and its relationship to intimate partner violence, in connection with the domestic violence statute and other statutory protections applicable to abusive behavior;

3. Recommend criteria for the Judicial Branch to make publicly available on its website appellate decisions related to RSA 173-B and RSA 633:3-a, while maintaining individual privacy in accordance with state and federal law;

4. Conduct a review of court forms as they relate to protection from domestic violence and make recommendations to ensure that all factual information necessary to establishing the applicable burden of proof is elicited in a clear and comprehensive format;

5. Explore opportunities available to provide victims of domestic violence increased access to the assistance of legal counsel and victim advocates at protection order hearings and in appellate proceedings;

6. Analyze the current state of relationships between the courts, law enforcement, the criminal defense bar, and domestic violence advocates and steps that can be taken to improve communication with respect to domestic violence and other abusive behaviors that warrant judicial relief; and

7. Examine any other subject matter which the Task Force deems relevant to the objective of providing victims of domestic violence full and fair access to the justice system, while maintaining fundamental fairness for all participants.

The Task Force will engage relevant stakeholders and report its conclusions and recommendations to the Supreme Court no later than March 1, 2022. The Task Force's Report will be posted publicly on the New Hampshire Judicial Branch's website.

Issued: December 9, 2021
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆

ADM-2021-0024, ***In the Matter of Asish Nelluvely, Esquire***

On November 24, 2021, Attorney Asish Nelluvely was suspended from the practice of law in New Hampshire for failing to appear at a show-cause hearing relating to her untimely payment of bar dues, court fees, and assessed delinquency fees. The notice to appear and show cause was properly issued.

On November 30, 2021, Attorney Nelluvely filed a motion for reinstatement. After review of the motion, the court orders that Attorney Asish Nelluvely be reinstated to the practice of law, effective immediately.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: December 16, 2021
ATTEST: Timothy A. Gudas, Clerk

◆

ADM-2021-0023, ***In the Matter of MaryEllen Morse, Esquire***

On November 24, 2021, Attorney MaryEllen Morse was suspended from the practice of law in New Hampshire for failing to appear at a show-cause hearing relating to her untimely payment of 2021/2022 bar dues, court fees, and assessed delinquency fees, and her untimely compliance with NHMCLE obligations. The notice to appear and show cause was properly issued.

On December 1, 2021, Attorney Morse filed a motion to vacate the suspension order. On December 13, 2021, Attorney Morse filed a motion to amend her motion to vacate the suspension order. The motion to amend is granted. After review of the motion, as amended, to vacate the suspension order, the court grants the alternative relief requested and, therefore, orders that Attorney MaryEllen Morse be reinstated to the practice of law, effective immediately.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: December 16, 2021
ATTEST: Timothy A. Gudas, Clerk

◆

ADM-2021-0027, ***In the Matter of Amy Tchao, Esquire***

On November 29, 2021, Attorney Amy Tchao was suspended from the practice of law in New Hampshire for failing to appear at a show-cause hearing relating to her untimely compliance with her NHMCLE obligations and her untimely payment of assessed delinquency fees.

On December 7, 2021, Attorney Tchao filed a motion for reinstatement after administrative suspension. After review of the motion, the court orders that Attorney Amy Tchao be reinstated to the practice of law, effective immediately.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: December 17, 2021
ATTEST: Timothy A. Gudas, Clerk

◆

LD-2021-0012, ***In the Matter of Robert M. Fojo, Esquire***

On December 17, 2021, the Attorney Discipline Office (ADO) filed a petition for the immediate interim suspension of Attorney Robert M. Fojo from the practice of law in New Hampshire. The ADO has alleged, among other claims of professional misconduct, that:

(1) As to one personal-injury client, Attorney Fojo misappropriated approximately $14,666 in settlement funds, was "out of trust" with his IOLTA account in that amount, used the funds of other clients to make a payment of $12,000 to the client, and knowingly misrepresented to the client the status of the settlement payment from the insurance company;

(2) As to two clients whom he represented in a contract dispute with a former employer, Attorney Fojo was "out of trust" with his IOLTA account in the amount of $50,020 and used the funds of other clients to issue a check, and then a wire transfer, in the amount of $67,000;

(3) As to another personal-injury client, Attorney Fojo misappropriated approximately $33,350 and was "out of trust" with his IOLTA account in that amount;

(4) Attorney Fojo failed to comply with the record-keeping requirements for IOLTA accounts; and

(5) Attorney Fojo's conduct violates Supreme Court Rule 50 and Rules of Professional Conduct 1.3, 1.4, 1.5, 1.15, 3.3, and 8.4(a) and (c).

The ADO cites Supreme Court Rule 37(9-A) and (16)(f) as grounds for suspending Attorney Fojo immediately and on an interim basis. Rule 37(9-A) authorizes the court to suspend an attorney, after notice and an opportunity for a hearing, when the court finds that the attorney has engaged in conduct that poses a substantial threat of serious harm to the public. Rule 37(16)(f) authorizes the court to suspend an attorney when it deems a suspension necessary for the protection of the public and the preservation of the integrity of the legal profession. When the court makes such a finding, the attorney may be suspended on a temporary order, with or without hearing. See Rule 37(16)(d).

Based on the information submitted by the ADO in its petition, the court finds that Attorney Fojo's immediate suspension from the practice of law is necessary to protect the public and to preserve the integrity of the legal profession. See Rule 37(16)(d) and (f). Accordingly, it is hereby ordered:

(1) In accordance with Rule 37(16)(d) and (f), Attorney Robert M. Fojo is immediately suspended from the practice of law in New Hampshire pending further order of this court.

(2) A copy of the petition for immediate suspension and of this order shall be served on Attorney Fojo by first-class mail at the latest address that Attorney Fojo provided to the New Hampshire Bar Association.

(3) On or before January 5, 2022, Attorney Fojo may request a hearing on the issue of whether the interim suspension should be lifted. The hearing will be promptly scheduled. See Reiner's Case, 152 N.H. 163 (2005).

(4) On or before January 20, 2022, Attorney Fojo shall file an answer to the petition for immediate interim suspension.

(5) Attorney Fojo is enjoined from further use of his IOLTA account. He is further enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed.

(6) On or before December 29, 2021, Attorney Fojo shall inform his clients in writing of his suspension from the practice of law and of his inability to act as an attorney, and shall advise them to seek other counsel. See Rule 37(13). Attorney Fojo shall file an affidavit on or before January 20, 2022, stating that he has complied with this requirement. A copy of the affidavit shall be sent to the ADO.

Pursuant to Rule 37(17), the court appoints Attorney Andrea Q. Labonte, ADO Assistant General Counsel, to take immediate possession of the client files and trust and other fiduciary accounts of Attorney Fojo, and to take the following actions:

(1) Attorney Labonte shall notify all banks and other entities where Attorney Fojo has trust or fiduciary accounts and operating accounts of Attorney Fojo's suspension from the practice of law and of Attorney Labonte's appointment by the court.

(2) Attorney Labonte shall, to the extent that she deems necessary, notify Attorney Fojo's clients of his suspension, inform them of any scheduled hearings, advise them to obtain the services of other lawyers of their choice, and advise them how they or their new attorneys may obtain their files. Attorney Labonte shall not undertake the representation of any of Attorney Fojo's clients, however.

(3) Attorney Labonte shall, to the extent that she deems necessary, notify the courts in which any hearings are scheduled in the near future of Attorney Fojo's suspension.

(4) Attorney Labonte shall prepare an inventory of Attorney Fojo's client files and shall file a copy of the inventory with the Supreme Court on or before February 4, 2022, together with a report of her actions taken under this order and recommendations as to what further actions should be taken.

(5) If Attorney Fojo was in possession of any client funds or property, Attorney Labonte may file an appropriate motion requesting authority to distribute them.

Attorney Fojo is ordered to cooperate with Attorney Labonte in performing the tasks as directed by the court. The expenses of Attorney Labonte shall be paid in the first instance from the funds of the Professional Conduct Committee, which may seek reimbursement from Attorney Fojo.

MacDonald, C.J., and Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: December 21, 2021
ATTEST: Timothy A. Gudas, Clerk

◆

Pursuant to RSA 21-V:10, I(d), the Chief Justice of the New Hampshire Supreme Court appoints Attorney Lisa L. Wolford to a three-year term on the Oversight Commission on Children's Services. Attorney Michelle Wangerin has notified the Chief Justice of her resignation from the Oversight Commission on Children's Services. Attorney Wolford's term shall expire on December 23, 2024.

Issued: December 23, 2021
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

◆

R-2021-0005, ***In re December 15, 2021 Report of the Advisory Committee on Rules***

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported two proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before **February 11, 2022**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments. Comments should be submitted through the supreme court's electronic filing (e-filing) system into case no. R-2021-0005. The address of the supreme court's e-filing system is: **https://ctefile.nhecourt.us/login**. Comments may also be emailed to the court at: **rulescomment@courts.state.nh.us**. Persons who are unable to submit their comments electronically may mail or deliver them to the clerk of the supreme court at the address listed on the following page.

The language of the proposed rules changes and background regarding the proposals may be found in the December 15, 2021 Advisory Committee on Rules Report, which is available at: **https://www.courts.nh.gov/resources/committees/advisory-committee-rules/reports-court**.

Copies of the December 15, 2021 Advisory Committee on Rules Report are also available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are available on the Internet at: **https://www.courts.nh.gov/resources/court-rules**.

The New Hampshire Supreme Court is requesting comment on recommendations to amend the following rules:

I. New Hampshire Rule of Evidence 902 – Evidence That Is Self-Authenticating

This proposal would expand the list of items that are self-authenticating to include: (1) certified records generated by an electronic process or system; and (2) certified data copied from an electronic device, storage medium, or file.

The language of the proposed rule change is set forth in Appendix A.

II. Circuit Court Family Division Rule 3.6 – Conditions of Release

This proposal would consolidate and reduce the number of conditions of release that currently apply to every juvenile on probation.

The language of the proposed rule change is set forth in Appendix B.

Date: December 28, 2021
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

◆

In accordance with Supreme Court Rule 37(5)(a), the Supreme Court appoints Attorney Elaine M. Michaud, Attorney Danielle H. Sakowski, and Mr. Peter E. Stanhope to the Complaint Screening Committee of the Attorney Discipline System, to serve three-

ORDERS *continued on page 36*

At-A-Glance from page 34

leased premises and violated RSA 540-A:2. These activities included: 1) playing music on an outdoor sound system over a number of days; 2) yelling "GET OUT OF MY HOME!"; 3) shooting a gun or igniting firecrackers during evening and morning hours; and 4) having an unidentified man trespass on the leased property with a camera. The tenant also alleged that the landlord breached a term of the lease, which prohibited the tenant from playing a "musical instrument, radio, television, or other like device in the leased premises in a manner offensive to other occupants of the building" or at certain times. The trial court held a final evidentiary hearing and entered judgment for the landlord. On appeal, the tenant challenged the ruling, arguing that the court should have considered the actions collectively, the court should have considered whether the actions violated the lease, and that the court improperly relied on the tenant's failure to submit evidence of a local sound ordinance in making its ruling.

In appeals of rulings under RSA 540-A, findings of fact are final, but the rulings of law can be considered on appeal. Therefore, appellate review is very limited, and review is very deferential as to findings of fact. The Court noted that it was applying precedent regarding the standard of review set forth in the matter *Miller v. Slania Enterprises*, 150 N.H. 655 (2004), which had cited but not discussed the standard of review set forth in RSA 540-A:4, V. The Court did not consider whether there was any difference between the Miller standard of review and the statute because no stare decisis argument had been made.

The tenant's right of quiet enjoyment is violated when the landlord substantially interferes with the tenant's beneficial use or enjoyment of the leased property, and in order for a breach of the right to quiet enjoyment to violate RSA 540-A:2, the violation must be willful, which means voluntary and intentional. The questions of if there is a violation of a right to quiet enjoyment and whether the violation was willful are questions of fact. The Court found that there was sufficient evidence before the trial court to support the ruling in the landlord's favor. Further, the Court found that the tenant had not preserved the other issues for appeal, including the arguments that the actions were not properly considered collectively, the trial court failing to consider whether the landlord breached the lease, and that it was improper to rely on the tenant's failure to submit a local sound ordinance. The judgment was affirmed. The Court also denied the landlord's request for attorney's fees incurred in defending the appeal without prejudice to the landlord filing a motion in compliance with Sup. Ct. R. 23.

Craig Donais and Stephen Zaharias, Wadleigh, Starr & Peters, Manchester, for the plaintiff. Bruce J. Marshall, Bruce J. Marshall Law Offices, Bow, for the defendant.

Municipal Law

American Civil Liberties Union of New Hampshire Foundation & a. v. City of Concord, No. 2020-0036
Dec. 7, 2021
Affirmed in part, reversed in part, and remanded.

- Whether certain portions of a contract for the purchase of covert communications equipment were exempt from disclosure under RSA 91-A, New Hampshire's Right-to-Know Law.

The trial court determined that portions of a contract between a vendor and the City of Concord ("City") for the purchase of covert communications equipment was exempt from disclosure under New Hampshire's Right-to-Know Law, RSA 91-A. The American Civil Liberties Union of New Hampshire ("ACLU") argued on appeal that the City did not meet its burden to establish portions of the contract are exempt and that the trial court erred when it held an ex parte in camera hearing for the City to provide evidence in support of the exemption.

The 2019-2020 proposed budget for the City included a line item for "Covert Communications Equipment," and city employees would not identify what the equipment was. The Chief of Police sated that the City had a non-disclosure agreement with the equipment's vendor that prevented the disclosure of the nature of the equipment. Both the ACLU and the Concord Monitor thereafter filed Right-to-Know requests seeking the nature of the equipment. When the City produced the contract related to the sale of the equipment, it included a number of redactions about the nature of the surveillance technology. The City claimed exemption under the six-prong test applicable to requests for law enforcement records set forth in *Murray v. New Hampshire Division of State Police*, 154 N.H. 579 (2006).

The plaintiff challenged the withholding of the information under RSA 91-A. With the plaintiffs' assent, the City submitted the unredacted copy of the agreement to the court for in camera review. The City also filed a motion for an ex parte in camera hearing so that the police could answer the court's questions about the redactions, but the plaintiffs objected. The court held the hearing and ruled that the redacted portions were exempt from disclosure under Murray.

On appeal, the Court found that most of the information was properly redacted, but that one provision of the agreement should have been disclosed. It also found that it was not improper for the trial court to have held an ex parte in camera hearing to review the agreement and hear the City's arguments in support of the exemption. The Court found that when the government had made as complete and detailed public disclosure as possible to describe the basis for the exemption but there was not enough information for the court to make a ruling, it is proper for an ex parte in camera hearing to be held. The Court cautioned this should only be used rarely.

The Court also examined each redaction in light of the Murray exemption and upheld the redaction of the name of the vendor, the nature of the equipment, the type of information gathered by the vendor, and how the vendor uses the information. The Court affirmed by an equally divided Court the nondisclosure of a choice-of-law provision. The Court did reverse the upholding of a redaction of the clause giving the vendor certain rights if there was a possibility of public disclosure of the technology after finding that the City failed to meet its burden to show that the provision was exempt from disclosure. Two other clauses were subsequently disclosed, so the City waived its right to claim that such information was exempt from public disclosure.

Henry R. Klementowicz (on the brief and orally) and Gilles R. Bissonnette (on the brief), American Civil Liberties Union of New Hampshire Foundation, for the plaintiffs. James W. Kennedy, city solicitor, Concord, for the defendant.

Property Law

Carter Country Club, Inc. v. Carter Community Building Association, No. 2020-0370
Dec. 28, 2021
Affirmed in part, vacated in part, and remanded.

- Whether a restriction in a deed created a right to reentry or a possibility of reverter; whether a right to reentry could still be transferable on the facts of this case; and whether a motion to amend a counterclaim to add a claim for declaratory relief regarding the enforcement of a restrictive covenant should have been granted.

A property was transferred containing a restriction that required a nine-hole golf course to be maintained and operated at the premises. If at any time the golf course was not operated for one year, the property was to, at the option of the grantor, revert to the grantor. The rights of the grantor were thereafter transferred to the defendant. Subsequently, the property was transferred again, and there was litigation over the property that did not resolve whether the defendant still had a reversionary interest in the property.

The plaintiff took title to the property thereafter and brought a petition to quiet title against the defendant, claiming that the conveyance of the grantor's future interest in the property to the defendant was void. The plaintiff claimed that the reversionary interest was a right of reentry that was not freely transferable. The plaintiff also claimed that the defendant's interest in the property, if any, violated the rule against perpetuities and was an unreasonable restraint on alienation. The defendant counterclaimed, seeking a declaration that it had a future interest in the property that was enforceable.

The parties filed cross-motions for summary judgment, and the defendant also filed a motion to amend its counterclaim, seeking to add a claim for declaratory judgment that it had the right to enforce its rights as a restrictive covenant. The trial court found that the interest held by the original grantor was a right of reentry that was not freely transferable. After the plaintiff's motion for reconsideration, the trial court ruled the plaintiff held fee simple title to the property. The trial court also denied the defendant's motion to amend, finding that because the grantor's transfer to the defendant was void, the amendment failed to state a claim upon which relief could be granted. On appeal, the parties did not dispute which Restatement of Property applied, so the Court assumed without deciding that the Restatement (First) of Property would apply.

On appeal, the defendant argued that that the grantor of the restrictive covenant had created a possibility of reverter rather than a right of reentry, which could be freely transferable. Because it had not been asked to consider which version of the Restatement to adopt, the Court assumed that the possibility of reverter would be transferable inter vivos, while the right of reentry would not. The Court found that the deed was unambiguous and that the language in the restrictive covenant created a right to reentry rather than a possibility of reverter, because the property did not automatically revert to the grantor after it ceased being operated as a golf course. The grantor would have had to exercise its option to retake the land.

The defendant also argued that even if the interest retained by the grantor had been a right of reentry, it was still transferable. The Court found the provisions of the Restatement (First) of Property related to future interests that the defendant relied on were inapplicable. The Court also found that RSA 477:3-b did not provide for an ability to transfer rights of reentry.

The defendant also appealed the denial of its motion to amend to add another counterclaim for declaratory relief. The proposed counterclaim asked the court to declare that the defendant was a beneficiary of the golf-course restriction, the plaintiff continued to be bound by that restriction, and the defendant had standing to enforce the restriction. The Court agreed with the defendant that the original parties to the deed had intended to create an independently enforceable restrictive covenant, separate from the right to reentry. Based on the language of the deed, the Court found that the defendant may have obtained the right to enforce the golf-course restriction as a restrictive covenant. While the Court did not make a finding as to the defendant's rights with respect to the restrictive covenant, it did find that it was improper for the trial court to deny the motion to amend only because it had found the right of reentry was not transferrable to the defendant. The Court remanded the case for the trial court to consider whether the amendment was necessary for the prevision of injustice and, if the amendment was granted, whether the defendant has a legitimate interest in enforcing the golf-course restriction.

Samantha D. Elliott (on the brief and orally) and Matthew V. Burrows (on the brief), Gallagher, Callahan & Gartrell, Concord, for the plaintiff. Jeremy D. Eggleton, Orr & Reno, Concord, for the defendant. Gordon J. MacDonald, attorney general (Thomas J. Donovan, director of charitable trusts), filed no brief.

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year terms commencing January 1, 2022, and expiring December 31, 2024. They are appointed to replace Attorney Frederick J. Coolbroth, retired Superior Court Justice Peter H. Fauver, and Mr. Peter J. Kiriakoutsos, whose terms on the committee have expired and who are not eligible for reappointment.

The Supreme Court designates Attorney Julian B. Jefferson, a current member of the committee, to serve as its chair, and designates Ms. Janet L. Ackerman, a current member of the committee, to serve as its vice chair.

Issued: January 7, 2022
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

◆

LD-2021-0010, *In the Matter of Keri J. Marshall, Esquire*

On October 28, 2021, the Professional Conduct Committee (PCC) submitted a request from Attorney Keri J. Marshall to resign from the bar in accordance with Supreme Court Rule 37(11). Attorney Marshall's resignation request was accompanied by her affidavit, which satisfies the requirements of the rule. The PCC submitted an initial recommendation that the resignation request be denied "unless Attorney Marshall agrees to repay the full costs of the prosecution of [the] matters" under investigation. On January 6, 2022, the PCC submitted an addendum to its recommendation on the request to resign. The addendum states that Attorney Marshall has since "paid the costs in full" and that the PCC "now recommends that the Court accept her request to resign under investigation."

The court has reviewed the affidavit of Attorney Marshall and the PCC's recommendation and addendum. In accordance with Rule 37(11), Attorney Marshall's resignation from the bar is accepted. Her resignation shall be effective on January 31, 2022, and shall be subject to the following PCC-recommended condition to which Attorney Marshall and the Attorney Discipline Office (ADO) had agreed.

If a grievance is docketed by the ADO prior to January 31, 2022, and the docketed matter alleges "serious misconduct" as defined by Rule 37(9-B)(b), the ADO shall promptly inform the Supreme Court in a pleading filed under seal (as the docketed matter will still be confidential). Such pleading shall be copied to Attorney Marshall. The court may then take such action as justice may require, including revoking this order granting the resignation, so that the docketed matter may be resolved in the normal course.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: January 10, 2022
ATTEST: Timothy A. Gudas, Clerk

December 2021

* Published

CIVIL RIGHTS; PRISON LITIGATION REFORM ACT

12/3/21 *Jarrell Wilson v. Groblewski, et al.*
Case No. 19-cv-786-JL, Opinion No. 2021 DNH 184

The plaintiff, Jarrell Wilson, alleged that the defendants, members of the New Hampshire Department of Corrections' medical and dental staff, acted negligently and with deliberate indifference to his serious medical needs when treating his jaw injuries, which arose from a physical altercation that took place while he was an inmate at New Hampshire State Prison. He asserted Eighth Amendment claims under 42 U.S.C. § 1983, as well as medical negligence claims. The defendants moved for summary judgment on the basis that the plaintiff failed to exhaust available administrative remedies before seeking recovery under 42 U.S.C. § 1983, as required under the Prison Litigation Reform Act. The court denied the summary judgment motion, finding that material disputes of fact remained as to whether the final step in the NHDOC grievance policy, which Wilson did not exhaust, was available to Wilson and thus subject to the PLRA exhaustion requirement. 13 pages. Judge Joseph N. Laplante.

ENVIRONMENTAL LAW

12/30/21 *Sierra Club Inc., et al v. Granite Shore Power LLC, et al.*
Case No. 19-cv-216-JL, Opinion No. 2021 DNH 189*

This environmental case concerns the operation of Merrimack Station, a power plant on the Merrimack River. The plant operates under an EPA-issued permit regulating its discharge of pollutants into the river. The plaintiffs, Sierra Club, Inc. and Conservation Law Foundation, Inc., alleged that the owners of Merrimack Station violated portions of the EPA permit. The defendants moved for summary judgment on Counts 1-3 of the complaint, which alleged that the defendants violated the permit's three-part thermal discharge limitation provision. The court denied summary judgment on Counts 1 and 2, finding that the plaintiffs provided evidence establishing genuine disputes of material fact as to the meaning of the relevant permit requirements and/or the defendants' compliance with them. The court also denied summary judgment on Count 3. The defendants' argument—that the permit's requirement is impermissibly vague as applied to them because they lacked fair notice of the plaintiffs' expert's definition of the requirement's prohibitions—is baseless under the void-for-vagueness doctrine. The defendants also moved for partial summary judgment on two portions of Count 4 of the complaint, which alleged violations of "applicable water quality standards" as set forth in particular state statutes and regulations. The court granted this portion of the motion, after finding that the state statute identified by the plaintiffs does not regulate the plant's discharges, and the plaintiffs failed to provide evidence to support their allegations of violations of the state's numeric dissolved oxygen criteria. 24 pages. Judge Joseph N. Laplante.

PATENT LAW; INEQUITABLE CONDUCT

12/30/21 *Ocado Innovation LTD, et al. v. AutoStore AS, et al.*
Case No. 21-cv-41-JL, Opinion No. 2021 DNH 190

The plaintiffs in a patent infringement suit relating to an automated storage and retrieval system moved to strike the defendants' inequitable conduct defense. The defense – which applied to one of the plaintiffs' patents-in-suit – alleged that the plaintiffs' representatives withheld material information from the USPTO during the patent's prosecution with the intent to deceive the PTO, and had the plaintiffs disclosed the information, the patent would not have issued. The court granted the plaintiffs' motion to strike without prejudice because the defendants' allegations, as to both the materiality and intent to deceive elements of the defense, failed to satisfy the heightened pleading requirements under Rule 9(b) for inequitable conduct defenses. 13 pages. Judge Joseph N. Laplante.

STATUTE OF LIMITATIONS; LABOR-MANAGEMENT RELATIONS ACT

11/23/21 *United Government Security Officers of America International Union, Inc. v. Paragon Systems, Inc.*
Case No. 21-cv-37-JL, No Opinion Number

In a suit to enforce an arbitration award under the Labor-Management Relations Act, the defendant-employer moved to dismiss on statute of limitations grounds, arguing that the plaintiffs' suit was barred by the one-year New Hampshire statute of limitations for actions to confirm arbitration awards. The court denied the motion, finding that the plaintiffs' claim was most closely analogous to a breach of contract action, and thus, the longer state limitations period for contract actions applied. The court further found that even if the one-year limitations period applied, the plaintiffs alleged facts supporting an equitable tolling of that period, so the defendant's motion had to be denied under either scenario. 18 pages. Judge Joseph N. Laplante.

TAX INJUNCTION ACT

12/22/21 *David Peterson v. Town of Dalton, NH, et al.*
Case No. 21-cv-606-JL, Opinion No. 2021 DNH 188

This motion to dismiss concerned the scope of the Tax Injunction Act, which provides that federal "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. The plaintiff David Peterson, acting pro se, filed a 42 U.S.C. § 1983 lawsuit against the Town of Dalton, the Town Clerk and Tax Collector, and members of Dalton's Select Board, claiming that their attempts to collect taxes on his property located in Dalton, without his consent or proof that the property was subject to the tax, violated his Fifth and Seventh Amendment rights to due process, property, and a trial by jury. The defendants moved to dismiss all of Peterson's claims for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) or, alternatively, for failure to state a claim for which relief may be granted, under Rule 12(b)(6). The court granted the motion to dismiss after finding that the TIA stripped it of subject matter jurisdiction over Peterson's suit, as Peterson sought relief that would interfere with the defendants' routine tax collection process and enable him to avoid paying the local tax. Nine pages. Judge Joseph N. Laplante.

Paralegal/Legal Assistant

Patch & FitzGerald is seeking an experienced full-time paralegal with outstanding communication skills for our growing workers' compensation and personal injury practice. Must be highly organized with experience in managing and preparing files for Labor Department and Compensation Appeals Board hearings. The position requires experience with timekeeping, client billing, and knowledge of Legal Electronic Data Exchange Standards ("LEDES"). Second Injury Fund claims experience a plus.

The ideal candidate will have at least three to five years of experience in NH workers' compensation. Salary commensurate with experience. Benefits include generous paid time off, health insurance, flexible spending account, and 401(k) plan employer match.

Interested applicants should e-mail their resume, cover letter, and salary requirements in strict confidence to **dgauthier@patchfitz.com**.

Family Law / Civil Litigation Attorney

Klug Law Offices, PLLC

Klug Law Offices is looking to hire an associate attorney that is energetic and self-motivated. We are searching for someone that will fit in with our fast paced and fun-loving firm to support clients and each other. This position offers your own office in our cozy North End location, and the option to work remotely when possible. The right candidate will have significant control over his or her workload, scheduled, and income. This is an incentive-based position that will allow you to earn based on your willingness to work. An existing client base is preferred but not required. Some benefits included.

The ideal candidate will possess the following:

- at least two years of experience in family law or other civil field in NH (MA a plus but not required)
- Experience drafting legal documents
- Ability to conduct legal research
- Willingness to initiate cases
- Experience working with clients and other legal professionals to develop strategies for contentious legal battles or settlement
- Ability to effectively communicate with clients about litigation status.

Please submit your cover letter and resume to **KWarner@KlugLawOffices.com**.

NEW HAMPSHIRE DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

The New Hampshire Department of Justice, one of the largest law offices in the state, has opportunities for experienced, talented attorneys to join a collegial network of public servants dedicated to advancing the ends of justice and protecting New Hampshire residents. Applicants must be admitted to (or eligible to waive into) the New Hampshire Bar. The ideal candidate brings a record of accomplishment, effective written and oral advocacy skills, resilience, and dedication. These opportunities may be of particular interest to seasoned, successful attorneys seeking an opportunity to "give back" through public service as the capstone of a distinguished and rewarding legal career. Competitive salary and commensurate with experience. Benefits include health, dental, and life insurance.

Please send questions, cover letter and CV c/o Chief-of-Staff Sean Gill to: employment@doj.nh.gov or at New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301

HEALTH CARE FRAUD ATTORNEY: utilizes civil and criminal enforcement mechanisms to prosecute patient abuse, false claims, and financial fraud by health care providers. A fascinating practice area and rewarding opportunity to ensure that precious Medicaid resources reach those truly in need.

PUBLIC INTEGRITY PROSECUTOR: serves on a team responsible for investigating and prosecuting allegations of misconduct by government officials—including law enforcement officers. Be one of five attorneys dedicated exclusively to public integrity.

CONSUMER PROTECTION ATTORNEY: investigates and prosecutes Consumer Protection Act violations, consumer-related theft, white collar crime, and securities fraud using criminal and civil enforcement tools in superior courts across the state. Apply your talents to combating scam artists.

YOUTH DEVELOPMENT CENTER (YDC) JOINT TASK FORCE ATTORNEY: serves on dedicated team of DOJ and Dept. of Safety professionals investigating and prosecuting allegations of physical and sexual abuse at YDC dating back 30+ years.

CIVIL LITIGATION ATTORNEY: represents state executive departments and agencies with cases before federal and state courts and administrative bodies at all stages of proceedings — from pretrial investigation through appellate review. Subject areas include torts, contracts, employment law, and constitutional law.

TRANSPORTATION AND CONSTRUCTION ATTORNEY: provides specialized legal services to Departments of Safety, Administrative Services, and Transportation to ensure compliance with state and federal law; defend those departments in litigation on matters ranging from complex construction litigation to disciplinary and personnel actions; and draft contracts, leases, land use agreements, procurement and transactional documents.

ENVIRONMENTAL PROTECTION ATTORNEY: enforces laws to safeguard health, the environment, and the economy; prosecutes polluters and offenders; advises executive agencies, boards, and commissions; and appears as Counsel for the Public before the Site Evaluation Committee. Help preserve NH's unique natural resources—a key component of our quality of life—for residents, visitors, and future generations.

The Office of the Attorney General is an Equal Employment Opportunity employer and does not discriminate on the basis of race, color, national origin, gender, age, sexual orientation, handicapping condition, and/or disability.
For more information about the New Hampshire Department of Justice, please visit our website: www.doj.nh.gov.

Classifieds

POSITIONS AVAILABLE

STAFF ATTORNEY. THE DISABILITY RIGHTS CENTER – New Hampshire (DRC-NH) seeks 1-2 enthusiastic, self-motivated attorneys to join us to protect and promote the civil rights of people with disabilities. Recent law school graduates and attorneys with civil and/or criminal litigation experience are encouraged to apply. For a complete job description, visit **https://drcnh.org/wp-content/uploads/2019/06/Staff-Attorney.pdf**. Please send cover letter; resume; and a writing sample/brief (not to exceed 30 pages) to **hr@drcnh.org**.

ATTORNEY - Manchester-based law firm is presently seeking an attorney to work part time on an as-needed basis for overflow work. The position would be ideal for a retired attorney looking for something to keep busy or a new attorney looking to build experience. The position could evolve into a full time position depending on circumstances. Familiarity with litigation a strong plus. Please submit resume and cover letter to **control1086@yahoo.com**.

ASSOCIATE ATTORNEY FULL TIME- EMPLOYMENT LAW FIRM (KEENE NH) – Associate Attorney sought for a busy firm in Keene, NH. This is a benefited full-time position. The Law Offices of Wyatt & Associates represents employees whose rights have been violated in the workplace. Responsibilities include: Client interviewing and intake; Drafting discrimination charges, etc. General litigation projects and support; Legal research and writing. We assist clients in all states in New England as well as in NY. Applicants already admitted into one of the New England (or NY) state bars preferred, but applicants who took the Bar in July 2021 are also encouraged to apply. Demonstrated experience or exposure to employment law is a plus, but not required. Please email a cover letter and resume to **spatriquin@wyattlegalservices.com**.

FAMILY LAW ASSOCIATE – Cordell and Cordell, a national domestic litigation firm with over 100 offices across 38 states, is currently seeking an experienced family law associate for an immediate opening in its Bedford, NH office. The candidate must be licensed to practice law in the state of New Hampshire, have a minimum of 3-5 years of litigation experience with 1st chair family law experience. Cordell and Cordell offers a great working environment, career opportunities and incredible benefits including: employer paid insurance premiums for health, dental, orthodontia, disability and life. The firm also offers 401(k), wellness initiatives, ongoing educational opportunities and more. This is a wonderful opportunity to be part of a large, client and employee-centered firm. To be considered for this opportunity please email cover letter and resume to Executive Recruiter Hamilton Hinton @ **hhinton@cordelllaw.com**.

ATTORNEY – Boxer Blake & Moore PLLC, a regional law firm located in Springfield, Vermont, seeks an attorney to join its civil litigation practice. The position requires prior relevant experience and/or exemplary academic credentials, demonstrated research and writing ability, and strong recommendations. Current license to practice law in Vermont or genuine intention and ability to become licensed in Vermont at earliest opportunity are required. Please respond to Boxer Blake & Moore PLLC, c/o Denise M. Smith, P.O. Box 948, Springfield, VT 05156-0948 or via email to **dmsmith@boxerblake.com.**

GREAT OPPORTUNITY FOR A NH/MA ATTORNEY! The Curtin Law Office is growing and looking for an attorney to join our team. The average tenure level of our current staff is well beyond industry norms and every day our team consistently rises to exceed expectations and meet the day-to-day demands of our thriving, growing practice. We have a highly collegial work environment that is built on teamwork and mutual respect, and in which everyone is keenly focused on client satisfaction. If you are a lawyer who would like to become part of a successful and client-focused firm such as ours, please let us know. This is an exceptional opportunity with a clear path to partnership for right person. Contact: Phil Curtin, Esq., (603) 669-7700, **pcurtin@curtinlawoffice.com.**

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

ESTATE PLANNING AND REAL ESTATE ASSOCIATE – Concord firm seeking lawyer with 2+ years' experience drafting wills, trusts and powers of attorney, as well as handling titles and closings. Flexible arrangement available (of-counsel, associate, remote work). Health insurance and 401(k) available for full-time employees. Please contact Anne-Marie Guertin at **amguertin@alfanolawoffice.com**, 4 Park Street, Concord, NH 03301 or 603-333-2210.

EXPERIENCED PARALEGAL/LEGAL SECRETARY wanted by research firm in Concord NH, Familiarity with corporate filings, UCC and real estate records necessary. Please send resume and cover letter to: **snowitch@gmail.com**.

POLICIES AND PROCEDURES ADMINISTRATOR: State of New Hampshire, Department of Administrative Services (DAS) – Concord, NH – DAS seeks to hire a Policies and Procedures Administrator to coordinate the drafting, adoption, revision and maintenance of DAS administrative rules, policies and procedures and to monitor DAS legislation. Salary range $66,729 - $80,106. Go to **https://www.nh.gov/glance/working.htm** for a full job description and apply for Job ID 22927.

HEALTH BENEFIT PLAN (HBP) POLICY & COMPLIANCE ADMINISTRATOR: State of New Hampshire, Department of Administrative Services (DAS) – Concord, NH – DAS seeks to hire a Health Benefit Plan(HBP) Policy & Compliance Administrator to coordinate the drafting, adoption, revision and maintenance of the State's HBP rules, policies, and procedures and monitoring HBP legislative initiatives impacting the HBP. Salary range $66,729 - $80,106. Go to **https://www.nh.gov/glance/working.htm** for a full job description and apply for Job ID 23323.

PARALEGAL/LEGAL ASSISTANT – Concord, New Hampshire boutique law firm with a busy trust and probate administration, real estate, business, and litigation practice seeks an experienced Paralegal/Legal Assistant to provide support to two attorneys. Applicant should be motivated, detail-oriented, organized, able to prioritize, and work as a team player. Applicant should be prepared to provide administrative support including file management. Excellent communication and writing skills, and experience with Microsoft Office are required. A minimum of 3 years of recent legal experience is required. Preference will be given to applicants with experience in multiple practice areas as well as familiarity with the NH Courts' e-filing system. Full and part-time options possible. Applicants need not have experience in any particular area of the law, but litigation experience is preferred. Please email your resume with cover letter to **nhlegalposition@gmail.com**.

REAL ESTATE PARALEGAL – AMC LAW GROUP, PLLC – AMC Law Group is a small boutique law firm specializing in real estate law on the seacoast. We are seeking a part-time or full-time paralegal with commercial or residential transactional experience and title and survey experience. We offer flexible hours and the ability to work in-person and/or remote. We offer competitive compensation. Please contact Anne Crotty at **acrotty@amclawgroup.com**.

FRASCA AND FRASCA/ FRASCA TITLE – Nashua law firm/title company is seeking a real estate paralegal. Experience is preferred but we will train the right candidate. Caring and supportive work culture. Please send your resume and letter of interest to **nick@frascalaw.com**.

FRASCA TITLE - REAL ESTATE PROCESSOR – Nashua title company seeks an experienced real estate processor to join its growing team. Responsibilities include reviewing title, preparation of closing documents and regular communication with buyers, sellers, lenders and agents. Experience with e-closing software is a plus. The right candidate will be eager, friendly and have a positive can-do attitude. Please send your resume and letter of interest to **nick@frascalaw.com**

POSITIONS SOUGHT

NEW ATTORNEY WITH TOP-TIER LITIGATION AND JUDICIAL EXPERIENCE - New member of the bar based in southeastern N.H., admitted in state and federal courts, eager to work on solving and preventing complex legal problems. Years of experience litigating high-value complex commercial insurance coverage disputes prior to law school; experience working in federal courts and firms serving both nation and local client bases. Available at **wwstrehlow@gmail.com** and **Linkedin.com/in/willstrehlow**.

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 1 year of experience in one or more of the following practice areas: civil law, family law, and estate planning. 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 ljusczak@wardlawnh.com.

Ward Law Group, PLLC WardLawNH.com

PROSECUTOR — SALEM POLICE DEPARTMENT

Salem Police Department seeks an **experienced, motivated criminal law** practitioner for a full-time prosecuting attorney position in an active, two-lawyer office. Prosecutors maintain an active circuit court trial docket; represent the department in administrative hearings, advise officers and assist victims & witnesses. Trial experience preferred.

Starting pay is $80k+

Minimum qualifications: J.D., lawyer in good standing

To apply: Send resume, cover sheet and applications to Town of Salem, Human Resources, 33 Geremonty Drive, Salem, NH 03079

Job posting at: townofsalemnh.org/human-resources/employment-opportunities

FAMILY LAW ATTORNEY FOR OUR EXETER OFFICE

Growing law firm servicing Central and Southern New Hampshire seeking a family law attorney to work in our Exeter office. We offer a very congenial work environment. This position requires a minimum of 2-3 days per week in office, however, the attorney has the flexibility to adjust their schedule to work remotely the remaining days, if not required to be in Court.

Competitive salary and benefits include health insurance, disability, life insurance and retirement account match.

Email resume to **jobs@cohenwinters.com**. All inquiries will be confidential.

SekellaLaw PLLC
Your Family, Your Future, Our Focus

FAMILY LAW PARALEGAL

Are you tired of the billable hour requirement? SekellaLaw, PLLC has billable goals. Are you frustrated that the attorney gets all the credit and yet without your hard work there would be no success? SekellaLaw, PLLC has attorney/paralegal team challenges and rewards. Do you want a change, but not the same-old, cookie cutter, big box firm where there is no life/work balance? SekellaLaw, PLLC plans monthly office outings to relax and have fun. Family law is very challenging and rewarding and never boring. Become part of something different, where you contribute to the game plan, where your contributions are recognized and celebrated and where there is inspiration and support not daily instructions, monotonous tasks, and personality conflicts.

We are looking for a full-time paralegal with at least 5 years of experience in family law. Desirable qualities include sense of humor, team mentality, strong financial skills including Excel proficiency and confidence to deal with stressful family situations in a fast-paced environment.

SekellaLaw, PLLC offers health, dental, vision insurances, firm contributed 401k, performance bonuses, rewards for team players, flexibility in schedules, and we will be competitive on compensation.

Submit your resume and a letter of introduction to **heather@sekellalaw.com**. All inquiries are confidential.

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Attorneys at Law

North Conway NEW HAMPSHIRE

Cooper Cargill Chant, northern NH's largest law firm, serving clients in New Hampshire and Maine, is looking for an attorney to join our vibrant firm. Our firm distinguishes itself by providing sophisticated counsel to a growing local, regional, and national client base, while balancing lifestyle opportunities afforded by our location in the White Mountains. Our lawyers are active members of the communities in which we live, serving on numerous state and local Bar Associations, municipal, and non-profit Boards. We offer a competitive compensation and benefits package.

CORPORATE ATTORNEY:

Cooper Cargill Chant seeks an associate attorney with 1-3 years of corporate and transactional experience to provide counsel to closely held businesses, lenders, and the resort community. The ideal candidate will have strong credentials and an ability to work effectively with clients, colleagues, and the community.

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Please send letter of interest and resume to Hiring Partner Leslie Leonard at lleonard@coopercargillchant.com. For further information, visit www.coopercargillchant.com

Labor & Employment Associate

Littler Mendelson P.C. is seeking an attorney with a minimum of 5-7 years of labor and employment law experience to join the Portland, ME office. The candidate should possess excellent academic credentials and their experience should include significant litigation experience. The candidate must be licensed to immediately practice law in Maine. A license to practice law in Massachusetts, New Hampshire and/or Vermont is also preferred.

For more information and to apply, please visit www.littler.com/careers

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Unemployment Fraud Prosecutor

New Hampshire Department of Justice
New Hampshire Employment Security
Counsel $72,748 - $101,322
Unclassified

The New Hampshire Department of Justice and the New Hampshire Department of Employment Security are jointly seeking a full-time attorney to prosecute unemployment compensation fraud. The position is part of the Department of Employment Security but is embedded at the Department of Justice. The position requires a JD. Candidates must have three years of litigation experience. Membership in the NH Bar Association or eligibility to waive in is required. Interested persons should forward a completed resume or State Employment application to:

Richard Lavers, Deputy Commissioner
New Hampshire Employment Security
45 South Fruit Street, Concord, NH 03301
richard.j.lavers@nhes.nh.gov
603-228-4064 • **www.nh.gov/hr/employment.html**
Will remain open until a qualified applicant is found. EOE

RATH YOUNG PIGNATELLI

CORPORATE TRANSACTIONAL ATTORNEY

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

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www.rathlaw.com
Concord (603) 226-2600 Nashua (603) 889-9952 Boston (617) 523-8080 Montpelier (802)552-4037

RATH YOUNG PIGNATELLI

LITIGATION ATTORNEY

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

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HINCKLEY ALLEN

Associate Attorney - Construction Litigation

Seeking an associate with 2+ years of experience to work in our Construction Practice Group in Manchester. The ideal candidate will have experience with litigation in New Hampshire state and federal courts, mediation, and arbitration. Experience with construction disputes, mechanic's liens, and breach of contract claims is beneficial. Experience reviewing, analyzing, drafting, or negotiating contracts, including construction contracts, purchase orders, or other construction related agreements, is also preferred. Admission to New Hampshire bar is required.

The position offers an excellent opportunity to assume significant responsibility and hands-on experience in a collaborative, sophisticated and team-oriented work environment. Candidates must possess superior research, analytical and writing skills. Must also be highly motivated and have the ability to work both independently and as part of a larger team.

Applicants should apply directly by email to Melanie Harrison, Legal Recruiting & Professional Development Manager (**mharrison@hinckleyallen.com**). Please submit cover letter and resume.

DOUGLAS, LEONARD & GARVEY, P.C.

Family Law Attorney

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

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

Please submit your cover letter and resume to **mail@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 Sue O'Donnell, Director of Operations, Rath, Young and Pignatelli, P.C. at slo@rathlaw.com.

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www.rathlaw.com
Concord | Nashua | Boston | Montpelier

RATH YOUNG PIGNATELLI

SENIOR TAX ASSOCIATE

Rath, Young and Pignatelli, P.C., a mid-sized law firm headquartered in Concord, NH, with offices in Nashua, NH, Boston, MA and Montpelier, VT, is seeking a Senior Associate with 3-5 years of federal and state tax experience to join our national tax practice. The attorney will support both the long-standing federal and state tax practices. Visit our website at www.rathlaw.com for a detailed description of the position. Send resume, letter of interest and writing sample to Sue O'Donnell, Director of Operations, at slo@rathlaw.com. The firm will not accept the submission of candidate resumes from search firms without a signed fee agreement.

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General Counsel

HealthTrust

HealthTrust, a quasi-governmental, self-insured, non-profit risk pool that provides health, dental, disability and other employee benefit coverage/services to its member political subdivisions seeks an experienced, detail oriented and enthusiastic in-house General Counsel to effectively provide vision and strategic leadership regarding all legal issues.

- Provides advice and counsel to the Board of Directors and Executive Director.
- Serves on the organization's leadership team
- Manages and responsible for organization's legal issues, including corporate governance, regulatory compliance, contracting, personnel matters, taxation, HIPAA and other privacy laws, Right-to-Know, and real estate.
- Supervises and supports the HR team, the internal auditor/HIPAA Officer and HealthTrust's Benefits & Coverage Counsel – who is primarily responsible for drafting benefit plans and compliance with laws and regulations applicable to such plans.
- Drafts, negotiates, and interprets contracts across the wide array of complex substantive areas including for TPA, PBM, IT and wellness services.
- Oversees and evaluates litigation and manages outside litigation attorneys.

Requirements:

- A Juris Doctor degree from an accredited institution, superior academic credentials, and a license to practice law in New Hampshire.
- Experience of at least 12 years in general business or corporate administration, with a demonstrated ability to manage complex transactions or projects.

To apply, email a résumé with cover letter to **hr@healthtrustnh.org.**

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

Sulloway & Hollis P.L.L.C.
COUNSELORS AT LAW

New Hampshire | Massachusetts | Maine | Rhode Island | Connecticut
Sulloway.com | Info@Sulloway.com | 603-223-2800

ATTORNEY OPENINGS

Sulloway & Hollis, PLLC, continues to expand our regional practice, with opportunities for talented attorneys to join our Real Estate practice group. We offer a dynamic and sophisticated practice, a collegial and flexible working environment that includes some work from anywhere capacity, and support to our attorneys with mentoring and business development training, together with a competitive compensation package and excellent benefits.

We are looking for an experienced real estate lawyer, as well as an associate with 3-5 years of experience, who are eager to represent clients in all aspects of real estate transactions, including acquisitions, development, financing, ownership and management. We have opportunities to work out of our NH and MA offices, with some travel needed between those offices for client representation. If you are interested in joining a great team and a growing practice, please submit a resume and cover letter to:

Jennifer L. Iacopino, Human Resources Manager
jiacopino@sulloway.com

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Excellent research, writing and communication skills required. Send resume, writing sample and references to: Deb Garland, Firm Administrator, 82 Court Street, Portsmouth, NH 03801 dgarland@nhlawfirm.com

Boynton Waldron
Doleac Woodman & Scott, P.A.

DCYF – Attorney II

NH Department of Health & Human Services
Manchester and Littleton District Offices

Starting Salary Range: $58,636.50 to $83,869.50

The N.H. Department of Health and Human Services, under the supervision of the N.H. Department of Justice, currently has three attorney positions available representing the Division for Children Youth and Families.

Positions #15803 and #40096 are located in the Manchester District Office.

Position #40095 is a telework position for the Littleton District Office.

Duties include: Representation of the Division for Children, Youth and Families in litigation involving the Division's child protection program. 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 four years' experience in the practice of law, preferably in the area of abuse and neglect or family law.

How to a APPLY: Please go to the following website to submit your application electronically through NH 1st: **http://das.nh.gov/jobsearch/employment.aspx**. Please reference the position number that you are applying for: **#15803 Attorney II (Manchester), #40096 Attorney II (Manchester), #40095 Attorney II (Telework/Littleton)**. Position will remain open until a qualified candidate is found. EOE.

For questions about this position please contact Attorney Deanna Baker, Legal Director at (603) 271-1220.

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Our Litigation Department's Complex Commercial Disputes Practice Group is seeking to hire a litigation associate to join our Manchester, NH office.

Qualified candidates will have two to four years of litigation experience, including written discovery, defending and/or taking depositions, legal research, drafting of pleadings, and participation with motion practice. Ability to work in a fast paced, leanly staffed environment with a varied caseload is critical. New Hampshire State Bar admission is required. Ideal candidates will have strong academic credentials, excellent research and writing skills, superb judgment and communication skills, and a commitment to providing excellent client services.

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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.
- Must be admitted into the New Hampshire Bar Association.

SALARY RANGE: $62,566 – $87,609 Dependent upon experience
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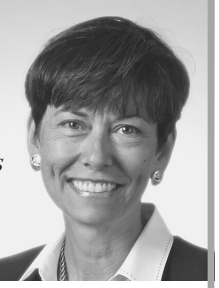

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