

## Public Hearing Held For Bill That Would Allow Paralegals to Represent Clients in Court

NHBA Director Says Pilot Program Could Help Bridge 'Justice Gap' in the State

By Scott Merrill

A public hearing was held Jan. 26 on a bill that would create a pilot program for non-attorneys to provide representation for people currently underserved in New Hampshire circuit courts.

The bill would allow qualified paralegals working under the authority of a licensed attorney to represent clients who earn up to 300 percent of the federal poverty level in family court and landlord-tenant matters.

State Representative Ned Gordon, the prime sponsor of HB 1343, began his testimony by reminding the committee that until the 1980s, "virtually all" litigants in divorce and custody matters were represented by attorneys.

"Now, in our circuit courts, 80 to 90 percent of the people who appear in our family division are unrepresented," he said, adding that while the Court has established mediation programs and attempted to make the process more understandable and user friendly, "there is no substitute for legal representation."

New Hampshire Legal Assistance Executive Director, Sarah Mattson Dustin, who also testified at the hearing, said most people involved in Circuit Court civil cases do not have an attorney.

"In the majority of family law cases, both parties represent themselves," she said. "[And] upwards of 90 per-

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## New Hampshire Legal Community is Addressing Diversity and Attorney Representation for Minorities

Allowing Non-New Hampshire Attorneys to Assist Pro Bono Cases Could Become Reality

By Scott Merrill

For minority groups in the Granite State, finding an attorney who not only speaks their language but shares their customs and beliefs—someone who is 'like them'—can be difficult.

To address diversity issues affecting representation—especially for those who can't afford attorney fees—members of the New Hampshire legal community, including various law firms, the UNH Franklin Pierce School of Law, the Judicial Branch's Access to Justice Commission, and the New Hampshire Bar Foundation, have been working to help solve the problem.

### Making it easier for out-of-state attorneys to bring pro bono legal support

Peter Nieves, a patent attorney at Sheehan Phinney and former adjunct professor at UNH Franklin Pierce School of Law, is working with the Access to Justice Commission to provide pro bono assistance to underprivileged minorities by attorneys with similar ethnic and cultural backgrounds.

"[W]e are seeking avenues to make it easier for attorneys in good-standing, who are licensed to practice law outside of New Hampshire, to provide pro bono legal support for underprivileged minorities who are seeking legal representation from attorneys having similar ethnic and cultural backgrounds," Nieves said. He adds that, while the work being done by UNH Franklin Pierce School of Law and various law firms to increase the number of minority at-

torneys is currently underway, this work will take more time to effectively influence New Hampshire's legal community.

And this is why, he says, it is important to make pro bono representation more easily available for those in need now.

"Providing a modification to the number of requirements for non-New Hampshire attorneys, who are in good standing, and who are willing to help provide pro bono legal support, at a time when the number of minorities in New Hampshire has grown and continues to grow, should allow us to reach out to our brothers and sisters in the legal field and seek their assistance in serving underprivileged minorities in need of pro bono support, where such minorities have expressed the desire to be represented by attorneys ethnically and culturally similar to themselves."

Despite increases in minority populations from 2000-2018, New Hampshire remains less diverse than much of America, with 90 percent of the population considered non-Hispanic white according to a Carsey School of Public Policy report.

At UNH Franklin Pierce School of Law, the number of minority students has fluctuated over the past 10 years, with minority students making up 22 percent of the student population in 2010, 10 percent in 2017, and 16 percent in 2019.

Non-members of the New Hampshire Bar are not permitted to appear in any case, except through an application to appear pro hac vice (for a specific occasion), with an in-

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### PRACTITIONER PROFILE

## Gar Chiang Brings Experience and Enthusiasm to His Practice

By Scott Merrill

Gar Chiang's law office in Boston's Chinatown is an easy drive to the on-ramp for Interstate 93 and the New Hampshire clients he represents there.

"I might be the only Chinese-speaking attorney in New Hampshire," Chiang says over Dim Sum at the Great Taste Restaurant in Chinatown. His remark is a reference to the search results his office assistant, Angie Reider, noticed when she used the terms 'New Hampshire' and 'Chinese speaking attorneys.'

"[People] up there want Chinese-speaking attorneys," Chiang says. "[M]aybe I can explain the terms of their cases to them easier."

Chiang, 71, a Boston native whose parents were from Beijing, is a general practitioner who brings an international perspective to his work, representing clients



in criminal defense, immigration status, business start-ups, estate cases, and landlord-tenant disputes.

But his career in the law didn't begin until he was nearly 60.

After graduating from Boston English High School, Chiang moved to New York City where he studied entertainment administration. He later found himself working for years as a general manager in the entertainment industry at Carnegie Hall, off-Broadway, and Lincoln Center, where he had a chance to meet such cultural icons as Yo-Yo Ma and Pavarotti.

While he is not a performer himself, per se, Chiang's passion for the arts is sometimes displayed as an attorney according to Reider, his office assistant.

"When he's at a hearing, it's like a performance," she says, playfully teasing her boss who seemed to agree. "He has a lot of energy."

Richard Rouse, former Sheriff of Suffolk County in Massachusetts, Supreme Court of Massachusetts Clerk, and a long-time friend of Chiang's, has also noticed his

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### THE DOCKET

**Cryptocraze.** Cryptocurrency may be here to stay, but according to Attorney Lisa Bragança, who will be speaking at the NHBA's Midyear Meeting this week, it's still a lot like the railroads of the early 1800s. **PAGE 2**

**Dispute Resolution.** Unmet client expectations, billing issues, client disputes. The NHBA's Dispute Resolution Committee offers some helpful practice tips to address and resolve these types of issues. **PAGE 6**

**Interview.** Gender Equality Committee Chair, Lyndsay Robinson, looks at the history of the Hollman Award in an interview with Randy Hawkes. **PAGE 7**

**What's the Password?** Ande Smith helps make sense of the latest guidance on password protection. **PAGE 8**

**Dinner at Last.** On April 12, 2022, the Bar Foundation's annual reception dinner and awards ceremony will be live and in person! **PAGE 10**

### Tax and Insurance Law

Problems and solutions for a troubling tax season; tax traps for the unwary; the New Hampshire financial responsibility act; business interrupting cases tending towards insurers; risky business of renewable energy development, and more. **PAGES 24-30**

**Medical Cannibis.** NH Supreme Court case involving Medical Marijuana allows for accommodation. **PAGE 31**

# What Gives A Thing Value?

## The Future of Cryptocurrency and The Meaning of Money

By Scott Merrill

What is wealth? And how is it that some things with seemingly no inherent value become the currency with which other things—like food, clothing, legal services, and shelter—can be bought?

And does cryptocurrency shed any light on the excesses of Western society?

These were a few of the questions that came to mind during interviews with Attorney Lisa Braganca (pronounced Bra-gan-za) former Branch Chief in the Division of Enforcement of the Chicago Office of the Securities & Exchange Commission, and Michael Lucia, CEO of Westford Free Federal Credit Union, about their experiences with cryptocurrencies. Working for the SEC, Braganca says, “[W]as a baptism by fire. They taught me a ton. It was great to be right there learning from people who knew everything about what was going on.”

The roots of Braganca’s interest in uncovering and investigating fraud at the SEC stems from her business school days before law school. She recalls being curious—and impressed—by the many ways people in the business world were trying to beat the system.

“Whatever the system, there was an emphasis on trying to figure out ‘how to get around it,’” she says. “[This] was a different mindset than what I had, which was ‘those are the rules.’ I found myself better suited to law school. That said, I have some insight as to how my brethren in the business community think.”

Since leaving the SEC, Braganca has done a mix of investor advocacy work and defended people being investigated by her former employer. She became acquainted with cryptocurrency—which she likens to the railroads of the early 19th century—after someone who ran a crypto exchange received a subpoena from the SEC.

“Railroad technology was fabulous, but that didn’t mean that if you invested in a particular railroad stock you weren’t going to lose your shirt,” she says. “[T]hat is the world we are in right now. There are a whole lot of people experimenting out there creating companies and issuing tokens. Most of them are not going to go anywhere, but there will be a couple that manage to get it right.”

As of January 2022, there were thousands of cryptocurrencies, such as Bitcoin, Ethereum, Tether, BNB, and Shiba Inu in



existence.

Major banks, such as J.P. Morgan Chase, and companies such as Meta, formerly Facebook, Inc., have entered the world of blockchain technology as well.

“Jamie Dimon was, for the longest time, saying, ‘you know, Bitcoin, it’s a blip, it’s a scam.’ And now Chase is piling onto the blockchain,” Braganca says. “We now have PayPal saying they’re going to issue a coin as well.”

The reason we’re talking about cryptocurrency today, and the reason it caught on, goes back to the financial collapse of 2008 and the resulting lack of confidence for some people in the federal government’s ability to manage the financial system, Braganca says.

“There were libertarian folks who were very much wanting to get away from, you know, fiat government-issued currency, but what really caused this to take off was the Great Recession.”

“Railroad technology was fabulous, but that didn’t mean that if you invested in a particular railroad stock you weren’t going to lose your shirt. [T]hat is the world we are in right now.”

Attorney Lisa Braganca

She finds it exciting to see the adoption of cryptocurrencies by the establishment but says several problems continue to exist.

“I get calls all the time from people who say, ‘you know, the crypto exchange won’t return my calls. I can’t get my money back,’” she says.

And in other cases, people call her after finding out the coin they invested in was a scam or they’ve lost their private key allowing them to access their account.

“[W]hen you’re dealing with these exchanges, folks get into it enthusiastically because it’s new,” she says. “The nice thing about centralization [is] that there’s actual people there.”

President and CEO of Webster First Federal Credit Union, Michael Lucia, explains cryptocurrency in terms of its evanescence.

“I ask people, ‘how much do you want to pay for it. I only have ten handfuls of air,’” he says. “By the time I sell my tenth handful of air, it’s worth twice as much as the first one and everyone else has some that’s worth twice as much, as well. And everyone keeps passing it around until you see who’s going to stop paying more for it.”

The issue, Lucia says, is whether someone is willing to take the hypothetical ‘handful of air’ as payment for something. Added

to this is the issue of taxation and the way cryptocurrency is being handled amongst traders.

“[W]hat I’ve found out, as a registered tax preparer, is that the institutions handling these transactions—Robinhood, Coinbase, et cetera—are not tracking everything the way they thought it needed to be tracked,” he says, explaining that this can create a major disincentive for using cryptocurrency as a payment option. “[E]ach transaction is a trade. A sale and purchase.”

Lucia described a hypothetical situation where a Robinhood account was started with four dollars of money the company gave to an individual to entice them to begin trading—a practice the company uses. As soon as that original four dollars—which was a gift—is traded or sold and then more crypto is bought, potentially increasing its value, a cycle of incremental tax liability begins.

“Every single transaction when you go to buy is the sale of a stock. It’s a sellable, taxable gain,” Lucia says. “The original four dollars might now be worth \$1,000, and you owe taxes on \$960. You pay the \$1,000 to someone, you owe taxes on that. It’s a nightmare. There’s no regulation on this.”

Lucia encourages people to record all their transactions.

“There are some people flipping this stuff every day,” he says. “No one is recording it. By law, you receive those thousand dollars but at the end of the year it’s only worth forty. How does that get returned on your taxes? Loss of income or capital gains loss?”

Lucia says he has bought multiple shares of crypto but that he puts every one of them on his tax returns. When I asked him about the inherent value of cryptocurrency, how, for instance, it has any value, he says it has to do with what people are willing to pay.

“I guess you can say the American dollar is just a piece of paper, kind of like a handful of air, but at least you have something,” he says. “It’s a piece of paper with a serial number on it. These crypto share values are fluctuating every day in price. It’s made-up money.”

I thought the metaphor of crypto being a handful of air was pretty good and people are, after all, buying things with those handfuls of air. At some point during these conversations in my attempt to understand the utility of cryptocurrency, I was reminded of those tribes in the Pacific Northwest whose economic systems were based on acts of reciprocal exchange.

In the 19th century, the Kwakiutl, one of the indigenous peoples of the Pacific North-

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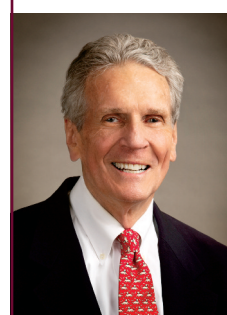
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west, practiced a form of exchange called potlatch, which means “to give” or “a gift,” and which often involved lavish ceremonies that included feasts, dancing, the generous giving of gifts, and in some cases the destruction of one’s own property as a sign of status.

Economically, what was going on is referred to as a redistributive exchange. For the Kwakiutl, potlatches were important social gatherings used to assert or transfer ownership of economic and ceremonial privileges.

In 1884, the Canadian government commissioned agents to survey the indigenous people living on Vancouver Island. One of the agents commissioned to investigate the indigenous people of this area was Gilbert M. Sproat, who wrote about the potlatch in a letter to the prime minister at the time, referring to it as, “the parent of numerous vices which eat out the heart of the [native] people... It is not possible that the Indians can acquire property, or can become industrious with any good result, while under the influence of ... [the potlatch].”<sup>1</sup>

By 1885, the Canadian government had made engaging in potlatch ceremonies a crime. Penalties included jail time for participants, and the law, contained in the Indian Act of 1884, stayed in effect until 1951 when it was repealed.

One might be able to witness a certain form of potlatch in our culture today when companies burn enormous sums of money for Superbowl ads, Bragança says, and those ads have value because they signal success.

“[T]here is no way that you could sell enough [Pepsi] to make it worth it to pay for the Superbowl ad, right? But it’s signaling. You’re signaling that ‘we are doing so well that we can just ignite a vast sum of money right in front of this giant audience and show

them how very successful we are,’” she says. “And it works, because everyone knows, Pepsi was able to do that.”

This way of thinking, Bragança says, is also associated with the ways people like to be associated with successful companies and with successful people. There seems to be an aura, if you will, or a quasi-religious charisma that emanates from the person or the company or even the object that a society values. And this, one could argue, is part of what’s happening with cryptocurrency at the moment.

But is it money?

“People think Bitcoin isn’t money but what is money?” Bragança asks. “It’s a construct.”

Money as we know it, those paper bills with serial numbers on them issued by the Federal Treasury, were not issued until the 19th century.

“We did just fine with banknotes until then,” Bragança says. “We all agreed that those notes would be used as a means of transferring value.”

Bragança gave the example of the Island of Yap in the South Pacific, where large stones are used as currency. In one case in this culture’s history, a ship transporting a stone intended for transfer to another party sunk during its journey. Yet even this stone—which now rests at the bottom of the ocean—maintains its value.

“[T]hat stone did not disappear off the ledger, everyone knows where it is,” Bragança says. “And so, it continues to be used as money.”

Money, she says, is like a contract.

“I need some way to be able to go to Walgreens and get toothpaste. I don’t want to have to take my legal services there and say to the pharmacist or the guy who owns my local Walgreens, ‘yeah, can I trade you some legal services for some toothpaste?’”

Bragança sees the potential for blockchain technology to help societies around the world in a number of ways, but she also agrees with Lucia that its current volatility doesn’t always make it a practical form of currency.

Some of the benefits include increasing the speed of getting produce to market and validating whether a product—like diamonds, for instance—are a fair-trade product.

“[T]he nice thing about blockchain is that you know it’s distributed. You have copies of these records all over the world and they’re backed up in a bunch of places,” she says, adding that while she is a crypto advocate and would like to see currency become less centralized, she still doesn’t own any.

“There are too many ways for it to get stolen and that’s something that I’m looking forward to talking with people about, because there are law firms that accept Bitcoin as payment or other forms of crypto currency,” she says.

In an upcoming talk at the New Hampshire Bar Association’s Midyear Meeting, Bragança says she will be discussing what lawyers need to know if they’re considering accepting cryptocurrency as payment and the reasons why simply “taking a pass” on dealing with this form of currency is unrealistic in a world where more and more people are holding it.

She illustrated her point by describing a client she represented in a divorce that involved the suicide of one of the parties who held large amounts of cryptocurrency that were extremely difficult to find.

But when it comes to lawyers accepting payment in cryptocurrency, Bragança believes there’s a lot to be worked out.

“I’ve been asked, ‘how can I pay you in Bitcoin? Do you accept it?’” she says. “I’m not going to take Bitcoin in large part

because of the myriad ways it can be stolen, but also, let’s say the client wants to pay me a retainer in Bitcoin. Oh my God. That’s like being paid a retainer in Euros. I have to deal with an entirely different currency. And it needs to be converted.”

And then there’s the question of fluctuation in price.

“Okay, I can accept Bitcoin, but what happens when the price moves?” she asks. “I would presume that it’s my loss. And what if you don’t pay me now? Often my clients don’t pay me for an additional 30 to 60 days. That’s fine because I’m dealing with one currency. But sixty days later, who knows what the Bitcoin exchange rate would be.”

Bragança’s railroad metaphor regarding the volatility of cryptocurrency today seems apt. While the buying and selling of crypto is already happening, and it may one day become demystified and normalized, investing in something with as many unknowns is risky for now. People are waiting, as she points out, on those who control the wealth (corporations and governments) to work out a lot of kinks to make it a safer investment for those who’d like to use it.

And therein lies the irony regarding the original intent of this decentralized form of currency. The major players ultimately controlling its success—and its current prices—already control much of the wealth; they’re free to burn their offerings without thinking twice. And this is the same behavior, after all, that the Canadian government banned in the Pacific Northwest for nearly 70 years.

To register for NHBA’s Midyear Meeting on Feb. 18 go to [nhbar.org](http://nhbar.org).

#### Endnotes

1. Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast*. (Vancouver/Toronto: Douglas & McIntyre, 1990), 15.

## Living Well in 2022

Look for our annual Living Well supplement in the March 16, 2022 issue of *Bar News* which will feature articles and interviews with the theme of Personal and Professional Optimization. Article topics will include: Advancements in treatment and recovery supports, The benefits of professional mentorship, Interviews with physicians engaged in the cutting-edge treatment of addiction and much more.



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Rep. Silber's proposed constitutional amendment to allow recall petitions for judges (Monitor, 1/21) is a bad idea. As correctly pointed out by New Hampshire Bar Association President Richard Guerriero, such petitions would politicize judicial decisions. New Hampshire law already has ways to address problems when judges are way out of line, as Guerriero pointed out in his testimony on the proposed amendment.

Courts resolve disputes. And one party usually goes away unhappy. Courts also protect the individual — the individual's civil rights and the individual's property against the power of the state, and sometimes against the outcry of a mob (see *To Kill a Mockingbird*). Subjecting the court itself to the outcry of a yelling mob, in the form of a recall petition, undermines the rule of law and may make judicial decision-making more political.

Parties who lose court cases frequently blame judges. Some of those parties will seek to remove judges, either out of revenge or misunderstanding about why they lost their case. Many laypersons don't understand why evidence was excluded from trials. They have difficulty understanding the hearsay rule (as many lawyers still do) and other rules of evidence. Many people still think the "exclusionary rule" in criminal law is just a "technicality." That rule excludes evidence because of an illegal search and it protects us all from invasions against our 4th Amendment rights.

People in court cases are in heated battles. This is especially so in domestic disputes, and more so if children are involved. The urge to "get back" at a judge who awarded custody to a spouse whom

one now hates or to seek retribution against a judge who found one parent abusive can be strong.

Putting the hammer of a recall petition in the hands of unhappy litigants can be dangerous. Most judges work very hard to arrive at the correct result. It will be too easy for people to try to punish judges because the other parent got custody or because a person accused of a crime wasn't convicted or got off on a so-called technicality.

There are many other things that parties in a court case might not understand. Sometimes experts are not allowed to testify in court because they do not properly qualify as experts based on the standards set out by law. Sometimes cases are dismissed at an early stage because a plaintiff cannot muster enough evidence to warrant the case going to trial.

People who are on the receiving end of these problems often feel they have been wronged by the judge. They can appeal, but that can be expensive. It is likely much less expensive for them to write a petition to have the judge thrown out of their job. Even if the judge defeats the petition by successfully explaining why their ruling or actions are correct the judge is put on the spot and must defend their work and their job in a public forum. This spotlight can be quite glaring if the case concerns a violent or notorious crime.

A judge must at times go against public opinion to correctly apply the law. It will be more difficult for judges to do their jobs correctly if they have to look over their shoulders because they have to worry about a recall petition.

Our courts also have many cases in-

volving people representing themselves, i.e., "pro se" parties. People have the right to file lawsuits on their own. I have seen many, many people who do so but with no understanding of the fact that their lawsuits have no legal basis. Many of these people get mad at judges and the lawyer for the other side due to their own misunderstanding of the law.

Some of these people file judicial complaints because of their lack of understanding. If given the option to file a petition to end a judge's career, the stakes become enormously high. And in this day of social media, it doesn't take much to spread a lie.

The point of our courts and appointed judges is to do justice. The system is not perfect. Judges are human. A constitutional amendment for recall petitions for judges will make it more likely that our courts and judges might bend to popular will rather than correctly apply the law. The constitutional amendment for recall petitions should therefore be voted down.

Corey Belobrow

*This opinion piece originally ran as a My Turn in the Concord Monitor.*

*Corey Belobrow is an attorney with Friedman Feeney in Concord.*

I read with interest an article on the front page of the January 19, 2022 edition of the *New Hampshire Bar News*.

The headline read, "Proposed Amendment Calls for Removal of State Court Judges."

Underneath the headline it was stated that the "New Hampshire Bar Association Unanimously Opposes Amendment."

I do not recall voting for this or in any way endorsing a position on the proposed bill.

The article went on to indicate that as many as 40 states in fact had some provisions allowing the recall of officials. So, it seems to not be a radical concept.

I have no choice when it comes to being a member of the Bar, unlike Massachusetts, but I did not give Mr. Merrill authority to speak for me.

Paul D. Creme

Having been actively engaged in the practice of law when New Hampshire was introduced to the then new LLC form of business organization, I have the greatest respect for Attorney Cunningham's professional knowledge and acumen in business law. However, I respectfully disagree with the conclusion in his recent "Op Ed."

Firstly, I choose to believe that all of the changes in voting procedures, times, manner of voting, etc. that were made by local officials during the pandemic-ridden 2020 national elections were made by local voting officials and done in a good-faith attempt to overcome the government-imposed restrictions on assembly, limitations on number of people allowed within a building at one time, social distancing, etc. imposed because of the Covid-19 virus, and were not an attempt to promote illegal voting.

However, that being said, such changes in voting procedures were unconstitutional,

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in fact. Under Article I, Section 4, the US Constitution provides, “The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”

As we know, such changes were not made by State Legislators, but by local voting officials; and Congress during or prior to the 2020 election did not authorize such changes. So, although made in good faith, such changes were illegal, albeit in good faith. Thus, now, several states are undertaking to correct such technically unconstitutional actions going forward; and many of such state changes are incorporating such changes as extending the time for voting to several weeks before the final “voting day,” which should provide for a better turnout. The other changes, which I assume Attorney Cunningham objects to are, at least reasonably arguably, intended to ensure that only legally-registered citizen voters are allowed to vote.

As a Conservative my whole (conscious) life, I am well aware that authoritarianism/totalitarianism can come from either the Far Right or the Far Left. However, at this time, it is my opinion that any totalitarianism/authoritarianism that comes to Americans during the next few years will come from the Far Left, as, in my opinion, the present Administration has been openly attempting. As such, I encourage all lawyers to study the so-called Voting Rights Act (S-2747 and HR-1 as amended) and judge for yourselves whether it is truly a voting rights act or an attempt to take away from states their ability to regulate their own elections, and thus another attack on Federalism.

Respectfully, Robert H. Fryer

## Opinions

# Recognizing the True Complexities of Intimate Partner Violence

By Steven Endres

The January 19, 2022 issue of the *Bar News* contained an article titled “The Complexities of DV Cases and Criminal Defense.” The article explained common strategies three criminal defense attorneys employ while defending people accused of abuse. While they may be acceptable in an adversarial proceeding, these common strategies, such as blaming or discrediting the victim (“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?”) or obfuscating the facts (“it is the relationship that will end up being on trial”) simply play on outdated stereotypes and misunderstandings of intimate partner violence (IPV). While these strategies may lead to “success” in the courtroom in terms of a finding of not guilty, they do nothing to actually address the underlying problems IPV present in our society or assist the Bar with a clearer understanding of IPV. As a bar association, and as a society, we can reduce the occurrence of IPV by understanding some of the dynamics of IPV, recognizing IPV, and promoting healthy, respectful, and nonviolent relationships which can help prevent the harmful and long-lasting effects of IPV on individuals, families, and communities.

Unfortunately, as many of us know, domestic or intimate partner violence (IPV) is prevalent in New Hampshire. According to a 2010-2012 study by the Center for Disease Control (CDC), 34.7% of New Hampshire women and 35.4% of New Hampshire men experience intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking in their lifetimes. According to the most recent report of the Domestic Violence Fatality Review Committee, 87 people were murdered by an intimate partner in New Hampshire between the years of 2009-2019. While there is a specific victim of IPV, society also suffers. We know that violence committed in front of children can have physical, developmental, and psychological ramifications on those who witness the violence or try to intervene. The incidence of child abuse is higher in homes where women are abused by their partners, and these children are at a high risk of becoming victims or abusers as adults. Research has documented high rates

of domestic violence perpetration and victimization in the lives of children growing up in domestic violence homes. In a 2013 study by Sam Houston University, researchers tracked children growing up in domestic violence homes for 20 years. Children from 78.6% of the families became perpetrators by the age of 21. Children from 75% of the families became victims of domestic violence by the age of 21. Society as a whole is further impacted economically by IPV. The CDC reports that in 1995, the cost of domestic violence against women exceeded \$5.8 billion. Of this cost, \$4.1 billion were directly attributable to medical and mental healthcare costs with almost \$1.8 billion attributed to the indirect cost of lost productivity. IPV is not a “private relationship” problem, it is a problem which impacts our society as a whole.

In order to help, we should first recognize that IPV is complex, especially within the context of the criminal justice system. Victims and survivors of IPV may present very differently than victims of other crimes. While the victim of a residential burglary may be extremely cooperative with the police in an effort to catch the suspect and recover their property, victims of IPV often recant, minimize, or altogether deny their abuse as a result of the power and control that permeates their relationship. One of the key differences between victims of IPV and victims of other crimes is that in IPV the victim and the offender are never strangers. Instead, victims of IPV have an intimate

relationship that is often spousal, romantic, sexual, parental, social, psychological, and/or financial. According to the National District Attorney’s Association, victims of other crimes may want justice, vindication, and restitution; however, many victims of IPV do not. Instead, victims of IPV want the abuse to stop or their abuser to be taken for the night but not necessarily arrested and prosecuted. Furthermore, as the court process lags on, victims of IPV may have personally resolved the conflict by putting the specific incident which led to the court process behind them and continuing their lives with their abuser. When this is the case, victims may perceive their personal resolution, however fragile and temporary, to be threatened by the stress and upheaval of the court process. They may not appear for a final restraining order hearing or become uncooperative and in some cases even hostile with the court process. Recantation and nonparticipation in the court process may be associated with the victim’s financial dependence on their abuser; psychological vulnerability; perceptions of an unsympathetic court response; poor access to advocates; emotional attachment to the offender; family, cultural, or religious pressure to remain with their abuser; shame or embarrassment; fear of deportation; and feelings of guilt.

According to the National District Attorney’s Association, recantation encompasses a vast majority of the domestic

OPINION continued on page 18



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## NHBA Board of Governors – 2022 Elections - Open Positions

Active, qualified members may submit a petition for one of the following positions for which nominations are open.

Positions with an asterisk (\*) indicates that the incumbent governor will seek reelection to their second term.

- Vice President (1-year term, and a 4-year commitment to board leadership track – President-Elect, President and Immediate Past President in subsequent years)
- Governor at Large (one vacancy, three-year term) \*
- County Governors (2-year term) representing:
  - o Belknap \*
  - o Carroll \*
  - o Hillsborough North
  - o Hillsborough South
  - o Strafford
  - o Sullivan \*
- Association Delegate to the American Bar Association House of Delegates \*

### Submitting a Nomination Petition

No fewer than 10 active member signatures are required for a nomination petition for a governor representing a county; no fewer than 25 active member signatures are required for vice president, governor at large, and Association ABA Delegate. Bar members may sign only one petition for a county position on the Board representing the county where the signer's principal office is located. Blank petitions can be obtained here or by contacting Debbie Hawkins ([dhawkins@nhbar.org](mailto:dhawkins@nhbar.org), 715-3269)

**Petition Deadline** - Petitions for nominations to the NHBA Board of Governors will be accepted no later than March 1, 2022.

**Election Information** - The online election opens April 1st, and members will receive more information about voting in March. Online ballots will be accepted from April 1 until April 15, 2022. Paper ballots can be mailed to eligible Bar members without an email address, or to those requesting one. Those eligible to vote are active-status members (dues fully paid).

## Practice Tips from the NHBA Dispute Resolution Committee



By Peter G. Callaghan

The cases that have come before the New Hampshire Bar Association Dispute Resolution Committee share common traits. While not every dispute can be avoided, most can be prevented and for those that still happen, they can be successfully managed. The Dispute Resolution Committee is a terrific option for resolving those matters.

- **Client expectations are unmet.** A theme in many matters before the Committee is a client contends a lawyer did not meet her/his expectations. Often the lawyer responds that what the client wanted was not what the lawyer thought he/she was doing. *This misalignment of expectations can be addressed at the outset with a clear engagement letter and early written communication outlining the goals of the representation, what the lawyer will do to advance those goals, and the timetable for completion.* It is rare for the Committee to see a dispute over expectations when there has been such a writing, but nearly every dispute over expectations has a dearth of communication. When expectations change – whether it be the goals, what the lawyer will do, or the time for completion – an early warning to the client and a con-

## NHBA Board Election – Ensure You Receive Your Ballot

Electronic voting for NHBA Board Election will take place starting at midnight, EST, on April 1, 2022. All Active members are eligible to vote. To ensure you receive your ballot information electronically, please be sure the email address we have on file for you is accurate. If you need to update your email; please log onto the Member Portal, and use the update MyProfile link that is found on the Profile page. Please do this no

later than March 15th. If you need assistance updating your email address, please contact [MemberRecords@nhbar.org](mailto:MemberRecords@nhbar.org).

Members eligible to vote in the Board election, without an email address on file with the Association, will receive a letter containing instructions on how to vote electronically or, if preferred, how to receive a paper ballot.



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firmation of the new expectations does wonders for the relationship and the understanding of the client.

- **Client feels uninformed.** Clients often say in matters before the Committee that they did not know what was happening in their matter, they were not aware of things that would happen that would lead to costs and legal fees, and the lawyer was not responsive (either slow to respond or not responding at all). *Advising the client and securing client assent in writing to major tasks, especially those that the client will see on the bill, is critical to avoiding a later dispute.*
- **Billing issues.** Some billing disputes are the result of the attorney not keeping the client informed about the precise work to be done, such as legal research, file review, hearing preparation, and enlisting the help of others (partners, associates, paralegals). *Providing realistic estimates to clients for likely costs and explaining precise legal tasks to be performed with a written estimate of the cost before the work is performed can help them, many of whom are inexperienced in legal proceedings, understand what is to come and feel like they have control in deciding how their resources are allocated.*
- **Handling client disputes.** When clients question charges, even for relatively small amounts, the lawyers who dig-in, refuse to adjust the bill, or become antagonistic with the client often find themselves before the Committee or another forum. Often the amount at stake is less than the time spent responding to an unhappy client and managing a dispute such as a matter before the Committee. *Recognizing the client's concern and conceding where possible can stop disputes from mushrooming.*

If a client or lawyer needs assistance in trying to resolve their disputes, consider using the New Hampshire Bar Association Dispute Resolution Committee for free-of-charge and experienced volunteers.

*Peter G. Callaghan is a Director with Preti Flaherty in Concord. His areas of practice include Business Litigation, Employment counseling and litigation, and White-collar defense. He is a Fellow in the American College of Trial Lawyers and has been a long-time member of the Dispute Resolution Committee.*

## Committee Corner

### NHBA's Gender Equality Committee Speaks With Director of NH Public Defender Randy Hawkes

By Lyndsay Robinson

The New Hampshire Bar Association's Gender Equality Committee's Mission is to investigate issues of gender discrimination and equality in the legal profession and in the legal system. The Committee may undertake projects as deemed necessary or appropriate to ensure fair treatment and equality of all members of the legal profession and all participants in the legal system.

The Philip S. Hollman Award for Gender Equality was established on the occasion of Judge Philip Hollman's retirement from the Superior Court bench in 2003. The award is designed to honor his efforts as a stalwart advocate for gender equality in the legal system.

A Hollman award recipient is someone who is dedicated to promoting respect and fair treatment towards all members of the judicial system. This recipient acts as a leader, educator, and role model on such issues. The Gender Equality Committee has chosen an award recipient each year since 2004.

The Gender Equality Committee decided to interview some of the Philip S. Hollman Award Recipients to further highlight their success in the area of gender equality and to see what has changed (or stayed the same) since the time the award was received.

I had the opportunity to speak to a representative of the very first Philip S. Hollman Award winner, the New Hampshire Public Defender Program. Randy Hawkes has been with NHPD since 1992. He was a trial attorney and managing attorney in the Dover office for twenty years, and has been Executive Director for

the past ten.

Below are some excerpts from my exchange with Randy.

*Has receiving the Philip S. Hollman award influenced the practice of the NH Public Defender Program? If so, in what way?*

The recruitment and promotion of female attorneys was already a well-established component of NHPD culture when the program received the Hollman award in 2004. Despite the momentum gained by the women's movement during the 1960s and '70s, and despite the obvious benefits of bringing more women into the legal profession, most law schools and law firms were slow to accept, let alone embrace, the idea that women could excel in the legal arena. But that wasn't the case with the early public defenders in New Hampshire.

Almost from the program's inception, NHPD provided professional opportunities for women. Back in the 1970s, when former New Hampshire Supreme Court Justice Jim Duggan was a public defender, he hired Cathy Green as an investigator while she was still in law school. When she graduated in 1977, she became the first female public defender in New Hampshire. At the time, there were no other women working as defense attorneys, no women in prosecutors' offices, no female clerks, and no female judges.

I think the 2004 Hollman award was an acknowledgment that NHPD had been among the leaders in providing opportunities for women, and ahead of the zeitgeist in doing so. Receiving the Hollman award reinforced NHPD's dedication to equality of opportunity.

*How have you promoted gender equality and fair treatment*



Randy Hawkes

COMMITTEE continued on page 9

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# Passwords Are Dead. Long Live Passwords!

By Ande Smith

If you are like me, about the last thing on your mind over the last year (or two) has been to ponder what the best password standards are. Given the turmoil of the professional and personal world with COVID, wouldn't it be nice if something – anything – could just be left well enough alone?

But cyber criminals and nation-state attackers have had a pretty good ride over this period at the expense of businesses and individuals. While ransomware doesn't quite seem to dominate the news as it did, recent vulnerabilities like Log4J have made our defenses look even more like Swiss cheese and have required some introspection.

Back in early 2021, the National Institute of Standards and Technology (NIST) started discussing changes in its password guidelines. While NIST's mission is to provide technology standards for the federal government, it is widely looked to as the gold standard for business and other organizations. NIST's password standards have been around since 2014, with major updates in 2017 and 2019. You may be familiar with the generally accepted dogma: change passwords frequently,



eight or more characters including numbers, special characters, and upper/lower case letters, and no password reuse.

As you may recall, the purpose of passwords is to prove the identity of someone seeking access to a system or data. Passwords have long been a staple, though have been supplemented at an accelerating rate by multi-factor authentication (MFA), relying on biometrics, physical tokens, and authentication tools that are on separate devices.

While passwords have been declared dead for quite some time owing to the ease of compromise, they are still real and don't seem to be going away anytime soon. Their fundamental role as a tool to prove one's identity based on the "secret" of the password only known to the user is generally always one of those multi-factors of authentication. Password-less solutions have not hit their stride and most end up storing a password of sorts to be compatible with how fundamental IT architectures exist anyway. This idea of a secret known only to you is a powerful one, so the change to consider is how to make it stronger.

The new guidance is refreshingly practical and is a change we recommend to all our clients as they think through their cyber programs. NIST's guidance takes a hard look at what people really do with their passwords and suggests some new practices and reliance on technology to overcome (well, help with) the human factor. The updated guidance is rather

cryptically buried in updates to NIST Special Publication 800-63B for those that like original sources best. There are a number of different practices you can consider for your practice.

### Characters and Length

The ability to decrypt an eight-character string is recognized to be minimally influenced by the types of characters used. The required technical effort is less in what characters are used, but rather in how many. Best practice guidelines are to use 64 characters rather than say eight or ten. Critical in the resistance to decryption or cracking is that they not have repetitive elements or words, which is a common behavior so users can remember them. Passwords should be gibberish, which raises the question of how users will keep track or create them, especially without using that old standby: the yellow sticky note.

### No Password Changes

NIST's new guidance is seemingly contrarian in recommending that passwords not be regularly changed. The rationale is that when frequent password changes are required, individuals defensively use repetitive and easy to crack themes rather than gibberish. These patterns not only make cracking quicker but guessing becomes easier with open-source intelligence that can be gathered by hackers or from a dark web repository of stolen and perhaps very similar passwords.

While passwords have been declared dead for quite some time owing to the ease of compromise, they are still real and don't seem to be going away anytime soon.

### Use Password Managers

To effectively create truly randomized passwords of great length, password managers are a recommended solution. NIST's new guidance even reverses its earlier frowning on cutting and pasting passwords to facilitate the use of these tools. Some password tools have been hacked in different ways over the year, but generally they are viewed as reasonably secure methodologies and many can accommodate the extended lengths and complexity NIST now suggests.

### No More Password Hints

Under the new guidance, password hints or challenge questions (i.e., name of your first pet) should not be used. They are readily exploitable through social engineering and open-source intelligence and the use of MFA, especially for remote access to internal networks and for access to cloud systems (e.g., M365 or Google Enterprise) is far more secure. MFA adoption is increasingly widely adopted,



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OFFER \$0	<b>Wrongful Death</b> IA 2021 Nonverbal 14-year-old girl died under nonprofit care	SETTLEMENT \$4 MILLION
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though we do find sophisticated clients that lag in this area.

This new NIST guidance is helpful for those looking for a simple and inexpensive way to enhance their security. Password managers and the use of MFA are neither complex to implement or hard on productivity when properly deployed. While not so long ago, the idea of an authenticator on your phone or using your face to log into a device seemed scary and complex, the iPhone has facilitated user adoption to more business settings.

While passwords as we've known them may be dead, they still reign. Re-looking at the old standby in your environment and making the move to the new NIST guidance (and MFA if you're not there) can be a manageable cyber initiative for the new year.

*A member of the New Hampshire and Maine bars, Ande Smith is president and founder of Deer Brook, an IT and cybersecurity consultancy. Deer Brook provides cybersecurity, privacy, and IT advisory services, including breach response, to many sectors of the SMB market.*

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

## Committee from page 7

since winning the Hollman award?

NHPD promotes gender equality by recognizing talented women, bringing them on-board, and providing equal opportunities for professional development. In 2004, half the public defender staff attorneys were women. Their numbers have increased with each successive year. Today, female attorneys comprise 61 percent of NHPD's staff. Today, 69 percent of the program's managerial positions are occupied by female attorneys, including six managing attorneys and five assistant managing attorneys. Half of the Directors in NHPD's administration are women. When NHPD was incorporated, all members of the Board of Directors were men. Today, five of the nine are women. The current distribution of women at all levels at NHPD largely derives from the caliber of women who have joined the program.

*What activities have you or others engaged in that you think have had a meaningful impact in promoting or advocating for gender equality in the legal system?*

At the risk of sounding like a cliché, when it comes to gender equality in New Hampshire's legal system, current advocates for gender equality stand on the shoulders of those who preceded us. My predecessors going back to the 1970s set the tone that each successive director at the Public Defender expanded upon. By no means has the Public Defender been alone in promoting gender equality. Many glass ceilings were broken because someone in government or someone in an administrative position in the corporate sector advocated for the advancement of women to key positions. Someone had to nominate the first fe-

male judge. Someone had to select the first female Attorney General. Someone had to hire the first woman in a firm.

However, it is women themselves who deserve the real credit for advancing gender equality. Female pioneers in the legal field had to have not only the skill, but also the necessary strength of character to be the first, knowing that their performance would be subject to greater scrutiny because of their gender. Successive generations of women have been their own best advocates in advancing gender equality by virtue of past accomplishments and on-going achievements.

*What changes have you seen in the area of gender equality since receiving this award?*

Fortunately, gender discrimination is increasingly viewed as being extraordinarily retrograde and anachronistic. At the same time, not all issues involving gender discrimination have been resolved. Disparate treatment of women continues to exist in the form of condescension, lack of respect, and the inappropriate use of terms of endearment. And, of course, studies reveal that women lawyers statistically earn less than their male peers. Though not at NHPD, I might add.

In terms of positive changes, the percentage of women in law school continues to increase. The percentage of women applying to become public defenders continues to increase.

A relatively recent change in the area of gender equality is the expansion of the meaning of gender itself beyond the binary definition, and the quest by gender non-conforming people for fair treatment and equal opportunity.

*Is there an area that stands out to you where*

*there can be further change? If so, what can be done to bring about that change?*

I recently read an interesting statistic that speaks to that question. The male justices on the United States Supreme Court interrupt the female justices three times as often as they interrupt each other during oral argument. Last year, two-thirds of all interruptions on the Court were directed at women justices.

Maybe that's not particularly surprising given the current composition of the court, but I believe it illustrates a point beyond civility or politeness. It isn't enough to have women working throughout the legal system, be it on the bench or in management or on staff. Women's perspectives, their opinions, and their voices must be heard and valued, rather than spoken over or dismissed.

Randy concluded, "It has been my good fortune at every stage of my career to have worked with many extraordinarily talented women, each of whom enhanced my professional and personal development. For that, I am deeply grateful."

Thank you to Randy Hawkes for sharing his thoughts, and to the New Hampshire Public Defender Program for continuing to set an excellent example of promoting gender equality in New Hampshire's legal profession. Stay tuned for more interviews of the Philip S. Hollman Award Recipients.

*Attorney Lyndsay Robinson is an associate attorney at Bernazzani Law. Her practice consists of general civil litigation with a focus on family law, estate planning, probate administration, business law, immigration, and other similar fields. Lyndsay is committed to serving families in New Hampshire with compassion. Ms. Robinson is the current chair of the NHBA's Gender Equality Committee.*

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2014	31	6
2013	29	3
2012	26	6
2011	36	5
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2009	22	9
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\* As published in *Massachusetts Lawyers Weekly* for years 2008-2019; as submitted to *LW* for years 2020, 2021.

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Andrew C. Meyer, Jr. and Krysia J. Syska

**\$1.5 MILLION**  
Necrotizing fasciitis after surgery  
Andrew C. Meyer, Jr. and William J. Thompson

**\$1.5 MILLION**  
Delay in diagnosis of gleason 9 prostate cancer leads to advanced disease  
Andrew C. Meyer, Jr. and Adam R. Satin

**\$1.5 MILLION**  
Improper antibiotic use leads to colitis and death of 9-year-old boy  
Andrew C. Meyer, Jr. and Adam R. Satin

**\$1.5 MILLION**  
Misdiagnosed stroke leads to death  
Andrew C. Meyer, Jr. and William J. Thompson

**\$1.5 MILLION**  
Death of 19-day-old baby from birth injury  
Andrew C. Meyer, Jr. and Robert M. Higgins

**\$1.5 MILLION**  
Spinal cord injury following epidural steroid injection for pain management  
Andrew C. Meyer, Jr. and William J. Thompson

**\$1.25 MILLION**  
Failure to properly manage anticoagulation medication results in debilitating stroke  
Andrew C. Meyer, Jr. and Adam R. Satin

**\$1 MILLION**  
Failure to test for strep in mother leads to permanent neurologic injury in baby  
Andrew C. Meyer, Jr. and Krysia J. Syska

**\$1 MILLION**  
Delay in diagnosis and treatment of sepsis results in death of 76-year-old woman  
Andrew C. Meyer, Jr. and Adam R. Satin

**\$1 MILLION**  
Delay in diagnosis and treatment of multiple myeloma results in death of 72-year-old man  
Andrew C. Meyer, Jr. and Krysia J. Syska

**\$1 MILLION**  
Medication error leads to death of 90-year-old woman  
Andrew C. Meyer, Jr. and Nicholas D. Cappiello

**\$1 MILLION**  
Failure to diagnose a bowel perforation leads to death  
Andrew C. Meyer, Jr. and Robert M. Higgins

**\$1 MILLION**  
Delayed diagnosis of ruptured spleen after car crash  
Andrew C. Meyer, Jr. and William J. Thompson

**\$1 MILLION**  
Improperly performed gallbladder surgery requiring reconstructive surgery  
Andrew C. Meyer, Jr. and Nicholas D. Cappiello

\*Unpublished settlement



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NEW HAMPSHIRE

# BAR FOUNDATION NEWS

## The Bar Foundation's Annual Dinner and Awards Ceremony, "Powering Justice, Propelling Change" – Be There!

At long last, on April 12, 2022, the Bar Foundation's annual reception dinner and awards ceremony will be live and in person! The event, which was postponed from this past September, will take place at the Manchester Country Club in Bedford, NH from 5:30 pm to 8:30 pm. It will continue with the theme, "Powering Justice, Propelling Change," which is a fundraising effort that focuses on three key initiatives – the statewide Diversity and Inclusion Project; the Moose on the Loose Teachers Guide on Civics Education; and supporting the 603 Legal Aid call center.

Following cocktails and dinner, four awards will be presented at this function. These awards are given annually, selected by vote of the sub-committees of the New Hampshire Bar Foundation. Recipients need not be members of the NHBA but are carefully chosen to honor individuals who meet the criteria for the award in its broadest sense.

Steven B. Scudder, the former Director of the ABA Center for Pro Bono and counsel to the ABA Standing Committee on Pro Bono and Public Service, will receive the Frank Rowe Kenison Award. This award was established by the Bar Foundation to recognize an individual (or



2022 President Elect for the New Hampshire Bar Association, Sandra Cabrera, speaking to a crowded room at the 2019 Bar Foundation Annual Dinner held at the Manchester Country Club. File Photo

individuals) who makes substantial contributions to the betterment of NH citizens through the administration of justice, the legal profession, or the advancement of legal thought. Frank Rowe Kenison (1907-1980) was a member of the NHBA for 48 years and served as Chief Justice of the NH Supreme Court from 1952 to 1977. He was an exquisite legal thinker who committed his life to the legal system, education about the law, and the promise of equal justice

for all.

Henry Klementowicz, Senior Staff Attorney at the ACLU of NH, and Megan Carrier, a shareholder at the Sheehan, Phinney, Bass & Greene Law Firm, are both recipients of the Robert E. Kirby Award. Recipients of this award are attorneys that are 35 years old or younger who demonstrate the traits of civility, courtesy, perspective, and excellent advocacy. Established in 1996, the Robert E. Kirby Award honors the

memory of Bob Kirby, a young lawyer "of great skill, civility, and good humor" who died that year at the age of 35. Kirby was an attorney at Gallagher, Callahan & Gartrell. The purpose of the award is to honor Bob Kirby's memory and to remind all of us that decency, courtesy, and perspective neither inhibits nor defeats excellent advocacy.

Finally, Rodney Dyer, formerly of Wescott Law, is the recipient of the Nixon-Zachos Award. Only fellows of the NH Bar Foundation may submit nominations for this award, which was created to honor the memory of David Nixon and Kimon Zachos, two NH attorneys who were leaders in the law and in their community. Both were active members of the Bar Foundation and the NHBA. They were preeminent lawyers, but some of their most important contributions were to their communities generally. Through their work, they emphasized the important role of lawyers – including shaping the law, serving in the state legislature, and working to ensure that we remain a society in which all stand equal before the law.

Due to Covid-19 protocols, limited space will be available for this event. For more information, visit [nhbarfoundation.org](http://nhbarfoundation.org).

## OUR ANNUAL DINNER & FUNDRAISING EVENT IS LIVE AGAIN!

# JOIN US

### IN CONGRATULATING THIS YEAR'S HONOREES



**NIXON-ZACHOS  
AWARD  
RECIPIENT**

**Rodney  
Dyer**

*Wescott Law (Ret.)*



**KENISON  
AWARD  
RECIPIENT**

**Steven  
Scudder**

*Former counsel,  
ABA Standing  
Committee  
on Pro Bono  
& Public Service*

### KIRBY AWARD RECIPIENTS



**Megan  
Carrier**

*Sheehan Phinney  
Bass & Green, P.A.*



**Henry  
Klementowicz**  
ACLU  
of New Hampshire

# POWERING JUSTICE PROPELLING CHANGE

**TUESDAY, APRIL 12, 2022**

**MANCHESTER COUNTRY CLUB  
BEDFORD, NH**

**5:30PM - 8:30PM**

**LIMITED SPACE AVAILABLE**

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[NHBARFOUNDATION.ORG](http://NHBARFOUNDATION.ORG)**

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*Strengthening Justice for All*



## Community Notes

Registration is OPEN for the **NH Women's Bar Association Annual Retreat** April 1-2, 2022 at the Wentworth by the Sea. Those interested may register for the event at [nhwba.org/event-4457870](http://nhwba.org/event-4457870)

**Nixon Peabody** is once again proud to announce a 100% rating on the Human Rights Campaign's Corporate Equality Index. This marks the 16th consecutive year the global law firm has achieved a perfect rating, designating it as one of the "Best Places to Work for LGBTQ+ Equality."

Attorney **Jane Young** was nominated by President Biden on Jan. 26 to serve as a U.S. Attorney for the District of New Hampshire. Young currently serves as New Hampshire Deputy Attorney General.



The ACLU of New Hampshire congratulates our Senior Staff Attorney, **Henry Klementowicz**, on receiving the **2021 Robert E. Kirby Award**.

Henry works day in and out to protect, advance, and defend civil rights in the Granite State, and his exceptional work has had a measurable impact in New Hampshire.

Thank you, New Hampshire Bar Foundation.



## Coming & Going

**Christopher Dube, Whitney Gagnon, Caitlyn McCurdy, and John Weaver** have been elected as the new directors of the McLane Middleton law firm.

Kozak & Gayer, P.A. is pleased to announce that **Ragner E. Jaeger** has joined our New England regional health law practice. Ragner graduated from Rutgers School of Law in 2014, served as Deputy Attorney General for the State of New Jersey,

and most recently as the Associate General Counsel and Compliance Officer for Penobscot Community Health Care.

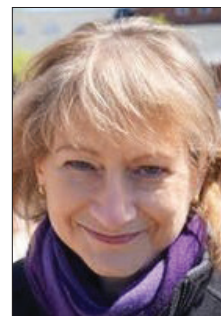
Senior Staff Attorney, **Karen Rosenberg**, will become the new policy director for DRC-NH. She replaces Mike Skibbie who has filled that role for 17 years.

The law firm of McLane Middleton is pleased to announce the hiring of attorney **Joseph W. Morales**.

## In Memoriam

### Emily Davis

Emily Davis, 65, of Lyme, NH, died early Thursday morning, December 16, 2021, at Dartmouth-Hitchcock Medical Center. Emily was born in 1956 in Brooklyn, NY before moving to the Boston suburbs for most of her childhood. She attended Marblehead High School before graduating from the University of Massachusetts Amherst in 1978.



After college, Emily went on to earn her

JD from Boston College Law School before moving to Saint Johnsbury in 1982 where she began her legal career. In 1985, while working in White River Junction, she met her husband, Matthew, and together they moved to Thetford, VT before marrying in 1988. Working for almost four decades in family law, Emily was well respected in the legal community and operated her own practice for over 30 years. She was president of the Vermont Bar Association from 1998-1999.

A driven and independent woman, Emily had many passions. An excellent cook, she compiled multiple binders of original and favorite recipes, heavily annotated and adapted. She loved hosting dinner parties for friends and family, with whom she had rich

IN MEMORIAM continued on page 17

## Professional Announcements

## Well Deserved

Congratulations to our friend and colleague **Megan C. Carrier** on being recognized with the 2021 Kirby Award. Thank you for setting a consistent example of professionalism, civility, and excellence.



### Megan C. Carrier

Shareholder

603.627.8103

[mcarrier@sheehan.com](mailto:mcarrier@sheehan.com)

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We are honored to share the news that Peter J. Malia, Jr. has been confirmed and sworn in as a Maine District Court judge. Peter was a partner and member of our firm for 25 years.



We wish Judge Malia all the best as a member of the Maine judiciary. He will be an excellent addition to the bench. The firm remains committed to carrying on the office's tradition of serving the legal needs of individuals, businesses, and municipalities in both Maine and New Hampshire.



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## PASTORI | KRANS

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PROUDLY WELCOMES

### Meredith M. Lasna

Meredith is a seasoned litigator, focusing on employment law and commercial litigation.

Prior to joining Pastori | Krans, Meredith practiced law at a large multi-state law firm. Meredith is admitted in New Hampshire, Massachusetts, and Vermont. She graduated from Suffolk University Law School.



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### KEELAN FOREY

Gallagher, Callahan & Gartrell is pleased to welcome Attorney Keelan Forey as an Associate with the firm's litigation team. Keelan's practice focuses on commercial and general litigation defense.



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## JacksonLewis

PORTSMOUTH

## Welcome to the Firm!

### John Prendergast



Jackson Lewis is pleased to welcome John D. Prendergast to the firm. John is of counsel in the Portsmouth, New Hampshire, office. His practice focuses on representing employers in workplace law matters, including litigation, preventive advice and counseling. Focused on labor and employment law since 1958, our 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business.

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### KIRSTEN J. ALLEN

kallen@shaheengordon.com  
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## Shaheen & Gordon Welcomes Kirsten J. Allen

**Attorney Allen joins the firm's Business Law Group.**

Allen will work with business clients on a range of matters, focusing on understanding their challenges and providing thoughtful advice, solutions, and litigation services when needed.

Prior to joining Shaheen & Gordon, Allen was a litigation attorney at another New Hampshire law firm. She also served as a research associate at the University of New Hampshire Institute for Health Policy and Practice and as a legal resident at Vapotherm in Exeter, NH, as well as at the Elliot Health System.

## 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"



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**JANUARY -  
DECEMBER 2022**

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## CONGRATULATIONS!

CATIC is pleased to announce that **Leigh Willey** has joined us as New Hampshire Underwriting Counsel complementing our underwriting counsels throughout New England.

Leigh has almost 20 years of legal experience with a broad and varied legal background, including litigation, complex commercial disputes, corporate law, and real estate.

We are excited to have Leigh, with her vast and diverse experience, join our team to serve our large network of agents and real estate partners.



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## Important Staff Transitions at

*Butenhof & Bomster, PC*  
Attorneys at Law



### Attorney Judith Jones Takes New Role

After 15 dedicated years with the firm, Judith Jones will be taking on a new policy advocacy role with New Hampshire Legal Assistance, building on her strong legacy of working to support greater access to critical services for New Hampshire residents in need of long-term care. Judith will be greatly missed, but we are excited for her and the important work she will be doing for the community. Please join us in wishing her every success in her new endeavor.

### Welcoming Attorney Alisha Cahall

We are proud to announce the addition of Attorney Alisha Cahall who comes to us from her previous position with the Special Education Unit of the NYC Department of Education. Alisha will be practicing in the areas of estate and special needs planning, elder law, and probate and trust administration. Admitted to the state bars of NH, NY, NJ, and FL, she looks forward to becoming actively involved in New Hampshire's legal community.



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cent of tenants facing evictions are going it alone.”

NHLA, a statewide nonprofit law firm that provides free civil legal aid to Granite Staters with low incomes, already utilizes paralegals or “paralegal advocates” as they are referred to, on numerous cases, including unemployment insurance appeals, DHHS (Medicaid, TANF, Food Stamps) appeals, Social Security (SSDI and SSI) appeals, certain immigration proceedings, and others.

One example of a paralegal currently representing clients outside of court is NHLA’s, Abdoul Fofana, who does work on the Energy and Utility Justice Project.

Last winter, his work allowed a man to receive much-needed heating assistance that had been denied by a Community Action Program (CAP) in Ashland.

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

Gordon provided various reasons why representation in court is critical for low-income individuals and for the state’s commitment to broadening the access to justice in the state.

“Non-attorneys appearing in court are

not new,” he said. “We allow police officers to prosecute cases and they’re not required to have one ounce of legal training.”

Unrepresented parties, Gordon explained to the committee, are at a disadvantage when the other party has counsel in cases before the court because they are often not familiar with court rules or procedures.

“And without representation,” he continued, “parties often make unnecessary concessions in order to avoid the court proceedings. And unfortunately, unrepresented parties do not understand the law and how it may apply to them.”

Gordon testified that the financial cost of representation often prevents litigants from receiving proper representation.

“The hourly cost in and of itself may

**“The ‘justice gap’ is a chasm and we ought to seek every opportunity to innovate toward a future in which more people can access the legal help they need.”**

**NHLA Executive Director,  
Sarah Mattson Dustin**

be prohibitive,” he said. “Particularly in family court matters it’s common practice to pay a retainer before an attorney will take on a case. The cost of that retainer is \$3,000 or \$4,000 or maybe more just for them to be represented,” he said.

The bill provides for paralegals who are qualified with a four-year degree or a paraprofessional degree with two years of experience working in the law, to work under an attorney who is insured and subject to the rules of professional conduct in the state.

The bill, which would sunset after two years if it was found to be ineffective, would be piloted in two courts in Manchester and Berlin, two cities with high populations of underrepresented people.

Those earning up to 300 percent of the poverty rate would qualify for the program. This equals \$38,640 for a one-person household, \$51,720 for two people, and \$65,880 for three people, according to the 2021 federal poverty level guidelines.

“There are many capable paralegals out there and I don’t see this as a situation where you’re going to see a lot of people who are non-attorneys out there representing clients,” Gordon said. “It will be under the auspices of an attorney. When I was doing this type of practice, the paralegals prepared the pleadings for me—they did everything except go to court.”

Gordon said he is aware that many of his colleagues may object to the bill because they feel the public will not be well served by people who are not formally trained.

“One thing I can say is that the Bar has known about this problem for 30 years and I’d ask, what remedy have they provided?” he said. “This is not a panacea. I don’t mean to say we can do away with unrepresented clients, but [the bill] can make a dent in it.”

A few states around the country have experimented with licensing paraprofessionals to practice law. For example, Utah launched a Limited Paralegal Practitioner Licensing Program in 2018. Washington State created, and then retired, a Limited License Legal Technicians Program. Arizona offers certification for Certified Legal Document Preparers, who are permitted to draft certain litigation and non-litigation documents.

“HB 1343 is categorically different from the Utah, Washington, and Arizona models,” Mattson Dustin said. “Unlike in those states, HB 1343 does not authorize independent paraprofessional practice.” Instead, [it] simply expands what paraprofessionals can already do in New Hampshire outside of the courtroom. It requires no investment in new state licensing infrastructure, nor development of any system for professional discipline. Instead, HB 1343 leverages the existing landscape of law practice, which is comprehensively regulated by the New Hampshire Supreme Court.

“The ‘justice gap’ is a chasm,” Mattson Dustin said. “And we ought to seek every opportunity to innovate toward a future in which more people can access the legal help they need.”

## Professional Announcements

# NEW DIRECTORS WITH CLEVELAND, WATERS AND BASS, P.A.



### Jeffrey C. Christensen

Jeff joined the firm in January 2014. His practice includes a variety of commercial litigation and real estate matters, including land use and property disputes, zoning and development matters and landlord-tenant issues. In the business field, Jeff’s experience includes commercial, business and employment disputes, as well as bankruptcy matters. During law school and before joining the firm, he worked at Boston College’s Legal Assistance Bureau, the Norfolk County Superior Court and the New Hampshire Bureau of Securities Regulation.

### Cooley A. Arroyo

Cooley joined the firm in July 2014. She is an experienced litigator representing commercial clients in the New Hampshire and federal courts. She focuses her practice on civil litigation, constitutional law and administrative and regulatory matters. She also advises businesses on employment and contractual issues. Cooley previously served as a judicial extern to the Honorable Gary E. Hicks of the New Hampshire Supreme Court and was a member of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law.



### Callan E. Sullivan

Callan joined the firm in 2018 after nearly four years as public defender in Manchester. Callan’s strong litigation experience assists her in representing clients on a variety of litigation matters, including criminal defense, workers’ compensation, personal injury and general civil litigation. Callan has successfully litigated jury and bench trials in New Hampshire’s superior and district courts and appears at the Departments of Labor and Motor Vehicles for administrative hearings. As a student at the University of New Hampshire School of Law, Callan was a Rudman Fellow and also the Phillips-Green Defender Fellow, and served as a judicial extern to the Honorable Judge Jacalyn Colburn at Hillsborough County Superior Court South.



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state attorney present at oral argument.

“[T]he number of minority attorneys in New Hampshire is very, very low. We’re trying to decrease the number of obstacles for attorneys across the border desiring to help New Hampshire’s minority population and this is one way to do that,” Nieves said.

“But it’s limited to the Pro Bono Program, and it would provide, for example, Massachusetts attorneys, with easier access to our New Hampshire court system, so that they can see first hand how well our courts function,” he continued. “Hopefully, this will result in an increased desire to work in New Hampshire, thereby increasing the number of minority attorneys coming into New Hampshire and being available to support our increasing minority population.”

Another Access to Justice Commission member, Robert Dietel, said allowing out-of-state attorneys to take pro bono cases was one of the Commission’s recommendations. How soon it could happen depends on the rules committee, he says, but it could happen sometime early this spring or summer.

“I think the big picture is that there are a few rules that are being considered and all of them are common-sense solutions to have more pro bono solutions,” he said.

### The New Hampshire Bar Foundation

The New Hampshire Bar Foundation has also been working hard to address diversity issues in the state. Last summer the Foundation began a fundraising effort focusing on three key initiatives – the statewide Diversity and Inclusion Project; the Moose on the Loose Teacher’s Guide on Civics Education; and supporting the 603 Legal Aid call center. A recent survey, sent to over 5,000 members of the New Hampshire Bar found that of the 1,725 respondents, 74, or six percent, considered themselves to have a diverse race or ethnicity and the remaining respondents, 1,189, were white.

Mary Tenn, a Foundation Board member who chaired the survey’s working group, says “We have put together a substantive report that will provide a baseline for all stakeholders in the legal system to take actions that can create, over time, a more diverse legal system that reflects New Hampshire’s increasingly diverse population.”

The survey is expected to be distributed in the “very near future,” says NHBA Executive Director George Moore. All of the data will be available on the NHBA website.

One area the survey data pointed to was the issue of recruitment of diverse candidates for positions in New Hampshire’s legal community.

### Firms collaborating on summer internship program

Some firms in the New Hampshire legal community are addressing the recruitment of minorities in the legal field with the creation of a summer internship program at New Hampshire firms for first-year law students, or 1Ls.

Sheehan Phinney attorney, Courtney Herz, has been involved in shaping a 10-week summer internship that will begin this summer. The other firms involved are Sullo-way & Hollis, Orr & Reno, Nixon Peabody, and McLane Middleton.

“Several of us were talking about ways to improve the diversity efforts in the state’s legal community, and one of the things we started talking about was recruitment. In designing our program, one of the places we looked for guidance was to a similar 1L program developed in Maine a few years ago,” she says. “Firms involved in the Maine program were helpful contributors to our plan-

ning.”

The goal of the program, Herz says, is to find students who will contribute to the Diversity, Equity, and Inclusion (DEI) efforts of the firms and the New Hampshire legal community. Each of the firms will hire at least one 1L student. “In recruiting for this program,” she explained, “we’ve reached out to law schools across the country, including UNH, as well as other schools that don’t historically send students to New Hampshire.”

Herz says the firms have received a total of 46 complete applicants for the paid summer internships. Twenty of those applications came from UNH Franklin Pierce School of Law, while others included candidates from Cornell, Howard, Seton Hall, Vermont, Roger Williams, and other law

schools from across the country.

“The thing that each of [the five firms] felt was unique about this was the importance of working cooperatively,” Herz says. “It is going to involve shared programming and shared goals, with the intention of improving our legal community.”

Rekha Chiruvolu, Nixon Peabody’s Chief Diversity, Equity & Inclusion Officer, referred to the program which she has been working on as a “pipeline” for bringing talented attorneys to the state.

“We’re hoping to build a pipeline so that people will decide to stay,” she says. “We’d like to give folks from diverse backgrounds a glimpse of what we’re practicing in New Hampshire.”

The internships would begin, Chiruvolu says, in May 2022. Those chosen will be do-

ing legal work, including research, writing, shadowing attorneys, and learning about various practice groups.

“We hope to show them the variety of work these five firms are working on,” Chiruvolu says. “I’m excited and it shows that the firms can work together.”

Applications have been submitted and interviews with students have been conducted. Offers should go out early-to-mid-February.

Nieves has been involved in this program, as well, and like Herz and Chiruvolu, he says the fact that these firms are working together is unique.

“It’s been great. The firms have worked hard together to give law students exposure to law firms in New Hampshire,” he says. “This is wonderful.”

## Professional Announcements

# NEW ATTORNEYS WITH CLEVELAND, WATERS AND BASS, P.A



### Benjamin F. Lewis

Ben is an associate in the corporate department, focusing his practice on business law, tax law and corporate transactions. Ben advises clients on a wide array of matters including entity formation, mergers and acquisitions, business succession planning, corporate governance, contract drafting and negotiation.

Ben is a member of the American Bar Association, the Greater Concord New Hampshire Chamber of Commerce and the Jewish Federation of New Hampshire, and enjoys golfing, hiking, skiing, traveling and being outdoors with friends and family.

### Valerie A. Weber

Valerie focuses her practice on estate planning, trust and estate administration and real estate transactions. Valerie advises individuals and families to help ensure their estate planning goals are realized and assists families after the death of a loved one in administering probate estates and trusts. On the real estate side, she represents lenders, individuals and businesses in various commercial real estate transactions including acquisitions, sales, financing and title work. Prior to working as an attorney, Valerie worked in banking in California for 10 years, including several years in commercial lending.



### Jacob M. Rhodes

Jacob is an associate working on matters throughout the firm’s practice. As a law student, he interned with Cleveland, Waters and Bass, P.A. Additionally, he represented the University of New Hampshire Franklin Pierce School of Law in the trademark focused Saul Lefkowitz Moot Court Competition.



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enthusiasm and energy.

Rouse says the pair met while working on Boston Main Streets, a network of 20 Boston-area organizations that work with businesses and community members around the city to foster economic growth in commercial districts.

“Gar has a lot of enthusiasm,” Rouse says. “He’s a good, decent fellow.”

Rouse was a member of the Mission Hill Main Street program in the 1980s and met Chiang who served on the board of directors when he was living there.

“He is a consensus builder and that was his role as one of the Directors of Boston Main Streets,” he said. “He brings people together.”

After spending seven years in the performing arts and entertainment industry in New York City, Chiang, who grew up speaking Mandarin, went to work for a Fox News affiliate in China for eight years. After returning to Boston from that job, he became a court interpreter in Massachusetts district courts—working on over 3,000 cases—as well as for then-Mayor, Thomas Menino.

“I had a lot of passion for that job, and I thought ‘this is perfect,’” Chiang says. “It was my basic training for becoming a lawyer.”

Chiang’s decision to become a lawyer grew while working as an interpreter, where he says, at first, he was unclear about a lot of the instructions and motions taking place in court.

“My favorite was ‘motion limited,’” he says, with a laugh. “I wanted to go to law school to be able to learn about these things, and I really got into it.”



Chiang in 2006 interpreting for former Boston Mayor, Thomas Menino. Courtesy Photo

After graduating from law school and becoming a member of the Massachusetts Bar in 2011, Chiang started his own practice. He was later sworn into the New Hampshire Bar in 2017.

As an older attorney, he says his experiences are sometimes less formal than they might be for an attorney in their 20s or 30s. He recalled the day he was sworn in as a member of the New Hampshire Bar.

“I was talking to one of the judges about Social Security, and we were sharing stories,” he said. “That’s not something a young attorney is probably going to do.”

Since then, Chiang has been an active member of the New Hampshire Bar, attending association events and handling multiple cases involving business startups and criminal defense in New Hampshire.

In 2021, he was selected as a member of the Bar Association’s Leadership Academy.

“I always thought I could get a lot out of it [Leadership Academy] but thought I’d be too old,” Chiang says. “I’m having a lot of fun with the younger lawyers.”

At a recent Leadership Academy event with New Hampshire judges and clerks,

that included New Hampshire Supreme Court Chief Justice Gordon MacDonald and Chief Judge of the United States District Court, Landya McCafferty speaking about their careers, Chiang was quick to observe the support that New Hampshire attorneys receive compared to what he has experienced in Massachusetts.

“You don’t get that [support] in Massachusetts,” he says. “As an older lawyer I think I can appreciate this maybe more. In Massachusetts, the support is not there. In New Hampshire, everyone is professional, and I like the fact that it’s a mandatory bar. In Massachusetts, it’s not, and the support is not there.”

**“In Massachusetts, the support is not there. In New Hampshire, everyone is professional, and I like the fact that it’s a mandatory bar. In Massachusetts, it’s not, and the support is not there.”**

When he’s not in court, Chiang spends some of his time digging for oysters and clams, even in the middle of the winter. On a recent day in Barnstable, he said he needed to break through a quarter inch of ice before he could dig.

“The importance of having a wonderful hobby like clamming is that it connects me to all those wonderful things nature has to offer—fresh air, the ocean breeze, our beautiful seacoast, blue sky, sea water, and fresh clams and oysters,” Chiang says. “It’s a good balance to my legal work.”

Paul Richard, chair of Webster First Federal Credit Union’s Board of Directors, met Chiang five years ago and had the opportunity to go clamming with him in January. Chiang is currently a member of the credit union’s supervisory committee.

“Gar took me out and we had a great time,” Richard says, adding that he temporarily lost one of his boots in the mud. “We came away with two dozen oysters though and I look forward to going out there again.”

Richard says Chiang’s attention to detail, witnessed first-hand while working with him at the credit union, as well as his care for people in his community, are two qualities that make him a good lawyer.

“He’s a very sharp guy, very intent, and he can relate to people in Chinatown,” Richard says. “A lot of people come over and can’t speak English and Gar’s there to



Chiang in the cold last month near the clamflats in Barnstable, Massachusetts. Courtesy Photo

help. He always comes across as inquisitive, and he’s very particular. From working with him over the years, I can see why he’s a very good lawyer.”

Rouse also referred to Chiang’s concern for people as one of the qualities that has made him successful.

“He knows how to get along with people,” he says. “[Gar’s] not driven by money. He’s an attorney because he wants to help people, and he’s done a million favors for people. He’d be a good politician if he wanted to be.”

**“I’ve referred cases to him and he’s always able to help. There was a speech I used to give before swearing ins about being a good advocate. That’s what Gar is.”**

**Richard Rouse**

“I’ve referred cases to him and he’s always able to help. There was a speech I used to give before swearing ins about being a good advocate. That’s what Gar is.”

Chris Garner, a New Hampshire attorney, has worked on the opposing side of Chiang on two contested divorce cases involving Asian clients. He says the two worked together to reach an agreement for

**CHIANG continued on page 17**

## LOTHSTEIN GUERRIERO, PLLC

### ‘CARTMAN’ EXONERATED BY NH SUPREME COURT?

In the episode of South Park entitled “The Pandemic Special,” Cartman successfully avoids virtual school attendance through camera spoofing - placing a large photo of himself in front of his webcam and then leaving the room to go make mischief. By now, we all know why he was able to get away with it – in a large group Zoom, due to unstable wi-fi connections, participants go “frozen” all the time. But would Cartman get away with it in a felony prosecution under NH law? Did Cartman falsify the evidence of his school attendance?

In what will almost certainly be the most metaphysical case decision of 2022, even allowing that it’s only February, the NH Supreme Court held that a criminal defendant did not commit falsification of physical evidence by placing a sheet of paper over a surveillance camera to block it from filming a prison assault. (*State v. Gunnip*, 01/28/22). The statute says a person cannot alter, conceal, or remove “any thing” with a purpose to impair its verity or availability in the investigation.

But what is a “thing?” Can it be an abstraction like the “light reflecting into the camera’s lens?” Can it be a “thought” – as in, the unobstructed view that the camera’s designers and installers *intended* it to have? Or must it be an “entity that can be apprehended or known as having existence in space or time as distinguished from what is purely an object of thought?” The Court chose the latter, narrower definition, and thus upheld the lower court’s order setting aside a conviction for falsifying physical evidence.

The NH Supreme Court has spoken: Cartman stands exonerated.

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## In Memoriam from page 11

and meaningful relationships. In addition to cooking, Emily never met a donut she didn't like. An avid reader, she read well over a hundred books a year. She loved animals and enjoyed long daily walks through the woods with her dog, Gracie. Emily also found immense pleasure in travel, photography, as well as annihilating her opponents on the Scrabble board.

In July 2021, Emily was diagnosed with late-stage cancer and lived her last five months primarily at her home overlooking the Connecticut River.

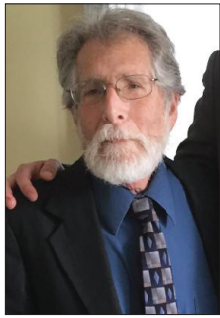
Emily is survived by her husband, Matthew Levine; her sons Henry and Ethan Levine; her sister Andrea Davis, and her nieces and nephews.

In lieu of flowers, donations can be made in her memory to Dana-Farber Cancer Institute or Doctors Without Borders. A private service will be attended by her immediate family. A larger memorial service will be held at a later date.

### Alan Steven Greene

Alan Steven Greene, of Orlando, Florida, and Portsmouth, NH, passed away on December 23, 2021 at home. Alan was born on July 17, 1947, in Chelsea, MA.

His parents were Frances and Samuel Greene. He grew up in the Point of Pines Beach in Revere, MA driving a taxicab for the fam-



ily business. Alan was an ocean lover and enjoyed scuba diving and bike riding in his younger years. He graduated from Revere High School in 1964 where he was known as the "Bob Dylan of Revere High," for his prowess with an acoustic guitar. Alan received a Bachelor of Arts in history from the University of Massachusetts in Amherst. He later received a Juris Doctorate from Suffolk Law School.

Alan first practiced law in Lawrence, Massachusetts, then later in Dover, New Hampshire, where he would open his own practice specializing in family law. He practiced law for 30 years on his own until his son joined him to form Greene and Greene in 2011. During his tenure as an attorney, he served as the chair of the Juvenile Parole Board. Alan was generous with his legal advice and was always readily available to assist those in need. In the 1990s he hosted a local radio show called "Out of Order" with a fellow attorney.

In 1970, he met Mary Buese in Boston, MA and got married in 1977. They had two children, Valerie and David. Both kids shared Alan's passion for justice, and both graduated from law school.

Alan devoted his free time to playing classic guitar, driving vintage Corvettes, reading, and yelling at the tv when something displeased him. In his semi-retirement, Alan became passionate about the care and well-being of several stray cats he rescued with his daughter.

He is survived by his wife, Mary, and his daughter Valerie, and her husband DJ Montigny of Rochester, NH, his son David and his wife Rebecca of Dover, NH, and his two grandchildren, Birk and Winona Montigny of Rochester, NH. Alan is survived by his sister Paula Rappaport of Naples, FL and two nieces and one nephew.

A celebration of life will be held in the spring. In lieu of flowers please send donations to the Pet Alliance of Greater Orlando (407) 351-7722 or the Pope Memorial Humane Society (603) 749-5322.

### Vincent James Iacopino

Vincent James Iacopino, loving husband, father, grandfather, great grandfather, and all-around incredibly awesome person passed away on January 28th.

Known as "Ike" or "Jimmy", he was born in Newark, NJ on September 3, 1930, son of Guiseppe and Concetta Iacopino. He grew up in Irvington, NJ and was a football star at Irvington High School. After high school he joined the Marine Corps, fought in Korea, one of the Chosin Few, and was awarded two purple hearts for his brave service. Upon returning home he attended and graduated from Seton Hall University, and Georgetown School of Law.

While at Georgetown, he met a lovely nurse at a party, Lorraine Angwin, from Concord, NH. They became best friends and married in 1957, raised their 5 children in Irvington, NJ and then Newbury, NH. While in NJ, he was a partner at the law firm of Kein, Scotch, Pollatschek and Iacopino. Jimmy cherished his family time at his shore house teaching his children to sail, swim and fish. He served as Commodore of the Shore Acres Yacht Club. His winter weekends were spent on the ski slopes of New Jersey, Canada and New Hampshire with his five children. There



was nothing he loved better than an interesting conversation on a chairlift. He was an active member of the Over 70's Ski Club for many years.

In 1976, Ike and Lorraine moved their family to Blodgett Landing, in Newbury, NH. Ike took a hiatus from his law practice and ran Ike's general store. He returned to the legal profession when he was appointed Executive Director, and then Chairman of the Public Utilities Commission of NH. He was later appointed Judge of the Newport District Court.

Ike served his community as an EMT in the Newbury Fire Department, as a member of the Kearsarge Regional School Board, and as Newbury Town Moderator.

Ike is predeceased by his 4 siblings and leaves behind his devoted wife Lorraine, his loving children and their spouses: Michael and Carol Iacopino, Mary Katherine and Louis Marzelli, Giacomo "Jack" and Jen Iacopino, Lorrie and Howard Maurer, and Jennifer and Neal Richard, his 16 adoring grandchildren, 11 cherished great grandchildren and many nieces and nephews. Ike treated everyone young or old, as if they were his favorite.

A funeral mass was held at Our Lady of Fatima, 724 Main Street, New London, on Saturday, February 5.

In lieu of flowers, please consider a donation to the Kearsarge Lake Sunapee Food Pantry and the Lake Sunapee Region Visiting Nurse Association.

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

*To submit an obituary for publication, email [news@nhbar.org](mailto:news@nhbar.org). Obituaries may be edited for length and clarity.*

## Chiang from page 16

their clients.

"In one case, both parties were Asian, and it was very helpful to have his [Chiang's] input because of his ability to communicate better with his client and my client," Garner says. "He is very knowledgeable."

While Chiang recognizes the importance of knowledge in practicing law, he says life experience is more important.

And as much as he believes in using his knowledge of the law to help his clients, Chiang says he doesn't like to use the word help.

"There are two things to being a good lawyer," he says. "Reasonable fees and returning people's calls promptly."

He considers himself a general practitioner and compares himself to a family doctor.

"I work with other lawyers, although I'm more like a family physician. If you need a heart transplant, I'll get you the best. Maybe I won't drive to Coös County, but I know someone I can call."

As we finished our Dim Sum amidst the voices and the sound of glasses and pots rattling, a waitress approached our table asking if we wanted dessert, just as Chiang was describing a recent clam dig.

He asked her if she eats oysters, and when she said yes, he asked how many she'd like when he returns from his next trip. He seemed to make a mental note, and one might imagine him making a delivery of oysters the following week.

"I could eat like this every day," he said, adding that he typically eats a lot less for lunch—usually oranges in his car on



Chiang sitting in the conference space at his office in Boston's Chinatown. Photo/Scott Merrill

the way to the courthouse.

Looking around at the people in the restaurant, Chiang reflected on the Chinese culture of which he is intimately immersed.

"I think the Chinese community is different from other Boston communities like the North End. I don't know. Chinese people here still want Chinese food, newspapers. There's more of a sense of community. The best cheese used to be in the North end. Used to be, I don't know. But I know the best Chinese food in Boston is in Chinatown."

And then the conversation turned to how the practice of law allows him to help people in his community.

"I would never say I wish I had done it sooner. I love meeting new people every day," he says. "Like today, I had three cases. A criminal matter, helping someone with an estate, and a probate case. I get to learn a lot. It's the greatest job I've ever had," he says.

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violence prosecutor's caseload, occurring in about 80% of domestic violence criminal cases. While victims of IPV may view recantation as the safest or most prudent course of action, it clearly does not mean the incident never happened or that it was a false report.

According to multiple studies, victims of IPV show high rates of post-traumatic stress disorder (PTSD), depression, and substance misuse or dependence. Research indicates that PTSD is experienced by 51% to 75% of women who are victims of IPV, depending on the instrument used to examine PTSD [Alison M. Nathanson et al., "The Prevalence of Mental Health Disorders in a Community Sample of Female Victims of Intimate Partner Violence, Partner Abuse" vol 3,1 (2012)]. This is considerably higher than victims of other traumatic experiences. Unlike many other traumatic experiences, IPV is created by another human being and not simply caused by fate, destiny, or natural disaster. The trauma of IPV causes deep and complex symptoms because it involves a feeling that another person, specifically a person with whom the victim shares an intimate relationship, deliberately wants to harm or abuse them. Victims often have strong feelings of loss of control, self-blame, vulnerability, hopelessness, and develop an inability to trust other people. The inability to trust can further lead to difficulty maintaining relationships, phobias, and depression. These feelings and manifestations are occurring amid a backdrop of additional stressors, such as: immediate safety concerns, lack of social support, and often concerns related to the victim's children.

While battering or physical violence is

what often leads to court intervention, battering is only one form of IPV. As far back as 1984, the staff at the Domestic Abuse Intervention Project (DAIP) in Duluth, MN began developing curricula for groups of men who batter and victims of domestic violence. They wanted a way to describe battering for victims, offenders, practitioners in the criminal justice system and the general public. Over several months, they convened focus groups of women who had been battered. After listening to accounts of violence, terror, and survival, they documented the most common abusive behaviors or tactics that were used against these women. This resulted in the creation of the "power and control wheel." At the center of the wheel is the root of the violence: the need for power and control. The spokes of the wheel represent the threats, intimidation, or coercion used to instill fear in their partners. The rim represents the physical violence that holds the wheel together. Again, while the physical violence is often what leads to court intervention, this is generally a small portion of what victims endure. A batterer doesn't need to strike a victim every day to maintain power and control, it is the ever-looming threat of physical violence which allows the threats, intimidation, or coercion to maintain the batterer's power and control over the victim. In fact, research has shown that this psychological abuse may be as damaging, if not more damaging, in terms of increased PTSD and depression than physical abuse.

When we are looking at these relationships, we should be cognizant of the batterer's need for power and control. Knowing that root, we can begin to recognize threats, intimidation, and coercion which is occurring. Only when we understand this dynamic can we try to understand the ac-

tions of both the abuser and the victim. Yes, the victim may be misusing drugs or alcohol. However, if we as a society want to help alleviate IPV, we must look at that fact not with a knee jerk "it's the victim's fault" reaction, but instead attempt to understand the dynamics of the relationship. Why is the victim misusing drugs or alcohol? Is the substance misuse associated with PTSD or depression caused by the IPV? Is the victim being encouraged to misuse substances by an abuser so that the abuser may more easily exert power and control over the victim? Is the abuser encouraging the behavior in an effort to harm the credibility of the victim? Many abusers are keenly aware that if charged with domestic violence it may be "my word against yours," and encourage actions which they know will harm the credibility of their victims.

It is also noteworthy that according to Australian-based Tweed Valley Women's Services, "Charm" is one of the five major warning signs in a relationship. Abusive men are often very charming. Of course, this does not mean all charmers are violent; however, charm can camouflage the controlling behavior that is typical of abusive relationships. Abusive men may actually come across as rescuers who are taking care of a woman who is in need. In an incident that gained worldwide attention, Gabrielle Petito was murdered by her intimate partner, Brian Laundrie. Gabby's parents have said in interviews that Laundrie "was very polite and quiet." When Gabby and Brian announced that they were going on a cross country road trip, Gabby's mother felt that she did not need to worry because "he would take care of her."

A few weeks prior to the murder, the couple was stopped by the police in Utah and the incident was documented on the officers' body worn cameras. You can watch the entire one-hour 17-minute video on YouTube (<https://youtu.be/ATZdGqV0jYQ>). In the video, Gabby is clearly upset and distraught. She starts off by telling the first officer "I have really bad OCD" (2:43). When Gabby explains to the officer what is going on, she tells him that she has been building a website and that she has been really stressed, "and he [Brian] doesn't really believe that I could do any of it, so, we just been fighting all morning and he wouldn't let me in the car before" (3:19). Brian is calm and charming. Brian's first words to the same officer are: "she just gets worked up sometimes, and I just really try to distance myself from her" (5:12). In fact, Brian is so calm and charming that the officers initially make the decision to arrest Gabby since she freely admitted that she hit Brian as they were being pulled over (10:12). A second officer asks Gabby something which is initially a bit unintelligible, but appears

to be "have you tried meditation out? Because you tend to have a lot of anxiety and stress... what's his name, Brian? Is he usually pretty patient with you?" (10:30). The second officer then explains to Gabby how his "ex-wife" had lots of anxiety and points out "that's why she is my ex-wife" (10:59).

When you watch that video with the benefit of hindsight, it is easy to see the dynamics of IPV occurring. Brian Laundrie successfully comes across to the officers as a good guy taking care of a woman in need. He does so by employing some of the same courtroom tactics outlined in the recent Bar News Article: he exaggerates Gabby's role in the conflict while minimizing his own, he claims Gabby is suffering from emotional or mental illness, he claims that any physical contact he employed was not unprivileged, and he leads the police to believe that he is the actual victim. Those tactics worked, because the police talk to Gabby about her mental health, and believing that Brian was the victim, gave him a ride to a local hotel room which they secured for him using funds from a local woman's shelter. During the ride to the hotel room, the first officer actually gives Brian advice by telling him that Gabby "seems a lot like my wife" and that she could benefit from "a long hot shower" or "medication," since when the officer's wife "got put on medication, within a week I saw a complete turnaround in her attitude" (1:07:50). Falling for those tactics and failing to recognize IPV had tragic consequences for Gabby Petito. We will never know what Gabby thought following the traffic stop in Utah but based upon the officers' statements and actions documented in the video, it would not be unreasonable for her to come away with the sense that the situation was her fault and that the criminal justice system was not there to support her.

We, as community members, should be aware of the dynamics of IPV and not fall for these courtroom tactics. We should not necessarily take denials or accusations at face value, but instead look at those statements through the lens of understanding the dynamics of IPV relationships. We should note that not all abusive relationships have physical violence, and just because a victim is not being battered it does not mean they are not being abused. As attorneys, we are in a unique position to help end IPV. However, to accomplish this goal we must be intelligent and understanding, reject outdated and misleading stereotypes, and not allow ourselves to be manipulated by charming abusers.

*Steven Endres is an Assistant Merrimack County Attorney with over 20 years of experience working with domestic violence cases. He would like to thank Attorney Alyssa Kuehne for her assistance with this article.*



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

### ELLIE KRUG

Gray Area Thinking®



**60**  
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*We've all heard the phrase, "diversity and inclusion," but what does it actually mean to make a workplace or organization or even our personal lives more diverse and inclusive? Ellen (Ellie) Krug, a civil trial attorney in Cedar Rapids with 100+ trials, transitioned from male to female in 2009 and later became one of the few attorneys nationally to try jury cases in separate genders. The author of *Getting to Ellen: A Memoir about Love, Honesty and Gender Change* (2013), Ellie has trained on diversity and inclusion to court systems, law firms, Fortune 100 corporations, and colleges/universities. A hopeless idealist, Ellie has presented her inclusivity training, Gray Area Thinking®, across the country. In 2016, Advocate Magazine named Ellie one of "25 Legal Advocates Fighting for Trans Rights." She is also a monthly columnist for Lavender Magazine and a weekly radio host on AM950 radio. Her monthly newsletter, The Ripple, can be found at [elliekrug.com](http://elliekrug.com). Ellie presently lives in Minneapolis and is the founder and president of Human Inspiration Works, LLC ([humaninspirationworks.com](http://humaninspirationworks.com)).*

### LISA BRAGANÇA

Thinking of Accepting Bitcoin as Payment?  
What Lawyers Need to Know



**60**  
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*Lisa Bragança helps defrauded investors recover losses and represents individuals and firms in federal and state financial regulatory investigations. She served as a Branch Chief in the Division of Enforcement of the Chicago Office of the Securities & Exchange Commission (SEC), where she handled investigations of accounting fraud, Ponzi schemes, insider trading, churning of investor accounts, and unsuitable investments. Since leaving the SEC, Lisa has helped recover millions of dollars of investment losses in court and in FINRA arbitrations. She has represented individuals and entities in numerous investigations by the SEC and other regulators into cryptocurrencies and token offerings, insider trading, financial fraud by public companies, and other alleged misconduct. Recently she served as a testifying expert on insider trading law. Lisa also writes and speaks about recovering investment losses, digital coin regulation, securities regulation, elder financial exploitation, and behavioral finance.*

### PATRICK JAICOMO

The Past, Present, & Future  
of Qualified Immunity



**60**  
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*Patrick Jaicomo is an attorney with the Institute for Justice and one of the leaders of IJ's Project on Immunity and Accountability. Through the project, Patrick works to promote judicial engagement and ensure that government officials are held to account when they violate individuals' constitutional rights.*

*In November 2020, Patrick argued *Brownback v. King* before the U.S. Supreme Court. That case, which involves the brutal choking and beating of an innocent college student by law enforcement officers working as members of a state-federal task force, will now return to the Sixth Circuit. There, the court will decide whether two claims brought in the same lawsuit can cancel each other out, simply because one of the claims was brought against the federal government. Patrick has litigated accountability issues — including qualified immunity and the restriction of constitutional claims against federal workers — across the country and at every level of the federal court system.*

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- President's Awards & GEC Hollman Award Presentation
- CLE – The Past, Present, and Future of Qualified Immunity (Patrick Jaicomo)
- Pro Bono Awards Presentation
- Lunch Break, Exhibitor Showcase
- CLE – Gray Area Thinking (Ellie Krug)
- CLE – Unconventional Responses to Unique Catastrophes: Tailoring the Law to Meet the Challenges (Kenneth R. Feinberg)
- Closing Remarks
- Post-Event Virtual Tea & Chocolate Pairing (*registration closed*)

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## Effective and Persuasive Presentation of Damages in a Personal Injury Case

Thursday, May 5, 2022 • 9:00 a.m. - 4:00 p.m.  
360 NHCLE min., incl. 30 min. ethics/prof.

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, PC, Manchester  
**Paul W. Chant**, Cooper, Cargill, Chant, PA, 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, PA, Manchester



## Consumer Bankruptcy

*A New Hampshire Overview*

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

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 Judge Hon. Bruce Harwood.

### Faculty

**Edmond J. Ford**, Program Chair/CLE Committee Member, Ford, McDonald, McPartlin & Borden, PA, 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, PA, Portsmouth  
**Eleanor Wm. Dahar**, Dahar Professional Association, Manchester  
**Ann Marie Dirs**, Office of the US Trustee, Concord  
**William M. Gillen**, Law Offices of William M. Gillen, Manchester  
**Lawrence P. Sumski**, Sumski Law Office, Manchester



## Intellectual Property for the General Practitioner

Wednesday, May 18, 2022 • 9:00 a.m. - 1:15 p.m.  
225 NHCLE min., incl. 30 min. ethics/prof.

This half-day seminar is designed to provide an overview of the major areas of IP law, addressing patent law; trade secret law; trademark law; copyright law; contractual issues relating to intellectual property, including licensing agreements and insurance coverage for intellectual property.

### Faculty

**Arnold Rosenblatt**, Program Chair/CLE Committee Member, Cook, Little, Rosenblatt & Manson, pllc, Manchester  
**Matthew H. Benson**, Cook, Little, Rosenblatt & Manson, pllc, Manchester  
**Daniel J. Bourque**, Preti, Flaherty, Beliveau & Pachios, PLLP, Concord  
**Doreen F. Connor**, Primmer Piper Eggleston & Cramer, PC, Manchester  
**Steven J. Grossman**, Grossman, Tucker, Perreault & Pfleger, PLLC, Manchester



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**What Lindsay Lohan Teaches Lawyers About Substance Abuse**  
*Original Program Date-December 20, 2021 – 60 NHCLE ethics/prof. min.*

Ms. Lohan has had a checkered career...which has been plagued by substance abuse. Believe it or not, there are a lot of lessons that lawyers could learn from her story. Come listen to the tales of a Hollywood "legend" and learn lessons that could help lawyers avoid the perils of substance abuse.

**Legal Tech for the Seasoned Attorney**  
*Original Program Date-December 28, 2021 – 60 NHCLE min.*

For many in the generation of lawyers who didn't grow up with technology, the new tools and procedures being thrust upon us are a constant source of discomfort and irritation. What does a senior lawyer need to know about the ethics rules changes, and how do we uphold our supervisory obligations under ROPC 5.1 and 5.3? What (simple and inexpensive) tools are available to help lawyers discharge their duty to use "reasonable efforts" to protect client data? How can a lawyer (who may not consider him/herself to be tech savvy) learn to be more self-reliant and confident about the technology tools we simply cannot avoid while practicing law?

**The Status of Estate Planning Following the Passage of the Build Back Better Legislation**  
*Original Program Date-January 13, 2022 – 60 NHCLE min.*

This one-hour Learn@Lunch program was originally planned to discuss the status of trust and estate planning subsequent to the passage of the Build Back Better legislation. Given that the bill passed the House leaving out key provisions affecting trust and estate matters, and the bill has stalled in the Senate, the seminar instead turned its focus to a discussion of where things stand now in the trust and estate realm.

**Intellectual Property & the Creative Client**  
*Original Program Date-January 27, 2022 – 90 NHCLE 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.

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

## Writing Corner: Prime and Prepare Through Legal Writing

*Anna Elbroch, Risa Evans, and Melissa Christiansen, Professors of Legal Writing at UNH Franklin Pierce School of Law contributed to the article.*

We have just finished up the fall term at the law school. 1Ls have momentarily completed their inaugural term and received their first grades of their law school career. Putting aside their feelings about their grades, in legal writing, we hope students have taken away at least these three principles for written work: (1) prime and prepare your reader, by signaling to your reader what is to come; (2) always fully explain the relevant law before you apply it; and (3) show your work, i.e., support every conclusion by presenting a complete, coherent analysis of how the law applies to the facts.

These principles are core to legal writing in law school and beyond. They also permeate other parts of our lives. For example, as I take on the frightening task of accompanying my 15-year-old on her 50 hours of required driving, I use these principles: I signal to her everything that could/will happen when driving: road signs, traffic signals, lane indicators, other drivers, and the instruments inside the car. I tell her the rules of the road, and as I drive with her, explain my actions and decisions, illustrating how the rules work in the real world, by applying them to the situations we encounter. Only after this explanation is she allowed behind the wheel, where she can “apply” the rules of the road to the re-

alities of the road. Okay, maybe only a lawyer would use this approach to teach her teen to drive (too much eye rolling), but these principles serve lawyers well—on the road, on the page, and beyond.

In legal writing, these principles allow writers to build their argument—to bring the reader step by step through the analysis. First, the topic is introduced. Then, the explanation of the law provides the foundation for the application.

With respect to the importance of priming a reader for a legal analysis by using clear topic sentences and fully explaining the relevant law, consider the following three examples:

**Example A:** In *State v. Ruff*, the court finds that someone who does not own the property is authorized to remove an unwanted guest from that property. (Citations Omitted.)

In this example, the writer provides a holding without context. We don’t know what we are supposed to learn from this: are we concerned about the property? the owner? the non-owner? We also don’t know what kind of case it was or how the court came to its conclusion.

**Example B:** In *State v. Ruff*, the defendant was charged with criminal trespass after entering a home “unannounced and uninvited.” The court held that the property owner’s son, a lawful resident, was an “authorized person” under the criminal trespass statute. (Citations Omitted.)

We now know a little more about what happened in the *Ruff* case but neither Ex-

ample A nor B introduce the topic or rule the writer will explain. The audience is left to figure it out on their own—thereby missing out on an opportunity to show and direct the analysis.

**Example C:** Lawful residents have authority to remove unwanted guests from the property where they reside. See *State v. Ruff*, 155 N.H. 536, 540 (2007). For example, in *State v. Ruff*, the defendant was charged with criminal trespass for entering a home “unannounced and uninvited.” Emphasizing the plain meaning of “authorized” and the statutory scheme proscribing intruders, the court held that the property owner’s son was an “authorized person” under the criminal trespass statute. The son was a lawful resident who referred to the home and its contents as his own without objection from the owner, and therefore, could verbally and physically bar the defendant from the property in which he lives. (Citations Omitted.)

Example C primes the reader using a clear topic sentence and introduction to the relevant case law and lays a detailed foundation for the application to come. Now, our reader will be ready for—and be persuaded by—our analysis:

Here, the babysitter, who is not a lawful resident of the property does not have the authority under the criminal trespass statute to remove our client. Although the babysitter requested our client to leave the property and called the police when our client remained, the babysitter is neither an owner nor a resident of the property. In-

stead, the babysitter only has a temporary position with limited responsibility in the house and no ownership of the home or its contents. She does not share the same status or authority as the legal resident in *Ruff* who resided on the property and claimed its contents without objection from the owner. Thus, the babysitter is not an authorized person who could require our client to leave the property under the criminal trespass statute. (Citations Omitted.)

The explanation paragraph (Example C) starts with a clear topic/rule signaling for the reader what is to come. The illustration of *Ruff* has enough detail to clearly explain the rule and prepare the reader for the application of the rule. The application paragraph sets forth a conclusion, and then supports the conclusion by analyzing the “fit” between the law and the facts. Without the *Ruff* foundation, the comparison would be ineffective and the analysis incomplete.

Incorporating these three principles not only into legal arguments and documents, but into daily life as well, helps us to be successful. Whether we are teaching our teen to drive or writing a motion for the court, we prepare our audience with the principles every 1L should now know: signal what is to come, explain the law before applying it, and show the analysis.

Weigh in with your thoughts and suggestions here: <https://forms.gle/oQeStq-Wo9LigkXdA6>

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## The New Hampshire Financial Responsibility Act: An Amendment That Reaches Across Borders

By Bailey Robbins

Financial responsibility statutes govern automobile insurance coverage in each state. The purpose of such statutes is to protect the public and provide compensation for innocent victims of negligence on the roadways. In the vast majority of states, financial responsibility laws are essentially compulsory insurance statutes. In other words, most states require that an individual must obtain automobile insurance in order to register a vehicle in that state. In fact, New Hampshire is the only state in which automobile insurance is currently not required by statute. *See* 1 Auto. Liability Ins. 4th § 2:9 (2021). New Hampshire does not mandate insurance, if a consumer purchases insurance in this state, the New Hampshire Financial Responsibility requires that each policy contain specific minimum requirements. *See* RSA 264.

Since at least 1958, it has been clear that the New Hampshire Financial Re-



sponsibility Act does not apply to accidents that occur outside of New Hampshire. However, a July 2021 amendment to RSA 264:18 appears to have changed that rule and broadened the reach of the statute.

Prior to the amendment, the statute read as follows: “A motor vehicle liability policy, except as to coverage providing protection against uninsured motor vehicles required by RSA 264:14 shall be subject, *with respect to accidents occurring in New Hampshire* and within limits of liability required by this chapter, to the following provisions.” The statute then provides a list of additional provisions which automobile policies issued in this state must contain.

In 1958, the United States District Court of New Hampshire issued an opinion in which it confirmed that the meaning of the “*with respect to accidents occurring in New Hampshire*” language limits the Financial Responsibility Act’s requirements to accidents in New Hampshire. *See Sierra v. Rompney*, 165 F. Supp. 483 (D.N.H. 1958). In that case, the insured driver was in a car accident in Massachusetts, while driving a new vehicle that had not yet been insured. The Court suggested that the requirements of the Financial Responsibility Act may have aided the driver in obtain-

ing coverage but concluded that, “by its express terms its application [the Financial Responsibility Act] is limited to accidents occurring within the state.” The *Sierra* Court thus declined to extend the protections and requirements of the Act to an accident occurring outside New Hampshire’s borders.

Insurance practitioners in this State have long relied on the language of the statute and *Sierra* to argue that the Act does not extend to accidents that occur outside New Hampshire. Effective July 24, 2021, however, the legislature amended the statute to remove the “with respect to accidents occurring in New Hampshire” language. The legislature has provided little commentary on this amendment, noting only that it was made upon request of the insurance department and that its intent is to clarify certain responsibilities of the insurance department.

New Hampshire courts have not yet had the opportunity to comment on the scope of this July 2021 amendment. It appears, however, that the practical effect of the amendment is to expand the Financial Responsibility Act’s requirements to accidents that occur outside New Hampshire. The amendment further suggests that *Sierra* is likely no longer good law.

Practically, it is important for insurance practitioners to be aware of this amendment and to keep its implications in mind when dealing with an accident that has occurred outside our borders. More broadly, one must wonder whether this amendment raises any conflict of laws issues. There is no clear majority rule in the insurance field with respect to which state’s law should apply where multiple states’ insurance laws may be implicated. *See* 110 A.L.R. 5th 465 (2003). Some states apply the law of the state where the policy was made, others have applied the law of the state where the accident occurred, while others have applied the law of the state where the vehicle was garaged. *See id.* Though New Hampshire has not dealt directly with the applicability of the Financial Responsibility Act, in light of the amendment, our courts would likely apply the Act to accidents involving New Hampshire residents with New Hampshire policies even if the accident occurs outside New Hampshire. Courts in this state have adopted the “most significant relationship” test to determine which state’s laws govern a contract. *See Glowski v. Allstate Ins. Co.*, 134 N.H. 196 (1991). With respect to

ACT continued on page 26

## Title Insurance and the Risky Business of Renewable Energy Developments

By Leigh S. Willey

New Hampshire is home to the nation’s first wind farm, built on the northside of Crotched Mountain in 1980. As of 2020, there are five wind farms operating in the Granite State. According to the U.S. Energy Information Administration, approximately 20% of New Hampshire’s electricity generation comes from renewable resources, including wind and solar farms. Fluctuating oil and gas prices, government-enacted renewable energy policies and mandates, tax incentives, as well as mounting pressure from individuals and businesses concerned about climate change are just some of the many factors driving renewable energy projects. Correspondingly, the need for real estate suitable to support



these energy projects has become increasingly apparent. This article highlights a handful of the issues title insurance companies will consider when insuring renewable energy developments.

Renewable energy developments are risky ventures that involve complex, multi-layered ownership and financing structures. Title insurance is one of several tools available to developers and lenders to protect their investments against the risks posed by potential title defects. As a rule, developers and lenders should obtain a preliminary title report as soon as the location of the project is identified. A comprehensive survey containing all relevant ownership information and accurately depicting encumbrances and physical conditions of the property is also critical to the underwriting process. Extra care should be taken when analyzing whether proposed development could trigger changes in use or violate applicable zoning regulations, existing covenants and restrictions, or conservation easements placed on the property. Failure to identify and address title is-

such as use restrictions, existing leases, easements, mineral, water, timber rights, or other interests at the outset may complicate the underwriting process, affect insurability, cause significant delays and unanticipated costs, or derail the project completely.

Large scale renewable energy developments typically require expansive tracts of undeveloped land in mostly rural areas to produce and transmit the power generated. Some projects involve multiple properties and multiple owners. If so, title to each parcel must be fully examined. New leases and easement agreements with the landowners may be required for access to the properties that comprise the project. Existing easements may need to be modified to allow access to the site for construction, installation, and maintenance of the project’s facilities and equipment. Existing mortgages and other liens may need to be negotiated, discharged, or subordinated.

If the project covers more than one parcel of land, the survey should verify that the parcels are contiguous, *i.e.*, there are no gaps

or overlaps between the properties. Contiguity is especially important because a series of transmission lines is used to connect the windmills or solar panels to substations and eventually, the power grid. And, in the case of wind farms, commercial turbines can reach up to 350 feet each. There may be situations in which the tower is on one parcel while the turbines extend onto another.

The survey should also confirm there is both legal access to the project site, as well as access to and between the project’s facilities and equipment, no matter their location. Wind farms often have access issues. Establishing access may involve use of public and private roads, as well as easements and rights of way the developer has secured from surrounding landowners. Title to each of the surrounding properties must be cleared before insuring these easements and rights of way.

Mineral rights may also present a challenge to renewable energy projects. The general rule of real property is that the property

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## Business Interruption Coverage Cases Still Trending Toward Insurers

By Tamara Holtslag

In the February 2021 edition of the New Hampshire *Bar News*, I addressed the substantial number of insurance coverage actions that had been filed by businessowners across the country in the wake of Covid-19.



Since that article, *Businesses Largely Without First Party Insurance Coverage for Losses on Account of Pandemic, Despite Coverage Lawsuits*, the number of insurance cases seeking such coverage has surpassed 2000 in the state and federal courts, and the judicial decisions have consistently tended to break in favor of insurers. This article will provide a brief overview of these cases and decisions, which amount to an increasingly growing body of insurance coverage authority nationally.

UPENN Law has faithfully been publishing a “tracker” for property casualty insurance coverage litigation related to the Covid-19 pandemic. This is an excellent resource for attorneys following these precedential filings and decisions. In February of 2021, at the time of my earlier article in the *Bar News*, approximately 1,467 such cases had been filed across the United States. As of this writ-

ing, the UPENN tracker notes that 2,218 cases have been filed in total and it appears that over 1,300 of those cases were filed in the federal courts. After initial spikes in case filings in 2020 and in early 2021, the filings have dropped off and leveled out; but it is the consistency of the courts’ decisions nationwide at the state, federal, and appellate levels that makes it noteworthy and has been even called a “juggernaut” of legal victories for insurers.

### What Kind of Insurance Coverage is Being Sought?

Businesses of varying types, from small dental offices to fast-food chains, diners, restaurants, gyms, fitness studios, wedding planners, casinos, universities, baseball leagues, and everything in between, have sought coverage for their business losses due to the presence of Covid-19 and the resulting decrease in business activity and revenues. By and large, the complaints filed against insurers allege they purchased property insurance for business losses, and that they are entitled to business interruption coverage due to the presence of Covid-19 at their places of business, as well as governmental orders of civil authority that restricted their ability to do business and generate income.

The insurance policies that are the subject of these coverage suits most often contain standard-form policy language, which historically (pre-Covid) was designed to indemnify loss or damage to property, such as a storm that ruins a res-

taurant’s signage, or a fire that results in damage to a store’s structure or inventory. Unlike those examples, the insureds here are trying to argue that the presence of the Covid-19 virus caused damage to their property; but the courts are resoundingly disagreeing. In so holding, the courts reason that a key element in property insurance policies is “direct physical loss,” to property, and that the presence of the coronavirus does not cause damage to property.

### What Makes These Cases Ripe For Summary Disposition?

Insurance coverage questions are, in the absence of any “ambiguity” in the policy language, usually questions of law for a court to resolve. From state to state, and court to court, there are certain tenets of insurance law that are practically universal. Insureds have the initial burden of establishing their entitlement to coverage under an insurance policy. Courts are bound to construe insurance contracts as a whole, in accordance with the terms and conditions of the policies; and the courts are to construe the policy terms according to their plain, ordinary, and often popular meaning. The courts are charged with enforcing the insurance contract as written, and are not to re-write the policies. Simply because two parties disagree of the interpretation of an insurance policy provision does not necessarily make the policy language ambiguous. Absent ambiguity, no discovery is usually necessary and sum-

mary disposition of the insurance coverage issues is warranted.

### Some Statistics on the Filings and Trends in Reasoning

Only two such cases are pending in New Hampshire, which are: *Schleicher and Stebbins Hotels LLC v Starr Surplus Lines*, (Case No. 217-2020-CV-00309), where an amended complaint was filed in state court in January 2022; and *The International Association of Privacy Professionals, Inc. v. Houston Casualty Co.* (Case No. 1:21-cv-00970), which was filed in the NH District Court. The overwhelmingly consistent way in which these cases are being decided across the country, in which the courts are interpreting mostly standard-form insurance contract language, may forecast the outcome of the New Hampshire cases, however.

Vermont appears to have only two cases of this type. One was swiftly dismissed: *Associates in Periodontics, PLC v. The Cincinnati Ins. Co.*, (Case No. 2:20-cv-00171). The other, *Huntington Ingalls Industries, Inc. et al. v. Ace American Ins. Co.* (Case No. 2021-173), was recently heard by the Supreme Court of Vermont, which was only the second state high court to address these issues, after the Massachusetts Supreme Judicial Court. In Rhode Island District Court, five cases have been filed; and of those cases, two were voluntarily dismissed, a motion to dismiss was

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insurance contracts, our courts have found that the state which is the “principal location of the insured risk” bears the most significant relationship to the contract. *See id.*

Though these issues have yet to come to fruition, I suspect that New Hampshire courts will be charged with interpreting this amendment in the near future. Our courts will ultimately have to clarify whether this amendment does in fact permit New Hampshire’s Financial Responsibility Act to reach across New Hampshire’s borders.

*Bailey Robbins is an attorney at Primmer Piper Eggleston and Cramer in Manchester, New Hampshire. Bailey specializes in insurance coverage and defense.*

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denied in another, and the others remain pending. In Massachusetts District Court, thirty cases have been filed. Of those cases, nine have been voluntarily dismissed; the insurers’ motion for summary judgment was granted in three of them; and nine others are reported as dismissed. No such cases have been filed in Maine.

In the referenced Vermont case, *Associates in Periodontics, PLC v. The Cincinnati Ins. Co.*, a dental practice sought coverage under an “all risk” insurance policy. The insurer argued that the plaintiff’s complaint failed to establish that it sustained any losses attributable to direct physical loss or damage to property, as required for coverage under the plain language of the policy; and that the insured failed to allege that the state of VT’s orders or the virus effected any physical change to Plaintiff’s property or premises. Counsel for the insurer also argued that, by contrast, the virus could be removed by cleaning, and cited the CDC guidelines in support of its argument that even if Covid-19 was present on the premises, it does not threaten the structures covered by property insurance, and its presence can be eliminated with cleaners. The virus, in short, poses a threat to persons, not physical damage to property and structures. The Court agreed.

The outcome of the other Vermont case, *Huntington Ingalls Industries, Inc. et al.*, is certainly one to watch for New Hampshire practitioners, particularly where policyholder counsel hope that the Vermont high court will look to New Hampshire precedent given the lack of

Vermont precedent on this topic. In particular, policyholder counsel opine that the Vermont Supreme Court should look to *Mellin v. Northern Security Insurance Company, Inc.*, 167 N.H. 544, where the New Hampshire Supreme Court held that a homeowner under its insurance policy was not required to demonstrate a “tangible physical alteration” to their apartment unit to demonstrate a “physical loss” under Coverage A; but must establish a “distinct and demonstrable alteration to the unit.”

In the noteworthy *Massachusetts case of Verveine Corp. dba Coppa et al. v. Strathmore Ins. Co. et al.* (Case No. 2021-P-0231), which was transferred to its state high court (the Supreme Judicial Court) sua sponte last fall and heard by the SJC on January 6, 2022, the arguments were strikingly similar against a finding of coverage. During oral argument, the justices seemed to question why the court should depart from the hundreds of rulings of other courts nationally. Counsel for the insurer argued, consistent with so many litigants across the US, that the plain and unambiguous language of the policy requires direct physical loss or damage to property, and where the business (and its floors, tables, etc.) can be readily cleaned or disinfected, there is no covered property loss. The SJC has yet to rule.

More broadly, with respect to the federal court filings, reportedly over 700 have been dismissed; only one has resulted in the insurer’s motion for judgment on the pleadings denied; and about 118 resulted in summary judgment or judgment on the pleadings for the insurer. In October of 2021, the first jury verdict of this kind was rendered in favor of the insurer in *K.C. Hopps, Ltd. v. Cincinnati Ins. Co.*, (Case No. 4:20-cv-00437), which was a Western District of Missouri case.

In terms of the circuit courts, it is notable that the 7th U.S. Circuit Court of Appeals recently ruled on this issue in six different pending cases, denying business-income interruption coverage for Covid-19-related losses. In so doing, the 7th Circuit joined the 2nd, 6th, 8th, 9th, 10th, and 11th Circuits in ruling that restrictions on the use of property, “unaccompanied by any physical alteration,” do not trigger coverage under such policies.

**Summary**

The judicial decisions out of the various courts are consistently (with relatively rare exception) the same: neither the presence of the Covid-19 virus at a business, nor any governmental action limiting in some fashion the business enterprise, does

not meet the property policy requirement of “direct physical loss” to property. Support for these conclusions are found in the policies themselves, which require “physical” loss, and in esteemed insurance treatises such as Couch on Insurance, *See, e.g., 10A Couch on Ins.* § 148:46 (“The requirement that the loss be ‘physical,’ given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.”) Many of the decisions note one way or the other that an item or structure that merely needs to be cleaned has not suffered a “loss” that qualifies as both “direct” and “physical” as required by these types of property insurance policies. Commercial property policies do not cover or insure a business’s operations; it is the building and the personal property in or on the building that is covered.

*Tamara is a partner at Peabody & Arnold LLP who regularly advises clients and litigates insurance coverage and other civil matters in the Massachusetts and New Hampshire courts. She is the founder and Chair of the NHBA’s Insurance Law Section.*

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owner owns both the surface estate and the mineral estate. In broad terms, the surface estate includes the right to occupy and make use of the property. The mineral estate is the right to explore for and extract oil, gas, and other natural resources underneath the surface of the property.

It is not uncommon for a property owner to sever the mineral estate from the surface estate by selling or leasing the mineral rights to a third party. For obvious reasons, most mineral rights conveyances also expressly grant surface access rights to the mineral estate holder and prohibit the surface estate owner from developing the property surface or taking action that may potentially interfere with the mineral estate holder’s rights in the mineral estate. From a title insurance perspective, affirmative coverage, usually by endorsement to the title policy, may be available to insure the developer and lender against damages caused by the mineral estate holder’s right to use the surface of the prop-

erty. But if a mineral rights holder refuses to terminate or limit its surface rights or enter into a co-existence agreement with the developer, title insurance may be unavailable, putting the entire project in jeopardy.

Generally, a standard owner’s title insurance policy insures fee ownership of land and, in some cases, certain site improvements if characterized as real property or fixtures. A leasehold owner’s policy insures the right of possession for a fixed number of years, as set forth in the lease. A lender’s policy protects the priority, validity, and enforceability of the mortgage recorded against the property. Under certain circumstances, title insurance may also cover easements. But a traditional title insurance policy does not insure either title to or liens against personal property, such as the energy collection systems, transmission lines, or switches, regardless of their role or financial importance to the project. Also, such policies do not usually cover claims that arise from improvements made after the policy date or that affect less than all the insured tracts.

In 2012, in response to the growth of renewable energy projects, the American Land Title Association (ALTA), created a new series of endorsements. The ALTA Series 36 (Energy Project) Endorsements address certain issues common to energy projects by: (i) providing affirmative coverage to easement interests when easements are used instead of leases; (ii) expanding coverage to account for loss to an integrated project where a covered claim might affect less than all of the insured tracts; (iii) extending coverage for losses arising from improvements constructed after the policy date; (iv) calculating losses under a covered claim to include “Severable Improvements,” which are improvements that are considered a functional part of an “Electric Facility,” but are characterized as personal property (e.g., turbines, towers, etc.); and (v) including an “Additional Items of Loss” policy section designed specifically for renewable energy projects.

Having insurable title to the real estate and property interests is necessary to the successful development of a renewable energy project. The underwriting process often takes significantly longer than brick-and-mortar commercial transactions because there are so many potential property interests that must be analyzed and addressed. A single title defect could prevent an otherwise viable project from leaving the starting gate.

*Leigh S. Willey, Esquire is New Hampshire Underwriting Counsel at CATIC. She can be reached at 866-595-5559 or lwilley@catic.com.*

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# Incentive Plans of Pass-through Entities: Tax Traps for the Unwary

By Amy E. Drake and John E. Rich, Jr.



Drake



Rich

In order to attract, retain, and incentivize key employees, owners of pass-through entities, including LLCs taxed as partnership and S corporations, frequently use equity-based compensation awards providing benefits based directly or indirectly on the appreciation in the value of the entity. This article will describe some (but not all) of the major tax traps that attorneys should be aware of when clients ask them to draft equity-based compensation programs and awards for their employees.

## Unvested Interests and Section 83(b) Elections

The recipient of a compensatory equity interest is required to include the fair market value of the equity interest (less any amount paid for such interest) in gross income under IRC Section 83(a). However, to the extent “unvested” – meaning the interest is both non-transferable and subject to a “substantial risk of forfeiture” – then no income

inclusion is required until the first taxable year in which either restriction lapses. An example of a “substantial risk of forfeiture” is a requirement that the equity interest be forfeited if the recipient does not remain employed for a certain period of time. If the deferral of tax is desired, counsel needs to ensure that document provisions clearly prohibit any transferability and include a substantial risk of forfeiture.

Because of the potential increase in value between the date of grant and the vesting date, it is advantageous for recipients of unvested equity interests to file an “83(b) election,” which allows the recipient to include the value of the interest in gross income in the year of grant, rather than in a later year when the value may be much greater. 83(b) elections must be timely filed with the IRS no later than 30 days after the date of grant. There is no relief for a missed or late 83(b) election.

## S Corporation “One Class of Stock” Requirement

Under IRS Section 1361(b)(1)(C), an S corporation can only have one class of stock. While S corporations are permitted to issue multiple classes of equity that confer different voting rights, in general, all shares of an S corporation must have identical rights to the corporation’s distribution and liquidation proceeds. “Profits interests” that entitle the recipient to a share of the partnership’s future profits and appreciation (but have no current liquidation value) are an attractive option frequently used by enti-

ties taxed as partnerships as profits interests are not taxable upon receipt. However, any attempt to issue profits interests from an S corporation will likely result in a “second class of stock” in violation of IRC Section 1361(b)(1)(C). The result is termination of the corporation’s S election resulting in taxation as a C corporation.

Beyond the obvious issue of granting profits interests, attorneys should carefully analyze any arrangements in an S corporation’s governing documents and other binding agreements relating to distribution and liquidating proceeds that might give rise to a second class of stock.

## Loss of Employee Status for Profits Interest Recipients

As noted above, “profits interests” are a popular type of equity compensation. Employees of an entity taxed as a partnership who receive a profits interest (or any ownership interest in an entity taxed as a partnership) can no longer be treated as employees of the partnership due to their newfound “partner” status. IRS rules prohibit a partner from being treated as an employee; rather, compensation received by profits interest holders is treated as “guaranteed payments” by the partnership, requiring the payments of quarterly estimated taxes and which are subject to 15.3% self-employment tax (SECA), essentially requiring the profits interest holder to pay the “employer half” of payroll taxes. Perhaps more importantly, if the recipient of an unvested profits interest continues to be treated as an employee,

the risk is that the profits interest may not satisfy the Safe Harbor rules set forth in IRS Revenue Procedure 2001-43, in which case the profits interest might be fully taxable upon vesting at the then fair market value. In addition, partners are unable to participate in Section 125 cafeteria plans, with their participation causing income inclusion on benefits paid and potentially disqualifying the 125 plan entirely.

## Tax Code Section 409A

The IRC Section 409A rules governing the taxation of deferred compensation must be considered in drafting any non-qualified deferred compensation arrangement irrespective of whether the benefit is calculated based on equity appreciation. Key elements of IRC 409A compliance are payment only upon specified events such as separation from service, death, or change in control or a fixed date, and no discretion on the part of the employer or employee as to when payments are made. The adverse tax consequences of 409A noncompliance are substantial. Current taxation is required in the year of the 409A failure on amounts deferred and for all prior years if there was no substantial risk of forfeiture and the amounts were previously untaxed. Interest on unpaid taxes and a 20% penalty are also imposed on the employee.

## Beware of ERISA

Although not a part of the Tax Code,

INCENTIVE PLANS *continued on page 30*

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# House Bill 1381 and Senate Bills 480 and 2387—The New Section 199A?

By John M. Cunningham

## Introduction

To individuals and certain trusts (“qualified taxpayers”) that own interests in pass-through businesses, Internal Revenue Code Section 199A provides an annual federal income tax deduction (referred to here as the QBI deduction) of up to 20% of their respective shares of the “qualified business income” (meaning, for most such businesses, their net business income). Pass-through businesses comprise

- State-law sole proprietorships, and
- LLCs and state-law corporations taxable as sole proprietorships, S corporations or partnerships.

All New Hampshire business lawyers should have at least a basic understanding of the QBI deduction, since, for most of their business owner clients, the deduction will be tremendously important. And all New Hampshire lawyers who form LLCs should be expert with regard to the QBI deduction or should work with others who possess this expertise, since QBI deduction expertise is indispensable in drafting operating agreements for both single-member and multi-member LLCs.



In particular, all of these lawyers should have at least a basic understanding of three bills now pending in Congress that may have a major impact on Section 199A in 2022 or thereafter—namely, House Bill 1381 and Senate Bills 480 and 2387.

## S. 480 and H.R. 1381

Section 199A(i) as presently in effect provides that Section 199A will expire on December 31, 2025. However, on February 25, 2021, Senate Finance Committee member Steve Daines, R-Mont., and House Ways and Means Committee member Jason Smith, R-Mo., with Democratic support, introduced two identical bills (respectively, S. 480 and H.R. 1381), each of which is entitled the “Main Street Tax Certainty Act.” These bills would extend Section 199A indefinitely.

In my view, both of the above bills are likely to pass and to be enacted into law. This may happen even in the present Senate and House sessions, but certainly before the end of 2025. The reason is not only that both political parties support these bills but also that any failure to extend the term of Section 199A will have a major adverse effect on qualified taxpayers. This failure, in turn, will undoubtedly trigger vigorous protests from these taxpayers and from their allies in the U.S.

Thus, if you are advising your clients about the QBI deduction, you can tell them with confidence that any QBI deduction planning they’ve done or are planning to do will very probably need no change after 2025. There are many clients for whom this

planning and its implementation can be complex and expensive. But your clients won’t waste time or money doing it.

## S. 2387—Background and Contents

Federal tax scholars and tax professionals have sharply criticized the provisions of the QBI deduction because of two main problems:

- The first (referred to here as the QBI deduction “income disparity problem”) is that the relevant Section 199A provisions award a grossly disproportionate share of the deductions available under them to very wealthy qualified taxpayers. According to a Senate Finance Committee overview, 61 percent of these deductions are awarded to the wealthiest one percent of qualified taxpayers.
- The second (referred to here as the “excessive complexity problem”) is that because the structure and terms of the QBI deduction provisions of Section 199A, the computation of QBI deductions under the section can be “overwhelmingly complex.”

The legislative history makes clear that the purpose of S. 2387 is to address the first of these issues. The bill does so mainly by:

- Eliminating the distinction between qualified taxpayers owning interests in “qualified trades or businesses” (QTOBs) comprising, generally, non-professional business except for the business of providing employment services and those owning interests in “specified service trades or businesses” (SSTBs) consisting mainly of certain types of financial professions and all of the traditional professions—e.g., law, medicine, accounting and consulting—except for architecture and engineering;
- Providing that the more the taxable income of wealthy qualified taxpayers exceeds \$400,000, the less will be the QBI deductions available to them; and
- Entirely eliminating these deductions for wealthy qualified taxpayers whose taxable income exceeds \$500,000.

However, the amendments to Section 199A under S. 2387 that address the Section 199A income disparity issue also have the effect of largely eliminating the “excessive complexity” problem under that section.

I suspect that none of the provisions of S. 2387 that have the effect of reducing the QBI deductions available to wealthy taxpayers will be enacted unless a majority of mem-

bers of the House and Senate decide to favor low- and middle-income taxpayers at the expense of wealthy ones. However, the QBI deduction provisions that simplify Section 199A without adversely affecting wealthy qualified taxpayers—and, above all, the provisions eliminating the above distinction between professional and non-professional businesses—may well pass eventually. However, given the current legislative priorities of the Biden administration, it seems very unlikely that they will do so in 2022.

## Policy issues under S. 2387

Furthermore, when Congress is considering the enactment of these provisions, it may well want to consider the policy issues inherent in S. 2387, which Congress did not consider when Section 199A was enacted. These include the following:

1. How effective, in actual dollar terms, is S. 2387 likely to be in achieving the parity between pass-through businesses and C corporations that was the stated legislative intent of Section 199A?
2. What specific tax or financial factors justify the fairness and reasonableness of \$400,000 as a dollar amount for use in defining “wealthy qualified taxpayers” for purposes of achieving the above intent?
3. Are the provisions of Section 199A that reduce the QBI deductions of wealthy qualified taxpayers as their taxable income increases above their threshold amounts fair or reasonable? I am aware of no similar approach to the availability of annual federal income tax deductions to individual taxpayers under any other provisions of the Internal Revenue Code.
4. By limiting the QBI deductions available to wealthy qualified taxpayers under S. 2387 or any similar bill, is it possible that the positive effect of provisions will be offset or exceeded by the loss of QTOB or SSTB jobs?

If, in considering whether to enact all or any of the provisions of S. 2387, Congress does decide to address the above issues, the enactment process won’t be quick, and it will be contentious.

*John Cunningham is of counsel to the law firm of McLane Middleton, P.A. This article is based on an article by Mr. Cunningham with the same title, published in the January 24, 2022 issue of Taxes, a daily journal for tax professionals.*



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# A Troubling Tax Season Ahead: Problems and (a few) Solutions

By Barbara Heggie

Those of us serving clients on the lower end of the economic spectrum have learned an unfortunate reality during the past couple of years: people most in need of help often have the greatest difficulties accessing the pandemic-relief benefits that were specifically created to help them. If you have any middle- or low-income clients, it's helpful to know that many of the "goodies" contained in the new tax laws may not get to the intended recipients without considerable effort. For some people, perseverance, creativity, and a lot of patience will win the day. For others, the relief is simply unattainable without assistance. This is where you may come in.

## Benefits

First, the goodies. Through its pandemic-relief legislation, Congress has created or expanded several tax benefits for financially-strapped households. For 2021, these include:

- **Recovery Rebate Credit (RRC)** – \$1,400 credit that many people received in advance last year as a lump-sum, third-round stimulus payment
- **Child Tax Credit (CTC)** – \$3,000 or



\$3,600 per child, depending on age, half of which was issued in six monthly installments to many households during the last half of 2021; fully refundable credit for 2021 with no minimum earned income requirement; includes 17-year-olds as qualifying children for the first time

- **Earned Income Tax Credit (EITC)** – worth up to \$6,728, depending on income and household composition; expanded age range of eligible claimants for 2021, with triple the previous benefit amount for childless workers
- **Child and Dependent Care Credit (CDCC)** – fully refundable credit for 2021; benefit amount significantly increased

## Problems

As the list above may suggest, user confusion has been one of the greatest problems associated with accessing these benefits, particularly the RRC and CTC. Who, exactly, is eligible? The rules are complex and vary from credit to credit. How did the IRS "know" who was eligible for the advance payments? Many of the neediest people weren't in the IRS databases at the time the stimulus payments were being handed out. How will the IRS handle incorrect advance CTC determinations or competing claims from divorced or separate parents, particularly when one is a victim of domestic violence?

The IRS website contains a bewildering array of FAQs and answers but still

leaves many questions unanswered. Even if the average reader could make sense of what's provided, the information is useless for those unable to access the internet. Again, those most in need of the information are often least likely to have such access. Calling the IRS is no solution, either, at least for the great majority of people. During FY 2021, only 1 out of 9 taxpayer calls were answered. And such low levels of taxpayer assistance were not confined to the call centers. By mid-October, the IRS still had about 13 million original and over 2.7 million amended returns awaiting manual processing.

Pre-pandemic, IRS customer service levels were not generally considered stellar, but the abysmal record of FY 2021 has no precedent. Of course, the reason so many people needed IRS assistance is the same reason the IRS had such difficulty providing it: the pandemic. This was the reality, despite the heroic efforts of dedicated agency employees. Chronically-low staffing and antiquated IT systems mixed badly with office shutdowns. And while the novel coronavirus raged on, the novel tax benefits caused a surge in return filing, triggering a four-fold increase in referrals to the IRS Error Resolution Unit – a black hole from which little communication and seemingly few tax returns could escape. Many of those caught up in that unit were flagged for identity verification, a process requiring numerous hours on the phone, at best. And then Congress passed new tax laws in the middle of the filing season.

Unfortunately, the "perfect storm" of 2021 is already reforming for the 2022 filing season. At the time of this writing, further Congressional changes to the currently-applicable tax rules were not off the table. Given the lack of programming agility in most IRS software, any attempt at a mid-stream alteration may as well as be the QE2 trying a 180° under the Piscataqua River Bridge.

Just as last year's filers had to reconcile their first two rounds of stimulus with the 2020 RRC, this year's flock will need to reconcile the third stimulus payment with the 2021 RRC – and reconcile their advance CTC payments with the 2021 CTC. To help with this endeavor, the IRS has issued millions of letters notifying each recipient how much they received in third-round stimulus and advance CTC payments, Letters 6475 and 6419, respectively. But what if the letter is incorrect? Or what if the letter never arrives and it is the tax filer who is incorrect? A mismatch will surely awaken the pitiless machinery of the Error Resolution vortex.

A close cousin of that vortex is the Return Processing nebula. It serves as an indeterminate purgatory for all paper-filed returns, whether original or amended. The limbo such filers had once endured, pre-2020, used to be measured in weeks; now, we speak in months. Relief intended for vulnerable people is delayed to the point of despair.

TAX SEASON continued on page 30

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## Tax Season from page 29

### Some Solutions

Low expectations may not be the key to happiness, but they can help establish some equanimity, both for yourself and your clients. Drive home the reality that if something goes wrong, this will likely be a long haul. And make them understand it's not always possible to avoid both the vortex and the nebula of Error Resolution and Return Processing. *Clients should not count on receiving a refund by any particular date.*

A handful of preventive measures are available, however. First, for clients with

internet access and the ability to verify their identity online, the IRS CTC Update Portal will provide the exact amount of advance CTC payments listed in their account in case they never received Letter 6419. Similarly, such clients can create an IRS account online and see the same information. For clients on the other side of the digital divide, they may sign an IRS power of attorney authorization, Form 2848, allowing you to access the information for them. This is a cumbersome procedure, not often done solely for the sake of filing a return accurately, but the information gleaned this way could prevent a months-long refund delay. Moreover, if something does go wrong, you will have access to the IRS Practitioner Priority Service line. More lukewarm than hot these days, this line still allows for a much faster resolution of simple problems than a client can typically manage.

Electronic filing is an essential first step, of course, in avoiding delay. Low-income clients have many free, reputable options for filing electronically; you can help them preserve their much-needed refunds by directing them accordingly.

The free, online options include [www.MyFreeTaxes.com](http://www.MyFreeTaxes.com), a partnership between United Way and TaxSlayer, and the IRS Free File tool: <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free>. Possibly, the IRS will launch another "nonfiler" portal on its website, as it did for 2019 and 2020 returns. For an intuitively-designed, mobile-friendly option, many hopes are pinned on a 2021 version of Code for America's app at [www.GetCTC.org](http://www.GetCTC.org). As of this writing,

the U.S. Department of the Treasury and Code for America were still hashing this out.

For a free, in-person or virtual tax filing option, Volunteer Income Tax Assistance (VITA) and AARP Foundation Tax-Aide sites stand ready to help. These sites can prepare returns for 2021 and for the previous three years, thus helping people who missed out on refunds during prior tax seasons. To make an appointment, go to [www.nhtaxhelp.org](http://www.nhtaxhelp.org) or call 211.

What if your client cannot file electronically because someone else – perhaps an ex-spouse – has already filed a return claiming a child your client is entitled to list as a dependent? In this scenario, your client can file electronically without the child, then immediately file a correct, superseding paper return by mail. (Write "SUPERSEDING RETURN" across the top.) The client will suffer a delay of the refund that's related to the child but will likely still receive promptly whatever refund does not depend on claiming the child. Please note that a superseding return must be mailed before the filing deadline.

Finally, if things go wrong, and you and your client cannot resolve the issue, refer the client to 603 Legal Aid's Low-Income Taxpayer Project. We may be able to help. Your client can apply online at [www.603LegalAid.org](http://www.603LegalAid.org) or by calling (603) 224-3333, Monday through Friday, 9:00 to 1:00.

Barbara Heggie is a supervising attorney at 603 Legal Aid, where she leads the Low-Income Taxpayer Project.

## Incentive Plans from page 27

the federal law governing employee benefit plans, the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") is potentially applicable to any equity-based plan for employees that defers payment to retirement and is taxed as ordinary income. The substantive provisions of ERISA will not apply to a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees under the so-called "top hat plan" exemption. As unintended coverage by ERISA can result in income inclusion under the Code and tax penalties, attorneys need to be mindful of ERISA as well when drafting equity-based compensation.

In summary, before drafting plans using equity-based compensation plans to reward employees, attorneys should be aware that there are major tax traps lurking that can catch even experienced attorneys unaware.

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# NH Supreme Court Rules on Reasonable Accommodation in Medical Marijuana Employment Discrimination Case

ACLU-NH, Disability Rights Center of New Hampshire Pleased with Court's Decision

By Tom Jarvis

In what medical marijuana advocates are calling a big win, the New Hampshire Supreme Court held on January 14 that the Superior Court erred when it dismissed plaintiff Scott Paine's complaint alleging employment discrimination against his former employer, Ride-Away, Inc. (NKA MobilityWorks).

At issue was whether a reasonable accommodation may be made under NH RSA 354-A for the use of therapeutic cannabis, prescribed in accordance with NH law.

Paine, who suffers from PTSD, was legally prescribed marijuana in 2018 to treat his symptoms. Consequently, he asked his employer, a national chain of wheelchair-accessible vehicle providers in Londonderry, to accommodate his disability by excluding him from their strict drug testing policy. He clarified that he was not requesting permission to use cannabis during work hours nor to possess it while on company premises. Ride-Away denied the accommodation and subsequently terminated his employment

for use of marijuana.

Paine then filed an employment discrimination suit against Ride-Away for failure to provide a reasonable accommodation for his disability. The employer filed a motion seeking judgment on the pleadings, asserting that the requested accommodation was unreasonable because marijuana is illegal under federal law, and the trial court granted the defendant's motion, concluding that the law does not require companies to accommodate therapeutic cannabis use.

Finally, Paine appealed to the NH Supreme Court, who unanimously reversed the decision and remanded the case for further proceedings. The Court opined, "we agree with the plaintiff that RSA chapter 354-A does not contain any language categorically excluding the use of therapeutic cannabis as an accommodation."

Jon Meyer, attorney for the plaintiff, said, "a reasonable accommodation is generally supposed to be a fact-based inquiry, focusing on specifics of what the employee does and doesn't do as part of their job. We argued that the subsection of the statute was

being misinterpreted by the trial court and the Supreme Court agrees."

The Court held that the use of legally prescribed medical marijuana can be a reasonable accommodation for an employee's disability under New Hampshire's law against discrimination, saying that "the trial court erred in determining that the use of therapeutic cannabis prescribed in accordance with RSA chapter 126-X cannot, as a matter of law, be a reasonable accommodation for an employee's disability under RSA chapter 354."

When asked about the impact of this decision and what's next for the plaintiff, Meyer said, "at this point there's been no final outcome in the Paine case. What we do know is that any employee who is prescribed medical marijuana for a disability now has the right to request that he/she be permitted to continue using that prescription even if they test positive for a drug test, as a reasonable accommodation."

Attorney for the defendant, Mark Attorri, was not available for comment.

The American Civil Liberties Union of

NH (ACLU) and Disability Rights Center (DRC) submitted a joint amicus brief in the case. Representatives from both organizations agree with the Supreme Court's ruling.

Henry Klementowicz, Senior Staff Attorney for ACLU said "this decision is a victory for the over ten thousand Granite Staters enrolled in the Therapeutic Cannabis Program, who now will be subject to the same employment protections for disabilities as everyone else. People with disabilities should not be denied employment opportunities based on what is required to treat their conditions."

"The lower court's decision was putting a hard limit on an entire type of reasonable accommodation for a particular type of treatment that is legal," DRC Staff Attorney Sarah Jancarik said. "Reasonable accommodations need to be evaluated on a case-by-case basis and we are pleased that our Supreme Court has reaffirmed this core element of state civil rights law."

The Court reversed and remanded the case for further proceedings consistent with its opinion.

## Supreme Court At-a-Glance

January 2022

### Criminal

***The State of New Hampshire v. Brandon Griffin, No. 2019-0503***  
January 11, 2022  
**Affirmed**

- Whether the trial court erred in denying defendant's pretrial motions to dismiss his drug enterprise leader (DEL) charge for (1) lack of speedy trial and (2) violation his right to due process.

In 2016, defendant was the leader of a drug-dealing entity in Manchester. Defendant supplied drugs sold by the gang and its members. A dispute arose with a rival gang, and defendant directed his associates to conduct shootings against the rival gang supplying his associates with weapons and compensating them for carrying out the shootings. Police executed a warrant to search an apartment that served as the gang's headquarters, where they found illegal drugs and arrested several gang members. Defendant was arrested, charged, plead guilty to one count, and served an approximately three month sentence.

In June 2017, defendant was arrested again after the police executed a search warrant for a different apartment where defendant was present, and in which they found illegal drugs. Between September 2017 and June 2018, defendant was charged in four separate indictments on numerous counts of drug offenses, assault, human trafficking, witness tampering, charges related to shootings, and the DEL charge. Prior to trial, the dockets were severed, and the State ultimately proceeded with the docket containing the shooting charges first. The State eventually nolle prossed the charges in the third docket and chose to proceed to trial on the charges in the second docket, which contained the DEL charge. The State sought to continue the trial date, but defendant objected, and the trial court denied the State's motion. The State nolle prossed the charges on the second docket.

In January 2019, the State reindicted the defendant on some of the charges from the

third docket and secured another DEL indictment. Seventy-two indictments, including the DEL charge, were combined into one docket and trial was scheduled for May 2019. Two weeks before trial, defendant moved to dismiss the DEL charge, citing a violation of his speedy trial rights. The trial court determine his speedy trial rights were not violated. Defendant filed a second motion for dismissal of the DEL charge as violating his due process rights since it arose out of the same transaction related to his November 2016 plea agreement. The trial court denied that motion, ruling that his DEL charge did not arise from a single criminal episode and a discrete set of facts, but rather a broad-ranging conspiracy. Defendant was convicted of fifty-three of the charges, including the DEL indictment. Defendant appealed.

The Court applied the four-part test from *Baker*, 407 U.S. at 530, to analyze defendant's speedy-trial claim: (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his rights to a speedy trial, and (3) prejudice to defendant caused by the delay. The Court found that the sixteen-month delay was presumptively prejudicial and moved on to analyze the remaining three factors. Analyzing the second factor, the trial court had found that there was an informal agreement between the parties as to the delay. The Court disagreed but still found the defendant partially responsible for the delay due to his preference to sever the dockets. The Court also found that defendant failed to assert his speedy trial rights in response to the State not setting the DEL charge for trial.

Analyzing the third factor, the Court found that because defendant had waited to assert his speedy trial rights until the eve of trial on that charge, while that factor weighed in his favor, it did not do so heavily. Analyzing the fourth factor, the Court found that the prejudice suffered by defendant, including oppressive pretrial incarceration, anxiety, or an impaired defense, did not weigh in his favor because he was incarcerated on numerous open criminal dockets, and given his preference to sever the dockets, he would have waited for many months for all charges to be resolved. Because defendant did not demonstrate actual prejudice, and because the factors did not weigh heavily in his favor, the Court affirmed the trial court.

### At-a-Glance Contributor



**Ryan M. Borden**

Practicing at Ford, McDonald, McPartlin & Borden in Portsmouth, NH with a focus on bankruptcy representation of trustees, creditors and debtors, corporate law and commercial litigation.

Relying on *Lordan*, 116 N.H. 479, defendant argued his due process rights were violated when the State reindicted him on the DEL charge, as the charges arose from the same facts underlying his 2016 plea agreement. The Court disagreed, as the facts underlying the DEL indictment included criminal conduct not related to his 2016 plea and was linked to all the charges joined against him for trial in May 2019. The Court concluded that defendant's due process rights were not violated.

*John M. Formella, attorney general (Elizabeth C. Woodcock, senior assistant attorney general, on the brief and orally), for the State. Christopher M. Johnson, chief appellate defender, Concord (on the brief and orally), for the defendant.*

***The State of New Hampshire v. Keith C. Fitzgerald, No. 2020-0595***  
January 11, 2022  
**Affirmed**

- Whether the trial court unsustainably exercised its discretion and committed an error of law by re-imposing the same sentence on remand that it had previously imposed.
- Whether the trial court violated defendant's state and federal due process rights by relying on improper information and failing to set forth, in detail, the basis for its sentencing decision.

In 2015, defendant was indicted on five counts of theft by unauthorized taking in violation of RSA 637:3. The jury heard evidence

that defendant made several transactions using his father's assets without consulting his father or defendant's siblings, and after obtaining his father's durable power of attorney, transferred his father's assets from accounts and trusts in his father's name to accounts only in defendant's name. The jury was instructed on sentence enhancements to determine whether the father was 65 years or older and whether defendant intended to take advantage of his father's age. The jury returned guilty verdicts on all five charges and the sentence enhancement factors. Defendant was sentenced to nine and one-half years to twenty-five years.

Defendant appealed his convictions, which the Court affirmed in a 2018 non-precedential order. Defendant then filed a motion for new trial based on ineffective assistance of counsel, which was denied. On appeal of that denial, defendant argued his counsel was ineffective in counseling him on the merits of the State's plea deal and his exposure to sentencing enhancements. Had he accepted the plea, defendant would have received two years in the house of corrections, followed by two years of administrative home confinement, and four-to-ten year suspended sentence with a window of ten years after completion of his final year of home confinement. The Court found trial counsel was ineffective, defendant demonstrated prejudice, and remanded to the trial court to allow it to exercise its discretion in determining whether to resentence the defendant to either the term offered in the plea, the sentence received at trial, or something in between. On remand, the trial court reimposed the same sentence based upon its review of the charges and convictions, applicable law, including the remand order, and the pleadings and arguments made by counsel. Defendant unsuccessfully moved for reconsideration. Defendant appealed.

Applying its unsustainable exercise of discretion standard, the Court rejected defendant's argument that the trial court failed to remove the taint of the ineffective assistance finding by imposing the same sentence. The remand order specified that the trial court had the discretion to reimpose the same sentence. The remand order also placed no boundaries on what factors

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or information the trial court could consider in imposing its sentence. The Court held that the trial court did not unsustainably exercise its discretion in reimposing the same sentence.

Applying its de novo review standard, the Court addressed defendant's due process arguments that the trial court improperly considered information other than that which ordinarily would have been available between the plea offer and sentence and because it failed to explain, in detail, the basis for its sentence.

The Court rejected defendant's reading of *Fitzgerald*, 173 N.H. at 582 and *Lafler*, 566 U.S. at 171-72, which defendant interpreted as requiring the trial court, at resentencing, to limit its consideration to information that ordinarily would have been discovered between acceptance of the plea offer and sentencing. The Court held that *Lafler* does not require trial courts to disregard what occurred at trial when attempting to neutralize the taint of ineffective assistance of counsel, the cases did not limit the trial court to information discovered between the plea offer and sentencing, and all other cases defendant cited did not support his arguments.

The Court rejected defendant's argument that the trial court failed to fully set forth the basis for its sentencing decision. The Court reviewed prior case law and stated that in instances where suspended sentences are revoked, the trial court must indicate in substance the evidence relied upon and reasons for imposing commitment. Similarly, in cases on remand where harsher sentences are given, "vindictiveness is presumed" unless the judge states the reasons for the increased sentence on the record, and those reasons are based on objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentence procedure. *Abram*, 156b N.H. at 652. The Court declined defendant's invitation to extend those rules to the defendant's case and found that his two-day resentencing hearing at which he was represented by counsel afforded him all due process to which he was entitled.

*John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Gregory M. Albert, assistant attorney general on the brief), for the State. Sheehan Phinney Bass & Green, Manchester (Michael D. Ramsdell on the brief), for the defendant.*

***The State of New Hampshire v. Justin Gunnip*, No. 2020-0322  
January 28, 2022  
Affirmed**

- Whether the trial court erred in setting aside defendant's falsifying physical evidence conviction by holding that he did not violate RSA 641:6, I when he held paper in front of a surveillance camera at the house of corrections in order to prevent the camera from recording an assault.

Defendant was an inmate at the Sullivan County House of Corrections. In August 2019, another inmate was assaulted in a room monitored by surveillance cameras. The camera footage was stored digitally and inmates had no access to the servers holding the footage. The camera footage showed defendant and several other inmates entering the room and that defendant approached one of the cameras and held paper in front of the lens, obstructing the camera's view. When the defendant removed the paper, the victim was injured.

Defendant was charged with one count of falsifying physical evidence and one count of conspiracy to commit assault. At trial, the State introduced the recording from the day of the assault. The State argued that, with respect to the falsifying physical evidence charge, the defendant altered the recording by obstructing the lens. The State did not introduce any evidence that defendant edited, deleted, or otherwise altered the recording that was saved to the server. After the State rested, defendant moved to dis-

miss both charges. The trial court denied the motions and defendant was convicted on both charges.

Defendant moved to set aside the jury's verdicts. Defendant argued, in relevant part, that RSA 641:6, I did not apply to his conduct because the statute was limited to the physical manipulation of physical existing things, and that the recording accurately recorded what it recorded and was still intact at trial. The Court granted the motion with respect to the falsification of physical evidence charge, finding that the "thing" defined by statute was the physical recording held on the server. With no evidence that defendant altered the recording, the trial court found that the evidence was insufficient to support a conviction under RSA 641:6, I. The trial court denied the State's motion for reconsideration. The State appealed.

In reviewing RSA 641:6, I, the Court disagreed with the State's interpretation of "thing." Relying on dictionary definitions and prior case law, the Court concluded that the phrase "any thing" as used in the statute "is limited to physical evidence that is capable of either assisting officials in an investigation or being used as evidence at a later proceeding, and must have some tangible quality; mere abstractions, such as thoughts, concepts, or ideas, are insufficient." The Court held that the camera's field of view or feed from that view was not the relevant thing, but rather a mere "abstraction," reflecting the house of corrections' intention to record digital images from a certain angle or of a certain event. Because such abstractions are not "things" as defined in the statute, defendant's obstruction of the camera's view did not violate RSA 641:6, I. The relevant "thing" was the recording on the server, and there was no evidence that defendant altered, destroyed, concealed, or removed the footage.

The Court rejected the State's argument that defendant altered the footage before it made it to the server, finding that the "thing" contemplated by the statute must exist before it can be altered. Placing paper in front of the camera lens did not alter a "thing" (the digital recording) before the "thing" was created.

*Office of the Attorney General (Zachary L. Higham, assistant attorney general, on the brief and orally) for the State. Stephanie Hausman, deputy chief appellate defender, Concord (on the brief and orally) for the defendant.*

## Employment

***Scott Paine v. Ride-Away, Inc.*, No. 2020-0470  
January 14, 2022  
Reversed and remanded**

- Whether the trial court erred in ruling that the use of therapeutic cannabis prescribed in accordance with New Hampshire law cannot, as a matter of law, be a reasonable accommodation for an employee's disability under RSA chapter 354-A.

Plaintiff suffered from PTSD for many years which substantially limited a major life activity. In May 2018, he was employed by defendant in its Londonderry facility. In July 2018, plaintiff's physician prescribed cannabis to treat his PTSD and plaintiff enrolled in New Hampshire's therapeutic cannabis program.

Plaintiff submitted a written request to defendant for an exception to its drug testing policy as a reasonable accommodation for his disability. Plaintiff explained he was not requesting permission to use cannabis during work hours or to possess cannabis on defendant's premises. Defendant informed plaintiff he could not work for it if he used cannabis. Plaintiff informed defendant he would use cannabis to treat his PTSD, and defendant terminated plaintiff in September 2018.

Plaintiff sued for employment discrimination based upon defendant's failure to make reasonable accommodations for his disability under RSA 354-A:7, VII(a). Defendant moved for judgment on the pleadings on the grounds that marijuana use is both illegal and criminalized under federal law. The trial court granted

defendant's motion, finding that the definition of disability in RSA 354-A:2, IV is "contingent on the 'disability' not including current, illegal use of, or addiction to a controlled substance as defined in the [federal] Controlled Substances Act," which includes marijuana. The trial court further found that while state law permits use of marijuana for therapeutic purposes, it does not require employers to accommodate such use. The trial court denied plaintiff's motion to amend his complaint as futile.

On appeal, the Court reviewed the definitions of "disability," "qualified individual with a disability," and "reasonable accommodation" set forth in RSA 354-A:7. The Court agreed with plaintiff that RSA 354-A does not contain a categorical exclusion of therapeutic cannabis as an accommodation. The Court found that defendant's reading of RSA 354-A to include controlled substances defined under federal law was incorrect. Rather, RSA 354-A defines disability, and in doing so, specifically excludes disability due to "current, illegal use of or addiction to" a federally controlled substance. In the instant case, plaintiff's disability was due to PTSD, not illegal drug use. The Court reversed and remanded for further proceedings consistent with its opinion.

The Court declined to address defendant's remaining claims because they were based on its erroneous reading of RSA 354-A:2, IV.

*Employee Rights Group, Portland, Maine (Allan K. Townsend on the brief) and Backus, Meyer, and Branch, Manchester (Jon Meyer on the brief and orally), for the plaintiff. Devine Milimet & Branch, Manchester (Mark D. Attorri and Lynette V. Macomber on the brief, Mark D. Attorri orally), for the defendant. American Civil Liberties Union of New Hampshire Foundation, Concord (Gilles R. Bissonnette and Henry R. Klementowicz on the joint brief) and Disability Rights Center of New Hampshire, Concord (Pamela E. Phelan and Sarah J. Jancairik on the joint brief), as amici curiae.*

## Family

***In the Matter of James R. Britton and Patricia F. Britton*, Nos. 2020-0029 and 2020-0313  
January 5, 2022  
Affirmed in part, reversed in part**

- Whether the trial court erred as a matter of law when it found that the 1983 version of RSA 458:19 did not terminate alimony in 1988 and found petitioner in contempt for discontinuing payments in 2018.
- Whether the trial court erred in permitting respondent to file a motion to renew alimony in 2018

The parties divorced in 1985. The final decree incorporated the parties' settlement stipulation, which required petitioner to pay alimony in the amount of \$400 per week until respondent turned 65 or died, and \$200 per week after she turned 65 or the death of either petitioner or respondent. In 2016, respondent filed a petition to bring forward for petitioner's failure to pay alimony. The parties stipulated to a settlement, which the trial court approved, and petitioner resumed payments until April 2018. In June 2018, petitioner sought termination of alimony based upon a substantial decrease in income. In July 2018, respondent filed a motion for contempt for petitioner's failure to pay.

The trial court denied petitioner's motion to terminate alimony and granted respondent's motion for contempt. The trial court observed that the 1983 version of RSA 458:19 applied, which limited alimony to three years unless "renewed, modified, or extended" for an additional three years. The trial court construed the 2016 stipulation as an extension of alimony for three years from October 2016 to October 2019 and found that petitioner failed to satisfy his burden of proof to terminate alimony.

The trial court observed that respondent made an oral motion for renewed alimony at the August 2018 hearing, but it deferred ruling on the motion. Respondent then filed a written motion for renewed alimony, and petitioner ob-

jected. The trial court found that the 1983 version of RSA 458:19 applied and awarded her three years of renewed alimony, from October 2019 to October 2022 in the amount of \$200 per week. Petitioner appealed.

The Court first addressed petitioner's argument that the trial court erred in denying his motion to terminate alimony and finding him in contempt. The Court, reviewing prior case law, held that the 1983 version of the statute automatically terminated alimony after three years, regardless of any stipulation to the contrary. The Court concluded that because the original alimony award entered in 1985, it expired by its terms in 1988. The Court further found that the 2016 stipulation did not serve to renew or extend the 1985 award and rejected the trial court's characterization of the 2016 stipulation as an extension of alimony. The Court held that the stipulation was used to resolve respondent's 2016 motion under an erroneous understanding that the original alimony award was still in effect. Because alimony had expired, the Court found that petitioner could not have been in contempt or ordered to pay arrearages, and reversed the trial court's award of attorney's fees to respondent.

The Court denied petitioner's request for reimbursement or credit of overpayment towards his future alimony obligations. Because petitioner had no obligation to pay alimony after 1988, the Court held the payments were voluntary, and absent fraud, "money voluntarily paid under a mistake of law cannot be recovered." *Harding v. Hewes*, 87 N.H. 488. The Court also held that the petitioner could not be credited for any payments made between 1988 and 2018 toward future alimony obligations, because, even assuming the trial court had discretion to allow such a credit, the trial court's findings supported respondent's continuing need for alimony. A credit would not meet respondent's needs, and the Court found that the trial court did not unsustainably exercise its discretion in declining to order reimbursement.

Finally, the Court addressed petitioner's arguments that the trial court erred in permitting respondent to file a motion to renew alimony after the August 2018 hearing. Finding petitioner's procedural arguments unavailing on the grounds that the family division may waive the application of any rule except were prohibited by law, the Court held that the 1983 version of RSA 458:19 applied, which included no time limitation on motions to renew alimony. The Court held that the trial court did not err in permitting the respondent to file a motion to renew alimony nearly twenty years after the alimony expired. The Court also held that the parties' circumstances supported the continuing alimony and upheld the trial court's ruling.

*Jonathan M. Flagg, Portsmouth, on the brief and orally, for the Petitioner. Devine, Millime & Branch, Manchester (Pamela A. Peterson, on the brief and orally), for the respondent.*

***In the Matter of Senay Akin and Nedim Suljevic*, No. 2021-0234  
January 13, 2022  
Affirmed**

- Whether the trial court erred in denying Father's motion to exercise temporary emergency jurisdiction over the parties' custody dispute pursuant to New Hampshire's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and granting Mother's petition to enforce the parties' Turkish child custody order.

The parties married in December 2010 in New Hampshire. Mother moved to Turkey and gave birth to their daughter in 2011. Father remained in the United States. Until 2019, daughter remained in Turkey where she attended school and received medical care. The parties divorced in Turkey in 2015. Mother received full custody and Father received visitation rights. In 2019, daughter spent two months with Father. At the end of the visit, Father refused to let daughter return. Mother obtained a job in Massachusetts so she could see daughter,

but Father still refused to return daughter.

Mother brought a petition for expedited enforcement of a foreign child custody order in April 2021. A day after being served, Father filed a motion asking the trial court to exercise temporary emergency jurisdiction over the dispute pursuant to the UCCJEA, arguing that daughter was present in New Hampshire and was threatened with mistreatment in Turkey if returned to Mother's custody. Mother objected, raising Father's refusal to return daughter to her custody, his harm to daughter by refusing to let her be with Mother and Mother's family in Turkey, and that Father should not be allowed to litigate the matter in New Hampshire when the Turkish order controlled. The trial court heard evidence and offers of proof, denied Father's motion, and granted Mother's petition for enforcement. Father appealed.

On appeal, the Court stated under the Hague Convention ("Convention"), a parent alleging wrongful retention has the burden of establishing a *prima facie* case of wrongful retention by a preponderance of the evidence and that retention is wrongful if (1) the child was habitually residence in one State and has been ... retained in a different state; (2) the ... retention was in breach of the petitioner's custody rights under the law of the State of the habitual residence; and (3) the petitioner was exercising those rights at the time of the ... retention. Father did not challenge Mother's *prima facie* case.

Once a *prima facie* case is established, the Court reiterated that the child must be promptly returned unless an exception applies. Father raised an exception under Article 12 of the Convention, which provides that when more than one year has elapsed between wrongful retention and commencement of proceedings, a court must order the child returned unless the child is now settled in her new environment. The Court rejected Father's argument that the trial court did not determine if daughter was settled. The Court found the trial court assumed that daughter was settled, but even if an exception applies, the trial court still has discretion to return the child, which is reviewed under an unsustainable exercise of discretion standard. Because Father only argued that the trial court failed to exercise its discretion – not that it unsustainably exercised its discretion – the Court rejected Father's arguments.

The Court rejected Father's arguments under the UCCJEA that the trial court erred in declining to exercise emergency jurisdiction because the only competent evidence demonstrated daughter was threatened with abuse or mistreatment in Mother's custody. Father's only evidence was his self-serving affidavit, which the trial court was not required to (and did not) credit. The Court found the decision was reasonable given the fact that Father had never sought to modify the Turkish order and continued to let Mother visit daughter.

The Court rejected Father's argument that the trial court erred in declining to exercise emergency jurisdiction because it decided the matter without conducting an evidentiary hearing. No case law required an evidentiary hearing, the UCCJEA contained no such requirement, and the Court held that the trial court did not unsustainably exercise its discretion. The Court rejected Father's federal due process arguments because Father received actual notice of Mother's petition and actively participated in the matter.

The Court rejected Father's argument that the parties modified the custody order when Mother allowed Father to retain custody between 2019 and 2021, because extrajudicial modifications are not enforceable under the UCCJEA. It also rejected his argument that the Turkish order should not have been enforced because he did not have an opportunity to be heard in the Turkish proceedings. The Court found that the translated Turkish order demonstrated Father had an opportunity to be heard in the Turkish proceedings.

*Bloomenthal Law Office, Nashua (Sandra Bloomenthal on the brief and orally), for the petitioner. Ropes & Gray, Boston (Daniel V.*

*Ward, Erin Macgowan, and Elias R. Feldman on the brief, and Daniel V. Ward orally), and Preti, Flaherty, Beliveau & Pachios, Concord (William C. Saturley on the brief), for the respondent.*

**In re C.C., No. 2021-0327  
January 25, 2022  
Vacated and remanded**

- Whether the trial court erred in relying on the criminal definition of sexual assault and grooming in a neglect petition brought by DCYF against the respondent.
- Whether the trial court erred in disregarding conduct of the respondent that the child did not personally observe.
- Whether respondent's actions compelled a finding of neglect.

Respondent is the adoptive father of C.C. DCYF received two reports in January 2021 that, among other things, respondent had sexually abused C.C.'s sixteen-year-old friend. A DCYF social worker investigated and interviewed C.C.'s family. Respondent was present during the interview. After the interview, C.C. contacted the social worker to discuss the matter further. During the subsequent interview, C.C. disclosed that respondent made sexual advances towards and inappropriately touched the friend. During further interviews, each child detailed three separate incidents of alleged sexual abuse. C.C. was present during the first incident, heard the third incident, and the friend told C.C. about the second incident.

In March 2021, DCYF filed a petition of neglect against respondent pursuant to RSA 169-C:3, XIX(b) alleging that he exposed C.C. "to sexual abuse of one of [her] minor female friends, expos[ed] [C.C.] to the sexual grooming of one of [C.C.'s] minor female friends, and sexual groom[ed] [C.C.]" DCYF introduced C.C.'s CAC interview, the friend's CAC interview, and the social worker's testimony at the adjudicatory hearing. The trial court dismissed the neglect petition in May 2021. The trial court credited the veracity of the children's interview statements but found that because C.C. did not personally observe any of the conduct, the exposure charge should be dismissed. The trial court ruled that because respondent's actions did not rise to the level of criminal sexual assault or criminal grooming of an under-aged person, the charges should be dismissed. DCYF moved for reconsideration, which the trial court denied. DCYF appealed.

The Court agreed with DCYF that the trial court erred in basing its neglect determination, in part, upon whether respondent's actions were criminal in nature. The Court found that the trial court misconstrued the standard of neglect set forth in RSA 169-C:3, XIX(b), which does not contain any requirement that a parent's conduct must be criminal in nature. The Court stated that the relevant inquiry is "whether the parent has deprived the child of proper parental care or control and whether, as a result, the child has suffered, or is likely to suffer, serious impairment." The Court vacated the trial court's decision and remanded for proceedings consistent with its opinion.

Finding that the issue was likely to arise on remand, the Court stated that based upon the Child Protection Act and precedent, no bright-line rule exists requiring a child to have personally observed conduct for a court to consider the conduct when determining neglect. Although C.C. did not personally observe respondent's conduct, she was a percipient witness to the conduct in that she heard the respondent make sexual advances towards her friend, and the friend told C.C. about respondent's inappropriate touching. The Court directed the trial court to, rather than disregarding the evidence, consider whether C.C.'s exposure to, and knowledge of, respondent's conduct "has caused, or is likely to cause, [C.C.] to suffer serious impairment." In light of the Court's ruling, the Court declined to address DCYF's remaining argument.

*John M. Formella, attorney general (Laura*

*E.B. Lombardi, senior assistant attorney general, on the brief and orally), for DCYF. Friedman & Besaw, Meredith (Jessie Friedman on the joint brief and orally) and Lothstein Guerriero, Concord (Kaylee Doty on the joint brief), for the respondent. Walker & Varney, Wolfeboro (James P. Cowles on the joint brief), for the child's mother.*

## Land Use

**Town of Lincoln v. Joseph Chenard, No. 2020-0316  
January 19, 2022  
Affirmed**

- Whether the trial court erred in ruling that the defendant is operating or maintaining a junk yard in violation of RSA 326:114.
- Whether the trial court erred in denying the Town's request for costs and attorney's fees.

Defendant owns property consisting of four lots in the Town's "General Use" zoning district, which allows junk yards only by special exception. Defendant's properties contained substantial amounts of personal belongings both indoors and in multiple sheds, which were generally in dilapidated condition. During its view, the trial court observed large amounts of used scrap metal, non-working automobiles, old snowmobiles, lawnmowers, ATVs, an old boat, and two semi-trailers. All of the material on the property belonged to defendant and was stored for his personal use. Defendant did not have a license to operate a junk yard business, nor a special exemption from the Town.

The Town sought injunctive relief to stop defendant from operating a junk yard and sought imposition of civil penalties, attorney's fees, and costs. The trial court enjoined defendant from operating a junk yard and ordered him to abate the nuisance by a certain date and authorized the Town to impose a civil penalty of up to \$50 a day for ever day after the abatement deadline. The trial court denied the Town's request for costs and attorney's fees.

Both parties moved for reconsideration. The trial court denied defendant's motion, partially granted the Town's, and modified its order in part, but did not grant the Town its attorney's fees or costs. The parties cross-appealed.

The Court rejected defendant's argument that in drafting the junkyard statute – RSA 236 – the legislature intended it to apply only to commercial junkyards. The Court stated the statute's definition of junkyard is "a place" used for "storing and keeping" or "storing and selling" or "other transferring" the items enumerated in the statute. A junkyard may exist simply by the existence of the enumerated items on a property, independent of the storage and sale of those items. This interpretation was further bolstered by the exceptions set forth in RSA 326:112, I for "noncommercial antique motor vehicle restoration activities," which specifically excludes such "noncommercial" activities. The Court found that if the definition of junkyard were meant to apply only to commercial junkyards, the exception would be superfluous.

The Court rejected defendant's argument that the trial court erred in ruling that all four parcels were junkyards without regard to the quantity of each item on each parcel. The Court found that the trial court's view of the properties demonstrated each of the four parcels met the definition of junkyard as to the storage of the type and quantity of the enumerated items in the statute.

The Court rejected defendant's final argument that, because his four parcels of land are within the limited access highway system for Interstate 93, RSA 236:90-:110 was the correct statutory subdivision to apply. The Court held that because the provisions of RSA 326:111-:129 apply to all junk yards as defined in RSA 326:112, I, it applied to junkyards subject to regulation under RSA 236:90-:110.

Turning to the Town's appeal, the Court upheld the trial court's ruling that the Town failed to prove the defendant's use of his properties constituted a junk yard under the Town's

zoning ordinance, and therefore it was not entitled to attorney's fees under RSA 676:17, II. The trial court found that the Town's ordinance did not define "Junk Yard" and did not incorporate RSA 236:112's definition of "Junk Yard." The trial court had rejected the Town's only evidence that it presently interprets Junk Yard as defined in RSA 236:112, as such evidence was not competent evidence of the enacting body's intent. Turning to the dictionary, the trial court had held that the Town's definition of Junk Yard required sale or reselling of junk.

The Court held that viewing the zoning ordinance as a whole, the Town regulated junk yards as an industrial use, the storage of one's own personal property was not an industrial use, and the defendant's use was not a violation of the Town's zoning ordinance. Because the Town made no other argument in support of an award of cost and attorney's fees under RSA 676:17, II, the Court affirmed the trial court's denial of attorney's fees and costs.

*Hastings Malia, Fryeburg, Maine (Peter J. Malia and Jason B. Dennis, on the brief, and Peter J. Malia orally), for the plaintiff. Bruce J. Marshall Law Offices, Bow (Bruce J. Marshall on the brief and orally), for the defendant.*

## Tax

**Appeal of City of Berlin, No. 2020-0474  
January 12, 2022  
Reversed and remanded**

- Whether the Board of Tax and Land Appeals (BTLA) erred in determining that the City over-assessed respondent for the 2017 tax year.

In February 2018, PSNH applied for an abatement from the City for property taxes assessed as of April 1, 2017 on 15 properties it owned in Berlin, including Smith Hydro. The City appraised the properties in the aggregate sum of \$99,763,300 and assessed the tax of \$3,659,317. PSNH argued the assessment substantially exceeded the properties' fair market value and was disproportionate. The Board of Assessors denied the abatement request and PSNH appealed to the BTLA.

At the BTLA, PSNH argued that the assessment failed to reflect changes in the energy market and its impact on the market value of Smith Station. PSNH also argued that applying the DRA 2017 median equalization ratio to the City's assessment indicated a fair market value of approximately \$103,704,054, which was substantially greater than the true value of the property, which resulted in an excessive assessment and disproportionate burden. By the time the appeal was heard, the Smith Hydro property was the only property in Berlin still at issue. The parties agreed that Smith Hydro's use as a merchant generating plant operating in a deregulated marketplace was its highest and best use but disagreed as to its market value and the equalization ratio to be applied.

PSNH's expert testified Smith Hydro was worth \$34,000,000; the City's expert testified it was \$49,000,000. The BTLA credited the City's expert as to value, and PSNH did not appeal that ruling.

PSNH submitted an exhibit showing the DRA 2017 median equalization ratio for Berlin and argued that the BTLA should take administrative notice of it and use that to resolve its appeal. PSNH submitted no other evidence. PSNH argued that it had made a *prima facie* case that the DRA 2017 ratio should be the median equalization ratio set by the DRA, and the burden therefore shifted to the City to present evidence warranting use of another ratio. The City objected, saying that when the tax was assessed, the 2017 ratio was not yet issued and therefore it used the 2016 ratio, the same ratio every other Berlin taxpayer was subject to for the 2017 tax year. The trial court granted PSNH's pre-trial motion to adopt DRA's 2017 median ratio.

The City explained during the hearing that it revalues utility property annually and,

AT-A-GLANCE continued on page 34

## LD-2021-0011, *In the Matter of David C. Dunn, Esquire*

On December 14, 2021, the Professional Conduct Committee (PCC) filed a recommendation that Attorney David C. Dunn be disbarred. The PCC's recommendation was based on a stipulation signed by Attorney Dunn and Disciplinary Counsel, in which Attorney Dunn admitted that he had violated numerous Rules of Professional Conduct and in which he conceded that disbarment was the appropriate sanction for his misconduct. In the stipulation, Attorney Dunn expressly waived his procedural rights under Supreme Court Rules 37 and 37A, including the right under Rule 37(16) to be served with the PCC's recommendation and to be heard on the recommendation prior to the imposition of discipline. Because the PCC's recommendation was based on the stipulation agreed to by both Attorney Dunn and Disciplinary Counsel as to Attorney Dunn's violations of the Rules of Professional Conduct and the appropriate discipline for the violations, and because Attorney Dunn has waived his rights under Rule 37(16), it is unnecessary to serve Attorney Dunn with the PCC's recommendation or to provide an opportunity to be heard on the PCC's recommendation prior to court action.

In the "Stipulation to Disbarment" approved by the PCC, Attorney Dunn admitted that he failed to act with competence and diligence in multiple estate matters; misappropriated client funds; commingled personal funds with client funds; knowingly submitted false trust account certificates to the Supreme Court for the periods from June 1, 2016 to May 31, 2020; and generally failed to maintain his client trust account in accordance with the requirements of Rule 50. He conceded that his conduct violated the following Rules of Professional Conduct:

1. Rule 1.1, which requires a lawyer to provide competent representation to a client;
2. Rule 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client;
3. Rule 1.15, which requires a lawyer to safeguard the property of a client, and Supreme Court Rules 50 and 50-A, which impose certain requirements on lawyers regarding client trust accounts;
4. Rule 3.3, which prohibits a lawyer from knowingly making false statements to a tribunal;
5. Rule 8.4(c), which makes it profes-

sional misconduct for a lawyer to engage in conduct involving dishonesty, deceit, or misrepresentation; and

6. Rule 8.4(a), which makes it professional conduct for a lawyer to violate the Rules of Professional Conduct.

The court has reviewed the "Stipulation to Disbarment" and the PCC's recommendation that Attorney Dunn be disbarred. After considering the nature, seriousness, and extent of Attorney Dunn's misconduct, the court concludes that disbarment is the appropriate sanction in this case.

THEREFORE, the court orders that David C. Dunn be disbarred from the practice of law in New Hampshire. He is hereby assessed all expenses incurred by the PCC in the investigation and prosecution of this matter.

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

DATE: January 14, 2022

ATTEST: Timothy A. Gudas, Clerk

In accordance with Supreme Court Rule 51(d)(1)(A)(i), the Supreme Court reappoints Supreme Court Associate Justice Patrick E. Donovan to the Advisory Committee on Rules (committee), for a three-year term beginning January 1, 2022, and expiring December 31, 2024. Justice Donovan shall continue to serve as chair of the committee.

In accordance with Supreme Court Rule 51(d)(1)(A)(iv) and (v), the Supreme Court reappoints Attorney Derek D. Lick and Mr. Charles P.E. Stewart to the committee, for three-year terms beginning January 1, 2022, and expiring December 31, 2024.

Issued: January 28, 2022

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

In accordance with Rule 42(II)(a), the Supreme Court appoints Attorney Benjamin LeDuc to the Committee on Character and Fitness (committee), filling the vacancy created by the resignation of Attorney Joseph F. McDowell, III, as a member of the committee. Attorney LeDuc shall serve the remainder of Attorney McDowell's three-year term, beginning immediately and expiring October 1, 2022.

Issued: January 28, 2022

where it is uncontroverted that the city used that ratio. Here, however, the City did not stipulate to the validity of the 2017 equalization ratio and introduced evidence it used the 2016 ratio. The Court distinguished *Appeal of City of Nashua*, finding it did not support PSNH's position that it can meet its burden of proving disproportionality simply by offering evidence of an alternative DRA ratio the City did not use, because in this case, the City disclosed it used DRA's 2016 ratio. The Court held that PSNH failed to submit any evidence regarding the general level of assessment in Berlin or supporting its preferred equalization ratio.

The Court also dispatched PSNH's argument that the City's methodology of using the 2016 ratio for assessing the 2017 values was untethered from good assessing practices. The Court restated the rule that "disproportionality, and not methodology, is the linchpin in establishing entitlement to a petition for abatement."

*Donahue, Tucker & Ciandella, Meredith (Christopher L. Boldt, Eric A. Maher, and Brendan A. O'Donnell, on the brief, and Christopher L. Boldt, orally), for the petitioner. Sulloway & Hollis, Concord (Margaret H. Nelson, Derek D. Lick, and Trevor J. Brown on the brief, and Derek D. Lick, orally), for the respondent.*

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

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

On January 6, 2022, the Professional Conduct Committee (PCC) submitted a recommendation that the court accept the request of Attorney Keri J. Marshall to resign from the bar in accordance with Supreme Court Rule 37(11). On January 10, 2022, the court issued an order accepting Attorney Marshall's resignation from the bar effective on January 31, 2022, subject to certain conditions to which Attorney Marshall and the Attorney Discipline Office (ADO) had agreed. On January 26, 2022, the ADO filed an assented-to expedited motion to extend the date of Attorney Marshall's resignation to April 1, 2022. In response, the court ordered a show cause hearing before a single justice (Donovan, J.) on January 31, 2022, to provide the parties with an opportunity to more fully explain the bases for the requested extension.

At that hearing, Attorney Marshall represented that she currently has approximately 66 client matters in various stages of litigation or representation that she has not transferred to alternative counsel. She further represented that, with respect to a number of complex matters with extensive discovery, she cannot withdraw without causing significant prejudice and costs to her clients. The court reviewed the list of matters, which did not include information identifying the clients, with Attorney Marshall and the ADO and ordered the parties to confer and identify those client matters that are at a critical stage such that Attorney Marshall's withdrawal would cause significant prejudice to her clients. On February 1, 2022, the parties submitted a joint status report to the court iden-

tifying 11 matters that the parties believe are at a critical stage and have scheduled hearing and/or mediation dates in February and March of 2022.

Based upon that report and the parties' representations at the show cause hearing, the court grants, in part, the parties' request to extend the date of Attorney Marshall's resignation from the bar to March 21, 2022, subject to the following conditions:

(1) Attorney Marshall shall, within 10 days of this order, issue a letter of termination and motions to withdraw (as applicable) in all matters that are not at a critical stage of litigation or representation and, to the extent possible, identify successor counsel to whom the client matters are to be transferred. Any matters for which mediation or marital hearings regarding temporary orders have been scheduled shall be considered non-critical matters. If necessary, Attorney Marshall may file motions to continue these non-critical matters;

(2) With respect to any matters identified as being at a critical stage, Attorney Marshall shall withdraw from any of these matters in the event they are continued to a date beyond the resignation date;

(3) In an effort to protect the public, Attorney Marshall shall confer with the ADO on a weekly basis and apprise the ADO of the status of her caseload and her progress withdrawing from and transferring matters to successor counsel;

(4) All other conditions set forth in the court's January 10, 2022 order remain in effect.

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

DATE: February 1, 2022

ATTEST: Timothy A. Gudas, Clerk

## NH Supreme Court Professional Conduct Committee

*Bollinger, Lisa U. advs. Attorney Discipline Office - #20-018*

### PUBLIC CENSURE WITH CONDITIONS SUMMARY

On December 14, 2021, the Professional Conduct Committee (the Committee) deliberated the Stipulation as to Facts, Violations and Sanction.

The Committee approved the facts as stipulated. It further found that Ms. Bollinger's conduct violated Rules of Professional Conduct 1.1; 1.3; 3.1; and 8.4(a), as stipulated.

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

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

January 26, 2022

*Dewhurst, Thomas E. advs. Attorney Discipline Office, #20-019*

### PUBLIC CENSURE WITH CONDITIONS SUMMARY

On September 21, 2021, the Professional Conduct Committee ("the Committee") deliberated the Stipulation as to Facts, Violations and Sanction.

The Committee approved the facts as stipulated. It further found that Mr. Dewhurst's conduct violated Rules of Professional Conduct 1.1; 4.2; and 8.4(a), as stipulated.

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

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

January 26, 2022

*In the Matter of Paul W. Pappas, Esquire- LD-2021-0005*

### PUBLIC CENSURE SUMMARY

On September 23, 2021, the New Hampshire Supreme Court remanded the reciprocal discipline matter to Professional Conduct Committee.

The Respondent maintained an IOLTA account to handle client receipt and distribution of client funds. Between December 18, 2017, and April 16, 2018, the Respondent deposited client settlement checks into his operating account, instead of his IOLTA account, and paid the clients directly from his operating account. No client was deprived of their funds. During this time period, the Respondent also deposited to and maintained funds in his operating account. The conduct violated Mass. R. Prof. C. 1.15(b).

From at the latest December 18, 2017, through at the earliest April 16, 2018, the Respondent did not perform three-way reconciliations of his IOLTA account, in violation of Mass. R. Prof. C. 1.15(1)(E).

On October 1, 2017 and October 25, 2017, the Respondent withdrew earned fees from retainer funds he was holding for a client without

## At-A-Glance from page 33

to ensure assessments are proportional to other properties, the City equalizes the fair market value using the most recent DRA equalization ratio and assesses the property at that equalized value. The BTLA held that proportionality required application of the current tax year's median equalization ratio and applied the DRA 2017 median equalization ratio to the City's \$49,000,000 market value, resulting in abated assessment of \$47,138,000. The City moved for rehearing, which was denied. The City appealed.

On appeal, the City argued that the BTLA's decision to apply the DRA 2017 equalization ratio to determine proportionality was unlawful or unreasonable, and that PSNH submitted no evidence regarding whether or how it was proper to use the DRA 2017 equalization ratio arrived at in May 2018 to prove the general level of assessment for tax year 2017. The Court disagreed with PSNH that simply introducing the DRA's equalization ratio was sufficient to carry its burden in proving the general level of assessment in Berlin for the 2017 tax year.

The Court reiterated that in certain circumstances, the DRA equalization ratio may be used to carry the taxpayer's burden, such as

sending that client an itemized bill of services rendered, notice of the amount withdrawn and a balance of the client's funds left in the account. This violated Mass. R. Prof. C. 1.15(d)(2). An Order is available on our website at [www.nhattyreg.org](http://www.nhattyreg.org).

January 26, 2022

*In the Matter of Brooks Richard Siegel, Esquire—LD-2021-0006*

**PUBLIC CENSURE WITH  
CONDITIONS SUMMARY**

On August 21, 2021, the New Hampshire Supreme Court remanded the reciprocal discipline matter to Professional Conduct Committee.

The Arizona Court's Order states, in part: The admissions in the Agreement constitute grounds for imposing the stipulated sanction. Mr. Siegel was hired in 2018 to represent a client in a Lemon Law matter. Thereafter, Mr. Siegel failed to diligently represent and directly communicate with his client for extended periods of time. He further failed to supervise his non-lawyer associates.

Mr. Siegel negligently violated his duty to the client and the profession causing potential harm. The Agreement includes a discussion of the grounds in consultation with the American Bar Association's *Standards For Imposing Lawyer Sanctions*. . . . The parties stipulate to reprimand [which is a public censure in this state], one year probation (LOMAP), and Mr. Siegel shall pay of costs totaling \$1200.00 within thirty days from the date of this order.

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

January 26, 2022

*In the Matter of Paul P. Nicolai, Esquire—LD-2021-007*

**PUBLIC CENSURE WITH  
CONDITIONS SUMMARY**

On November 4, 2021, the New Hampshire Supreme Court remanded the reciprocal discipline matter to Professional Conduct Committee.

On March 7, 2020, Connecticut Disciplinary Counsel filed a Presentment of Attorney for Misconduct against Mr. Nicolai alleging that he violated Connecticut Practice Book §2-27(e) (Clients' Funds; Lawyer Registration) and Connecticut Rule of Professional Conduct 8.1(2) (Bar Admission and Disciplinary Matters). Mr. Nicolai entered a Stipulation (attached) of the Parties, admitting to violations of the above cited rules. A copy of the foregoing Connecticut Rules is attached. The Connecticut Superior Court accepted the Stipulation and entered an order publicly reprimanding Mr. Nicolai and imposing a requirement that he submit records of his IOLTA account for quarterly audit by the disciplinary authorities in Connecticut until the end of 2021. The results of the audit of Mr. Nicolai's IOLTA account were deemed satisfactory by the Connecticut disciplinary authorities and discipline was imposed solely based upon Mr. Nicolai's failure to cooperate with the initial efforts to audit the account.

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

January 26, 2022

**US District Court Decision Listing**

January 2022

\* Published

**CRIMINAL LAW; SUFFICIENCY OF  
EVIDENCE**

1/4/22 *USA v. Laveneur Jackson*  
Case No. 18-cr-132-01-JL, Opinion No. 2022 DNH 001P

Following jury verdicts finding him guilty of two counts of unlawful possession of a firearm, the defendant moved for judgment of acquittal, arguing that the prosecution had not met its burden of proving beyond a reasonable doubt that: (1) he was the perpetrator of the charged crimes; (2) the firearms he allegedly possessed traveled in interstate commerce; and (3) he knew he had previously been convicted of a crime punishable by more than one year. The court denied the motion, finding that the prosecution introduced evidence from which a rational jury could find each of these elements met beyond a reasonable doubt. Specifically, the witnesses and visual evidence sufficiently connected the person on trial to the perpetrator of the crimes, the government's qualified interstate nexus specialist provided adequately supported opinion testimony that the firearms in question crossed state lines, and the jury could infer from the defendant's Massachusetts court-generated plea documents and two-year sentence that he knew of his convicted felon status at the time of the charged crimes. 29 pages. Judge Joseph N. Laplante.

**JURISDICTION; INSURANCE  
COVERAGE**

1/31/22 *Currier, et al. v. Newport Lodge*  
No. 1236, Loyal Order of Moose, et al.  
Case No. 21-cv-667-JL, Opinion No. 2022 DNH 011

The plaintiffs – alleged tort victims and plaintiffs in an underlying tort litigation – filed a declaratory judgment action against the alleged tortfeasors and their insurers, seeking a declaration that the tortfeasors were covered by certain insurance policies. Defendants moved to dismiss on several

grounds, including lack of standing, untimeliness, and ripeness. While the court found that the plaintiffs had standing to bring the action, it dismissed the plaintiffs' claim without prejudice on ripeness grounds. In light of the wholly contingent nature of the relief sought and the uncertain status of their claims in the underlying tort litigation, the plaintiffs' claim was not yet fit for judicial review. Nor would the requested declaratory relief prevent hardship to the parties. The plaintiffs therefore could not satisfy their burden of establishing that their claims satisfied the federal ripeness test. 22 pages. Judge Joseph N. Laplante.

**JURISDICTION; ROOKER-FELDMAN  
DOCTRINE**

1/7/22 *Brady v. Howard, et al.*  
Case No. 21-cv-614-PB, Opinion No. 2022 DNH 006

Lisa Brady sued New Hampshire Superior Court Judge Mark Howard and four Justices of the New Hampshire Supreme Court. Brady's claims arose out of her failed state court action challenging the termination of her public school employment. After Judge Howard disposed of her claims against the school defendants on summary judgment, Brady unsuccessfully appealed to the New Hampshire Supreme Court. She later filed a federal complaint, seeking to revive her state action because defendants allegedly failed to afford her due process and equal protection and penalized her for exercising her First Amendment rights. Defendants moved to dismiss the complaint for lack of subject matter jurisdiction. The court granted the motion on the ground that the Rooker-Feldman doctrine deprived the court of jurisdiction to review and reverse the state court judgment. The court reasoned that Brady, the losing party in state court proceedings, filed her federal action after her state court proceedings had ended, complaining of alleged injuries caused by the state court judgment and seeking relief that would undo that judgment. Because her federal complaint sought an end-run around a final state court judgment, Rooker-Feldman barred her claims. 14 pages. Judge Paul Barbadoro.

**Classifieds**

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New Hampshire Employment Security  
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Richard Lavers, Deputy Commissioner  
New Hampshire Employment Security  
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[richard.j.lavers@nhes.nh.gov](mailto:richard.j.lavers@nhes.nh.gov)

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**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](mailto:dmsmith@boxerblake.com).

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**ATTORNEY** – Manchester firm with north country satellite office seeks attorney for permanent position with partnership potential. We are an established firm providing a variety of services to our long term corporate and government clients. Our attorneys are expected to consult with clients directly on corporate, business and real estate matters. Our attorneys appear in state courts and bankruptcy court for hearings and small litigation matters. Knowledge or interest in probate, estate planning and asset protection is preferred. Our attorneys are expected to have excellent interpersonal skills to be successful in a small office setting. Please send resume and cover letter to [cpratt@cda-law.com](mailto:cpratt@cda-law.com).

**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](mailto:hr@drcnh.org).

**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](mailto:hhinton@cordelllaw.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](mailto:spatriquin@wyattlegalservices.com).

**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@alfanolanlawoffice.com](mailto:amguertin@alfanolanlawoffice.com), 4 Park Street, Concord, NH 03301 or 603-333-2210.

**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](http://www.nhpd.org).

**PARALEGAL** – Donahue, Tucker & Ciandella, PLLC is looking for a business practice paralegal to join our team in our Seacoast NH office. We offer competitive compensation, benefits and a pleasant work environment. Candidate must be detail oriented, organized and able to work independently and as part of a team. Experience in business entity document preparation and filing, including formation, dissolution, purchase and sale transactions, and annual reports required. Qualifications include previous experience as a paralegal, excellent written and verbal communication skills, attention to details and deadlines and the ability to prioritize and multitask. Please send your resume and letter of interest to Amy Bertolino, Human Resources Manager at [abertolino@dtclawyers.com](mailto:abertolino@dtclawyers.com).

**LEGAL ASSISTANT** needed for a full-time position at a busy personal injury, workers' comp and medical malpractice law firm. Applicant should have strong computer, typing and organizational skills. Some experience preferred, but will train the right candidate. We offer competitive compensation and benefits. Please forward your resume and letter to [lpinkos@mcdowell-morrisette.com](mailto:lpinkos@mcdowell-morrisette.com).

**PARALEGAL/LEGAL ASSISTANT** - Laboe & Tasker, PLLC of Concord, a busy trust/probate, real estate, business, and litigation practice, seeks an experienced Paralegal/Legal Assistant to provide support to two attorneys in these areas. Applicants should be motivated, detail-oriented, organized, able to prioritize, work well as a team player, and be prepared to provide administrative support including file management. Excellent communication and writing skills, experience with Microsoft Office, and a minimum of 3 years of recent legal experience are 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 [ktasker@laboelaw.com](mailto:ktasker@laboelaw.com).



CLEVELAND, WATERS AND BASS, P.A.  
ATTORNEYS AT LAW

## LEGAL ASSISTANT

Cleveland, Waters and Bass, P.A. is seeking a full-time legal assistant to work in our downtown Concord office. Strong technical skills are required along with the ability to prioritize and apply independent judgment. The successful candidate will also be proficient with Microsoft Office Suite, knowledge of maintaining electronic files, be detail-oriented along with the ability to work under deadlines. Cleveland, Waters and Bass offers a competitive salary and benefits package, to include medical, life, 401(k), vacation and holidays.

Please submit a cover letter and resume to Lisa Tillotson, Office Administrator at [tillotsonl@cwbp.com](mailto:tillotsonl@cwbp.com).



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# 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.

## GOOD PEOPLE. GREAT LAWYERS.

Please send letter of interest and resume to Hiring Partner Leslie Leonard at [lleonard@coopercargillchant.com](mailto:lleonard@coopercargillchant.com). For further information, visit [www.coopercargillchant.com](http://www.coopercargillchant.com)

## GOOD PEOPLE. GREAT LAWYERS.

# FAMILY LAW/LITIGATION PARALEGAL (F/T)



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**Cooper Cargill Chant, northern NH's largest law firm, serving clients in New Hampshire and Maine, is looking for a Family Law/Litigation Paralegal to join our vibrant firm.**

**IDEAL CANDIDATES WILL OFFER:** Strong attention to detail; excellent technical and interpersonal skills; sound judgment; ability to prioritize and balance several projects simultaneously; solid written and verbal communication skills; prepare and draft motions, pleadings, judgments, statements, documents and correspondence (financial affidavits, child support worksheets, responsive pleadings, etc.); maintain case files, schedule appointments, court appearances, mediation/deposition hearings; prepare trial notebooks and provide assistance in trial settings; prepare and review discovery packages including disclosure statements, answers to interrogatories and production requests; maintain effective communication with clients; and investigate financial documents. Cooper Cargill Chant offers a comprehensive benefits package, excellent salary, and an opportunity to join a terrific, supportive team. The Firm will provide training for less experienced but motivated individuals.

Candidates should submit a resume, with cover letter stating salary requirement, to John Gosnell at [jgosnell@coopercargillchant.com](mailto:jgosnell@coopercargillchant.com).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**ATTORNEY I, BUREAU OF CHILD SUPPORT SERVICES (BCSS)** - The NH Department of Health and Human Services is seeking a full-time attorney to represent BCSS, based in its Concord office. Duties include representation of BCSS in litigation involving establishing and enforcing court orders for paternity, child and medical support, including Uniform Interstate Family Support Act cases. 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. In addition, candidates may assist in preparing child support related legislation and policy. **Requirements** - Juris Doctorate from a recognized law school, NH Bar membership, two years of experience in the active practice of law, and, a valid driver's license and/or access to transportation for statewide travel. Salary - \$53,800.50 - \$76,011.00. For more information about this position and instructions on how to apply, go to <https://das.nh.gov/jobsearch/employment.aspx> and search for Position #19778, or contact Sharon Sibley, Attorney II, [Sharon.M.Sibley@dhhs.nh.gov](mailto:Sharon.M.Sibley@dhhs.nh.gov), 603-271-4118.

**PARALEGAL/LEGAL ASSISTANT** - DHHS in Concord is seeking a full-time paralegal. Paralegals assist in the development of legal cases and opinions for the Legal Unit of the Bureau of Child Support within the Bureau of Health and Human Services. Duties may include preparing cases for hearings, utilizing the BCSS computer system to research and review information related to public assistance programs, calculating child support obligations, analyzing financial information, and communicating with public, state, and federal agencies, courts, sheriff departments, and attorneys. Candidates should have two years' experience in legal research, legal investigative work, paralegal work, criminal justice, or an area which provided experience with legal terminology. Salary \$35,704.50 - \$49,237.50. For Job details and application information <https://das.nh.gov/jobsearch/employment.aspx> Position #41028 or contact Jennifer Weilbrenner, Supervisor IV, [Jennifer.A.Weilbrenner@dhhs.nh.gov](mailto:Jennifer.A.Weilbrenner@dhhs.nh.gov), 603-271-4464.



### 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](mailto:mharrison@hinckleyallen.com)). Please submit cover letter and resume.

## CITY OF MANCHESTER

### Prosecutor - City Solicitors



**Department:** City Solicitors - Open Positions: 1  
**Job Status:** Full-Time  
**Shift:** 8:00 AM - 5:00 PM  
**Days Worked:** Mon., Tues., Wed., Thu., Fri.  
**Hour Per Week:** 40  
**Rate of Pay:** \$67,347.38 to 96,021.27 - plus comprehensive benefits package

**Job Description**  
 Grade 23

#### General Statement of Duties

- Provides professional legal representation for the City of Manchester;
- Prosecutes cases within the 9th Circuit Court-Manchester;
- Performs directly related work as required.

#### Acceptable Experience and Training

- Graduation from an accredited college or university with a Juris Doctorate degree; and
- Some experience in a municipal law operations, including some prosecutorial experience.

#### Required Special Qualifications

- Admission to the New Hampshire Bar.
- New Hampshire driver's license or access to transportation.

To apply please visit:  
[www.manchesternh.gov/Departments/Human-Resources/Employment](http://www.manchesternh.gov/Departments/Human-Resources/Employment)

The City of Manchester is an Equal Employment Opportunity Employer

### Family Law / Civil Litigation Attorney



Klug Law Offices is looking to hire an associate attorney that is energetic and selfmotivated. 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, schedule, 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](mailto:KWarner@KlugLawOffices.com).

# Career Opportunity

**ASSOCIATE ATTORNEY** with 0-5 years experience needed for 7 lawyer Portsmouth firm handling diverse cases with emphasis on litigation.

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



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#### Prospective teammates should:

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

#### Successful candidates will:

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

Experience in pollution, mass tort litigation or insurance coverage is preferred but not required. RiverStone offers an exceptional health benefits program, paid maternity leave, company matching 401K, tuition reimbursement, employee stock purchase plan and additional site specific perks (on site gym, yoga classes, personal trainer and more). For additional information, and to apply online, please visit [www.trg.com/join-us](http://www.trg.com/join-us).

## LABOR AND EMPLOYMENT ATTORNEY

Drummond Woodsum's Manchester, NH office is seeking an attorney to join our labor and employment law practice group. Our labor and employment group is a tight-knit team that provides counsel to public and private sector employers, as well as tribal nations located throughout the country. Our team provides labor and employment counseling on all aspects of the employer/employee relationship, including collective bargaining, grievance administration, workplace discrimination, and harassment, Americans with Disabilities Act compliance, state and federal wage and hour laws, and workplace misconduct. We also represent clients in state and federal courts, before federal and state agencies, and in labor arbitration. Our team is frequently called upon to provide clients with workplace training.

This position is open to qualified applicants who have excellent academic credentials, research, writing, and analytical skills, and who are highly motivated to learn. We are looking for a candidate who has effective interpersonal skills, and who is able to balance top-notch client advocacy with compassion and understanding. Although applicants with 1-3 years of prior litigation or employment/labor law experience are preferred, applicants without prior experience are encouraged to apply. We are invested in the success of all our associates and will provide training, mentoring, and resources to support your development as a labor and employment practitioner.

We are committed to diversity and inclusion in our hiring practice and encourage qualified candidates of all backgrounds to apply for the position. To apply, please send your cover letter and resume to [hr@dwmlaw.com](mailto:hr@dwmlaw.com). All inquiries are held in the strictest confidence.

## 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](mailto:jobs@cohenwinters.com). All inquiries will be confidential.

## Attorney - Corporate Practice Group

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2-4 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

To learn more about the firm, visit our website at [www.clrm.com](http://www.clrm.com). To apply, please send your resume to Lisa Roy, Hiring Coordinator, at [l.roy@clrm.com](mailto:l.roy@clrm.com).



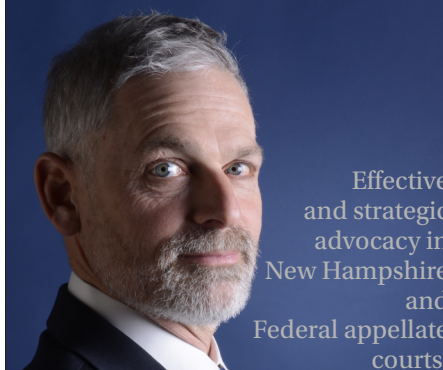
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## NEW HAMPSHIRE DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL

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](mailto:employment@doj.nh.gov) or at New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301

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**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.

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