

## Historic SCOTUS Ruling on Abortion to Come in a Matter of Weeks

Legal Scholars and Policy Makers Concerned Decision May Call  
Other Civil Rights Into Question

By Monica Ciolfi

*Editors note: As the Bar News was heading to press, a leak from the US Supreme Court disclosed a draft opinion in the Dobbs v. Jackson Women's Health Organization case authored by Justice Samuel Alito. According to Politico, which reported the leak, Justice Alito's opinion was joined by at least four other Justices. Chief Justice John Roberts has verified the authenticity of the leaked draft and stated it did not constitute the Court's final decision in the case, which is expected sometime in the next two months.*



The US Supreme Court will deliver what is perhaps its most consequential abortion ruling since 1992 in a matter of weeks, and some legal scholars believe the decision could have a historic impact on

the future of abortion rights, reproductive rights more generally, and even broader civil rights like marriage equality.

In an appeal from *Dobbs v. Jackson Women's Health Organization*, the Court is expected to uphold Mississippi's 15-week abortion ban. The case involves that state's 2018 law banning abortion procedures after the first 15 weeks of pregnancy. Lower courts had ruled to prevent enforcement of

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## The Crooning Counselor

Ralph A. Barbagallo, Jr. Finds Balance  
in Life as a Lawyer and a Musician

By Kathie Ragsdale

It's not every New Hampshire practitioner who has rubbed elbows with the likes of former Massachusetts Attorney General (and later US Senator), Edward Brooke, actresses Blythe Danner and Rue McClanahan, and rock-and-roll legend Chuck Berry, but Ralph A. Barbagallo Jr. is not your average lawyer.

The attorney-cum-musician has maintained dual careers most of his adult life, callings which have taken him to such disparate locales as the Massachusetts Supreme Court and the Hampton Beach Casino Ballroom.

A personal injury lawyer with principal offices in North Andover, MA and



Salem, NH, Barbagallo is also the man behind the Rico Barr Band, which performs at a variety of venues throughout the region, offering "jazz standards, the American songbook, and Marvin Gaye to Steely

Dan," as Barbagallo puts it.

A native of Lawrence, MA, he was the first in his family to attend college, graduating from St. Anselm's before go-

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Court Navigator, Manu Cunha, (left) and Circuit Clerk of Nashua District Court, Sherry Bisson. Photo/Scott Merrill

## A Personal Touch

Court Navigator in Nashua Provides Legal Information and Individual Support

By Scott Merrill

Unlike enjoying a good courtroom drama, going to court—especially for people dealing with major life crises—can be a daunting and unpleasant experience.

New Hampshire's Circuit Court—which includes District, Family, and Probate divisions, in various locations within 10 Circuits—handles over 125,000 criminal and civil cases per year. Since the start of the pandemic through Dec. 31, 2021, there have been 271,868 hearings. Sixty-three percent of those hearings involved at least one person participating remotely.

While numbers are important for administrators lobbying the state legislature for funding or knowing how to best utilize court staff, they can't capture the anxiety people feel when they need to fill out a domestic violence petition for immediate protection from a dangerous partner. They don't reflect the sadness of someone in their 90s seeking an ex-parte motion allowing them to access the account of their spouse of over 60 years who has recently died. Numbers don't paint a picture of the desperation created by language barriers that can exist for non-English speakers. They don't, in short, tell a personal story.

For Manu Cunha, making sure people aren't treated like a number means getting to know their personal stories and helping them solve problems when they come to court.

Cunha, a court assistant since 2008, started in early December 2021 as the Court Navigator at the Nashua District Court, which has the highest volume of probate cases in the state, as well as a high number of domestic violence petitions.

"It's rewarding work and people are very thankful for the help," Cunha said. "The challenge is to convince people we're not an adversary."

The Navigator Program, now in a pilot phase, originated with a proposal by the New Hampshire Access to Justice Commission created to make changes to improve citizens' access to the courts when dealing with civil matters.

Sixteen other state judicial systems, as well as hospitals and various organizations around the country, use navigators to provide better customer service.

New Hampshire Circuit Court Administrator, Heather Scheiwe Kulp, said the position in Nashua, which the court hopes to eventually expand, is one of many solutions the court system and the Commission have implemented to increase access to justice and reduce confusion by assisting people going through filing processes.

"The position provides people with legal information and also helps to identify ways the court system can continue to offer legal information and improve the services that it offers," said Scheiwe

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Periodical Postage paid at Concord, NH 03301

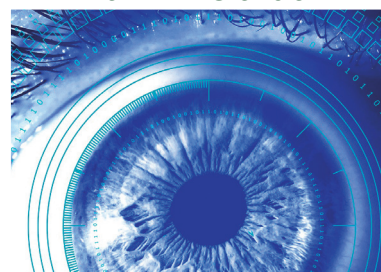
### THE DOCKET

**Opinions.** Alito's draft opinion on *Dobbs* is dishonest; imprecise language regarding plural pronouns coarsens our culture. **PAGE 4-5**

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# Finding the Line Between Passionate Advocacy and the Rule of Law

During my year as President of the New Hampshire Bar, I have thought a lot about being a trial lawyer and the rule of law. We all know how a trial is supposed to work. The outcome of a trial should be determined by the facts and the law. Opposing trial lawyers investigate the facts and research the law, then advocate for their respective positions. Trial judges decide which law applies. Then, trial judges or juries decide the facts and apply the law to those facts. Each person does their job to the best of their ability and in good faith. We call the result fair and just, not because a particular result is reached, but because the process was fair.

If only it were that simple.

It seems like right now public support for the rule of law, and the rule of law itself, are faltering. Many people do not believe in the legitimacy of the process or of its trial lawyers and trial judges. More than ever, we see attacks on lawyers and judges, most of whom seem to be just doing their job. To be sure, our work involves preventing and resolving conflict among people and institutions with important interests at stake. That predictably leads to tension and to criticism which we should usually welcome because criticism helps hold us all accountable. But now we are seeing personal attacks which sometimes seem to be aimed more at embarrassing, harassing, or intimidating the lawyers and judges, than at lodging legitimate complaints.

My first reaction is to say that personal attacks have no place in our system of justice. Threats of violence, blatantly false claims of bias, personal insults that have no relevance to any case, and the like, are clearly wrong. However, some kinds of "personal attacks" are justified. A criticism based on demonstrated dishonesty, or bias, or incompetence is a personal attack,

## President's Perspective



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

but also legitimate. Isn't that why we all support transparency in the justice system? Doesn't the very integrity of the rule of law hinge upon people calling out demonstrat-

advocating for their clients and on independent trial judges making rulings of law and fact. We have a duty to promote that system of justice. That means advocating passionately for our clients while respecting the rule of law, and always looking carefully for the line between the two.

How to do that? In hotly contested cases, there might be a temptation – for the parties, the witnesses, the public, and even the lawyers – to accuse opposing counsel of misconduct or accuse the trial judge of bias. That should not be the reaction to every decision we don't like. Those accusations should only be made when we have the proof to back them up, which will be rare. A feeling of disappointment

or anger is not proof. We can disagree with a decision while still respecting the roles of everyone involved. Whether talking to our own clients, the media, or others, we do no harm to our position when we say of opposing counsel, "She is representing her client to the best of her ability just like I am doing for you." Or, of the judge, "The judge made a decision based on the facts and the law as he saw them. We don't agree, but that does not mean he broke the law or did anything wrong. He did his job. He just did not agree with us. We will seek other ways to

achieve your goals."

We do not have to give up our commitment to our clients and causes to respect the rule of law. Rather, we should recognize that public respect for the rule of law helps us advocate for our clients, especially unpopular clients and causes. A neutral application of rules—the very foundation of the rule of law—makes that advocacy possible and helps prevent the powerful from operating wholly within their own set of rules. Thus, by promoting respect for the rule of law, we give ourselves the best chance to seek justice.



ed dishonesty, bias, or incompetence?

Then I think that maybe it is as simple as identifying the improper personal attacks as the ones which are baseless or unfair. But who decides what is baseless? Who decides what is unfair? Now, I'm back in the weeds. There is no simple rule to follow here. Like we tell our clients in so many situations, the answer will always be, "it depends."

The best we can do, in my view, is to demonstrate through our words and actions our faith in the rule of law. Our system of justice depends on responsible lawyers

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## Lawyer Referral Service – Modest Means Program: Helping the “Working Poor”

By NHBA LRS Staff

Granite Staters are currently faced with numerous financial hardships due to the sustained economic fallout of the pandemic. As rent, food, and gas prices persistently climb, their income remains static, and their ability to pay full legal fees continues to plummet. Many of these citizens fall into a progressively large legal services gap of being unable to afford standard legal fees but earning too much to qualify for free legal services. With the help of IOLTA grants from the New Hampshire Bar Foundation, The New Hampshire Bar Association’s Lawyer Referral Service is consistently able to help bridge that gap and assist our community members in need (sometimes called “the Working Poor”) with its Modest Means Program (LRS-MM).

LRS-MM provides referrals for a variety of legal issues, from family law and landlord/tenant to bankruptcy and unemployment. Attorney participants are urgently needed to meet increasing client demand.

One such client was Emily, a young single mother in Manchester about to be evicted. She had missed her lease renewal deadline due to a change in the online procedure. With a third child on the way, she could not afford to lose her home, let alone afford full legal fees. Upon contacting the Modest Means Program, Emily was referred to a lawyer at a reduced rate of \$80 per hour. Through mediation, she and her children were able to stay in their home. The lawyer also helped her apply for rental assistance.

Another client, Rebecca, had been trying to get divorced for more than two years. She and her husband were both in the military and her husband, who was overseas, was seemingly delaying the process. Her income disqualified her from obtaining free legal services and she was unable to afford an attorney’s standard rates. After discovering LRS-MM, she was qualified for a fee cap of \$100 per hour and was referred to a lawyer that was able to secure the documents necessary to effectuate Rebecca’s divorce and establish a parenting plan.

Through the Modest Means Program, these clients – and many like them – were able to obtain favorable outcomes with the help of an attorney they otherwise would

not have been able to afford. IOLTA funds allow LRS-MM to play a critical role in making affordable legal services accessible to the underserved population of those who don’t qualify for free legal services. With the help of IOLTA grants - as well as recent additions to staff, advertising, and streamlining of procedures - the program’s effectiveness has been steadily increasing, with referral numbers doubling in the past year.

Here’s what our panelists and intake specialists have to say about the Modest Means program:

“One of my favorite clients came to me from the LRS-MM program. She was looking for assistance in obtaining a guardianship to care for her niece after her brother was unable to do so due to drug use and mental health concerns. It was an amicable situation as her brother knew he could not care for his daughter and wanted to make sure she stayed with family members. This client was one of the most selfless individuals I have met and raised her niece as her daughter. Years later, my client and her husband came back to file for adoption of their niece. I was able to help them with that process too. In the family law world, adoptions are the happiest cases we take. I still get holiday cards from my client and love seeing her family grow and thrive.”

-KM, Attorney  
February 2022

“Thanks to the Modest Means Program, I have had the privilege of assisting a lovely young woman in her defense of both civil and criminal charges arising from the same incident. If it wasn’t for the program, she may not have secured legal counsel and likely would not have had as favorable of an outcome. It is always a pleasure to provide services at a discounted rate to limited-income clients who are grateful for the help.”

-AA, Attorney  
February 2022

“We were able to provide a referral to a father who was seeking custody of his child following the habitual drug use and eventual overdose of the child’s mother. Mother was placed in rehabilitation and father needed to establish a parenting plan

COMMITTEE continued on page 6

## 2022 NHBA Board of Governors Election Results

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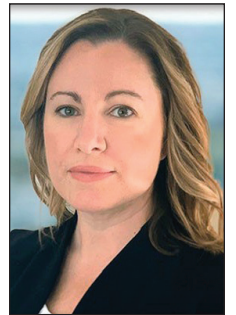
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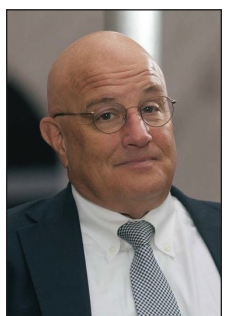
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## Alito's Draft *Dobbs* Opinion is Dishonest

Two salient points appear in Alito's draft decision on abortion in *Dobbs v. Jackson Women's Health Organization*: (1) its arguments were each analyzed and rejected by the Court in *Planned Parenthood of SE Pennsylvania v. Casey*;<sup>1</sup> and (2) it is intellectually dishonest.

Each of the arguments made by Alito were made and rejected in *Casey* and *Roe*. Alito says nothing new. Nothing has changed except the composition of the Court.

*Casey* and *Roe* disclose the intellectual dishonesty, and danger, of *Dobbs*. The core intellectual dishonesty is that *Dobbs* in effect adopts a strict constructionist approach to the 14th Amendment's due process protection of liberty without justifying that adoption. That strict constructionist approach differs from *Roe* and *Casey* which used Justice Harlan's approach of a "reasoned judgment."<sup>2</sup> The *Casey* Court quoted Justice Harlan's words:

"If the supplying of content to this Constitutional concept [of liberty] has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a

living thing."<sup>3</sup>

The majority of the *Casey* Court rejected the idea that "the Bill of Rights [or the specific practices of States at the time of the adoption of the Fourteenth Amendment mark] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects." The majority of the *Casey* Court specifically rejected the idea that judicial discretion could be constrained by limiting the protections of the 14th Amendment to the understandings of history. The Court quoted Justice Frankfurter in *Rochin v. California*:

"To believe that this judicial exercise of judgment could be avoided by freezing 'due process of law' at some fixed stage of time or thought is to suggest that the most important aspect of constitutional adjudication is a function for inanimate machines and not for judges."<sup>4</sup>

Presciently, in 2010, Justice Stevens described the contrast between the dynamic approach (used by the *Roe* and *Casey* courts) and the history and traditions approach (used by Alito in *Dobbs*):

*More fundamentally, a rigid historical methodology is unfaithful to the Constitution's command. For if it were really the case that the Fourteenth Amendment's guarantee of liberty embraces only those rights 'so rooted in our history, tradition, and practice*

*as to require special protection' ... then the guarantee would serve little function, save to ratify those rights that state actors have already been according the most extensive protection.... That approach is unfaithful to the expansive principle Americans laid down when they ratified the Fourteenth Amendment and to the level of generality they chose when they crafted its language; it promises an objectivity it cannot deliver and masks the value judgments that pervade any analysis of what customs, defined in what manner, are sufficiently 'rooted'; it countenances the most revolting injustices in the name of continuity, for we must never forget that not only slavery but also the subjugation of women and other rank forms of discrimination are part of our history; and it effaces this Court's distinctive role in saying what the law is, leaving the development and safekeeping of liberty to majoritarian political processes. It is judicial abdication in the guise of judicial modesty.*

*No, the liberty safeguarded by the Fourteenth Amendment is not merely preservative in nature but rather is a 'dynamic concept.'*

*Its dynamism provides a central means through which the Framers enabled the Constitution to 'endure for ages to come'... a central example of how they 'wisely spoke in general language and left to succeeding gen-*

*erations the task of applying that language to the unceasingly changing environment in which they would live.'* 'The task of giving concrete meaning to the term liberty,' I have elsewhere explained at some length, was a part of the work assigned to future generations. ... The judge who would outsource the interpretation of 'liberty' to historical sentiment has turned his back on a task the Constitution assigned to him and drained the document of its intended vitality."<sup>5</sup>

*Roe* and *Casey* fit squarely in the tradition of interpreting the protection of "liberty" in the 14th Amendment through a dynamic "reasoned judgement" in light of our history and living traditions.

Alito overturns *Roe* and *Casey* because they do not establish—and Alito says he cannot find—the protected right (in his lexicon, a right to an abortion but truly a right to personal bodily autonomy) "deeply rooted in [our] history and tradition."<sup>6</sup> In Alito's opinion, the test to determine whether a right is protected by the 14th Amendment's protection of "liberty" is whether it is "deeply rooted in [our] history and tradition." But that is exactly the test that the *Casey* Court refused to adopt.

Where did Alito get that test? He got it from *Washington v. Glucksberg*<sup>7</sup> in which the majority opinion in dicta limited substantive due process rights to "fundamental rights

## Steps to an Easy License Renewal Process

Beginning June 1, 2022, the "My NHBAR" Member Portal found on the NHBA's website at [nhbar.org](http://nhbar.org) will be open for Annual License Renewal. The all-online process is governed by a single deadline; a personalized web page enables attorneys to access forms and monitor their compliance with just a few clicks.

**DEADLINE:** The deadline for all licensure obligations is July 1, 2022. Delinquency fees for any licensure obligations not met will be assessed after Aug. 1, 2022, and are as follows:

Nonpayment of NHBA dues/NH Supreme Court fees: \$100  
Not filing the Trust Account Compliance Form: \$300  
Not filing the NHMCLE Affidavit: \$300

### 1. ART Appreciation

The Attorney Reporting Tool (ART) found in the My NHBar Member Portal or at [nhmcle.org](http://nhmcle.org) enables Bar members to track their legal education minutes. Minutes from New Hampshire Bar Association CLE programs are automatically loaded in ART; non-NHBA CLE program minutes must be entered by the attorney attending the class. All NHBA CLE course minutes must be taken by June 29th to assure minutes are loaded to file the Affidavit of Compliance by July 1st.

**Tip:** Watch videos at [nhmcle.org](http://nhmcle.org) for tips on using ART.

### 2. Make Way for Email

On Wednesday, June 1, 2022, watch for an email from [billing@nhbar.org](mailto:billing@nhbar.org). Designate [billing@nhbar.org](mailto:billing@nhbar.org) as a safe

sender, to ensure that important updates regarding Annual License Renewal will be received.

### 3. Payment Made Easy

The June 1 email from [billing@nhbar.org](mailto:billing@nhbar.org) will contain a web link that goes directly to an online invoice with payment functionality. We've made it easy to pay NH Supreme Court fees, NHBA dues, and NHBA Section dues with a credit card online. No credit card? Pay by check made payable to NHBA and sent to Accounts Receivable, NHBA, 2 Pillsbury St, Ste 300, Concord, NH 03301-3502 via U.S. Mail.

### 4. Check the Box to Donate to 603 Legal Aid Pro Bono Program

The 603 Legal Aid Pro Bono Program – formerly NHBA's NH Pro Bono Referral System – needs contributions now more than ever. Don't forget that Pro Bono donations are tax-deductible.

### 5. Check the Box to Volunteer for Vital Legal Services Programs

This year, many civic legal aid programs are struggling to recruit panelists. For members interested in contributing their time and talents in volunteering for 603 Legal Aid Pro Bono Program, NHBA Modest Means Program, NHBA's Lawline, or ABA's Free Legal Answers, a new check box has been added to note interest. By checking the box to volunteer, members will receive email correspondence regarding volunteer opportunities and how to take the next steps to enroll, share talents, and give back to the community.

### 6. Assume the Trust Account Compliance (TAC) Form Is Required

Most active-status Bar members must e-file a Trust Account Compliance form, even if not actively practicing or holding trust accounts. The online form asks eligibility questions

and requires members to fill in the necessary answers for their membership situation.

**Tip:** Law firms may have the managing partner complete a single TAC form for all lawyers at the firm by adding each firm attorney to the form.

### 7. Be Prepared to file the TAC Form

Make sure to have all IOLTA bank account information handy before starting to complete the online Trust Account Compliance form. The online filing system does not save information if a member stops or exits before completing the form. Therefore, set some time aside to fully complete the form.

**Tip:** Attorney information such as IOLTA account numbers may be cut and pasted from other sources to avoid data entry errors.

### 8. Help Is Available

For questions about NHBA dues/NHSC fees, whether forms were completed correctly, or about NHMCLE reporting, the NHBA Renewal Team is here to help. Look first to the Bar's website at [nhbar.org](http://nhbar.org) to see what resources are available for members' questions. License renewal information can be found under the header Resources just above the dark green line at the top of the NHBA home page.

**Tip:** Members may also contact the NHBA Member Hotline at (603) 715-3279 or email [billing@nhbar.org](mailto:billing@nhbar.org). We appreciate our members' patience as all 8,000 + NH Bar members renew their license during this time. Questions via telephone or email are answered in the order they are received.

### 9. Go for Green by July 1

Log into the compliance portion of the My NHBar Member Portal. Members will see colored bars in the middle of the page for

NHMCLE, Trust Account Compliance, and Annual NHBA Dues and NH Supreme Court fees. Each box will be RED until payments or forms are processed. Three GREEN boxes mean that all necessary licensure renewal steps have been completed.

**Tip:** Submissions will be acknowledged on-screen or via email at the time of submission or payment. It may take up to 48 hours for the Member Portal to display color updates on the bars.

### 10. Track It

The My NHBar Annual Compliance Dashboard will be available for license renewal beginning Wednesday, June 1, 2022. Visit the dashboard on the My NHBar Member Portal regularly to confirm license renewal completion.

### 11. Update Your Member Info

NHBA encourages all members to check the accuracy of their contact information on the NHBA Member Directory or Profile page in the My NHBar Portal. In doing so, please pay particular attention to email addresses on file as renewal notices are delivered to the primary email in the NHBA database.

**Tip:** We encourage all members to review, and if needed, update this info ASAP – and certainly prior to June 1, 2022 – to ensure members receive every message concerning license renewal in a timely manner.

Questions? Email [Billing@nhbar.org](mailto:Billing@nhbar.org) or call the member hotline at 603 715-3279.

Getting everything done before the July 1, 2022, deadline saves time, energy, and eliminates stress!



found to be deeply rooted in our legal tradition.” It is intellectually dishonest to override the requirements of stare decisis and overturn *Roe* and *Casey* based on that language of *Glucksberg* for at least three reasons.

First, it is dishonest to chide the authors of *Roe* (decided in 1973), and of *Casey* (decided in 1992), for failing to follow the dicta of a case years later in 1997.

Second, the standard articulated in *Glucksberg* is dicta. It is dicta because the outcome of the case did not depend on which standard is applied. Both the majority and the concurring opinions reached the same conclusion. Whether assisted suicide is deeply rooted in our history and tradition or, alternatively, properly within the protection of liberty under a reasoned judgment approach taking into account our living tradition, made no difference to the outcome. All agreed it was neither. The dicta of *Glucksberg* cannot be said to overturn *Casey* and *Roe*.

## NHBA License Renewal Starts June 1

June 1, 2022 marks the start of NH Annual Attorney License Renewal for inactive and active members of the NHBA. Licenses must be renewed by July 1, 2022.

The fastest and easiest way to renew your license is by using the My NHBar Portal at [www.nhbar.org](http://www.nhbar.org).

When you login on June 1st, you will see that your Compliance area will have 1-3 red boxes, depending on how many requirements you have. Click the link in each red box to complete the requirement.

If you have been an Inactive member of the NH Bar for all of the past year, all you need to do is click the link to pay your invoice. If you have been an Active member of the NH Bar this past year, you will need to pay your invoice, file your Trust Account Compliance Certificate, and file your NHMCLE Affidavit. That box will turn green within 48 business hours. When all your boxes are green, you will have completed your Annual License Renewal.

Need help with your payment, or have questions when completing your requirements and don't know who to contact? Susan Belair, the Accounts Receivable Administrator in the NHBA Billing office, is your primary point of contact for license renewal questions. She can be reached at [billing@nhbar.org](mailto:billing@nhbar.org) or by calling 603-715-3265.



Third, *Dobbs* dishonestly overturns *Casey* and *Roe*. By a kind of sleight of hand, Alito claims that *Roe's* reading of history was egregiously wrong and therefore subject to being overruled (since egregious error is one of the elements needed to overcome the weight of stare decisis) because it does not meet the *Glucksberg* standard.<sup>8</sup> But, aside from not being egregiously wrong on the history, the *Casey* and *Roe* courts did not treat history as the sine qua non of a protected liberty interest but merely as one of the elements of a reasoned judgment taking into account our living traditions. The *Casey* and *Roe* courts did not believe that 14th Amendment liberty interest rights were, in the metaphor of Justice Frankfurter, frozen at the time of its adoption.

The overruling of *Roe* and *Casey* is not about a different reading of history<sup>9</sup>, but, instead, a different standard for finding rights protected by the 14th Amendment. In overruling *Roe* and *Casey*, Alito overthrows the standard they used. Yet he wastes no words explaining why that standard, one which had been benefitted by the favorable imprimatur of many famous Supreme Court justices, is overturned.

Instead, Alito spends many pages establishing the unsurprising proposition that the white men who voted in favor of the 14th amendment did not contemplate that they might be giving women (who did not have the right to vote) autonomy over their own bodies. The conclusion that women were granted no such protected right is foregone as soon as one decides that the rights protected by the 14th Amendment are only rights recognized by history and not rights recognized

by reasoned judgment.

Alito overturns *Roe* without addressing or, in fact, identifying an error. Instead, he simply adopts a different rule of constitutional interpretation, fails to explain why his rule of interpretation is even permitted in light of stare decisis, let alone why the rule used by *Casey* and *Roe* is egregiously wrong, and then applies it to obtain the result the world knows that Alito wanted before the case was argued.

Because he does not identify the change in rule of constitutional interpretation he adopts, he dishonestly overturns a decision based on a proper application of the old rule of interpretation. There was nothing egregiously wrong about *Roe's* or *Casey's* application of the reasoned judgment approach to abortion. Alito instead rejects the reasoned judgment approach and would replace it by the “deeply rooted” in history approach. But the *Casey* court rejected the “deeply rooted” in history approach and Alito makes no attempt to explain why stare decisis does not require that he accept that decision and apply the reasoned judgment approach.

The protection of the right to an abortion is a product of a view of the constitution as a living document. A living document is not Alito's view. If he is a judge constrained by precedent and the rule of law, he must apply that view of a living constitution to the problem of abortion. If he were instead a legal philosopher unconstrained by the rule of law, then he is permitted to ignore the rule of precedent. As a judge, ignoring precedent, he undermines both his court's integrity and the rule of law.

## Endnotes

1. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)
2. *Planned Parenthood of Southeastern Pennsylvania*, 505 U.S. at 849
3. *Planned Parenthood of Southeastern Pennsylvania*, 505 U.S. at 850, quoting Justice Harlan in, *Poe v. Ullman*, 367 U.S. 497, 542, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961) (dissenting from dismissal on jurisdictional grounds).
4. *Planned Parenthood of Southeastern Pennsylvania*, 505 U.S. at 850, quoting *Rochin v. California*, 342 U.S. 165, S. Ct. 205, 96 L. Ed. 183 (1952).
5. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 875–77, 130 S. Ct. 3020, 3098–99, 177 L. Ed. 2d 894 (2010) (in dissent). A critical reader might complain that both McDonald (incorporating the right to keep and bear arms) and *Timbs v. Indiana*, 139 S. Ct. 682, 686–87, 203 L. Ed. 2d 11 (2019) (incorporating the excessive fines clause of the 8th amendment) used the “dee[p] root[s] in [our] history and tradition” approach. But both found rights, neither subtracted rights. The fact that there may be two analytic approaches to finding rights does not mean that one of the two must be in error. Rights found to have deep roots, may well also be rights that are part of our dynamic “living tradition.”
6. *Dobbs* at p. 11.
7. *Washington v. Glucksberg*, 521 U.S. 702, 722, 117 S. Ct. 2258, 2268, 138 L. Ed. 2d 772 (1997)
8. See, *Dobbs*, pp 15-30.
9. Although those readings do differ at least as to emphasis – both seem to agree that pre-quickening abortion was legal at common law.

Edmond J. Ford

## The Coarsening of Our Culture Through Imprecise Language

For the second time within the past year, I find myself writing to protest the coarsening of our culture through the degradation of the English language advocated by a member of the Bar. In this case, it is the assertion by Melissa Christensen in the course of her article in the April 20th issue that a sentence reading “The attorney went to the courthouse and they left their phone at security” represents “correct grammatical structure” and promotes “inclusivity” and “a sense of belonging.”

Such absurd pairings of plural pronouns with singular nouns, hereafter to be normalized and made universal, are said to be a necessary evolution of our language in order not to offend any member of the so-called “transgender community,” which it is my understanding comprises less than one-half of one percent of the population, and wasn't even a “thing” until it was discovered and identified in recent years by white Liberals as the latest victim group in dire need of their condescen-

sion.

Indeed, the disproportion between the numbers of this victim class du jour actually involved in this movement to corrupt our language, and the extremity of the changes to be made to it in their supposed behalf, is probably much greater. It has been my view, and in my experience the general view of others who are different in some significant way from the crowd, that what is most desired is simply to be left alone and to be permitted to blend into the larger society, and not to be vessels of upheaval for our special benefit that would foster the very attention and resentment we wish to avoid. I suspect, therefore, that most transgendered people cringe at the noise their white Liberal betters are making on behalf of the gullible and faint-hearted minority of this already tiny minority they have adopted as mascots.

Precision in the use of language is a central feature and a distinguishing characteristic of the profession of a lawyer, which makes it

especially strange to find in a Bar Association publication (of all places) by a teacher of legal writing (of all people) an article calling for institutionalizing imprecision. I refuse to surrender to this, and I call on all members to do the same.

Were I in Ms. Christensen's place, I would make clear to my students on the very first day of classes that the correct use of the English language shall be required and rigorously enforced, meaning (among other things) that “podium” shall not be an acceptable substitute for “lectern,” nor “momentarily” for “presently,” nor “literally” for “figuratively,” nor “loan” for “lend,” and that any departure from noun and pronoun agreement, or any other degradation of the English language in the service of political objectives, will be unacceptable.

Gregory M. Sorg, Franconia



HEATHER BURNS



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## Message From the NHMCLE Board: Publications Credit

Beginning June 1, 2022, the NHMCLE Board will limit the number of CLE credits to be obtained through publication of written legal materials that can be used to satisfy the annual reporting requirement.

The NHMCLE Board's policy will cap the number of credits that can be applied to a bar member's annual reporting requirement in any reporting year to 360 minutes. The 360 credit minutes limit is one-half of the total required for a reporting year.

A member may seek an exception to the 360-minute limit by petitioning the NHMCLE Board's Audit Committee. Written materials which exceed the 360-minute length, as calculated under the Board's long-standing formula, will not have credits carry over from one reporting year to the next.

### NHMCLE Minimum Requirement Reminder

Per NH Supreme Court Rule 53.2(B)(2), members who have held active membership status for more than six months must complete 720 minutes of Continuing Legal Education (CLE), of which 120 minutes must be in Ethics.

Once the minimum requirement has been met, and after June 1st each year, the NHMCLE Affidavit of Compliance must be filed via the Attorney Reporting Tool (ART) found at [www.nhmcle.org](http://www.nhmcle.org).

#### Exempt from the Rule:

Those exempt from Rule 53.2(B)(2) are full-time judges, full-time magistrates, full-time marital master, the state reporter appointed pursuant to RSA 505:1, or any full-time supreme, superior, or circuit court clerk or deputy clerk who occupies such position at any time during the reporting year.

In addition, any part-time judge, part-time magistrate, part-time marital master, or part-time supreme, superior or circuit court clerk or deputy clerk are exempt, unless such individual was in active practice of law at any time during the reporting year. Lawyers on active duty with the armed forces for more than three months during the reporting period are also exempt from the Rule.

## NEW HAMPSHIRE BAR ASSOCIATION 2022 Annual Business Meeting Garden Room Mountain View Grand Resort, Whitefield, NH

June 17 – 1:00 PM

### AGENDA

President Richard Guerriero presiding

1. Call to Order
2. Secretary's Report – Draft Minutes of the 2022 Midyear Membership Business Meeting for approval
3. Old Business
4. New Business
5. Adjournment

### Committee from page 3

in order to enroll his child in school and secure counseling services for the child.”

-AW, LRS-MM Intake and  
Referral Specialist  
March 2022

In addition to LRS-MM, the Lawyer Referral Service administers two pro bono programs. LawLine is a free hotline held on the second Wednesday of each month, where callers can speak with an attorney for brief legal advice. NH Free Legal Answers (a service of the ABA) is an online portal where low-income people can submit a confidential (non-criminal) legal

question to be answered by a volunteer attorney. These small, but very effective resources are available for members of the community that only require brief legal help.

Like other civil legal aid organizations, LRS-MM is facing a critical shortage of attorneys available to take on an increasing number of cases. Not only does this affect our ability to match prospective clients with qualified attorneys, but it also places a heavier burden on the remaining panelists. If you have the time and heart to become a Modest Means panelist, please contact NHBA LRS Coordinator Jennifer Greenwald at 603-715-3235 or [jgreenwald@nhbar.org](mailto:jgreenwald@nhbar.org).



## THE BEST LAWYERS – YEAR AFTER YEAR

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Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs

### KEVIN F. DUGAN

Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs

### JARED R. GREEN

Personal Injury Litigation – Plaintiffs and Product Liability Litigation – Plaintiffs

### HOLLY B. HAINES

Medical Malpractice Law – Plaintiffs and Personal Injury Litigation – Plaintiffs

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Medical Malpractice Law - Plaintiffs

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

**REMOTE MEETING**

Please contact Debbie Hawkins for meeting join information  
[dhawkins@nhbar.org](mailto:dhawkins@nhbar.org)

**DRAFT MINUTES**

President Richard Guerriero - Presiding

1. Call to Order  
President Richard Guerriero called the meeting to order at 3:03 p.m.

2. Secretary's Report

**ACTION**

On motion to approve the draft Minutes of the 2021 Annual Membership Business Meeting. Passed with three abstentions, Vanessa Wilson, Paul Kleinman, and Abby Sykas Karoutas.

3. Old Business  
There was no old business to discuss.

4. New Business
  - a. Vote on Proposed Bylaws Change
  - b. Vote on Proposed Constitution ChangeExecutive Director George Moore summarized the proposed changes. (Please see attached summary sheet of the changes.)

**ACTION**

On motion to adopt the proposed revisions to the NHBA Bylaws and Constitution. Passed.

5. Adjournment  
The meeting was adjourned at 3:14 p.m.

**Proposed changes to the NHBA Bylaws – December 7, 2021**

Many of the revisions are simply grammatical corrections, and changes to make the language consistent with current practice. The last time the bylaws were reviewed and revised as a whole was 2013, with minor revisions since then.

Below are the substantive changes:

**page 4 – Article II, new section 6:** As formerly written, members of the armed forces received a waiver of dues until they notified the NHBA that they were no longer on active duty. In practice, these notifications did not happen. The new language changes this so that they will be charged dues unless they request a waiver due to their service on active duty.

**Page 6 – Article II, new section 8:** Language regarding Resignation moved from Article II section 8 of the NHBA Constitution to the bylaws for consistency, and a definition of good standing was added.

**Page 7, 11 – Article III, section 3, and Article IV, section 8 (newly added):** Language added to define the role of ABA Delegates as ex officio members of the Board of Governors, without vote.

**Page 9 – Article IV, section 2** – In practice, this task is performed by the President, as noted in section 1.

**Page 10 – Article IV, section 3:** Process clarified, and time limits added to succession procedure so can follow the proscribed process. If a resignation comes within the last 90 days of the President's term, it is not possible to meet timelines for special election.

**Page 22 – Article IX, section 6(g)** – Charge of Committee on Lawyer Referral Services revised to make it consistent with understood role of NHBA Standing Committees.

**Proposed changes to the NHBA Constitution – December 7, 2021**

These revisions are grammatical corrections, and changes to make the language consistent with current practice, the NHBA Bylaws and the NH Supreme Court Rules.



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## Supporting Mental Wellness in Legal Practice: Can You Be the Change?

By Jill O'Neill and Dan Wise

*Content warning: This article contains content about suicide. The italicized material is a fictionalized account. None of the names are real or related to actual events, past or present.*

If you or someone you love is having thoughts about suicide, please call the National Suicide Prevention Lifeline at 800-273-TALK (8255), or message the Crisis Text Line at 741741.

Andy Kreuger's death by suicide was shocking, everyone gathered for the Abenaki County Bar meeting agreed. However, when people thought about it, maybe not such a total surprise.

Andy, an attorney in a solo practice in North Upton, NH, and secretary of the aforesaid association – really an excuse to organize a dinner and get some free CLEs a couple times a year – was competent and well-liked. He was the go-to expert on the tangled mess of poorly drawn property lines and sketchy titles around Hemlock Lake. Like many lawyers in a small county, real estate work was a staple that he supplemented with the occasional lawsuit and minor criminal matters.

His wife's death from leukemia five years ago had been hard on him, but by Christmas of that year, he seemed to have found a new normal. He joked that adding a dog to the household gave him somebody to talk to, and hey, he no longer felt guilty about how often

he'd gone hunting that year.

But this past fall, Lucas Verville, his usual hunting partner, and the county's tax assessor, said his friend seemed more subdued on their tramps in the woods. Andy did not seem to care at all that he did not bag a deer, and several times, he just said he wasn't up to going out. And Lucas felt really uncomfortable when he had to tell Andy that he had mixed up the parcel numbers on some paperwork he had filed with Lucas's office. It was not typical for someone who knew the area's tax maps the way Andy did. Andy thanked him profusely for catching the error before it got too far, and then promptly forgot to sign the check for the accompanying fee. The next time Lucas saw Andy at the Buy-Low food market, Andy pretended not to see him. When Lucas heard about the suicide two months later, he wondered if he should have said something.

Paralegal Dottie Franklin, who literally bumped elbows several times a week with Andy in the Registry of Deeds office, had said something, and now was wondering what she should have done next. Just last week, she had picked up a stack of folders on the worktable at the Registry to move them out of her way, and a letter on fancy corporate letterhead had fallen out. She was just putting the letter back on the stack as Andy came hurrying over, looking furious. Through clenched teeth, he hissed that she had no business messing with his stuff. They had known each other for years and had a pleasant nodding relationship. But in the past year, as Dottie's title business had begun to add some clients

that used to go to Andy, he had become distant and then even testy. "Andy, really..." she said, consciously maintaining an even tone, without backing away. "We're friends. I have no interest in your stuff." She wished she had known what else to say. His reaction had seemed so out of proportion. Something was wrong.

Beth Grandison, 33, who joined the County Attorney's Office as its only assistant last year, was also at the County Bar meeting. Before she joined the County Attorney's Office, she had started a private practice. Andy, once her high school track coach, had referred her a drunk driving case, and astutely brainstormed the case's weak and strong points with her. But now that she was a prosecutor, Beth felt awkward when she met with Andy to discuss plea deals on two cases in the past month. Andy seemed unprepared, unfamiliar with case details. Andy wasn't relying on the facts to negotiate, she felt like Andy was leaning on their friendship to give his clients a break. He was pleading rather than arguing, it seemed to Beth. She wasn't sure that Andy was adequately representing his clients, but it wasn't her place to say something. Or was it?

Others, too, had noticed Andy not being on top of his game. But at the County Bar meeting, no one voiced these thoughts aloud. No one except Julian Davis.

"Dammit! I wish I had not left him alone. I always thought he would come back to talk to me," said the burly, red-haired attorney in a booming voice. Julian had sat on the district court bench for 15 years before

returning to practice law. Sipping his omnipresent tall glass of club soda with lime, Julian shook his head and recounted to the room. "Last month, I bumped into him coming out of the bank. He looked like he'd seen a ghost. I said, 'Andy, you don't look so good.' I made him join me for a cup of coffee. We sat out there on the common and he told me he was having some problems – I can't tell you what. He said sometimes it just seemed like he was on a treadmill and going nowhere. I told him that he ought to get some help. Then he straightened up and said he was fine, that he could handle it.

Julian paused a minute. "I told him we should get together on the weekend, do some target shooting, talk some more. He never called me. I never called him."

No one spoke for a long minute. No one knew what else to say.

These attorneys and colleagues, and others in their small community, had seen signs that someone they knew well was struggling. Some reached out to their friend, others wanted to but felt constrained by their roles. Making a referral to an outside authority – the attorney discipline process, the courts, the lawyers assistance program – those were drastic steps. What damage to his professional reputation would calling someone else have caused? How would he react?

Jill O'Neill, Executive Director of the NH Lawyers Assistance Program, knows

WELLNESS continued on page 14



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**Additional results: TL4J.com**

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# We the People State Champions Milford High School Return from National Finals

By Tom Jarvis

On April 22, 2022, Milford High School represented New Hampshire in the We the People National Finals in Washington, DC, via Zoom, where they placed 22nd out of 47 participating schools. They became State Champions during the State Finals back in January.

Participating students were Ryann Anderson, Carla Costas, Caleb Cote, Allison Demmons, Sofia Freeman, Cameron Hopkins, Lily Kincaid, Riley Weis, Logan Woods, and Manya Ziemiecki.

Although they were not crowned National Champions – California’s Amador Valley High School took that honor – Milford took home a prestigious Unit Award for Excellence. These awards are presented to each of the six units for strong demonstration of their knowledge pertaining to a particular subject. Milford’s presentation for voting laws, equality, and the Civil Rights Act earned them the award, which ranked that unit 12th in the nation.

In 1987, the Center for Civic Education developed the innovative program called, We the People: The Citizen and the Constitution (WTP). Brought to schools by the New Hampshire Bar Association, WTP is a nationally acclaimed civic education program that enhances students’ understanding of the Constitution and Bill of Rights and allows them to discover its contemporary relevance.

The program’s culminating activities are simulated congressional hearings where students evaluate, take, and defend positions

on six units of constitutional law principles before a panel of judges, made up of NHBA members and other civics leaders in the community. District hearings occur in December of each year and the State Finals take place in January. The top performing class then earns the opportunity to represent NH in the National Finals in Washington, DC.

Thomas Lundstedt, Milford’s teacher of the program, is an alum of both Milford High School and WTP. This is his first year of teaching.

“The students put in a lot of work leading up to the finals,” Lundstedt said. “Being a smaller class, we had to double up, so it was nice to see them rewarded for their efforts and to get a little validation for all the work they put in. They did a really good job.”

Lundstedt says being familiar with the program and how it works as a former WTP student gave him a little bit of an advantage. However, the advantage was mitigated by his class being smaller than the other schools, which means they had to work harder.

Despite not winning at the Nationals, Lundstedt was still very positive and beaming with pride for his students.

“I left on Sunday feeling very proud of their performances,” he says. “The class was a really smart bunch, so it was really cool



We the People teacher, Thomas Lundstedt, standing in front of his classroom explaining the types of government. Photo by Tom Jarvis/Bar News



Milford High School students proudly holding their trophy for winning the We the People State Championship in January 2022. From left to right: Cameron Hopkins, Riley Weis, Lily Kincaid, Ryann Anderson, Sofia Freeman, Allison Demmons, Manya Ziemiecki, Logan Woods, Carla Costas, and Caleb Cote. Photo by Tom Jarvis/Bar News

to see them demonstrate their knowledge.”

Manya Ziemiecki, one of Lundstedt’s students said, “we were prepared but we knew that it was okay if we didn’t get into the top 12. It was a wonderful experience to have gotten that far.”

Ziemiecki says that in addition to going McGill to study voice in the fall, she also wants to study political science and potentially become an attorney like her father, doing civil defense.

“I don’t think I would have ever solidified that career path for myself without the We the People class,” says Ziemiecki. “It’s a really good class for students to learn the information [taught in the WTP class] because with everything that’s going on right now in the headlines, like the bomb that was just dropped with *Roe v. Wade*, I felt like I was less in the dark and understood more of what I was reading. The class provided the

objective facts that you should weigh when looking at these problems.”

Ziemiecki also added that she was pleased that her Social Studies teachers, including Lundstedt, were not biased in their teachings. “They are focused very much on fact,” she says. “Very much on the objective issue at hand and not trying to taint their teaching with any of their personal beliefs.”

The NHBA’s Law Related Education department is currently engaging in efforts to increase the WTP program’s outreach with the goal of getting the program into more schools.

“Overall, it’s a really great program,” Lundstedt says. “It gives kids something to be proud of in terms of their high school careers and it’s something they can take with them into college.”

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2014	31	6
2013	29	3
2012	26	6
2011	36	5
2010	21	5
2009	22	9
2008	25	8

\* As published in *Massachusetts Lawyers Weekly* for years 2008-2019; as submitted to *LW* for years 2020, 2021.

**\$6 MILLION**  
Death of transplant recipient from parasitic infection transmitted by donor organ  
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Birth injury  
Andrew C. Meyer, Jr. and William J. Thompson

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Andrew C. Meyer, Jr. and Robert M. Higgins

**\$2.45 MILLION**  
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Andrew C. Meyer, Jr. and Robert M. Higgins

**\$2.1 MILLION**  
Failure to properly manage airway post-operatively results in death\*  
Andrew C. Meyer, Jr. and Nicholas D. Cappiello

**\$2 MILLION**  
Improper treatment of recurrent bladder cancer results in death  
Andrew C. Meyer, Jr. and Adam R. Satin

**\$2 MILLION**  
Brain injury to newborn  
Andrew C. Meyer, Jr. and Robert M. Higgins

**\$1.8 MILLION**  
Delay in diagnosis of prostate cancer\*  
Andrew C. Meyer, Jr. and Nicholas D. Cappiello

**\$1.5 MILLION**  
Delay in recognition of cardiopulmonary arrest results in brain damage and death of 9-month-old boy  
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Necrotizing fasciitis after surgery  
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Delay in diagnosis of gleason 9 prostate cancer leads to advanced disease  
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**\$1.5 MILLION**  
Improper antibiotic use leads to colitis and death of 9-year-old boy  
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Misdiagnosed stroke leads to death  
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**\$1.5 MILLION**  
Death of 19-day-old baby from birth injury  
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Spinal cord injury following epidural steroid injection for pain management  
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**\$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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## Endowed Fund Established in Memory of Attorney Marilyn McNamara

The New Hampshire Bar Foundation is happy to announce that through the generosity of Attorney Mark Larson and the law firm of Upton and Hatfield, an endowed fund has been established in the name of Attorney Marilyn McNamara.

For those who knew her, Attorney McNamara was a warm and caring advocate for her private practice clients, but also for the least fortunate among us. Marilyn was a volunteer pro bono attorney for decades, taking many cases that were difficult to place. She donated her time very generously to numerous public causes.

When there was a desperate need, Attorney McNamara voluntarily left her private practice doing family law and became the Executive Director of the Legal Advice and Referral Center, a Concord-based, federally-funded poverty law program providing family and housing law advice, counsel, and referral services to



Chief Justice Broderick with incoming NHBA President Marilyn McNamara at the 2010 NHBA Annual Meeting. The pair worked together on legal services and access to justice issues.

low-income clients. According to her longtime friend and law partner, Mark Larson, "it was the selfless devotion to the common good that will be her lasting contribution to New Hampshire." Mark felt that her commitment to LARC and her devotion to her needy clients should be memorialized with a fund in her name to support legal services to the poor.

During her life, which was tragically cut short in 2016, Marilyn was recognized for her tireless service to the poor, with the L. Jonathan Ross Award for Outstanding Commitment to Legal Services for the Poor. Then, in 2012, she accepted the inaugural Bruce E. Friedman Award for pro

bono commitment. In addition, Attorney McNamara served as the New Hampshire Bar Association President in 2010. When in private practice, her law firm, Upton and Hatfield, always supported her time and energy devoted to her neediest clients, and in that spirit, continue to support her priorities by co-founding this endowed fund.

The founders of the endowment hope that others who knew Marilyn and appreciated her big heart and good deeds will make contributions in her honor so as to continue the work that she made a priority.

If you have questions or would like to contribute to the Marilyn McNamara endowed fund, contact Associate Executive Director of the New Hampshire Bar Foundation, Mysty Shappy, at [mshappy@nhbar.org](mailto:mshappy@nhbar.org).

## Powering Justice and Propelling Change

### Bar Foundation Annual Dinner Held on April 12 at the Manchester Country Club



Former NH Bar Foundation Chair Jack Middleton (left) is pictured with current NH Bar Foundation Chair James J. Tenn, Jr.



Attorney Lisa Wolford (left) enjoys a laugh with the Honorable Daniel E. Will (center) and Senior Assistant Attorney General Tim Sullivan (right).

One hundred and twenty people were in attendance at this year's Bar Foundation Annual Dinner, held in-person after a two-year pause due to the pandemic. The event included lively speeches, socializing, and awards.

Award recipients included Rodney N. Dyer, Nixon-Zachos Award; Steven B. Scudder, Kenison Award; Megan C. Carrier, Kirby Award; Henry R. Klementowicz, Kirby Award.

The event raised \$40,150 in sponsorships and \$17,670 in donation pledges with an expected net revenue of \$50,004. Money raised by the Bar Foundation helps to support a variety of legal services programs in New Hampshire.

Thank you to all attendees, award presenters and recipients, sponsors, and donors for making this such a successful in-person event!



Honorable Joseph LaPlante presents the Kirby Award to Megan Carrier (not pictured).



NH Bar Foundation Chair James J. Tenn, Jr. (left) pictured with award recipients, Rodney Dyer (left-center, Nixon Zachos Award), Steven Scudder (right-center, Kenison Award), Henry Klementowicz (right, Kirby Award).



Gail Dyer looks on as her husband, Attorney Rodney Dyer accepts the Nixon-Zachos Award.



## In the News

### Community Notes

Join the NH Women's Bar Association for their May Book Club at the Crown

Tavern in Manchester, NH on Wednesday, June 1, 2022, at 5:30 pm. This month's book is *Maid: Hard Work, Low Pay, and a Mother's Will to Survive*. Happy Reading! To register go to: <https://nhwba.org/event-4804793/Registration>

### Coming & Going

The law firm of McLane Middleton is pleased to announce the hiring of Kim

E. LaCoste as a Trust Officer in the firm's growing Trust Services Department.

McLane Middleton is pleased to announce the promotion of Michael C. McLean to Director of Marketing and Business Development.

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## Luncheon & Networking Event

*Come join the Granite State Association of Legal Administrators for a luncheon and networking event on Thursday, August 11 at 11:30 am at the Puritan Backroom Conference Center. Space is limited.*

Register by emailing: [blandry@pastorikrans.com](mailto:blandry@pastorikrans.com)

Granite State Chapter of the Association of Legal Administrators, GSALA, serves legal management professionals in NH and beyond. We are a member-managed organization that is committed to serving the needs of our membership and others in the legal community.



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## NHBA Committee Members Sought

Watch for survey coming soon by email - reply by May 27

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### NHBA Committees

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- Lawyer Referral Service
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- Legislation
- New Lawyers

Learn more at [nhbar.org/nhba-committees](http://nhbar.org/nhba-committees)

Questions? Contact Debbie Hawkins  
at [dhawkins@nhbar.org](mailto:dhawkins@nhbar.org) or (603) 715-3269



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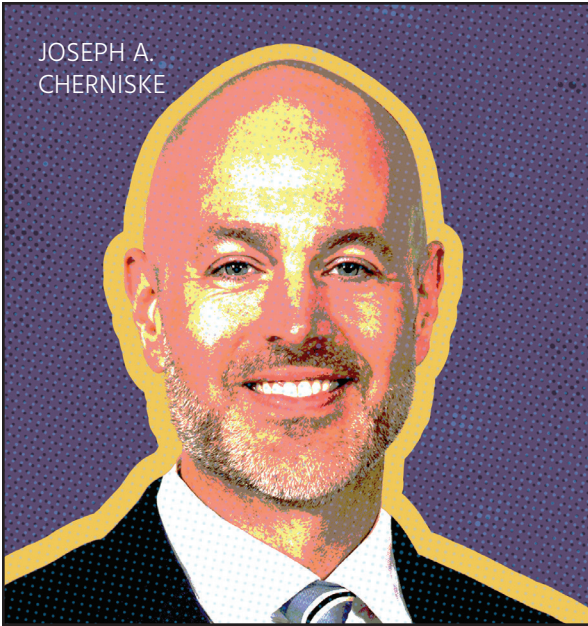
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**Attorney Cherniske joins the firm's Criminal Defense Group.**

Joe has over a decade of experience in the criminal justice system. He represents clients charged with serious misdemeanor and felony crimes.

Prior to joining Shaheen & Gordon, Joe worked at the New Hampshire Office of the Attorney General in the Criminal Bureau. Joe began his legal career as a prosecutor at the Merrimack County Attorney's Office, where he handled over 60 jury trials and hundreds of cases.

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*Joseph Rheaume rejoins Devine Millimet's Corporate Team*

Devine Millimet is pleased to announce that Joseph Rheaume has rejoined the firm as a Corporate Attorney. Joe helps clients navigate a myriad of choices involved in starting, buying, maintaining and selling a successful business. He has also worked as in-house corporate counsel to a global medical device manufacturer with 800+ employees, advising on, negotiating and preparing a number of different types of contracts.

Joe attended the University of New Hampshire School of Law, where he participated in the Daniel Webster Scholar Honors Program. He was also a teaching assistant for three classes and founder of the Veterans Law Society, a student organization devoted to justice for veterans. In his final year, Joe was a member of the Commercial and Consumer Law Clinic. Before joining Devine Millimet, Joe also consulted at the New Hampshire Insurance Department on matters pertaining to life, accident, and health insurance.

Prior to practicing law, Joe served for 11 years in the U.S. Air Force as a Survival, Evasion, Resistance, and Escape (SERE) Specialist, where he educated service members on surviving austere conditions behind enemy lines, including all types of captivity. Following the Air Force, Joe worked at the Marine Corps Special Operations School instructing SERE to Marine Corps special operators.

Joe can be reached in Devine Millimet's Manchester office at (603) 695-8572 or at [jrheaume@devinemillimet.com](mailto:jrheaume@devinemillimet.com).

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Upton & Hatfield, LLP is pleased to announce that Todd C. Fahey has joined the firm. He will practice in the firm's Concord office.

After a hiatus running one of New Hampshire's largest membership organizations for the past eight years, Todd will return to his law practice serving clients in the areas of nonprofit, business, municipal, banking and real estate law. Todd will resume his practice counseling nonprofit and tax exempt organizations, charitable trusts and foundations and continue working with New Hampshire businesses, nonprofits, entrepreneurs, municipalities and real estate owners and investors with a focus on related leadership, financial and strategic decisions.

Todd graduated from the University of Maine School of Law and Columbia College, Columbia University and has served New Hampshire businesses and nonprofits in various volunteer and leadership roles, and as their trusted legal counsel, since 1993. He is admitted to practice in New Hampshire and Maine and in the U.S. District Courts of both states.

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### EMILY WHITE

Emily is an immigration attorney focused on representing companies, organizations, and individuals in a broad range of immigration matters. A lecturer on immigration law to both local and national audiences, Emily is also a sought-after mentor to attorneys in complex immigration cases.

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those concerns exist. She says that often attorneys, judges, or other colleagues in the legal community see that someone is showing signs of a struggle – substance use, depression, emotional outbursts, or performance issues – but these caring bystanders are left unsure about exactly how to respond. “They are afraid to speak of their concerns about their colleague until it reaches a certain point – but they may be waiting too long,” she says.

O’Neill, who took over the NHLAP program in July 2021, has more than 19 years of experience as a mental health provider, and she served for four years in Nashua’s mental health court. She also is part of a task force that promotes programming for justice involving veterans, so she has gained experience with the special pressures, responsi-

bilities, and role constraints of people in legal and law enforcement fields.

One thing she’s learned is that many times people who are struggling with mental health issues are grateful to be connected to a mental health professional – even if they did not initiate the contact. “People are afraid to make a referral for fear of damaging someone’s reputation, but more often than not, that person is receptive to our help.”

Often when discipline issues arise, it’s the signal of someone’s emotional suffering, she says. Fellow professionals may feel it is not appropriate to inquire about someone’s mental wellness until it is demonstrated that the professional’s conduct has fallen below minimum standards of professional conduct. But that may be too late.

Others believe that an offer or even an inquiry about someone’s wellness will be unduly intrusive or out of bounds for their re-

spective roles. Or they worry that provoking a hostile response will drive the person away from seeking help.

NHLAP and other mental health resources are there to help people who are suffering, and it is up to every individual to help the profession, recognizing that sometimes it is necessary to step out of one’s professional role and relate on a personal level. Callers who do reach out to ask the NHLAP to share concerns about a colleague who shows distressing signs are often angst-ridden themselves, O’Neill says. “They have belabored to themselves as to whether to call or not. But they care. The remark is always, ‘I’m calling because I’m concerned and care.’”

The story of Andy Kreuger is fictional but many in the real county courthouses and law offices of NH may recognize someone who might be in similar circumstances. Often in retrospect, colleagues and friends have recognized behavior changes and signs of emotional suffering. To change the ending of a story like Andy’s, we must commit ourselves to overcome the stigma that keeps us from seeking help for ourselves or that influences our decision to “not get involved” when we see the signs.

The legal profession, individually and collectively, can make changes to develop a healthier culture where help-seeking is openly talked about, encouraged, and supported. Resources exist, but the will to change must also be present to enable the profession to tackle head-on the occupational hazards of suicide loss within the spheres of our lives, our families, our workplaces, and our communities.

The NHLAP provides immediate and continuing assistance to judges, lawyers, and law students in addressing personal and professional issues that is guaranteed confidential. NHLAP can help address a wide range

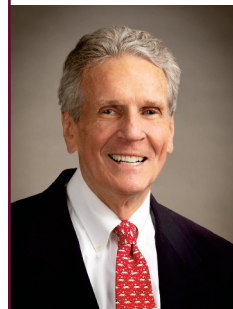
of wellbeing challenges from physical health, mental health, substance use, and addiction issues. It offers a “no wrong door” approach to seeking information, resources, or support. Reaching out to NHLAP cannot negatively impact your license, career, or personal relationships; but not reaching out might.

While there is no Abenaki County Bar Association, the legal communities it was meant to resemble are encouraged to reach out and contact Jill to open a dialogue about what they can do to improve the ending for the next Andy Kreuger in their midst.

*This article was written by Dan Wise on behalf of the New Hampshire Coalition for Suicide Prevention in collaboration with Jill O’Neill, Executive Director of the New Hampshire Lawyers Assistance Program.*

For more information or to contact the NHLAP confidentially call (603) 491-0282 or visit [www.lapnh.org](http://www.lapnh.org).

Contact the Coalition and access its resources by visiting its website [www.zerosuicidesnh.org](http://www.zerosuicidesnh.org).



## Attorney John M. Cunningham

John forms LLCs, converts corporations to LLCs and represents clients in LLC disputes. He chaired the committee that drafted the NH LLC Act, and he is the author of the leading U.S. LLC legal and tax practice manual.

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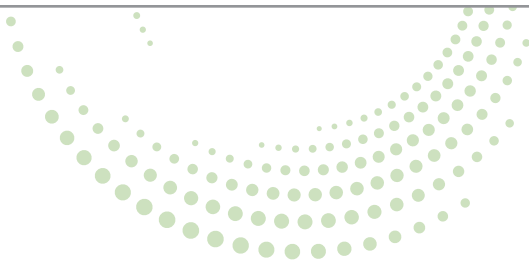


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ing on to the Boston University School of Law.

He was also an early music aficionado, learning accordion as a boy because, “every Italian mother wants her son to play the accordion,” he jokes. But another instrument soon won his allegiance. His uncle was a drummer, and Barbagallo remembers going to visit him at his grandmother’s house and he “looked at this big bass drum and it was love at first sight.”

That uncle became his first percussion teacher, and he then studied privately with Joe Morello, the famed American jazz drummer who served as drummer for pianist, Dave Brubeck.

While still in high school, Barbagallo played drums for Ted Herbert, a well-known bandleader from the big band era, and stayed with his band off and on for three or four years. “A lot of the guys (in the band) went on to Woody Herman’s band,” he recalls. “I went on to law school. I never regretted it.”

During his years in law school, Barbagallo interned for then-Attorney General, Edward Brooke, later to become the first black politician from MA to serve in Congress. When Barbagallo mounted an unsuccessful run for State Representative in the 1970s, Brooke came to Lawrence to campaign for him. “He was quite a guy,” Barbagallo says.

After law school, he continued working full-time as a musician, doing legal work in his spare time. “Then it morphed into full-time,” he remembers. For 15 years, he had a general law practice in the areas of real estate, divorce, personal injury, and civil and criminal work, then started focusing on personal injury cases in

1983. Winning a half-million-dollar case for a construction worker who had been injured in Seabrook helped decide that direction, he says.

Though he has collaborated with other lawyers on some cases, Barbagallo has always had his own firm. “I had a political friend who worked for the Department of Labor, and I walked into his office and saw all these cubicles and I said, ‘I’ll sell pencils before I do something like that,’” he explains. “I like my freedom.”

One of his most memorable cases was *Commonwealth v. Chretien*, in which he represented a man who had been accused of raping his estranged wife, and which went all the way to the MA Supreme Court. Though he lost – the court ruled that the victim being the spouse of the defendant was no bar to a conviction of rape – it was a landmark case because it marked the first time a man was prosecuted for raping his wife, Barbagallo says.

His legal work has won the admiration of fellow attorneys like Mark Stevens, a criminal defense lawyer with offices in NH and MA. When Stevens was opening an office in Salem, NH, Barbagallo called him and offered advice about getting the business started, “and he’s been a great resource ever since,” says Stevens, who has referred personal injury clients to Barbagallo.

“I always get good feedback about him,” Stevens says. “I do listen to his music, too.”

Barbagallo has also been active in a number of Bar-related, political and civic organizations. He was President of the Rockingham County Bar Association twice, a Governor of the New Hampshire Trial Lawyers Association, serves on the Board of Directors of the Hampton, NH Chamber of Commerce, and has served on

charter commissions in both Lawrence and North Andover, MA.

He belongs to the Italian American service organization, UNICO, and is a past Director of the Citizens League for Adult Special Services (CLASS), the Merrimack Valley Philharmonic Orchestra, the International Institute, and other philanthropic groups.



Ralph Barbagallo performing as Rico Barr. Courtesy Photo

But most of his out-of-the-office time is devoted to his other love: music. He is the “Rico” of the Rico Barr Band, a take-off on the name of Beatles’ drummer, Ringo – and is the band’s lead vocalist, with a smooth, dateless voice that can easily move from Bobby Darin to Elton John to Motown covers. Depending on the event and venue, he either appears as part of a duet, a trio, or a full band with up to eight or nine members, calling itself the Rico Barr Band featuring the JJR (Jump ‘n’ Jive Review) Horns. He has also written some 300 original songs.

“He can sound like Sinatra, like Tony Bennett, like Steve Lawrence,” says Boston radio personality, Ron Della Chiesa, the voice of WCRB’s Boston Symphony Orchestra broadcasts and the host of Radio Station 99.1’s, “Strictly Sinatra,” for which Barbagallo wrote the theme song. “He’s one of the singers from the Italian school; he knows that repertoire cold.”

“I never knew when I met him that he was a lawyer,” Della Chiesa adds. “I just thought he was a fantastic musician who really knew how to get an audience going. I can just imagine what he’s like in a courtroom.”

Chuck Rolecek, owner of CR’s Restaurant in Hampton and former owner of C.R. Sparks in Bedford, has known Barbagallo for some 30 years, since he heard him perform at a wedding and asked him to play at his restaurant venue.

“He’s got a great voice and he’s a heck

of a drummer,” says Rolecek. “At CR’s, he gets a really great following. He’s really good at ‘50s and ‘60s crooners like Frank Sinatra, Bobby Darin, Dean Martin, and Tom Jones, but he also sings and plays with a keyboard player. He’s a true professional. He gets here on time, he sets up well in advance, he interacts well with the guests, and he plays requests. I truly love working with him.”

One of Barbagallo’s favorite performance anecdotes dates back to the 1960s, when his band was playing back-up for Chuck Berry, the pioneer rock-and-roll singer and guitarist, and Berry was late for the performance. About an hour into the show, “the crowd was getting restless,” Barbagallo recalls, when Berry finally showed up and demanded payment before he would appear. He would not take a check, and promoters had to scramble to find enough cash for the payment.

“Then he took the time to count every dollar and put it in his guitar case before he would come on stage,” Barbagallo says. “All I heard from that moment was screaming... He probably got burned so many times he had to make sure he got paid before he got on stage.”

Barbagallo also used to play drums at the Hampton Playhouse for musicals like “South Pacific” and “Music Man,” and appeared – sort of – in a 2016 Disney movie called, “The Finest Hours,” with Chris Pine and Casey Affleck. He is in a nightclub scene, but the rhythm section is hidden by taller players in front, so he is little more than a shadow.

During his years at the Hampton Playhouse, he also met and worked with Blythe Danner (aka Gwyneth Paltrow’s mother) and Rue McClanahan of “Golden Girls” fame. The Rico Barr Band has appeared at venues ranging from the Cape Cod Jazz Festival to the Peabody Essex Museum to the Manchester Jazz and Blues Festival to Swinging Under the Stars at Faneuil Hall, and Barbagallo says he is especially looking forward to playing at a “Rat Pack Night” at a barge concert in Boston this summer.

The father of two grown children and grandfather of one, he lives in North Andover, MA with his wife and office manager, Marie.

“Two of the best moves I ever made were getting admitted in NH and focusing on personal injury law,” he says of his professional life. “The third thing was having an outside interest. It doesn’t have to be music. People get burned out. I think having outside interests makes you better at everything you do because you’re fresh all the time and it makes for a long career. I learned that lesson, about work-life balance, a long time ago.”

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## Legal Writing: Knowing Your Audience is Key

By Heather Ward

Who is your audience? We started out the Legal Analysis & Writing 1L course in August with this important question. We emphasize throughout the school year that as lawyers we must know who our audience is to understand the type of communication that we are doing. In the fall term, we focused on objective writing – where the audience is a client or partner who is getting an internal memorandum of law analyzing a specific legal issue. We are now ending this school year focusing on the importance of audience in persuasive writing as the students complete their mock oral arguments in front of New Hampshire judges.

Knowing your audience plays a role in all areas of the law and legal analysis. Initially, we are presented with a fact pattern. The fact pattern takes the form of a civil complaint, answer to complaint, deposition, client interview, or some other method of obtaining the case facts. From these facts, we think about what the issue is to complete the legal analysis. Even before we address the legal question or issue presented, we must understand who is receiving the communication – who is



the audience? Legal analysis does not operate in a vacuum. It is communicated to an audience through a vehicle – an internal memo, a client meeting, an email, or an argument in court. The individual who is receiving the analysis is as important as the analysis. The legal analysis is lost if it is not communicated in a manner that factors in the audience who is receiving it.

As lawyers, when we initially meet with a client, we listen and hear what the client says to best understand this audience to communicate our legal analysis. The client has a different background and experience than the lawyer – a different perspective. A client may be angry, scared, or have any number of other emotional reactions to being involved in a legal situation. This will help inform how the attorney communicates the law and legal analysis to the client, both in that initial meeting, as well as future meetings.

The attorney must also consider the client's understanding of legal proceedings. If a client has no prior experience dealing with a legal situation, a lawyer's communication and legal analysis would be conveyed differently than if the client was also a lawyer and had certain background information. The sensitivity in communication varies based upon the client and their emotional investment in the proceedings. For example, if the client has no legal experience and is overwhelmed by the mere service of the complaint, a lawyer would limit the initial legal analysis to the basic information as to what happens next,

instead of bombarding the client with citations to caselaw and rules to support understanding the chronology of the proceedings.

Similarly, in communicating legal analysis to other lawyers it is important to once again revisit the idea of audience. Who is the other lawyer? Co-counsel? Supervising partner? Opposing counsel? Depending upon the role this lawyer plays in the legal matter, the communicated legal analysis will take a different form. You may have a more relaxed and casual objective analysis with co-counsel in contrast to a more persuasive and guarded analysis with opposing counsel.

Additionally, it may be that the lawyer is familiar with the background law and does not need the same foundational analysis as a lawyer who has not practiced in the area. To deliver the legal analysis, consideration of the audience allows for streamlining the legal analysis. For example, the objective analysis that was provided to co-counsel without citations to caselaw and without persuasive language transforms when speaking to opposing counsel, moving toward persuasive writing arguing for the client. The objective statement to a partner, "we will most likely be successful on this motion to suppress because the search occurred in the client's private boarding house room, without a warrant or any exception, and although he did not always lock the room, there is a heightened privacy interest in his private dwelling space," transforms to a persuasive state-

ment to opposing counsel: "the search of my client's boarding house room was unconstitutional and the evidence won't be admissible at trial because he has a heightened right to privacy in his personal private living space."

Once in front of the court, a lawyer has a new audience in presenting their legal analysis. The legal analysis remains the same, applying the facts to the law; however, how that analysis is communicated changes based upon the audience. The persuasive analysis provided to opposing counsel through conversation may now include citations to case law and comparison to case facts: "In Smith, the court made clear that there is a privacy interest in individual boarding rooms. In that case, under the specific facts of the case, there was no reasonable expectation of privacy in the hallway of the boarding house, but the individual rooms were protected as apartments. Here, the defendant's boarding house room was similar to an apartment and protected from intrusion with a warrant or an exception to the warrant requirement."

We see the importance of audience in a jury trial. In any jury trial, there is both the sitting jury, as well as the judge. The process of jury selection shows us that who makes up the audience is an important factor in how we deliver our argument. In a jury trial, a lawyer is not arguing the legal principle articulated in case precedent. Instead, the lawyer is using the law to communicate the same analysis but through a story to the jury, taking into account this new audience. During a jury trial, the language and style used is different than that which is used in the pre-trial motion hearing before the judge. We as lawyers take into account who is receiving our information and therefore how it must be delivered.

As lawyers, we have certain facts and relevant law. We are constantly tasked with communicating, through different mediums, our legal analysis. Who the audience is must be at the fore when determining how best to communicate our legal analysis. If our audience is not considered, a lawyer may overwhelm the recipient by providing a more extensive analysis than can be comprehended or may bore the audience with redundancy. The lawyer may also offend or harm the client who is personally and emotionally invested in the outcome. To obtain the maximum persuasive benefit from the strength and goals of the legal analysis, an attorney must consider the audience.

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## The Unspoken Benefits of a Legal Education

By Travis Bennett

Beginning law school as workplaces and educational institutions were returning to in-person operations was an anxious time. Anxious, of course, due to the still-lingering shadow of the pandemic, but also due to the challenges of law school and re-engaging in social settings that had largely ceased for nearly two years. Working for five years after finishing my undergraduate degree made the classroom setting seem even more foreign, almost surreal. Thankfully, I'm far from the only UNH Law student closer to 30 than 20.

By far, my biggest struggle, as with many first-year law students, revolved around legal writing. *Erie Railroad Co. v. Tompkins* and *International Shoe Co. v. Washington*, for example, aren't the most challenging cases to read or extract rules from. However, applying the Erie Doctrine on a Civil Procedure exam or drafting my first memo to show sufficient minimum contacts to establish diversity jurisdiction, was another matter. The formulaic, analytical, and writing structure at first makes perfect sense. Issue, rule, application, conclusion—how else would you apply the law to a fact pattern?

Then, exams come, and the pressure of knowing that nearly your entire grade will



be determined in those few hours, and in that single response, adds another challenging layer to the endeavor. This aspect of legal education—the emphasis on performance within a high-stress, high-stakes environment—is a crucial yet understated aspect of law school as it relates to the profession. If you can't handle a high-stakes exam, how can you be expected to navigate a public trial where someone's livelihood may hang in the balance?

Indeed, the entire grading scheme of law school seems reflective of the uncertain nature inherent in the legal field. At very few points during my doctrinal classes, until final grades were released, did I know how well I was performing, and I imagine that feeling may be similar to awaiting a judgment on a case. The bell-curve grading system has certainly engendered a fair amount of consternation and debate amongst students and legal academics, as it measures students against one another and can create a competitive and sometimes toxic environment. This is perhaps why some law schools, such as Northeastern and Harvard, have moved away from a GPA-based grading scale, to help foster "a cooperative spirit that becomes an asset in their legal careers," as Northeastern's website puts it.

During orientation at UNH Law, the competitive and cut-throat aspect of law school was downplayed as something that other schools are known for. And sure enough, that has not been something I've noticed or experienced to any significant degree (however, I also commute and I'm not

the most active student on campus, so maybe I'm not the best person to ask). Perhaps it helps that UNH Law is a relatively small, close-knit campus, in a close-knit state, and that it was conceived in the 70s out of an effort to change the approach to legal education.

**"Learning how to conceptualize present challenges within the broader perspective of law school, a career, or life, seems like yet another crucial, almost unspoken part of legal education."**

Certainly, the faculty has a significant role to play in helping shepherd the student body along the path of civility and professionalism. One of the highlights of our first semester, for myself and I'm sure for many others, was when one of our professors downplayed the significance of first-year grades in our last class before finals. First-year grades may determine what kind of job we get over the summer, he said, but they comprise a small fraction of what our overall grades would be upon graduation. Even then, while law school grades may determine our employment immediately after law school, he went on, they only determine the first job you have after law school. He further assured us that no one ten years down the line would

care what grade we got in his class. Naturally, he received a well-deserved round of applause.

Learning how to conceptualize present challenges within the broader perspective of law school, a career, or life, seems like yet another crucial, almost unspoken part of legal education. Certainly, that ability is a life skill that any person ought to develop over the course of their life. However, for law students and lawyers, maintaining a degree of realistic objectivity, with respect to the actual practice of law, but also towards your own professional development, seems a necessity. In an environment and professional field dominated by so much uncertainty, ambiguity, stress, and competition from some of the most intelligent and driven people in the world, how else can one expect to function, much less succeed?

As I prepare for finals, this newfound perspective and insight has helped assuage some of my angst. Already, compared to last December when the weight of exams felt almost suffocating, I have less dread for those final moments before the exam begins. Considering the past year, more broadly, with the pandemic now overshadowed by a war in Europe, I can't help but pause to reflect that my own hardships are trivial in comparison to most. Attending law school, while a dream come true for me, will never be more than a fantasy for many, or even a possibility for others. Therein lies a kernel of motivation and inspiration, for me at least, to ultimately pursue something beyond grades, or a nice paycheck.



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the Mississippi law on the basis that it violated the holdings of *Roe v. Wade* and *Planned Parenthood v. Casey*, which both recognized a woman's right to obtain an abortion before a fetus is viable, well after 15 weeks of pregnancy.

Director of the ACLU-NH, Gilles Bissonnette, said that upholding the Mississippi law could have harmful effects, not only on vulnerable communities but on public perception of the Court.

"If the Supreme Court allows Mississippi's ban to stand, it will erase nearly 50 years of precedent, and in the words of Justice Sotomayor, create a 'stench' in the public perception of the Court and its legitimacy," said Bissonnette, who also fears "politicians will try to ban abortion nationwide, including right here in New Hampshire."

Bissonnette is concerned that such a ruling would create more barriers for "people who already face systemic racism and discrimination in this country: people of color, people who are undocumented, people with disabilities, and LGBTQ+ people, as well as people who are young, have low incomes, or live in rural areas."

#### Granting Cert in *Dobbs* Is Itself Significant

The Court's forthcoming decision comes after nearly a year-long pendency. Mississippi's petition for writ of certiorari



Bissonnette

was granted in May 2021, following Justice Amy Coney Barrett's appointment as the replacement for Justice Ruth Bader Ginsberg, who died the previous September. Both the US District Court for the Southern District of Mississippi and the US Court of Appeals for the Fifth Circuit had struck down the State's Gestational Age Act, which prohibits nearly all abortions after 15 weeks of pregnancy, with limited exceptions for fetal abnormalities and medical emergencies. The lower courts held that the law was unconstitutional under the Supreme Court's precedents in *Roe v. Wade* 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), both of which recognized the constitutional right to pre-viability abortion.

Some Court watchers and constitutional scholars who listened to the two-hour-long Dec. 1, 2021, oral argument in *Dobbs* picked up a clear signal of the Court's direction.

John Greabe, UNH Franklin Pierce School of Law Professor and Director of the Warren B. Rudman Center for Justice, Leadership & Public Service, believes the Court is "extraordinarily likely to rule for Mississippi, based on the justices' known ideological commitments and the questioning at oral argument."

"The Court could rule for Mississippi by modifying but not completely overruling the holdings in *Roe v. Wade* and *Planned Parenthood v. Casey*," he said.

The Supreme Court has repeatedly reaffirmed that states cannot ban abortion before



Greabe

fetal viability, which is typically around 24 weeks of pregnancy. In granting cert, the Court agreed to hear only one of the three questions included in the petition, namely whether all pre-viability prohibitions on elective abortions are unconstitutional. Given its decision to rule on that single question, as well as its own precedents, numerous lower court rulings, and the lack of a split among the circuits, the Court may be ready to revise those affirmations. Commenting on its decision to grant cert, Professor Mary Ziegler of Harvard Law School, an expert on the law, history, and politics of reproduction, observed that "a court eager to take on abortion bans early in pregnancy seems unlikely to hesitate when the moment comes to eliminate abortion rights altogether."

In Petitioners' Brief, Mississippi argued that the US Constitution does not provide a right to abortion and, therefore, a state can freely ban abortions at any time during pregnancy, provided the regulation is "rationally related to legitimate government interests."

Mississippi contends that a right to abortion cannot arise from the word "liberty" in the Due Process Clause of the Fourteenth Amendment, because "liberty" only implicates fundamental rights that are deeply rooted in United States' history and tradition. Women's Health Organization responded that the right to abortion is firmly grounded in the Fourteenth Amendment, in that physical autonomy and body integrity are essential elements of liberty, protected



Ziegler

by the Due Process Clause. As examples, Women's Health Organization pointed out that the Court has held that the right to decide whether to accept medical treatment, the right to use contraception, and similar rights are all included in the word "liberty." The right of a person to the possession of their own body is recognizably important in the common law tradition and this nation's history, Women's Health Organization asserted, pointing out that women enjoyed a greater right to abortion during the nineteenth century than in the 1970s.

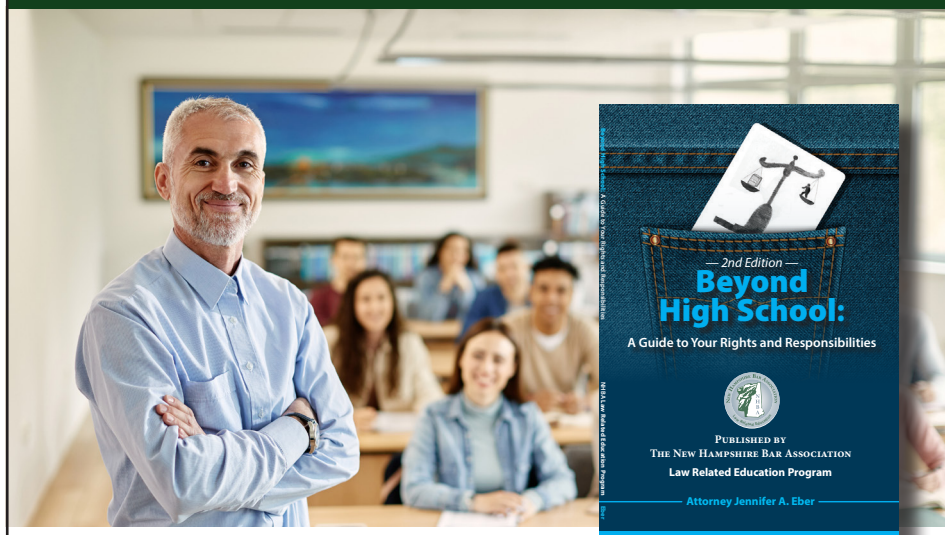
According to Professor Ziegler, "the Court wanted to take a case that would require them to either overrule all of *Roe v. Wade* or part of it." And based on the questions that were asked at oral argument, it seems that there are six justices who think that *Roe v. Wade* is either going to be eliminated entirely or radically overhauled," she said.

#### *Roe v. Wade* Has Been Continually Weakened

If the Court overhauls or completely overturns *Roe* with *Dobbs*, it will be a culmination of an erosion process that began soon after the case was decided in 1973. Just three years later, the Court upheld parental consent laws, restricting minors' access to abortion in *Bellotti v. Baird*, 428 U.S. 132 (1976). The following year, in 1977, Congress passed the Hyde amendment, barring federal Medicaid funding for abortions. Similar state-level prohibitions were upheld by the Court in *Beal v. Doe*, 432 U.S. 438 (1977).

In 1992, the Court issued the *Casey* decision, which upheld *Roe* but gave states broad authority to regulate abortions at all stages of pregnancy provided those regula-

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tions did not constitute an “undue burden” on a woman’s right to abortion. In the ensuing years, hundreds of abortion bans, including 20-week, 24-week, and so-called “heartbeat” bills were enacted. These, together with clinic and provider restrictions, parental consent, as well as laws mandating waiting periods, counseling, and ultrasounds were passed in dozens of states around the country. According to the Guttmacher Institute, a much-cited abortion research and policy organization, over 1,337 restrictive laws have been enacted since *Roe v. Wade*.

Three months before the oral argument in *Dobbs*, the high Court refused to grant an emergency application for injunctive relief in the case of *Whole Woman’s Health v. Jackson*. The plaintiffs in the case sought to prevent Texas’ six-week abortion ban, known as SB 8 or the Texas Heartbeat Act, from going into effect. The unusual Texas law outlaws abortion after six weeks of gestation but prohibits state enforcement, instead providing a \$10,000 “bounty” to private plaintiffs bringing suit against anyone who “engage(s) in acts that aid or abet” a person seeking a later abortion. Due to the law’s lack of a “state actor” for purposes of preemptive legal action to block enforcement under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and *U.S. Ex Parte Young*, 209 123 (1908), neither abortion providers nor the federal Justice Department have successfully enjoined SB 8 since its effective date, nearly nine months ago.

Taken together, the oral argument in *Dobbs* and the Court’s inaction on SB 8 have spawned considerable state legislative activity since January to both restrict and to protect abortion rights. As of mid-April, according to Guttmacher, a total of 1,989 provisions related to sexual and reproductive health rights have been introduced across 46 states and the District of Columbia. 536

restrictions have been introduced in 42 states, with 33 of them enacted so far in nine states. At the same time, 11 protective abortion measures have been enacted in seven states. According to Guttmacher and others, such as the Planned Parenthood Federation, 26 states are certain or likely to attempt to ban abortion immediately upon the Court’s ruling in *Dobbs*.

Even before 2022, many states had created laws on the books prohibiting nearly all abortions.

“[Those laws] will automatically take effect if/when the Court overturns *Roe*,” said Greabe, who believes there are likely to be “efforts in many of those states to come up with ways to prevent their citizens from traveling to states where abortion is legal to obtain an abortion.” Guttmacher estimates that under these laws, 58 percent of—or as many as 40 million—child-bearing age women would lose access to abortion.

### Impact of *Dobbs* in New Hampshire and on Other Rights is Unclear

Here in New Hampshire, the status of abortion rights is in flux. In 2021, Governor Chris Sununu signed into law the State’s first-ever abortion ban in modern times, a no-exceptions 24-week ban that mandates ultrasounds for all abortions, and provides a felony criminal penalty for doctors. In May 2022 the Governor signed HB 1609, legislation to create limited exceptions to the ban and remove the ultrasound mandate. However, a bill to enshrine existing state abortion rights in statute (HB1674) died in the

House of Representatives. Going forward, we can expect continued legislative action surrounding abortion and the 24-week ban in the State House.

But beyond the escalating threat to abortion rights unleashed by the high Court’s recent action (and inaction), there is concern

“[T]he *Dobbs* decision is unlikely to quell entrenched efforts to eradicate abortion and may call other civil rights into question.”

UNH Franklin Pierce School of Law  
Professor, John Greabe

that the eventual ruling in *Dobbs* may pose risks to the other rights anchored in constitutional privacy protections. Like abortion, rights to contraception and marriage equality are also constitutionally rooted in our liberty interest in privacy, Greabe pointed out.

Again, according to Professor Greabe, “The reasoning that the majority is likely to use in overturning *Roe* also will call into question the correctness of the Court’s holdings in these other areas,” he said. “The only limiting factor will be whether two of the six conservative justices who, for example, certainly (or almost certainly) regard the Court’s (2015) *Obergefell v. Hodges* decision—which constitutionalized the right to same-sex marriage—will be persuaded that the Court should not revisit the decision for prudential reasons under the doctrine of stare decisis.”

Greabe doesn’t believe Chief Justice

Roberts will wish “to go on an overruling spree in these areas.”

“The question will be whether he can persuade one of the Justices, (Gorsuch, Kavanaugh, or Barrett) to join him in forbearing. Justices Thomas and Alito certainly would vote to overrule *Obergefell* if given an opportunity to do so.”

Depending on whether the language in the *Dobbs* decision unambiguously extinguishes federal abortion rights, there could be further litigation in federal courts on the multitude of state restrictions. However, if federal abortion protections are overturned outright, their recognition will be a matter for state legislatures and courts. Without a federal constitutional foundation for the right to terminate pregnancy, either entirely or after a certain gestational point, states will have wide latitude to enforce extensive restrictions.

“[It’s] possible that other liberty-protected rights will devolve to the states, as well,” Greabe notes. “There are additional concerns that once the high Court abandons the constitutional right to abortion, there will be legislation criminalizing abortion at the state level and an effort to recognize fetal personhood under the Fourteenth Amendment.”

Correspondingly, Greabe noted there could be proposed legislation prohibiting abortion.

“In other words, the *Dobbs* decision is unlikely to quell entrenched efforts to eradicate abortion and may call other civil rights into question.”

Professor Ziegler framed it this way: “The recent rash of anti-abortion laws reflects the uncertainty of America’s future. The writing may be on the wall for *Roe v. Wade*, but when it comes to what happens next, the public might still have a say.”

## MARK YOUR CALENDARS: WE’LL BE PREVIEWING THE RESULTS NEXT MONTH.

We’ll also be publishing a special supplement in the July 2022 issue of *Bar News*, where we’ll share more of the most relevant findings. (And maybe even a tip or two.)

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Kulp, explaining how the idea of a navigator emerged with a subgroup of the Commission, which met throughout 2020-21.

In 2021 Nashua District Court had 5,868 district filings which included criminal, civil, landlord tenant, and small claims. The court also had 1,350 family filings, including domestic violence, and 3,215 probate filings.

The original proposal from the Access to Justice Commission was to create a position for a court navigator due to housing-related issues during the first summer of the pandemic in 2020.

"[After] the Court received funds and designed a few new processes to manage landlord tenant matters, [it was] determined the Navigator would focus on other less-resourced areas for improvement," Scheiwe Kulp said. "[And] the Navigator can certainly assist individuals and make recommendations for improvements in the housing area."

Scheiwe Kulp said Navigator programs that exist in other states are run by non-profits or bar associations, but not an employee of the court as in Nashua.

"[W]hat the Commission task force did was to convert these other models to be a court system employee model," said Scheiwe Kulp. "The Navigator in Nashua is doing the work the Court staff frankly doesn't have the time to do because of the understaffing of the courts that they otherwise could be doing."

Circuit Court Administrative Judge, David King, said Service Center Coordinators in various courts, which fulfilled a role similar to Cunha's in Nashua, were in place when he was Administrative Judge for the

**"We don't think of these cases as numbers, they're people. I want them to feel like we gave them the time they needed."**

probate court in 2007 but that these positions were abandoned because of budget constraints.

"If money were no object, it would be great to expand," said King, referring to the potential for the Navigator Program in Nashua being implemented in other courts around the state as well as hiring an attorney to assist people with legal questions when they come to court.

"This would be one step further in helping folks understand the legal process," King said.

Cunha said some of her many duties as Navigator include triaging people's needs in the lobby, providing help filling out forms, guidance with the E-filing kiosks, directing people to various legal services, and speaking with people virtually.

Overall, she says, the position helps to stop some of the backup of traffic in the lobby while providing a welcoming face for people coming to the court.

Eighty-eight percent of the help she provides is at the kiosks, and 12 percent is on the phone.

"Some days it's a steady flow of peo-

ple all day long and other days it's slower," she says. "But overall, it balances out."

A recent encounter with an elderly man illustrates the type of personal interactions which she says makes her job meaningful.

The man, who had lost his wife of 60 years a week earlier, came into the lobby of the Nashua Court with his son-in-law needing to file forms to retrieve money from a bank account.

"He was crying because he wasn't on the account," Cunha said. "He needed an ex-parte motion. This poor old man was beside himself and would never have known how to do that without help. It was emotional."

Cunha recalled the many times she has received hugs from people, cards in the mail, and even people who return to the court to say thank you for the help they'd received.

"We're understaffed and overworked," said Cunha, who works as much as an hour or more with people some days. "This position takes the burden off the girls."

Circuit Clerk of Nashua District Court, Sherry Bisson, who has worked in the Court for 36 years, said that because Nashua is the largest probate court in the state, they need more help with people filing for estates.

"These cases bring a lot of emotion," she said, "especially when people have lost a loved one or a child. They're not in a good frame of mind at these times and often not able to afford an attorney. We are able to walk them through the procedure."

Bisson and Cunha also stressed the mental health challenges in the state that exist for the Court. Part of Cunha's job is developing a resource list for people with Involuntary Emergency Admissions and

**"He was crying because he wasn't on the account. He needed an ex-parte motion. This poor old man was beside himself and would never have known how to do that without help. It was emotional."**

the court works closely with the Greater Nashua Mental Health Center.

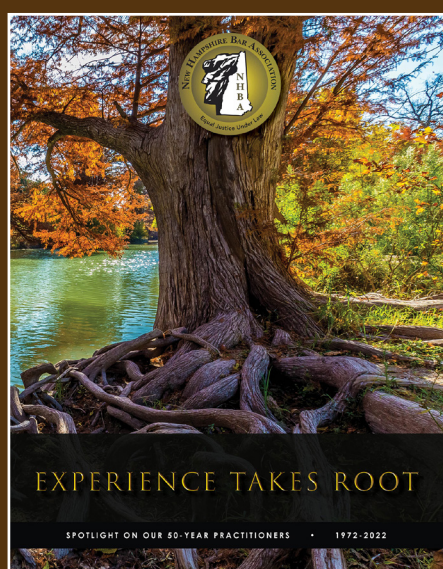
"We're trying to get a better sense of what people are coming to the court for," said Bisson, who added that people sometimes drive from as far away as Keene just to have the face-to-face interaction. "By having Manu in the lobby we're hearing what people really need."

Cunha says she understands how difficult it can be for people coming into court and she is grateful to have the chance to help.

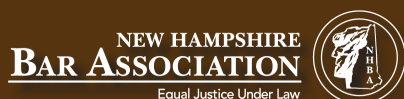
"We don't think of these cases as numbers, they're people," she said. "I want them to feel like we gave them the time they needed."

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Last year, we created a digital booklet as a tribute to our members who celebrated 50 years of law practice in 2021. It was well-received, so we're making it into a series! This year's edition will publish next month and will feature advice and insights from the Class of '72. We hope you'll download it to your favorite electronic devices and refer to it again and again.



(You can still download the 2021 edition at [nhbar.org](http://nhbar.org), under "Publications")

## MENTOR ADVICE PROGRAM



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Equal Justice Under Law





## Legal Networks: Today's Legaltech Is Connected and Future-ready

Today's modern law firms are building better client-centered experiences with new legal technologies that enable efficient, seamless, and scalable client services and firm growth.

Legal networks are widening as a result of these changes, and the industry is better connected than it's ever been before.

Much of that is facilitated through an unprecedented adoption of technology infrastructure. But there's a shift in mindset, too. Today's legal professionals are empowered to become more client-centered and deliver transformative experiences.

Instead of waiting on clients to ask for new methods and service models, growing firms are addressing their needs before they arise—differentiating themselves from bulkier and often antiquated practices while reaching into new territories and opportunities to connect to more clients. The 2021 Legal Trends Report captures just how prevalent the adoption of new technologies is throughout the sector—at least 95 percent of legal professionals plan to continue using these technologies beyond the pandemic. Together, we've experienced a generational shift, and there's no turning back.

We're more connected in a broader sense, too. Our technologies, relationships, and physical locations are redefined by the changes that surround us. We look to future concepts like digital currencies and the metaverse as a very possible future for us, and are thinking

wider about how we'll apply new technologies to make our physical lives better and more intentionally connected.

This is precisely the environment to introduce Clio's legal operating system, the first of its kind, and the most connected platform in legal.

In the traditional context of computing or technology, an operating system manages a computer's processes and connects hardware and software to utilize its full capabilities amongst its connected programs. Today, across multiple devices, softwares, and integrations, Clio is at the epicenter of technologies for legal professionals, facilitating a customizable, seamless experience at every point of the legal process.

Clio is getting intentional about digital and in-person interactions. Seamless digital relationships are an expectation of today's consumer, and we believe excelling in this capacity will lead to better in-person exchanges when they arise.

To connect clients to their legal matters, we've launched Clio for Clients, a portal designed for legal clients to securely communicate and share information with their lawyer. This portal gives clients unlimited access to the status of their matters, and importantly, connects them on a self-serve basis, so they always feel connected to their case in real-time, without the need for their lawyer to provide ongoing updates.

Text notifications are another important feature we've developed to better connect lawyers and their clients. Providing client-centered communications through text, and automating the process, can improve the



**NH Bar Members receive a 10% lifetime discount on Clio products!**

attorney-client connectedness while easing the burden on legal professionals.

We're also continuing to build opportunities for collaboration and growth between legal professionals with The Law Community. We launched this platform just one year ago to foster conversation between Clio customers, industry leaders, and legal professionals.

Clio is closing access to justice gaps. When the pandemic forced this industry into a great wave of technical adoption, there was no greater need to connect legal professionals to their colleagues, files, and clients remotely—with ease and immediacy. Clio customers can access vital information through the cloud. In addition to the many integrated tools and technologies, Clio customers have access to everything needed to transition their businesses confidently into the realities of offering remote legal services.

Attorneys can now offer better legal services to more clients without the need to physically meet, reaching beyond travel inconveniences and restrictions. This is a game changer for clients who seek fast, efficient remote legal services, but more im-

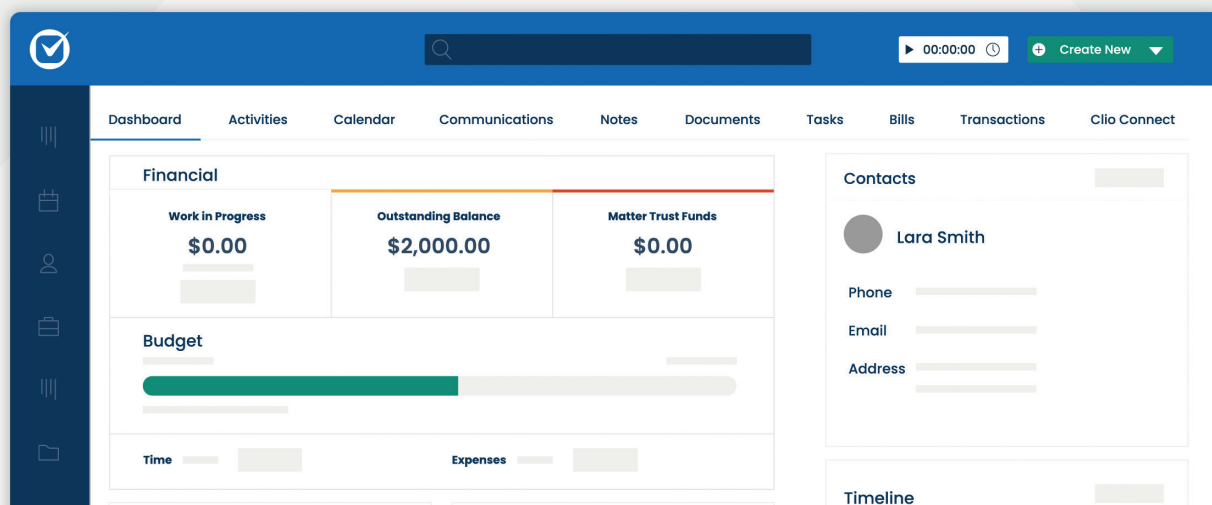
portantly serves a greater span of clients who live in areas with sparse legal representation or services, or "legal deserts."

Attorneys have the opportunity to increase access to justice by expanding remote legal services to underserved regions. Where access to technology is limited, some of our customers have reinvented the "place" for legal offices, showing up on-site at the scene of disaster, or traveling to communities without access to technology or legal services. We are proud to be a small part of this effort made by members of the legal community who continue to go above and beyond in ensuring access to justice for those who need it.

The legal operating system is just the beginning. New legaltech infrastructure has made remote connectivity possible, and with that comes an opportunity to expand legal networks accordingly. By bringing together all of the ways Clio's legal operating system improves our ability to connect people, places, and technologies, legal professionals can engage the tools that support them in their goals for effectiveness and growth. Clio's legal operating system is designed to create channels for deeper, and more meaningful connections between the judicial system, legal communities, innovators, peers, and clients.

Today's legaltech infrastructure is supporting tomorrow's innovations. The legal operating system provides a foundation to what we'll build together in the future of this sector.

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# CONTINUING LEGAL EDUCATION GUIDE

## High Quality, Cost-Effective CLE for the New Hampshire Legal Community

Have an idea for a CLE? Reach out to the Professional Development team or a member of the CLE Committee.

### MAY 2022

**WED, MAY 18 – 9:00 a.m. – 1:15 p.m.**

**Intellectual Property for the General Practitioner**

- In-Person • Webcast
- 225 NHCLE min., incl. 30 ethics/prof.
- Concord • NHBA Seminar Room

**THU, MAY 19 – 12:00 – 1:00 p.m.**

**To Indemnify, or To Hold Harmless?**

- Webcast; 60 NHCLE min.

**FRI, MAY 20 – 12:00 – 1:30 p.m.**

**Be the Change: 4 Pillars to Creating a Mentally Healthy Workplace Culture**

- Webcast; 90 NHCLE ethics/prof. min.

**TUE, MAY 24 – 12:00 – 1:00 p.m.**

**Killer Correspondence for Lawyers**

- Webcast; 60 NHCLE min.

**THU, MAY 26 – 8:30 – 10:30 a.m.**

**16th Annual Ethics Program**

- In-Person • Webcast
- 120 NHCLE ethics/prof. min.
- Concord • NHBA Seminar Room

### JUNE 2022

**MON, JUN 6 – 12:00 – 1:00 p.m.**

**New IRA Regulations Applying at Death-Very Recent and Surprising Changes Impacting all IRA Owners**

- Webcast; 60 NHCLE min.

**NOTE for in person seminars** – NHBA COVID-related safety measures may include limited seating and additional restrictions. Please read the NHBA's current protocol at <https://www.nhbar.org/covid-related-protocol/>. In registering for and attending an NHBA-sponsored CLE or other meeting or event, participants agree to the NHBA's current health and safety protocols, the NHBA COVID-19 safety acknowledgment, and liability waiver and release of claims. (<https://nhba.s3.amazonaws.com/wp-content/uploads/2022/03/28094948/COVID-Safety-Acknowledgement-Liability-Release.pdf>)



### WE DO THE REPORTING FOR YOU!

#### How to Register

All registrations must be made online at  
<https://nhbar.inreachce.com/>

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

**TUE, JUN 7 – 9:00 a.m. – 12:15 p.m.**

**Better Legal Writing**

- Webcast; 180 NHCLE min.

**TUE, JUN 14 – 9:00 a.m. – 12:15 p.m.**

**Consent of the Governed? Contracting for Ordinary People in the 21st Century**

- In-Person • Webcast
- 180 NHCLE min.
- Concord • NHBA Seminar Room

**FRI – SUN, JUN 17–19**

**2022 Annual Meeting**

**Mountain View Grand, Whitefield**

**TUE, JUN 21 – 9:00 a.m. – 12:15 p.m.**

**Not-for-Profit Corporations and Associations for the General Practitioner**

- In-Person • Webcast
- 180 NHCLE min.
- Concord • NHBA Seminar Room

**WED, JUN 22 – 12:00 – 1:00 p.m.**

**Pets in the Workplace**

- Webcast; 60 NHCLE min.

**THU, JUN 30 – 12:00 – 1:30 p.m.**

**“Please. Do Not Touch That!” And Two More Lessons from the World of Museum Law**

- Webcast; 90 NHCLE min.

### Be the Change: 4 Pillars to Creating a Mentally Healthy Workplace Culture

*with*

**Jill O'Neill**, NH Lawyers Assistance  
Program and **Kim LaMontagne**,  
President & CEO Kim LaMontagne, LLC

Friday, May 20, 2022

12:00 – 1:30 p.m. via Webcast

90 NHCLE ethics/prof. min.

Learn how you can positively influence the culture of legal practice and drive culture change around mental health. Kim LaMontagne, President & CEO of Kim LaMontagne, LLC, International Speaker, Corporate Trainer, and Author will share her powerful story of recovery. Kim was a high-performing executive who suffered in silence in the workplace, with alcohol misuse, major depression, anxiety, and suicidal thoughts.

During this training session, the presenters will address mental health and well-being in the workplace through understanding the impact of unaddressed mental health in the workplace and well-being as it correlates to ethical responsibilities. You will learn the key ingredients to creating a mentally healthy workplace culture and walk away with actionable steps to embracing a culture of safety. You will also learn about the untapped resources of the New Hampshire Lawyers Assistance Program, which can nourish positive workplace culture.

Visit <https://nhbar.inreachce.com> for more information

### Consent of the Governed? Contracting for Ordinary People in the 21st Century

*with*

**Michael Lewis**, Rath Young & Pignatelli, PC and  
**Stephanie A. Bray**, NH Legal Assistance

Tuesday, June 14, 2022

9:00 a.m. – 12:15 p.m. In-Person & Webcast

180 NHCLE min.

In this program, faculty will lead an interactive and provocative discussion about the concept of “assent” or “consent” under modern consumer contract law. The central contention is that consumers are being incapacitated, and even infantilized, by modern commercial practices and the commercial laws that support them. These practices overrun consumers and, effectively, deprive them of important rights established by public processes and constitutional law. They will also examine the concepts of assent, consent

and affirmation as they are applied to individuals of varying levels of sophistication in the areas of housing, public benefits, family law, and elsewhere. Solutions abound, including through advances in technology.





#### Who Should Attend?

Business litigators, health care lawyers, judges, public interest lawyers, tech lawyers and corporate lawyers.

Live Programs • Timely Topics • Great Faculty • Online CLE • CLEtoGo!™ • DVDs • Webcasts • Video Replays • and More!



## Intellectual Property for the General Practitioner





Wednesday 9:00 a.m. - 1:15 p.m.  Webcast  
**May 18**  225 NHCLE min.  
incl. 30 ethics/prof. min.  ★ In person ★ 

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, Hinckley Allen & Snyder, LLP, Manchester  
**Matthew H. Benson**, Cook Little, 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

## 16<sup>th</sup> Annual Ethics CLE

Thursday 8:30 a.m. - 10:30 a.m.  Webcast  
**May 26**  120 NHCLE ethics/  
prof. min.  ★ In person ★ 

This CLE is an annual update and review of developing issues for all attorneys in practice.




### Topics will include:

- client communications;
- withdrawing from a case;
- the complaint and disciplinary process;
- an update on current topics before the Ethics Committee.

### Faculty

**Hon. John C. Kissinger**, Associate Justice, NH Superior Court  
**Elizabeth M. Murphy**, NH Supreme Court Attorney Discipline Office, Concord  
**Stephanie C. Hausman**, NH Appellate Defender Program, Concord  
**Stephanie K. Burnham**, Burnham Legal PLLC, Manchester  
**Christopher D. Hawkins**, Donahue, Tucker & Ciandella, PLLC, Exeter  
**Richard Guerriero**, Program Chair, Lothstein Guerriero, PLLC, Keene

## Better Legal Writing





Tuesday 9:00 a.m. - 12:15 p.m.  Webcast  
**June 7**  180 NHCLE min.. 

A well-written legal document can distinguish an outstanding attorney from an average one. Judges base their decisions on many factors; how well you've thought out and presented your argument on paper is just one of them. Learn techniques that can help give you the edge when it matters most.

### Faculty

**Justin S. St. James**, Program Chair/CLE Committee Member, Justin St. James, Attorney at Law, Andover, MA  
**Anna Elbroach**, Director of Legal Writing, UNH Franklin Pierce School of Law, Concord  
**Risa Evans**, Associate Professor of Legal Studies, UNH Franklin Pierce School of Law, Concord  
**Holly Vietzke-Lynch**, One Law LLC, Newton, MA

## Not-For-Profit Corporations and Associations for the General Practitioner

Tuesday 9:00 a.m. - 12:15 p.m.  Webcast  
**June 21**  180 NHCLE min.  ★ In person ★ 

Have you ever wondered how not-for-profits are formed or why some companies worth millions of dollars are considered non-profit? While the rules and regulations government non-profits comprise a narrow body of corporate law, the basics are valuable for any attorney working with businesses to know.

### Faculty

**Justin S. St. James**, Program Chair/CLE Committee Member, Justin St. James, Attorney at Law, Andover, MA  
**Thomas J. Donovan**, Director of Charitable Trusts, New Hampshire Attorney General's Office, Concord  
**Diane M. Quinlan**, Assistant Director of Charitable Trusts, New Hampshire Attorney General's Office, Concord  
**Terry M. Knowles**, University of New Hampshire, Carsey School of Public Policy, Durham

## Upcoming Webcasts

### New IRA Regulations Applying at Death- Very Recent and Surprising Changes Impacting all IRA Owners



Monday, June 6, 2022 – 12:00 – 1:00 p.m. • 60 NHCLE min.

The IRS has issued expansive regulations interpreting the 2019 SECURE Act and providing guidance on using trusts for post-mortem retirement benefits. This CLE will discuss the new guidance and latest planning strategies for inherited retirement accounts.

**Robert A. Wells**, Program Chair/CLE Committee Member, McLane Middleton Professional Association, Manchester  
**Whitney A. Gagnon**, Director, McLane Middleton Professional Association, Newington  
**Audrey G. Young**, McLane Middleton Professional Association, Woburn, MA

### "Please. Do Not Touch That!" And Two More Lessons from the World of Museum Law

Thursday, June 30, 2022 – 12:00 – 1:30 p.m. • 90 NHCLE min.

This 90-minute Learn@Lunch program will delve into the world of museum law, focusing specifically on the following two lessons: Lesson 1 will provide a brief review of the law concerning accessions of archaeological materials, plus useful tips to detect hot artifacts; Lesson 2 will identify and discuss the legal issues and fiduciary duties surrounding deaccessioning items from a museum's collection.

**Amanda L. Nelson**, Program Chair, Artium Amore, PLLC, Dover  
**Ricardo A. St. Hilaire**, Lebanon

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



*Editor's Note:* In this age of uncertainty, misinformation, and complexity, knowing which IT concerns to focus on and who to trust is crucial. This is especially true when it comes to the technology lawyers use every day to serve their clients. The everchanging world of IT, combined with cyberthreats, complex systems, and new ways of doing business, presents a host of challenges. By providing a robust response to these challenges, IT professionals help lawyers stay tuned into this abundant landscape, allowing them to do their jobs with peace of mind. Inside our Information Technology section you will find their advice and information on how to think about Russian cyberthreats, the future of artificial intelligence, using online tools efficiently, and much more.

## From the IT Professionals

“[T]he current AI model is a prediction machine. It looks at data and makes accurate predictions, based on existing data it has analyzed. Wildly powerful. Yet, this shows what AI is not. It is not intuitive. It is not rational. It is not a decision maker. In areas of uncertainty, AI can provide predictions, but it is incapable of having insights.”

— Ryan Barton

“[L]awyers are more aware than ever of the importance of implementing strong cybersecurity measures. The

reason for this newfound vigilance is due to the increase in cyberattacks in recent years. Notably, however, the increased focus on cybersecurity is paying off, and the lawyers surveyed reported lower numbers of viruses, spyware, and malware overall.

— Nicole Black

“Only a few electronic signature services (RSign and the few that have licensed RSign patents) combine electronic signature capture processes with digital signature authentication technology. The result: a record of agreement that is court-admis-

sible with strong evidential weight.”

— Zafar Khan

“Spillover is the idea that a cyberattack against Ukraine will spread uncontrollably to others. Direct attacks are premised on the idea that short of kinetic attacks (e.g., bullets and bombs) against the US, the Russians could make more oblique, possibly deniable demonstrations of their capability and give us pause.”

— Ande Smith

## Tech Essentials – E-Sign School is Now in Session

### How to Create a Robust Legal Record of Any Electronically Signed Agreement

By Zafar Khan, CEO, RPost

While this may not be the best cocktail party chit chat, we've been asked the question lately about what the distinction is between an Electronic Signature and a Digital Signature in the context of recording agreement on documents. Most people get confused on this topic, so we thought we would simplify things here:



An *Electronic Signature* is a legal term defining what constitutes a record of intent to form agreement. A *Digital Signature* is a digital authentication technology.

Only a few electronic signature services (RSign and the few that have licensed RSign patents) combine electronic signature capture processes with digital signature authentication technology. The result: a record of agreement that is court-admissible with strong evidential weight.

There you have it. Simplified.

Now, for those more inquisitive types, we'll get into more detail. (Of course, we're still summarizing here. A useful resource is in the legalities section of the RPost.com website). Hang onto your seat.

#### What is an Electronic Signature?

Various countries have written laws to define what an Electronic Signature is. For example, in the US, the most pointed-to definition is in the Electronic Signatures in Global and National Commerce Act (ESIGN, the Federal statute), in which it broadly defines an electronic signature (paraphrased) as a sound, symbol, or mark made with intent to sign (applied to a document), logically associated with the content. (Read more here)

If the electronic signature meets the legal definition, it is a legal electronic signature. So, what makes a legal electronic signature strong evidence if there is ever a dispute as to who agreed to what with whom?



#### What is a Legal Electronic Signature with High Evidential Weight?

Here, one should look to see whether the record that memorializes the electronic signature (sound, symbol, or mark) that is logically associated with the content agreed to includes other metadata related to the transaction. Metadata is a fancy term for data about the data record itself.

An example of strong metadata about the e-sign transaction record that can provide strong evidential weight to the record is, (a) an audit trail that records the timestamps and server/IP addresses associated with sending, delivery, opening, and sign-off, and (b) the audit trail, timestamps, content, and electronic “sound, symbol, or mark” packaged together in a form that can be authenticated – determined untampered, authentic, original content.

This is where Digital Signatures come in. In the context of electronic signatures, robust electronic signature services will apply a digital signature to the electronic signature record. Digital Signatures are a technical term for an encrypted hash of a set of data (that set of data in this context being an electronic signature applied to a PDF record with agreement content and transaction metadata, for example).

This electronic signature record (of the sound, symbol, or mark logically associated with the content with markings, making it apparent that there was an intent to sign) is, with the RSign service, prepared as a PDF record of the agreement and electronic signature markings plus an appended electronic signature certificate. Combined, this RSign e-sign record is in the form of an RSign PDF.

With RSign, the RSign PDF electronic signature record then has a Digital Signature applied to it.

This is a process of essentially running the content of the RSign PDF through an algorithm to generate a digital fingerprint (a one-way hash) of the content. This means that if the content is unchanged and passed through the algorithm again, it would generate an identical digital fingerprint. This digital fingerprint is then encrypted and applied to the RSign PDF electronic signature record. The RSign PDF electronic signature thus, additionally has a Digital Signature applied to it by the RSign system.

This means, in short, the RSign electronic signature service creates a robust legal record of an electronically-signed agreement in that it:

- records the legal agreement ceremony (sound, symbol, or mark made with intent to sign);
- is logically associated to the content of the agreement;
- does so with timestamped audit trail transaction metadata associated for greater evidential weight; and
- is rendered tamper -detectable with the entirety of the record using Digital Signature technology.

In summary (and again simplified), an electronic signature is a definition of a legally acceptable way to record agreement and a digital signature is a technology. When applied together as part of an electronic signature service, you get a strong, legal, court-admissible evidential record of an electronically-signed agreement. Only RPost-patented technology, employed by RMail, RSign, and licensed by a few others, provides this industry-best legal e-sign record.

So, if you have understood all this, congratulations! Consider yourself an Electronic Signature (and Digital Signature) expert. Click here to learn more about RSign or contact us or auto-schedule a meeting or demo to discuss how you can get started.

*(By the way, internationally, due to different language translations of these terms, there is more confusion, as sometimes the terms are used interchangeably. Digital Signatures may also be used to apply an identity of a user to a document with intent to sign but if used, requires expertise for signer; special software at signer and viewer, and does not contain the metadata of the transaction; so is a lesser record for most. Digital Signatures may also be applied to email for sender authentication in the eyes of a recipient -- we'll save that discussion for another day).*

*Zafar Khan is the CEO of RPost, the global leader in secure and certified electronic communications. RPost has helped businesses enhance their security, compliance, and productivity for more than a decade.*



# The Russians are Coming! The Russians are Coming! So Where are They?

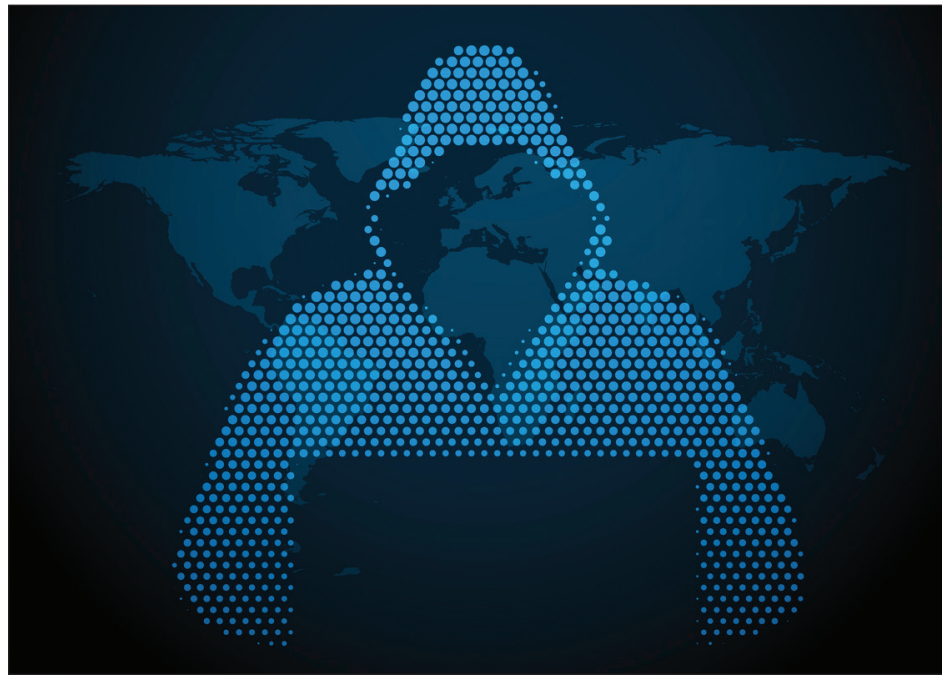
By Ande Smith

When the Russians invaded Ukraine a few months ago, many braced for serious cyber-attacks. As the US has incrementally provided more support to Ukraine, the concern has increased in stride. If you've never seen the 1960's movie, *The Russians are Coming*, it's an instructive guide on what NOT to do. In the movie, a Russian submarine grounds near a stereotyped New England fishing village on a small island. Suffice to say, the islanders live in the heights of Cold War angst and what ensues is pretty predictable, with lots of yelling, guns, and running about – all quite at odds with facts on the ground, or at sea as it were. I do commend it to you, not for your cyber professional development, but because it is pretty darn funny and these days, we could all use a laugh or three.



In a more measured fashion, we have worked with our clients as they brace for two general consequences, neither of which has been felt too strongly to date, at least publicly: spillover impacts and direct attacks against US cyber systems and infrastructure. Spillover is the idea that a cyberattack against Ukraine will spread uncontrollably to others. Direct attacks are premised on the idea that short of kinetic attacks (e.g., bullets and bombs) against the US, the Russians could make more oblique, possibly deniable demonstrations of their capability and give us pause.

Cyber impacts on the US are far from as farcical as the movie's Russian invasion via submarine. In its attempts to destabilize Ukraine since 2014, the Russians have made that country their cyber lab. The notion of spillover is most vibrantly illustrated with the "NotPetya" malware infection of 2017. A Russian intelligence group inserted self-propagating "wiper" malware in an update to what is basically the go-to tax filing software for Ukrainian businesses. Wiper malware is purely destructive in nature, spiking the hard drives or BIOS of affected systems and rendering computers inoperable, often requiring hardware replacement. While disrupting the Ukrainian economy was the likely objective, many foreign companies also used the



**"The good news is that new types of cyber-attacks are used sparingly: once a tactic is used in the wild, it will become part of cyber defense art and lose its effectiveness."**

software to manage their Ukrainian taxes and as they took the tainted updates, it literally spread across the globe. Among the impacts, the shipping giant, Maersk, was effectively shut down, with container shipping facilities moving back to pen and paper for a considerable period. This spillover attack against Ukraine was estimated to have cost \$10 billion globally. The book *Sandworm* by Andy Greenberg tells the story in lay detail – a fine summer read.

It has been widely reported that the Russians have again deployed wiper malware attacks against Ukraine. Several wiper variants have been detected and have generally been quelled without spillover. In April, an attack against a Ukrainian power grid operator was foiled in the last moments. Because of the possibility of spillover, it's little surprise that reports suggest the engagement of NATO and US cyber staffs, together with companies like Microsoft, in support of Ukrainian cyber

defenses.

And there has been collateral damage of sorts from attacks against Ukraine. In February, you may have read of a disruption of German windmill farms from a satellite outage. The system used to monitor sea-based wind turbines seems to have relied upon the same satellite provider as the Ukrainian government, the terrestrial software for which was disrupted in the opening days of the war. It is not believed that the attack was a "signal" of some sort to Germany and with the monitoring link severed, the turbines operated in a safe mode without incident.

The threat of direct attacks against the US has put many on high alert. At least twice, the Cybersecurity and Infrastructure Security Administration has issued alerts that might suggest imminent attacks. So far, a handful of organizations have reportedly been attacked, but all are directly linked to on-the-ground Ukrainian efforts. Certainly, none of

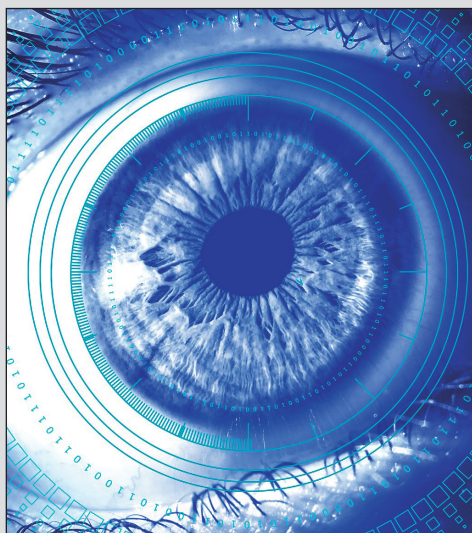
the worst fears of broad disruption to utilities, healthcare, or others have come to pass.

Unlike the movie's beached sub, the Russians don't appear to have landed quite yet. Factors undoubtedly include a stepped-up but non-public response by government actors and private sector measures, such as limiting internet connectivity to the west directly from Russia. Private sector preparation and vigilance against attack – which is increasingly hard to maintain over time – are also likely contributing factors. But as the war continues unsatisfactorily for Russia, and US support to Ukraine spirals upward in a sense, now is the time to revisit your cyber preparations, as the risk of a demonstration cyber attack could be increasing. Creating risk and fear of consequences for us could well be part of their "escalate to deescalate" strategy in preparation for a negotiated off-ramp.

The good news is that new types of cyber-attacks are used sparingly: once a tactic is used in the wild, it will become part of cyber defense art and lose its effectiveness. That means if the Russians do reach their long arm to our shores with a cyber-attack, it is likely to leverage much of the same tactics, techniques, and procedures seen in the past. So, getting going on some of the key initiatives you might have deferred is still the best play. Those include implementing MFA to access cloud environments, remote access to your networks, and for those using privileged accounts internally. Testing your incident response process, ensuring your patching and configuration management programs are top-shelf, and even looking carefully at your external attack surface through penetration tests or other assessments are smart plays to protect your firm against a potential escalation.

While a Russian cyber offensive against the US won't feature the well-intentioned and good-natured crew from that grounded Russian submarine, our response also need not involve grabbing our guns and running through the streets. A clear-eyed and thoughtful review will see you through!

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



The *Bar News* has changed the name of this section to Information Technology to recognize and reflect the broad range of technology issues that New Hampshire lawyers face. Cybersecurity and information security, along with many other topics, will continue to be covered extensively in our new section. Contact [news@nhbar.org](mailto:news@nhbar.org) if you would like to contribute an article on critical technology issues.

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# ABA Report: Lawyers Are Relying on Online Tools and Technology More Than Ever Before

By Nicole Black

In a few of my recent posts, I shared data on lawyer demographics, diversity, stressors, and future plans obtained from the recently-released ABA Profile of the Profession 2021. This report compiles data collected by the ABA from a number of different surveys, most of which were conducted in 2020 and 2021, and includes statistics on a host of issues relating to the legal profession, including lawyer demographics and diversity, the pandemic and its impact on the practice of law, lawyers' perspectives on retirement and the future, and much more.

The report also includes a lot of interesting data about lawyers' use of technology. Some of the most notable statistics from this year's report provide insight into lawyers' use of online legal resources, their cybersecurity efforts, and the hardware and software choices that they are making. No matter how you look at it, the data from the report offers evidence of an important lesson for lawyers: Technology is no longer an option, but a pivotal part of a successful law practice.

## Online legal resources

The legal research statistics from this



"For nearly a third of the lawyers surveyed, the starting point for most legal research projects is a free search engine, such as Google. Another third (30%) turn to paid online search tools before conducting any other type of legal research."

year's report are particularly interesting, in part because legal research was one of the first law firm processes to be impacted by technology. The transition to online legal research occurred decades ago, and since that

time legal research efficiency has increased significantly. Despite the increased efficiency, according to the report, lawyers still spend a big chunk of their time – 18% of each workday – conducting legal research. For nearly a third of the lawyers surveyed, the starting point for most legal research projects is a free search engine, such as Google. Another third (30%) turn to paid online search tools before conducting any other type of legal research.

Lawyers also obtain most of their daily legal news online from a variety of different sources. Nearly half of the lawyers surveyed shared that Law 360 was their top legal news source (41%). Next was the Wall Street Journal (22%), followed by Bloomberg Law News at 8% and Bloomberg News at 6%. Other news sources reported included ALM (4%), Reuters (3%), Westlaw Journal (2%), and Courthouse News (2%).

The online world has also made its mark when it comes to legal marketing. Gone are the days of relying solely on the Yellow Pages, park benches, billboards, and costly television ads for lawyer advertising. In 2021, especially while in the middle of a worldwide pandemic, the internet was where it was at. According to the survey results, event sponsorships, which are both virtual and in-person, are the top way that lawyers are marketing their firms (48%), followed by three web-based marketing opportunities: LinkedIn (42%), email (41%), and Facebook (33%). Other less-popular marketing methods included print (21%), Twitter (16%), and direct mail (14%).

## Cybersecurity

Next up, cybersecurity. In 2021, lawyers are more aware than ever of the importance of implementing strong cybersecurity measures. The reason for this newfound vigilance is due to the increase in cyberattacks in recent years. Notably, however, the increased focus on cybersecurity is paying off, and the lawyers surveyed reported lower numbers of viruses, spyware, and malware overall.

Specifically, the data from the report

showed that 36% of lawyers shared that their law firms had been affected by a cyberattack in 2020, down from 40% in 2018 and 43% in 2017. Steps taken by law firms to prevent such attacks included spam filters (81%), anti-spyware (76%), firewalls (74%), and popup blockers (72%).

Another noteworthy finding from the survey was that solo attorneys fared better than their larger-firm counterparts when it came to cyberattacks. According to the report, only 19% of solos reported that they'd experienced a breach, compared to 42% of lawyers from firms with 10 to 49 lawyers.

## Hardware And Software Technology Choices

Finally, let's turn to the technologies used by lawyers, starting with hardware. When it comes to smartphones, the results showed that the most popular choice is an iPhone, with 79% of lawyers surveyed reporting that it's their smartphone of choice. Android phones came in second at 18%, and the once-popular BlackBerry is used by only 1% of lawyers surveyed.

Lawyers are also relying on mobile tools more often than ever before, which isn't surprising given the increase in remote work due to the social distancing requirements of the pandemic. According to the survey results, the use of laptops by lawyers has increased significantly in the past year, with nearly half (47%) of lawyers reporting that their laptop was their primary work computer, compared to 39% in 2017. In comparison, less than half (49%) of lawyers now use desktops as their main work computer, compared to 60% in 2017. Finally, only 1% of lawyers use a tablet as their primary computer.

## Related: [Blog Post] Now is The Time to Transition Your Firm from Premise-Based Legal Software to the Cloud

Next up, let's take a look at the legal software statistics. As part of the survey, lawyers were asked about the legal software available at law firms. The software that they reported was most often available in their firms was conflict checking software (63%), followed by case management or law practice management software (63%). Other types of software that lawyers reported were offered in their firms included specialized practice software (37%) and rules-based calendaring software (38%).

How does your firm's use of technology compare? Is your law firm relying on online tools and technologies more than ever before? For even more ideas on how to use technology to streamline your law firm, make sure to download this FREE guide: Tips for Automating Your Law Firm.

*This article first appeared in the MyCase blog in September of 2021. It is being reprinted here with permission from the author.*

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

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## AI. What is it, exactly?

By Ryan Barton

When hearing “AI,” we often think of digital personality – a thinking, talking, digital being. What today’s technologists have (and are developing) is far from this. It is, instead, a very particular kind of AI. A kind that has



certain applications. Because AI threatens to disrupt the legal industry significantly, every law firm leader must understand what AI is – and what it isn’t.

The pursuit of AI began before WWII with the brilliant mathematician Alan Turing. For decades, it advanced glacially. Computer scientists attempted to build AI by coding instructions to every possible scenario. If X happens, do Y. The code grew, but intelligence did not. Scientists were largely blocked.

In the 2000s, a new approach was explored. AI researchers began leveraging cloud computing power and designing neural networks; an approach that mimics the design of the connections of neurons in human brains. A neural network is a model that can learn. It is trained by being fed vast amounts of data. Training replaced coding instructions. Feed a neural network one million pictures of cats,



“Human intelligence is multi-faceted. It is intuitive, emotional, creative, multi-layered, and embodied. It is also conscious – a state of being that Cognitive Science still struggles to even explain, much less replicate. AI is far from those things. It is powerful, yes. But its applications are targeted.”

and it can recognize and tag the next one million pictures all on its own.

The results have been staggering. Just since 2015, AI has transformed ser-

vices we rely on every day – from Google Search to Translate to iPhone autocorrect. The accuracy and usefulness of these services has exploded. AI is already integrat-

ed into our digital lives. And trainable AI is now a “tool” that developers can leverage through the cloud, integrating easily into new applications.

If you have large sets of data, AI is very good at detecting patterns and making good predictions. This has had immediate application to arenas such as language translation or credit card fraud detection. It is also disrupting industries like radiology. Doctors must read a complex image, attempting to predict what masses are cancerous. AI is already more accurate than trained radiologists, under repeated tests (radiologists shouldn’t fear: the best results come from AI and a Radiologist working together).

The significance of the recent AI breakthroughs and the resulting explosion of capabilities has created a sense of AI’s limitless possibilities.

That promise should be tempered with the recognition that the current AI model is a prediction machine. It looks at data and makes accurate predictions, based on existing data it has analyzed. Wildly powerful. Yet, this shows what AI is not. It is not intuitive. It is not rational. It is not a decision maker. In areas of uncertainty, AI can provide predictions, but it is incapable of having insights.

Human intelligence is multi-faceted. It is intuitive, emotional, creative, multi-layered, and embodied. It is also con-

*AI continued on page 31*

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## Cyber: What Is the Role of an Attorney?

By Cameron G. Shilling

Businesses often mistakenly believe that cyber is task for information technology (IT). They do not know that attorneys play a critical role in security and privacy, or they do not understand the scope or significance of these legal services. A few examples are as follows:



- Risk management within privilege
- Breach and security incident response
- Transactions and vendor management
- Privacy law compliance

For many attorneys, these tasks are foreign, but that is not unusual. For example, most family law practitioners do not know how to write a patent, and most trial attorneys would be ill-suited to manage a corporate merger. However, as advisors to our clients, being aware of the role of cyber attorneys is important to advise them about the scope and significance of these services.

### Risk Management Within Privilege

Cybersecurity requires a comprehensive risk assessment of the business, preparation of a detailed report listing and categorizing its vulnerabilities and areas



of non-compliance, and creation of a plan to mitigate and remediate those risks. That process involves all parts of the business (not just technology), and requires close interactions with owners, board members, executives, managers, and employees from all business segments (not just IT).

A cyber attorney is a valuable business counselor through that risk management process. For example, rating and categorizing different types of vulnerabilities, and designing a strategy and plan to implement solutions to mitigate or remediate them within the budget and culture of the business, while also ensuring that the business complies with then existing and upcoming cyber security and privacy regulatory and contractual requirements, requires a team approach of a cyber attorney alongside collaborative IT

professionals and committed business leaders.

Also, businesses that conduct cyber security risk management with only an IT firm often become concerned about whether the recommendations made by that firm are truly necessary or efficient, since the IT firm is typically proposing to provide the services itself. Involving a cyber attorney in that process helps ensure that the business is confident that the recommendations resulting from the assessment are truly necessary and appropriate for the business.

Equally important is the privilege that attaches when a business uses a cyber attorney. Risk assessment reports can serve as roadmaps for regulators to use to conduct audits and levy huge fines against businesses, or for litigants to use in lawsuits against

businesses arising out of breaches. If a business uses only an IT firm to conduct the risk management process without the central involvement of a cyber attorney, all of the highly damaging documents created in that processes lack the vital protection of privilege.

### Breach and Security Incident Response

Responding to and remediating a breach or security incident is a complicated legal crisis management process. A cyber attorney directs the client's activities, determines the scope of the breach and the client's resulting notification obligations, and retains and manages the work of forensics experts, public relations professionals, and firms that provide notification, call center, and identity and credit protection services, all within the protection of privilege.

Breach response also requires cyber attorneys to interact with vendors, customers, and other third parties that caused or were impacted by the breach, particularly with respect to the contractual rights and remedies between the parties. Those interactions can become legally complicated and contentious, particularly if not handled adeptly. Responding to a breach also frequently involves negotiating with insurance carriers, and either securing rapid and comprehensive payment or otherwise negotiating coverage for the breach.

Cyber attorneys commonly handle the most difficult inquiries by individuals affected by breach. In doing so, it is critical to have

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the ability to knowledgeably discussing the breach in terms that are understandable to those individuals, while simultaneously providing helpful assistance and demonstrating real compassion without admitting fault.

Finally, regulatory actions following breaches can be punitive and difficult to challenge. Skilled cyber attorneys implement measures both during the breach response and immediately afterwards that can significantly mitigate the scope of the regulatory audit and the potential magnitude of fines issued by regulators.

## Transactions and Vendor Management

The value of a business often depends not just on the information that the business possesses but also the systems that the business uses to monetize that information. Thus, when one business is interested in acquiring another, it is critical for the buyer to conduct thorough due diligence with respect to the cybersecurity and privacy practices and safeguards of the seller. Similarly, when a business anticipates potential acquisition, it must take steps in advance of such an acquisition to ensure that it has implemented appropriate practices and safeguards. A cyber attorney plays a critical role in these transactions, both with respect to preparing a business for acquisition, as well as reviewing cyber security and privacy due diligence materials during acquisition.

Businesses that provide information to cloud service and other vendors are obligated to ensure that the vendors have implemented safeguards at least as stringent as the businesses are required to implement. Cyber attorneys obtain and interpret such vendor due diligence materials, and advise their clients with respect to the potential risks associated with vendors. Those attorneys also negotiate the agreements that businesses must enter into with vendors to protect the interests of the business and ensure that proper safeguards are contractually required of vendors.

## Privacy Law Compliance

Privacy is the newest and most rapidly expanding area of cyber law. These regulations emanate from foreign jurisdictions, like the European Union, Canada, Brazil, Australia, and China, as well as other states, like California, New York, and Virginia. Cyber privacy laws apply to businesses in New Hampshire, because those laws often apply to businesses that possesses personal information about residents of those other states and foreign jurisdictions.

Unlike cyber security laws, which ad-

**“Unlike cybersecurity laws, which address the safeguards that businesses must implement to avoid loss and theft of information, cyber privacy laws impose requirements and limitations on businesses with respect to their collection, use, and disclosure of information.”**

dress the safeguards that businesses must implement to avoid loss and theft of information, cyber privacy laws impose requirements and limitations on businesses with respect to their collection, use, and disclosure of information. Such requirements include providing notice to and obtaining consent from individuals before collecting, using, and disclosing information about them. Privacy laws also limit the purposes for which businesses can collect, use, and disclose information, and create rights that individuals have to control the ways in which businesses collect, use, and disclose information about them.

Because of the difference between cyber privacy and security, IT firms rarely help businesses comply with privacy laws, or are necessarily even aware of these regulations. Cyber attorneys play a pivotal role in advising businesses about the applicability and scope of privacy laws, and assisting businesses to implement practices to comply with them.

Proper cyber security and privacy compliance requires a team approach – a skilled cyber attorney working together with collaborative IT professionals and business leaders who are committed to the process. As counselors to our business clients, we should be aware of the role of that cyber attorneys play, so we can advise our clients about the scope and import of these legal services.

*Cam Shilling founded and chairs McLane Middleton's Cybersecurity and Privacy Practice Group. The group of three attorneys and one technology paralegal assist businesses and private clients to improve their information privacy and security compliance, and address any security incidents or breaches that may occur. Cam can be reached at (603) 628-1351 or [cameron.shilling@mclane.com](mailto:cameron.shilling@mclane.com).*

## AI from page 29

scious – a state of being that Cognitive Science still struggles to even explain, much less replicate.

AI is far from those things. It is powerful, yes. But its applications are targeted.

Understanding this allows us to recognize why self-driving cars made such rapid progress, but also why that progress has stalled. After observing human driving for millions of miles, AI can now predict the best next move for the car with extremely high accuracy. However, that level of accuracy doesn't translate to intuition. AI is struggling at detecting unusual objects. A paper bag blowing across the highway is outside the scope of its prediction powers (it hasn't seen enough paper bags blowing in different ways, to be able to predict it), so it is interpreted by AI as a small flying child – a mistake a human would never make.

Will researchers solve this for self-driving? Almost certainly. However, it will likely take years.

What about the legal industry? Wherever large amounts of data are used to make predictions, AI will have an application. So where is that in the legal profession? Finding issues in contracts, organizing due diligence, identifying relevant data in litigation information, and detecting risk across many documents. And indeed, in each of those areas, AI-powered software has become available

from Luminance, Casetext, Fastcase, Westlaw Edge, LexCheck, and more.

The best way to gain a practical application of today's AI capabilities is to schedule demos of the latest AI-enabled software. Then, consider the potential gains of each.

To understand the potential disruption of tomorrow, recognize that it is AI and humans together that make the best partnership. We humans are limited in our ability to detect patterns in large sets of data. AI is limited in intuition. AI-empowered attorneys combine these skills in a powerful way.

AI can review the contract and then make recommendations based on a vast set of experience. The attorney then interprets and makes recommendations to the client. When will AI interpret the unique complexity of your client's organizational risk and advise a strategy directly? No time soon.

Is AI evolving rapidly, and is it critical to maintain a working knowledge of this trend? Without a doubt.

*Ryan Barton is the founder and CEO of Mainstay Technologies, an IT and Information Security services firm based in New Hampshire. You can learn more about the company at [www.mstech.com](http://www.mstech.com) or reach Ryan on LinkedIn.*

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# How to Form New Hampshire Real Estate LLCs

By John Cunningham

## I. Introduction

In this article, the term “New Hampshire real estate LLC” means an LLC which is owned by one or more NH resident individuals or entities and whose purpose is to acquire and hold one or more parcels of NH real estate and to rent these parcels to tenants.

If you wish to represent a client in forming any single-member or multi-member LLC, you must handle two distinct LLC formation phases.

- In Phase 1, you must identify and address all of the general LLC legal and tax issues that may be important for your client whether you are forming a single-member or a multi-member LLC for her.<sup>1</sup>
- In Phase 2, you must identify the issues that should be addressed for your client in the operating agreement of the LLC you are forming, and you must determine how best to address those issues.

In Parts II through V of this article, I will address what I believe are the four most common Phase 1 issues likely to arise in forming NH real estate LLCs. I’ll address Phase 2 issues in future articles in this journal as the occasion arises.

In this article, I will assume that the type of entity you are forming for your client is an LLC and not any other type of entity, such as a state-law business corporation, a state-law general or limited partnership, or a limited liability partnership. Although this choice-of-entity issue is beyond the scope of the present article, it is clear that for most NH real estate investors, the LLC business organization form provides strong legal and tax advantages that other business organization forms cannot provide.

In my view, there are no specific legal or tax provisions that should be included in the operating agreements of real estate LLCs but not in non-real estate LLC operating agreements. Thus, no such provisions are discussed below. However, for reasons discussed below, it may be useful to state in the certificates of formation of real estate holding company LLCs (discussed below) that they may not engage in real estate management.



## II. Single-Entity Structures vs. Holding Company/Operating Company Structures For Real Estate LLCs

In this article, I will use the term “single-entity real estate company” to mean a company that engages both in acquiring and holding real estate parcels and in managing these parcels—i.e., in maintaining them and renting them to tenants. I will use the term “holding company/operating company structure” to mean a business organization structure that consists of two separate LLCs:

- A holding company LLC, whose only permissible activities are to acquire, hold, and sell real estate parcels, and which conducts no real estate management activities; and
- An operating company LLC, which owns no real estate parcels or other valuable assets, and whose only permissible activity is to manage these parcels.

If a real estate investor uses a holding company/operating company structure to hold and manage her real estate investment, and if any tenant or other third party makes a claim involving that real estate, the claim will necessarily arise because of the activities in which her company engaged in or should have engaged. However, under a well-managed holding company/operating company structure, such a claim can be sustained only against her operating company, since only that company can engage in potentially actionable activities or omissions. Furthermore, since her operating company will own no real estate parcels, it will have no assets potentially subject to the claim, and the assets held by the investor’s holding company will not be subject to the claim.

Because of the above considerations, my experience suggests that most real estate companies should be organized in holding company/operating company structures, unless there are substantial financial or other facts to the contrary. Indeed, in my view, for a lawyer not to advise his or her real estate investor clients to use a holding company/operating company structure could, in an extreme case, constitute malpractice.

It is true that the formation of any holding company/operating company structure is likely to involve at least a few significant subsidiary issues, such as whether the operating company in the structure should be a wholly owned subsidiary of the holding company or, instead, an entirely separate entity. However, these issues are beyond the scope of this article.

## III. Should You Form A Real Estate LLC For Your Clients Under the New Hampshire LLC Act or Under the Delaware LLC Act?

In my experience, most real estate LLCs you are likely to form for NH real estate investors should be formed under the New Hampshire LLC Act. However, many domestic and foreign lenders, investors, and other third parties view the Delaware Limited Liability Company Act (the Delaware Act) as the best and the most prestigious US LLC act. If your real estate investor client will be dealing with these third parties, it may benefit her to conduct her business as a Delaware LLC rather than as a NH LLC.

Furthermore, the Delaware Act contains a number of provisions that are not contained in the New Hampshire LLC Act, such as LLC series provisions, and these provisions may benefit your client. A comparison of the New Hampshire LLC Act and the Delaware Act is beyond the scope of this article. However, it is obvious that you should not form a Delaware LLC for your real estate investment client unless you have a thorough knowledge of the Delaware Act, since you must be aware not only of all of the advantages potentially available to your client under the Delaware Act, but also of all of the potential disadvantages.

## IV. When Should You Form A Real Estate LLC as a Single-Member LLC and When as a Multi-Member LLC?

Obviously, if you are asked to form a real estate LLC for two or more real estate investors, you should form that LLC as a multi-member LLC.

However, what if your client is an individual who is planning to create a single-owner real estate investment company? In my view of this situation, you should always consider advising your client that a multi-member LLC is likely to provide her with better asset protection and, more particularly, a stronger liability shield than a single-member LLC. This is because, among other factors, a multi-member LLC is less likely than a single-member LLC to be liable to a veil-piercing claim under the alter-ego theory.

In other words, if you take into account all relevant factors, you may well determine that a multi-member LLC is better for your client than a single-member LLC, despite the fact that a multi-member LLC may be significantly more complex and expensive to form and maintain than a single-member LLC.

## V. Tax Considerations in Forming Real Estate LLCs

Whenever a client asks you to form a real estate LLC, you must address all relevant federal and state tax considerations, and, if you lack the necessary tax expertise, you must associate yourself with a lawyer or accountant who possess this expertise.

In particular, for purposes of maximizing the 20% annual federal income tax deduction potentially available to your client from her real estate LLC income under Internal Revenue Code Section 199A, you must determine the federal tax regimen that will be best for her. In general:

- If her taxable income is less than her Section 199A “threshold amount,” her LLC should generally be taxable as a sole proprietorship if it has only one member; if it has two or more members, it should generally be taxable as a partnership.
- If her taxable income equals or exceeds her Section 199A threshold amount, her LLC, whether it has a single or multiple members, should often be taxable as an S corporation.

A complex NH state tax issue may arise for your client if, as often happens, she already owns real property before she forms her real estate LLC, and she wants to form an LLC into which to transfer this property. In this situation, you must structure the transfer to ensure that it will not trigger for your client a New Hampshire Real Estate Transfer Tax liability.

## Endnote

1. For brevity, I will use feminine pronouns in this article to refer to the real estate investors and real estate LLC members mentioned in the article.

*John Cunningham is licensed to practice law in NH and MA. His office is in Concord, NH. He is of counsel to the law firm of McLane Middleton, P.A. He chaired the committee that drafted the Revised New Hampshire Limited Liability Company Act, and he was one of the principal drafters of the provisions of that act. He is the principal author of Drafting Limited Liability Company Operating Agreements, the leading US LLC formbook and practice manual, and he is the only author of Maximizing Pass-Through Deductions under Internal Revenue Code Section 199A, the only book on Internal Revenue Code section 199A published by a recognized publisher. The publisher of both books is Wolters Kluwer, a global provider of medical and legal information.*



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# Liens Under RSA 447:12-A, Construction Mortgages and Letters of Credit

By Ed Ford

The priority dispute between mechanics liens and construction mortgages is governed by NH RSA 447:12-a. The Bank is given priority if it obtains the appropriate affidavit with each disbursement or disburses "toward payment of invoices from or claims due subcontractors and suppliers..."<sup>1</sup> The statute provides a roadmap and NH banks have become familiar with the routine to disburse and maintain the priority of construction loans.



Even with the statutory roadmap, the priority of mechanics liens is a source of dispute. One aspect of that potential dispute is the interplay between mechanics liens and the security for the financial guarantees required to obtain municipal approval of real estate development. The municipal approval process commonly requires a performance bond or other financial guarantee assuring completion of improvements.<sup>2</sup>

A performance guarantee often used in NH is a letter of credit; the bank financing the development often issues a letter of credit to the municipality assuring completion of the improvements shown on the approved plan.<sup>3</sup> That bank financing the development typically makes a construction

loan and the letter of credit is an ancillary service.

The relationship between the construction loan and the letter of credit creates the prospect that the financing bank, even though it has followed the statutory roadmap, will find its mortgage subordinated to mechanics liens to the extent of the letter of credit.

The problem arises when the bank uses a single mortgage to secure both the construction loan and the letter of credit. The banker's view is that the two obligations (the construction note and the letter of credit) are really the same – they work together to fund the project. The banker's view is that the letter of credit is just another draw on the note financing construction. The banker treats the letter of credit as a "blocked" part of the construction line. The banker tells the lawyer, "The total loan is \$X, but only \$X minus the letter of credit amount is available to be lent until the letter of credit is released." Having been instructed, the lawyer drafts a single mortgage securing the construction note and the letter of credit.

The banker and the lawyer have now walked into a trap. The trap springs when the municipality drafts on the letter of credit. If the draft on the letter of credit were like any other draw on a construction loan, the loan officer would refuse to permit the draw without satisfaction of the requirements of NH RSA 447:12-a, which mandate payment to suppliers or an affidavit that all materials are paid. But the draft on the letter of credit is not a draw on the construction

line; the bank may not refuse to pay a proper draft.

What is worse, the draft is ordinarily presented to the bank when the project is in trouble, i.e., when there are unpaid workers or suppliers of material. Those unpaid suppliers and workers have mechanics liens. Are those mechanics liens senior to the mortgage securing the reimbursement obligation under the letter of credit?

The answer depends on whether the mortgage securing the letter of credit is a construction mortgage. RSA 447:12-a defines "construction mortgage" by looking at the purpose when executed:

a construction mortgage shall mean any mortgage loan made for the purpose of financing the construction, repair, or alteration of any structure on the mortgaged premises where the lien secured by such attachment arises from the same construction, repair, or alteration work.

What about a mixed-use mortgage – one which secures financing for both construction and land acquisition? If the loan is (originally) a mixed-use loan, i.e., in part to fund acquisition and in part to fund construction, then the portion of the loan that secures acquisition debt is not a construction mortgage.<sup>4</sup>

But our banker's mortgage has not secured acquisition funding. The funding was construction plus a letter of credit. If all had gone as planned, the funding would be all construction and the letter of credit would

never have been drawn.

When the letter of credit (contrary to plan) is drawn, what is the priority of that portion of the loan; is it senior to or junior to attaching unpaid contractors? Has the mortgage become a mixed-use mortgage, being in part a construction mortgage (and therefore dependent for priority on affidavits or tracing under RSA 447:12-a), and in part not a construction mortgage (exempt from the priority rules of RSA 447:12-a)?

The answer is critical to the priority of the portion of the mortgage securing the reimbursement obligation, because the bank's obligation to pay under the letter of credit is absolute. The bank owes payment and cannot condition payment on any affidavit or payment of subcontractors. The bank, owing payment under the letter of credit, cannot assure compliance with the mechanics lien statute, RSA 447:12-a. In a case where the mortgage securing the reimbursement obligation is a construction mortgage, the bank will then be unable to comply with the statute and the bank's recovery will be junior to unpaid mechanics liens.

When faced with this problem, the bank (and its lawyer) will find that the answer does not depend on the purpose of each advance, but instead, on the intent of the mortgage when given and the Court will focus on the "agreement level, not the disbursement level."

At the agreement level, what is the purpose of the construction mortgage? If

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# An Overview of Florida's Tenancy by the Entireties Law

By Sabrina Beavens

Florida's housing market has consistently been at or near the top of the hottest markets during the last several years. Zillow named Tampa, Florida as the hottest city in the country for buying a home in 2022 with anticipated strong value growth, high job growth, high demand, and fast-moving inventory. In addition, the demand for second homes has increased 87% from pre-pandemic levels according to real estate brokerage firm, Redfin.

Married couples purchasing real estate in Florida may hold title as tenants in common, joint tenants with rights of survivorship, or as tenants by the entirety (TBE). TBE, of course, is not recognized in New Hampshire. However, matters involving Florida real estate are already common given New Hampshire's significant snowbird population, and current data suggests those numbers may increase. This article provides a refresher on ownership as tenants by the entirety and a summary of the advantages and disadvantages of TBE ownership.

Florida property (real and persons) held as tenants by the entirety must have six characteristics or "unities":

(1) Unity of possession (both spouses must



- have joint ownership and control)
- (2) Unity of interest (each spouse has an identical interest in the property)
  - (3) Unity of title (the interests in the real property must have originated in the same document)
  - (4) Unity of time (the interests must have commenced simultaneously)
  - (5) Survivorship (on the death of one spouse, the surviving spouse becomes the sole owner of the property)
  - (6) Unity of marriage (the parties must be married at the time the property was titled in their names)

*First Nat'l Bank v. Hector Supply Co.*, 254 So.2d 777, 781 (Fla. 1971). Prior to the amendments to Florida Statute §689.11, it was not clear whether the conveyance of real property from one spouse to both spouses created a tenancy by the entirety. As a result, a straw man was commonly used. However, §689.11, as amended currently provides:

- (1) ...An estate by the entirety may be created by the action of the spouse holding title:
  - (a) Conveying to the other by a deed in which the purpose to create the estate is stated; or
  - (b) Conveying to both spouses.

Importantly, it is not necessary that the deed describe the owners as "husband and wife," "a married couple," or "wife and wife" to establish ownership as tenants by the entirety; however, to avoid doubt, it is better practice to do so. *Ramos v. Estate of Ramos*,

329 So.2d 172, 173 (Fla. 3rd DCA 2021); see also *Beal Bank SSB v. Almand and Associates*, 780 So.2d 45 (Fla. 2001) (a seminal case on TBE holding that real and personal property owned jointly by husband and wife is presumed to be owned as tenancy by the entireties, unless the couple has expressly indicated a contrary intent). In addition, non-residents who own property in Florida may claim tenancy by the entirety protection. *In re Cauley*, 374 B.R. 311, 316 (Bankr. M.D. Fla. 2007) (recognizing that tenants by the entireties is a form of property ownership that applies to all property located in Florida regardless of the domicile of the owners).

There are several key advantages to tenancy by the entirety ownership. From an estate planning point of view, when one spouse dies, the property transfers to the surviving spouse outside of the estate administration. Also, tenancy by the entirety is a powerful shield against collection efforts from creditors where the creditor only holds a judgment against one of the spouses. There are a few exceptions to this rule for "super" creditors such as the IRS, the FTC, the SEC, or the Department of Justice. Interestingly, in the context of bankruptcy, a married New Hampshire couple may still be able to claim Florida real estate as exempt because federal bankruptcy law recognizes tenancy by the entireties as a creditor protection tool and the law of the state where the real estate is located governs.

While there are significant advantages to ownership as tenants by the entirety, certain situations limit those advantages. In the

case of divorce, tenancy by the entireties immediately converts the ownership into tenants in common. This could be problematic if one spouse has creditor challenges as that person's share of the property would immediately be subject to execution by the creditors. As mentioned above, tenancy by the entireties is a useful probate avoidance tool; however, similar to divorce, tenancy by the entirety ownership terminates at death and the property vests solely in the surviving spouse. The property could suddenly be exposed to the surviving spouse's creditors. Also, tenancy by the entireties, like joint tenancy, might result in the accidental disinheritance of intended heirs. For example, if a surviving spouse remarries, deeds the real estate to the new spouse as TBE, and then dies first, the children from the first marriage would receive nothing from the real estate.

It is important to remember that Florida law also recognizes ownership as tenants by the entirety as to personal property. A thorough analysis of the case law on personal property is beyond the scope of this article; however, common assets include stock certificates, LLC interest, vehicles, and tax refunds. In this author's experience, personal property is often vulnerable for objection to an ownership claim as tenants by the entirety. For example, some banks do not permit TBE accounts, or the account owners may have checked the box for a "joint" account instead of a TBE account as it is common to think of bank accounts as joint or individual, not TBE. The Florida Supreme Court commented in *Beal* with regard to bank accounts, "the problems in proof are compounded by a lack of uniform documentation to assist the inquiry into what form of tenancy the married couple had intended to establish." 780 So. 2d at 55. The same is true for titles to cars, boats, and other assets.

The next time a file lands on your desk involving Florida real estate owned by a married couple, take a close look at the deed. It may not be immediately evident that ownership is held as tenants by the entirety because of the presumption and lack of formal requirements to create the tenancy by the entireties. However, determining the status of the title may have an important impact on the issues under review in light of the advantages and disadvantages of TBE ownership.

Sabrina Beavens is of counsel in McLane Middleton's Real Estate Department. Admitted in Florida, New Hampshire and Massachusetts, she can be reached at (603) 628-1281 or [sabrina.beavens@mclane.com](mailto:sabrina.beavens@mclane.com).

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# Navigating the Legal Landscape of Paper Streets

By Courtney Herz

A perhaps surprising number of property owners find themselves facing a myriad of confusing questions if their property includes or abuts a so-called “paper street.”

## How is a paper street created?

As outlined in RSA 229:1, roads in New Hampshire can be created in one of four ways: (i) the legal processes of eminent domain and layout of a road, (ii) construction of a road on land that has been deeded to a municipality, (iii) dedication and acceptance, or (iv) prescription.

For land to become a road under the third of these methods, both dedication and acceptance must occur. First, a property owner can “dedicate” their land by unequivocally expressing an intent that the municipality accept the road. While there are many ways this can be done, one frequently-employed method is for a developer to depict the anticipated road on a recorded plan, and then to sell lots with reference to that plan.

Dedication, however, is not sufficient to create a road. The law protects municipalities from becoming involuntarily obligated to maintain roads that they do not want by requiring them to “accept” a dedication in order for it to become effective.

In those instances where a road has been dedicated through depiction on a recorded plan, but – for whatever reason – has never been accepted by the municipality, a paper street (one that exists only on paper) has been created.

## Who owns a paper street?

Typically, in New Hampshire, the abutting land owners actually own the fee interest in the land under a road. This is true even where a road has been constructed and exists other than on paper. In those instances, the municipality holds an easement for the public’s viatic (“reasonably incident” to travel) use, but the property owner actually owns the fee. In most cases, the boundary line is found at the centerline of the municipality’s right of way. In fact, the abutting property owners usually own the fee to the centerline, even when the deed recites the adjoining road as the lot’s boundary line or refers to a plan



which depicts a road as the boundary.

These ownership principles are the same whether a road “actually” exists or whether it is simply a paper street. In a paper street, though, because the dedication was never accepted, the municipality does not hold an easement for the public’s use over that road.

Understanding the law governing the ownership of the fee interest in roads can be particularly important when determining the boundary between abutting property owners along a paper street or, similarly, a road that had existed but was discontinued by the municipality. If there is confusion, or a difference of understanding, between those property owners, a quiet title action is sometimes necessary to resolve the situation.

## How can a land owner determine if

## a municipality’s acceptance of a dedication was effective?

The answer to this question depends on when the road was dedicated. In 1912, in the case of *Harrington v. Manchester*, 76 N.H. 347 (1912), the NH Supreme Court held that a dedication is permanent – a municipality has the option to accept that road – even long after the dedication was made.

In 1913, the following year, however, the legislature enacted a statutory limit, creating a scheme whereby unaccepted dedications automatically expired after 20 years.

The statute, now codified at RSA 231:51, was amended in 1989, and now provides that a municipality may release a dedication by an express vote, if the road has not been accepted within 20 years of the dedication.

In short, dedications made before 1893 (20 years before the 1913 statute was enacted) are perpetual. Those made between 1893 and 1969 (20 years before the 1989 amended statute) terminated automatically if they were not accepted within 20 years. And, more recent dedications are perpetual unless terminated by vote of the governing body.

## What other issues can arise concerning paper streets?

Just as in virtually all areas of the law, the types of problems and disputes that can arise concerning paper streets are almost innumerable. Some of the most common concern access and building rights. For example, under certain circumstances, property owners whose only access to their land is over a paper street may be found to hold an implied easement for access rights.

Questions can also arise when the owner of a property that is only accessible from a paper street seeks approvals to build on that lot. Frequently, planning board approval of the street will allow the paper street to be considered for purposes of assessing frontage calculations.

In short, paper streets present a wide variety of legal questions, which often arise for property owners who may not even know of the existence of a paper street, near or through their land.

*Courtney Herz is a Shareholder and co-chair of the Land Use Practice Group at Sheehan Phinney.*

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## Some Key Considerations in Negotiating a Commercial Lease

By Eric T. Kilchenstein and  
Christopher M. Candon



Kilchenstein



Candon

The considerations involved in the drafting and negotiating of a commercial lease are extensive. Landlords and tenants have different motivations, but ultimately this is a business relationship that is intended to endure for many years, and may represent significant revenue to the landlord and, conversely, the largest expense to the tenant. To avoid future misunderstandings, the landlord and tenant must consider numerous items and draft a lease that meets their expectations. Base rent and initial term may initially frame the structure of the lease, but many other considerations will arise in the lease negotiation.

### Additional Rent; Determination of Operating Expenses

Payment obligations under the lease tend to draw the most attention and typically have the most influence over whether

“Aside from clear provisions in the lease as to how and to whom notice should be delivered and received, the timeframe of a notice to exercise an extension needs to be carefully considered with your client.”

the landlord and tenant are able to reach an agreement. In most leases, the base rent is clearly identified and usually has some measure of escalation during the term. However, the base rent may only be a portion of the overall rental obligations in a lease. In most commercial leases, the tenant will also be responsible for the costs and expenses of operating, maintaining and managing the property or the “operating expenses.”

The determination of what is included in operating expenses may have significant financial implications in the lease. While the landlord will seek a broad definition of operating expenses, the tenant will seek to limit the inclusion to reasonable expenses and negotiate a number of exclusions. Embedded in these negotiations, among other things, is the treatment of capital expenditures. The parties will need to identify whether any limitations on the pass through of capital costs will exist. The tenant may seek to limit these capital expenses only to those that reduce operating expenses. Whatever is ultimately included

should be subject to amortization over the useful life of the expenditure.

Key aspects of the operating expense negotiation may also include whether a gross-up provision (landlord’s ability to increase expenses based on building occupancy) will be included or whether the tenant will have an audit rights to examine whether the charges are fair.

### The Buildout Process

Even in the best scenarios, finding a rental space that meets the needs of the business will likely require some amount of renovation. This buildout requires a negotiation between the landlord and tenant to determine the financial responsibilities for each party. Depending on the circumstances, the parties may prefer a “turnkey” arrangement, whereby the parties agree on a buildout plan that the landlord pays for and completes. Issues that might arise typically relate to the “ownership” of the project. The tenant is ceding most of the control on execution of the buildout plan, including contractors, materials and timing, so agreeing on the condition and timing of the delivery of the property is crucial.

An alternative to the turnkey process is a tenant improvement buildout that is largely controlled by the tenant. The landlord often gives the tenant a payment or a discount on rent to offset the improvement costs. In lease negotiations, the tenant should be prepared with a preliminary construction budget to guide the amount of the tenant improvement allowance and to identify the costs that it may ultimately need to complete the project if the allowance is not sufficient.

### Extension Options; Determination of Rental Amount for an Extension Period

The lease should clearly set forth whether the tenant has the option to extend the lease and the terms and mechanics of

an extension.

Commercial leases that are drafted by non-lawyers often include extension provisions but fail to address notice. Notice is extremely important with commercial leasing. Aside from clear provisions in the lease as to how and to whom notice should be delivered and received, the timeframe of a notice to exercise an extension needs to be carefully considered with your client. Generally, commercial tenancies require a match between the unique needs of a business and the limited number of properties that are suitable for those needs. This means that because the pool of commercial tenants and suitable properties is limited both landlords and tenants need to ensure that there is adequate time, in the event of non-extension to a) if a landlord, market the property and find a new tenant and b) if a tenant, find a new and suitable space. Typically, landlords will seek a longer notice of extension period and tenants will seek the flexibility of a shorter one.

The Extension provisions themselves most often mirror the initial term of the lease in length and the term of an extension period is not disputed in negotiation. The rental amount in an extension period is obviously one of the most negotiated terms of a lease and there are several ways that it can be calculated but it should be specific. Often commercial leases link extension term rental amounts to changes in a consumer price index (CPI). While this may be deemed fair to the parties to a lease, there is very low correlation between CPI and the commercial rental market or the needs of the parties. More commonly, landlords and tenants establish the extension rental amount based on negotiation at the time of negotiating the lease or include a provision linking extension rental amounts to fair market value. If left to fair market value, the lease should provide a clear amount of time for the landlord to notify the tenant of the new rental amount and an arbitration and an appraisal or arbitration process should be included in the event of disagreement.

### Including an Option to Purchase, Right of First Refusal or Right of First Offer

It is often in the interest of the tenant to include an Option to Purchase, Right of First Refusal (ROFR) or a Right of First Offer (ROFO) in a commercial lease. An

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# Legal Challenges to Workforce Housing Shortage Will Stifle New Hampshire Business and Job Growth

## State and Local Governments Working at Cross Purposes on Workforce, Senior Housing

By Robert Best

There is a housing crisis in New Hampshire. It isn't "brewing," and it isn't on the "horizon." It's here in full force, right now, today. Ben Frost, Deputy Executive Director and Chief Legal Officer at the New Hampshire Housing Finance Authority, says the statewide housing shortage is about 20,000 units. By way of perspective, according to Data USA, the City of Concord has about 17,500 households. You read that right, to address the shortage, we need to add a medium-sized city's worth of housing across the state.



Short supply isn't the only problem. The median New Hampshire household cannot afford to rent the median apartment in places like Manchester. The data is far worse for a single person earning the New Hampshire median income, who would need at least two roommates to afford the median apartment. Buying the median home is even further out of reach—requiring an income that is 133 percent of the median household income.

Here's the data. According to the New Hampshire Department of Business and



Economic Affairs, the average median rent for a two-bedroom apartment in Manchester in the third quarter of 2020 was \$1,824 per month. Apartmentlist.com says that the cost of utilities in New Hampshire for a two-bedroom apartment is between \$174 and \$190 per month, depending on the municipality. That puts the monthly cost of a two-bedroom apartment at \$1,999 - \$2,014 per month. State law defines affordable housing to mean housing that is no more than 30 percent of gross income for all housing costs, including rent/mortgage, utilities, insurance, and taxes. RSA 674:58, I. That means it takes a house-

hold income of about \$80,000 to afford that apartment.

The problem is that the median household income in New Hampshire was only \$76,768 in 2019, according to the US Census Bureau. For a single individual, the median income is \$35,807 in 2019, which is not even halfway to the income needed for that median apartment. Interested in buying a home? According to the NH Association of Realtors, in 2021, the average price in NH was \$395,000. If you can find \$79,000 for a 20 percent down payment, your mortgage, taxes, utilities and insurance will work out to

around \$2,550 per month. It'll take a household income of \$102,000 to support that housing budget. That means the average NH home is out of reach until income exceeds 133% of the median.

Importantly, a housing crisis can often foreshadow an economic crisis. Without housing, we do not have workers, and without a labor force, we do not have jobs and businesses. We also will not have schools, public works, police officers, coffee shops, gyms, hardware stores, and flower shops.

How did this happen? NH has statutes that require every town to provide reasonable opportunities to develop workforce housing (RSA 674:58-61) and manufactured housing (RSA 674:32); we have tax-advantaged financing for affordable housing projects (RSA 204-C), and expedited appeals of local land use matters (RSA 679). When it adopted the workforce housing statute, the state called it an "urgent and compelling public policy goal" (SB342, 2008). The state has been hard at work solving the problem.

Unfortunately, certain New Hampshire municipalities have been systematically and purposefully undermining the state's urgent and compelling public policy goal by obstructing the development of workforce housing. This revelation is not new. Forty-four years ago, in 1978, the New Hampshire

CHALLENGES continued on page 38

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## Liens from page 33

it says it is a construction mortgage, it discusses construction disbursements, and is in an amount that is equal to the anticipated construction financing, then it is very likely that a trial court will find that at the “agreement level,” the purpose of the mortgage was to finance construction and the fact that a disbursement was made under a letter of credit is of no consequence. So, if the bank provides the letter of credit and “blocks” a certain amount of the construction loan to cover the letter of credit, it runs a significant risk of losing its priority to unpaid contractors.

The lesson is that a bank that funds a construction project—and also provides a letter of credit for the project—should record two mortgages: the first to secure the letter of credit reimbursement obligation, and the second to secure the construction financing. By recording two mortgages, the bank can isolate the construction purpose at the agreement level in the construction mortgage and keep the non-construction priority of the mortgage securing the reimbursement obligation under the letter of credit.

### Endnotes

1. N.H. Rev. Stat. Ann. § 447:12-a
2. See, e.g., *Manchester Subdivision and Site Plan Review Regulations*, §4.14, <https://www.manchesternh.gov/Departments/Planning-and-Comm-Dev/Regulations>
3. This article will not address whether a

letter of credit is properly used as a guarantee of performance in the face of the independence principle of Article V: “Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.” N.H. Rev. Stat. Ann. § 382-A:5-103 (d)

4. *Lewis v. Shawmut Bank, N.A.*, 139 N.H. 50, 52, 650 A.2d 744, 745-46 (1994) (“Therefore, if the defendant’s loan is regarded as a “mixed” loan (i.e., its purpose is to finance not only construction, but also land acquisition or discharge of mortgages on land), then, under the race-notice rule of priority, the defendant would enjoy priority with respect to non-construction disbursements.”)

5. *Lewis v. Shawmut Bank, N.A.*, 139 N.H. 50, 53, 650 A.2d 744, 746 (1994) (“The trial court appeared to focus on this disbursement level in concluding that the loan was mixed. *Gerrity Co., Inc. v. Laconia Savings Bank*, 120 N.H. 304, 307, 414 A.2d 1278, 1280 (1980), however, makes clear that for purposes of RSA 447:12—a priority, the inquiry as to the type of loan is focused on the agreement level, not the disbursement level.”)

*Edmond J. Ford, Esq. is an attorney at Ford, McDonald, McPartlin & Borden, P.A. in Portsmouth, NH. He can be reached at 603-373-1737 and [Eford@fordlaw.com](mailto:Eford@fordlaw.com).*

## Challenges from page 37

Supreme Court first wrote that “[t]owns may not refuse to confront the future by building a moat around themselves and pulling up the drawbridge.” *Beck v. Raymond*, 118 N.H. 793, 801 (1978). In *Britton v. Chester*, 134 N.H. 434, 440 (1991) the court wrote “[t]he town of Chester appears willing to lower that bridge only for people who can afford a single-family home on a two-acre lot or a duplex on a three-acre lot. Others are realistically prohibited from crossing.” Thirty-one years later, we’re still building moats and drawbridges.

How are towns building this proverbial moat? It happens through restrictive zoning that gives the illusion of fairness but, in effect, eliminates any path to developing workforce and senior housing in an economical way. Minimum lot sizes are perhaps the most glaring exclusionary zoning practice. Land costs money, and requiring every development to have lots of land drives up the cost. At some point, the cost is too high, and the developer abandons the project.

Limiting multi-family developments to four units, or even six to eight units per lot/building also looks like a reasonable opportunity to develop housing, but in reality, it is unrealistic to develop such small-scale projects and hope to offer an apartment for \$1,500 per month in rent. The concern about exclusionary zoning regulations goes beyond economics. For example, a common goal of senior housing is to maximize social interaction among residents. Doing so improves safety, decreases depression and loneliness,

and fosters the introduction of community services such as a vaccination clinic, recreational activities, and transportation. Breaking up a senior housing development into a sprawling array of tiny duplexes and triplexes utterly defeats the effort to maximize social interactions, rendering the development undesirable by the class of persons the development aims to serve.

The demand for workforce and senior housing is historically high. Yet, significant barriers prevent developers from starting projects to meet the demand. The lingering pandemic and high lumber prices aside, there are systemic zoning issues that need to be addressed. One-hundred-foot setbacks, green belts, unreasonable height restrictions, extreme road frontage requirements, buffer requirements, prohibiting mixed use developments, requiring unreasonable offsite improvements, and the like are obstacles that can be removed or at the very least adjusted.

This kind of zoning strategy has gone on too long for anyone to believe it could be accidental. Municipalities intend to exclude, and the person most often targeted for exclusion is low income, more likely a minority, and often a senior citizen. This kind of zoning is repugnant to the laws of this state, and should be abandoned.

*Robert Best is an attorney and partner at Sulloway & Hollis. His practice focuses on business and healthcare clients, including real estate and land use practice. For more information regarding workforce housing, please contact Robert Best at 603-223-2812 or [Rbest@Sulloway.com](mailto:Rbest@Sulloway.com).*

## NHBA•CLE

### AVAILABLE On-Demand in the NHBA•CLE Catalog:

#### What’s New in Environmental Law? 3/30/2022 – 360 NHMCLE min.

Join experienced environmental attorneys and professionals to learn what’s new in environmental law.

#### Planning & Zoning 101 10/1/2021 – 360 NHMCLE min.

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

#### Petitions to Partition: Real Estate Separation in the Age of Cohabitation 5/20/2021 – 60 NHMCLE min.

This program will discuss the petition to partition process in NH.

#### Traps for the Unwary: Landlord/Tenant 5/12/2021 – 60 NHMCLE min.

This program provides a brief overview of landlord and tenant practice in New Hampshire. The seminar touches on basic issues that often arise during evictions and in actions filed by tenants against landlords.

#### Basic Construction Law 2021

5/5/2021 – 360 NHMCLE min., incl. 60 ethics/prof.

This program is packed with essential knowledge and practical advice on basic construction law concepts.



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## Lease from page 36

Option to Purchase is generally narrowly drafted to give the tenant the opportunity to purchase a property on or after a certain date. Specificity is needed regarding the terms which should include an appraisal process if the price is not predetermined. A ROFR and a ROFO can be drafted to include the purchase of the property or simply the renting of other space that the landlord may own. A ROFR is generally triggered when the property owner receives an acceptable offer to purchase, or lease, the property and gives the holder of the ROFR (the tenant) the right to either purchase or lease the property upon the same terms or upon other terms listed in the ROFR. A ROFO is triggered when the landlord decides to sell or lease additional property and gives the holder (the tenant)

the right to make a first offer. All three types of provisions should include as much detail as possible and if representing the landlord could be drafted to be linked to the tenant’s performance under the lease.

The above represents only a few of the key provisions in a typical commercial lease. Given that the property represents an asset to the landlord and is critical to the future business of the tenant, engaging in a fulsome review and negotiation of the lease is a critical business item that warrants special attention by the landlord and tenant.

*Eric Kilchenstein is an attorney in the Real Estate Department at Sheehan Phinney.*

*Christopher Candon is a member of the Management Committee and serves as the Chair of the Corporate Department.*

## Contribute to Bar News

### PRACTICE AREA SECTIONS

*NH Bar News* features a special content section each month dedicated to specific areas of the law, and welcomes member and non-member article submissions.

June	Municipal & Government Law & Intellectual Property Law
July	Federal Practice & Bankruptcy & International Law
August	Worker’s Compensation & Personal Injury Law
September	Environmental & Telecommunications, Utilities and Energy Law



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about contributing  
to the sections.



# On the Power of Professionalism

In April, Senior Associate Justice Gary Hicks traveled to New Orleans to guest lecture at a class in professionalism at Tulane University School of Law. He was joined by the Hon. Ivan Lemelle, Senior US District Judge of the Eastern District of Louisiana and Judy Perry Martinez, past president of American Bar Association. Together they taught students in Adjunct Professor Richard Levenstein's course on Healthcare Law. Justice Hicks, Judge Lemelle, and Attorney Martinez each spoke on their preferred area. Justice Hicks stressed the importance of individualized professional development and civility.

This was Justice Hicks's second appearance in a Tulane classroom, but his first one in person, and he expects he will return during future semesters to engage with Tulane students on this critical topic.

"Erosion of civility in our culture and in our courts is one of the greatest challenges facing the legal profession," noted



"Erosion of civility in our culture and in our courts is one of the greatest challenges facing the legal profession."

NH Supreme Court Justice  
Gary Hicks

Justice Hicks. "I was pleased to meet with the students at Tulane, and along with my distinguished colleagues, encourage them to develop and incorporate civility toward their professors, their clients, opposing counsel, and all members of the legal community they encounter during the course of their careers."

Senior Associate Justice Gary Hicks and Judy Perry Martinez, past president of American Bar Association, teach a class in professionalism at Tulane Law School in New Orleans, La. (Courtesy of Tulane Law School.)

## New Hampshire Supreme Court Advisory Committee on Rules Public Hearing Notice

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 3, 2022 at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar as the Committee considers whether to recommend that the Supreme Court adopt several proposed amendments to Supreme Court Rules 37 and 37A that have been recommended by the Attorney Discipline Office.

Comments on any of the proposed amendments which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before May 26, 2022 or may be submitted at the hearing on June 3, 2022. Comments may be emailed to the Committee on or before May 26, 2022 at: [rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us)

Comments may also be mailed or delivered to the Committee at the following address: N.H. Supreme Court, Advisory

Committee on Rules, 1 Charles Doe Drive, Concord, NH 03301.

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

The changes being considered concern the following rules:

### I. 2022-001 Supreme Court Rule 37(8)

*(This proposal would give the Attorney Discipline Office (ADO) "reciprocal" subpoena power, which would allow the ADO to issue a subpoena in this jurisdiction where the issuance of a subpoena has been duly approved under the law of another jurisdiction.)*

1. Amend Supreme Court Rule 37(8) as set forth in Appendix A.

### II. 2022-001 Supreme Court Rule 37(14)

*(This proposal addresses the procedure for attorneys who seek reinstatement and requires that any applicant seeking*

*reinstatement have taken and passed the Multistate Professional Responsibility Examination (MPRE) within one year of the filing of the petition for reinstatement.)*

1. Amend Supreme Court Rule 37(14) as set forth in Appendix B.

### III. 2022-001. Supreme Court Rule 37(20)

*(This proposal would clarify what records of the ADO are public, authorize members of the public to obtain copies of public records at their expense, and permit disclosure of relevant confidential information to the New Hampshire Public Protection Fund.)*

1. Amend Supreme Court Rule 37(20) as set forth in Appendix C.

### IV. 2022-001. Supreme Court Rule 37(21)

*(This proposal would repeal Rule 37(21) which the ADO believes is no longer necessary because it applies to matters "initiated on or before April 1, 2000.")*

1. Amend Supreme Court Rule 37(21) as set forth in Appendix D.

### V. 2022-001. Supreme Court Rule 37A(III)(b)(5)(F)

*(This proposal would amend Rule 37A(III)(b)(5)(F) to allow the ADO to move for conditional default against respondents who fail to timely furnish discovery)*

1. Amend New Hampshire Supreme Court Rule 37A(III)(b)(5)(F) as set forth in Appendix E.

### VI. 2022-001. Supreme Court Rule 37A(V)

*(This proposal would allow attorneys to request annulments not only of reprimands but also of public censures.)*

1. Amend Supreme Court Rule 37A(V) as set forth in Appendix F.

New Hampshire Supreme Court  
Advisory Committee on Rules  
By: Patrick E. Donovan, Chairperson  
and Lorrie Platt, Secretary  
May 3, 2022

## Supreme Court At-a-Glance

April 2022

Insurance

**Cincinnati Specialty Underwriters Insurance Company v. Best Way Homes, Inc. & a., No. 2021-0280**

April 27, 2022

**Affirmed**

- Whether the trial court erred by concluding that the terms of a commercial general liability policy clearly and unambiguously excluded coverage for damages in a personal injury action against Cincinnati Specialty Underwriters Insurance Company's (CSU) insured resulting from a fall from an alleged negligently constructed staircase.

CSU requested, among other things, dismissal by the trial court of a personal

injury claim as a matter of law based on the terms of an exclusionary provision. Blodgett and Best Way argued, among other things, that CSU was not entitled to summary judgment because the claims did not arise out of the work of the subcontractor and thus were not precluded from coverage by the exclusionary provision, and that CSU suffered no prejudice as a result of Best Way's failure to obtain a written contract with the subcontractor. The trial court granted CSU's motion for summary judgment, finding that the terms of the policy's exclusionary provision were clear and unambiguous, and that all claims in the underlying action arose out of the subcontractor's work and were subject to the policy's exclusionary provision.

On appeal, Blodgett argued the exclusionary provision does not apply to negligent acts that occurred before the policy's effective date based on the wording of the policy, and that the subcontractor's work

### At-a-Glance Contributor



Eric Wind  
Attorney at the  
NH Public Utilities  
Commission  
in Concord, N.H.

occurred approximately four years before the policy became effective. The Court disagreed, finding that no reasonable person in the position of the insured could have construed the conditions precedent of the exclusionary provision as having a temporal reference. The Court agreed with the trial court, concluding that all claims against Best Way arose out of the work

of the subcontractor and the exclusionary provision precludes coverage in the underlying litigation.

*Getman, Schulthess, Steere & Poulin, P.A., of Manchester (Christopher J. Poulin, on the brief and orally), for the plaintiff. Van Dorn, Curtiss, Rousseau & Ross, PLLC, of Lebanon (Cristina Rousseau on the brief and orally), for defendant Russell Blodgett. John J. Cronin III, PC, of Bennington, for defendant Best Way Homes, Inc.*

### Administrative Law

**Appeal of Tradz, LLC, No. 2021-0053**

April 8, 2022

**Affirmed**

- Whether the New Hampshire Division

AT-A-GLANCE continued on page 40



of Motor Vehicles (DMV) erred in concluding that RSA 262:40-a (relating to abandoned vehicles) did not provide a basis for Tradz, LLC to obtain title to ten motor vehicles that it claimed were abandoned.

The DMV denied applications for title to ten vehicles. With respect to the six vehicles that the petitioner towed at the request of the lienholders and one vehicle it towed from Massachusetts, the DMV determined that the petitioner had repossessed the vehicles, and, for that reason, the abandoned vehicle statute did not apply. With respect to three vehicles that the petitioner towed from an automotive dealership, the DMV denied the applications based on its determination the property owner did not request the petitioner to tow the vehicles pursuant to RSA 262:40-a, I.

On appeal, petitioner argued that the DMV erred by concluding that the abandoned vehicle statute did not provide a basis for the petitioner to obtain title to the vehicles.

The Court determined that the DMV did not erroneously interpret RSA 262:40-a. With respect to vehicles repossessed at the request of a lienholder, the Court determined that actual possession of the abandoned vehicle was definitionally required under RSA 262:40-a, that the lienholders did not possess the vehicles, and that the petitioner was not subsequently authorized to sell the six repossessed vehicles to itself at public auction based on RSA 262:40-a. With respect to the vehicles towed from an automotive dealership, the court determined that the DMV correctly ruled that the abandoned vehicle statute did not provide a basis for the petitioner to obtain title to these vehicles based on the evidence in the record and its conclusion that the petitioner was not subsequently authorized to sell the repossessed vehicles to itself at public auction. With respect to the vehicle towed from Massachusetts, the court held that RSA 262:40-a does not apply to vehicles that are removed from property located outside of New Hampshire.

*Wadleigh, Starr & Peters, PLLC, of Manchester (Craig Donais and Stephen Zaharias on the brief, and Stephen Zaharias orally), for Tradz, LLC. John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Christina M. Wilson, assistant attorney general, on the brief and orally), for the New Hampshire Division of Motor Vehicles.*

**In Re K.C., No. 2021-0215**  
**April 21, 2022**  
**Reversed**

- Whether the trial court based its decision to order the respondent's involuntary admission to New Hampshire Hospital on sufficient evidence.

The trial court involuntarily admitted respondent pursuant to RSA 135-C:34, based on symptomatic evidence and evidence of past acts. The Court interpreted RSA 135-C:34's dangerousness requirement to require clear and convincing proof of specific acts demonstrating actual or likely serious bodily injury. The Court determined that the only evidence of a specific act with the potential to cause serious bodily injury to either the respondent or others lacked requisite temporal detail and provided insufficient probative value for determining future dangerousness.

*John M. Formella, attorney general, and Anthony Galdieri, solicitor general (Laura E. B. Lombardi, senior assistant attorney general, on the memorandum of law and orally), for the petitioner. Amy B. Davidson, of Contoocook, by brief and orally, for the respondent.*

**In Re J.D. & In Re A.D., No. 2021-0285**  
**April 20, 2022**  
**Affirmed**

- Whether the trial court erred in terminating parental rights without a new social study being conducted at or after the filing of the termination petition.

The trial court terminated the parental rights of both respondents following findings of abuse and/or neglect, and after determining that both respondents failed to correct the conditions that led to the abuse and/or neglect findings. Respondents argued that the language of RSA 170-C:9 requires that a new social study be conducted at the time of or after the termination petition is filed. The Court analyzed the purpose of the social study under the statute, namely, to aid the court in making a disposition of the petition based on the circumstances, including the social history, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. The Court declined to interpret the statute narrowly to require a new report titled a "social study" be filed,

instead concluding that reporting on the investigation of the statutory criteria must be submitted to the trial court for its consideration and may consist of a combination of reports, including reports completed prior to the filing of the termination petition. Respondents also argued that the trial court lacked jurisdiction to terminate custody of a child who reached the age of maturity after the order's issuance but before its effective date. The Court held that the trial court had jurisdiction to issue its order because circuit court - family division orders remain effective during the pendency of motions for rehearing or appeal. The Court declined to address the arguments relating to the children's rights to council and sufficiency of the evidence.

*John M. Formella, attorney general, and Anthony Galdieri, solicitor general (Laura E. B. Lombardi, senior assistant attorney general, on the memorandum of law and orally), for the petitioner. Charles A. Russell, of Concord, by brief, for the respondents.*

**In the Matter of Brian Colsia and Allana Kelley-Colsia, No. 2021-0373**  
**April 6, 2022**  
**Affirmed and Remanded**

- The Court responded to questions of law, including 1) whether a receiver for the marital estate possesses the authority to approve a settlement with third parties and intervenors; 2) whether third-party mortgagees possess standing to intervene in a divorce proceeding; 3) whether a receiver appointed by a divorce court possesses authority to negotiate and approve settlement with third parties and intervenors regarding the aforesaid mortgages over the objections of a spouse and without review and approval by the superior court; 4) whether the trial court erred in approving such settlements over a spouse's objections; and 5) whether a party that moved to have a receiver appointed with broad settlement powers and failed to challenge the Marital Court's issuance of an order providing the receiver with such settlement powers subsequently challenge the receiver's ability to exercise such settlement powers.

Before and during a proceeding for divorce, husband took actions to hide marital assets from his wife. At the request of the wife, the trial court appointed a receiver to recover property that had been removed from the marital estate. Receiver challenged the validity of mortgages granted to husband's brother before the superior court, and ultimately concluded that various settlement agreements were in the best interests of the marital estate. The trial court approved the settlements, and subsequently granted the wife's request for a stay of the effectuation of the settlements pending interlocutory appeal and the transfer of five questions to the Court.

The Court answered the first three questions in the affirmative, the fourth question in the negative because approving the settlement had no adverse effect on the wife's right to ask the trial court for a property division that favors her and disfavors the husband based on the husband's conduct, and assumed without deciding that the wife could challenge the receiver's exercise of settlement powers. The Court concluded that the trial court's decision to grant the motions to approve the settlements were supported by the record and not plainly erroneous as a matter of law.

*Brian Colsia, the petitioner, filed no brief. Nadeau Legal PLLC, of Biddeford, Maine (Robert M. Nadeau on the brief), for the respondent. Bernstein, Shur, Sawyer & Nelson, P.A., of Manchester (Roy W. Tilsley, Jr. and Hilary H. Rheume on the brief), for intervenor Wayne Colsia. North Atlantic Legal, PLLC, of Portsmouth (Jonathan T. McPhee on the brief), for intervenors Faith Deeter-Macomber and Foxtrot Delta, Inc. Ford, McDonald, McPartlin & Borden, P.A., of Portsmouth (Marc W. McDonald on the brief), for the receiver. Danielle Colsia, self-represented party, filed no brief.*

**Criminal Law**

**The State of New Hampshire v. Richard Racette, No. 2020-0364**  
**April 26, 2022**  
**Reversed and Remanded**

- Whether the trial court erred by: (1) barring cross-examination about a witness's prior statement; and (2) failing to dismiss an indictment for insufficient evidence.

Defendant was convicted by jury on four pattern counts of aggravated felonious sexual assault. On appeal, defendant argued that the trial court erred by barring cross-examination of complainant's sister intended to impeach her testimony about the complainant's demeanor and her belief that the complainant felt uncomfortable around the defendant.

The Court held that the sister's prior statement was admissible as a prior inconsistent statement because at least one rational theory supported its admission on that basis, and that issues such as whether the prior inconsistent statement constituted poor impeachment material or could have been interpreted in a variety of ways was for the jury to determine. The Court went on to find that the improperly excluded evidence was not cumulative or inconsequential, and reversed and remanded the matter.

The defendant also argued that the trial court erred by failing to dismiss an indictment for pattern of sexual assault because the State was required to prove the defendant committed more than one act under upon the same victim over a period of 2 months or more and within a period of 5 years, and the evidence was insufficient to prove that the defendant attempted intercourse more than once and that any second such act occurred at least two months after a first act. The defendant concedes that he failed to preserve this issue for appeal. The Court reviewed for plain error, concluded that the evidence was insufficient to support the defendant's conviction on the pattern of sexual intercourse indictment, that the trial court therefore committed plain error, and reversed the defendant's conviction on the pattern of attempted sexual intercourse charge.

*John M. Formella, attorney general (Zachary L. Higham, assistant attorney general, on the brief and orally), for the State. Christopher M. Johnson, chief appellate defender, of Concord, on the brief and orally, for the defendant.*

**The State of New Hampshire v. Benjamin M. Mackenzie, No. 2019-0265**  
**April 8, 2022**  
**Affirmed**

- Whether the trial court erred when it admitted testimony that the victim had previously purchased opioids from the defendant as habit evidence under New

## Need to schedule a Mediation?

FEBRUARY 2022

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

Fast-track scheduling at [www.NHMediators.org](http://www.NHMediators.org)



Hampshire Rule of Evidence 406.

- Whether the trial court erred when it admitted text messages between a cell-phone alleged to belong to the defendant and other apparent drug customers as intrinsic to the charged crime.

Defendant appealed conviction on one count of distribution of a controlled drug with death resulting. Defendant argued that the trial court erred when, prior to trial, it ruled that the testimony of the victim’s friend was admissible under N.H. R. Ev. 406 as evidence of the victim’s habit of buying opioids from the defendant, that the same testimony would not be unfairly prejudicial under N.H. R. Ev. 403, and by overruling his hearsay objection, admitting the evidence under the residual hearsay exception, N.H. R. Ev. 807. The defendant also appeals the trial court’s pre-trial ruling admitting certain text messages as “intrinsic” to the charged offense, or, alternatively, under N.H. R. Ev. 404(b).

Although the Court agreed with the defendant that the court erroneously ruled that a friend’s testimony was admissible as habit evidence, because the state’s proffer insufficient to establish that the victim’s purchase of opioids from the defendant was a regular response to her need to procure opioids, the court found the error harmless in light of alternative evidence identifying the defendant as the person who supplied the lethal dose a controlled substance.

The Court also determined that any error in determining that text messages were intrinsic to the offense would also be harmless because the challenged text messages were cumulative and inconsequential in relation to the other evidence.

*John M. Formella, attorney general (Zachary L. Higham, assistant attorney general, on the brief and orally), for the State. Christopher M. Johnson, chief appellate defender, of Concord, on the brief and orally, for the defendant.*

**Right-to-Know**

Samuel Provenza v. Town of Canaan, No. 2020-0563  
April 22, 2022  
Affirmed

- Whether the trial court erred in concluding that a report relating an investigation into a complaint of excessive force against a police officer was subject to disclosure under the Right-to-Know Law, RSA 91-A.

On appeal, the plaintiff presented fifteen questions for review. The Court determined that the report was subject to disclosure based on its analysis to three questions: 1) whether RSA 105:13-b bars disclosure; (2) whether RSA 516:36 and/or State Personnel Rules bar disclosure; and (3) whether RSA 91-A:5, IV bars disclosure. The Court determined that RSA 105:13-b does not apply because the report was not maintained in a personnel file; and agreed with the trial court’s conclusion that RSA 516:36 governs admissibility, and therefore has no bearing on the Right-to-Know analysis.

With respect to RSA 91-A:5, IV, the Court applied a three-step balancing test to evaluate whether there is a privacy interest that would be invaded by the disclosure, the public’s interest in disclosure, and to balance the public interest in disclosure against the government’s interest in non-disclosure and the individual’s interest in nondisclosure (citing *Union Leader Corp. v. Town of Salem*, 173 N.H. 345 (2020)). The Court concluded that the plaintiff’s privacy interest was not weighty because it related to his conduct as a government employee while performing official duties and interacting with a member of the public, that the government’s interest in nondisclosure was minimal, and that the public has a substantial interest in the information. On balance, the Court reached the same conclusion as the trial court, holding that the report was subject to disclosure.

*Milner & Krupski, PLLC, of Concord (John S. Krupski on the brief and orally), for the plaintiff. American Civil Liberties Union of New Hampshire Foundation, of Concord (Gilles R. Bissonnette and Henry R. Klementowicz on the brief and orally), for the intervenor, Valley News.*

**Landlord/Tenant**

Melissa Natal v. GMPM Company & a.,

No. 2021-0258  
April 1, 2022  
*Affirmed*

- Whether the trial court erred by determining that defendant’s property was not a “shared facility” as defined by RSA 540-B:1.

After terminating the plaintiff’s tenancy, the defendant argued that RSA 540-B:1 (governing rentals of shared facilities for residential purposes) does not require that an owner occupy the premises, rather, that an owner only needs to have access to the common areas for the purposes of cleaning, maintaining, and monitoring the premises for the shared facility exemptions (such as processes for termination of any tenancy) to apply. Defendant argued that nothing in the provision’s language requires that the owner sleep in or occupy the premises for it to be considered a shared facility.

The Court concluded that the term “shared facility” as defined by RSA 540-B:1 mandates that the owner of the leased property live in and share the use and enjoyment of one or more significant portions of the facility in common with the occupants for that property to qualify as a shared facility under RSA 540-B:1. The Court further found language in the lease identifying it as a shared facility per NH RSA 540-B unavailing, noting that RSA 540:28 provides that no lease or rental agreement shall contain any provision by which a tenant waives any of his rights under the chapter, and any such waiver to be null and void. As such, the Court held that the trial court did not err by concluding that the property was not a “shared facility”.

*603 Legal Aid, of Concord (Marta A. Hurgin on the brief), for the plaintiff. Keith Duperron, non-lawyer representative appearing by approval of the Supreme Court under Rule 33(2), on the brief, for the defendant.*

**Statutory Immunity**

Janet Bisceglia v. e Secretary of State & a., No. 2021-0102  
April 1, 2022  
*Reversed and Remanded*

- Whether the trial court erred by granting a motion for summary judgment filed by the defendants, the New Hampshire Secretary of State and the New Hampshire Department of Natural and Cultural Resources pursuant to the limited immunity provision of RSA 508:14, I (New Hampshire’s recreational use statute).

Plaintiff visited a lighthouse, situated on federally-owned land in New Castle, N.H., and adjacent to Fort Constitution. Fort Constitution is owned and operated by the New Hampshire Department of Natural and Cultural Resources. While the plaintiff was standing on the federal land next to the outer wall of Fort Constitution, a portion of the wall fell on top of her, causing injuries. The Plaintiff sued the State under a theory of negligence. The State moved to dismiss. The trial court construed the State’s motion as a motion for summary judgment, and granted the State’s motion pursuant to RSA 508:14, I. The trial court determined that, because the State “held Fort Constitution out to the public at no charge” and the wall “was maintained as part of the historic site for the use and enjoyment of the public” that RSA 508:14, I, shielded the State from liability “regardless of whether Plaintiff was physically on [the State’s] property at the time of the injury.”

The Court construed the language of RSA 508:14, I to grant limited immunity from negligence claims by persons injured while using land open to the general public without charge for recreational activities, limited in applicability to on-premises injuries. Because the plaintiff was not on not on the State’s property in this instance, the Court held that RSA 508:14, I presents no bar to recovery. The Court reversed the order and remanded the case for further proceedings.

*Burns, Bryant, Cox, Rockefeller & Durkin, PA, of Dover (Matthew B. Cox on the brief and orally), for the plaintiff. John M. Formella, attorney general (Samuel R.V. Garland, assistant attorney general, on the brief and orally), for the defendants.*

NH Superior Court Judicial Assignments: May - June 2022

COURT	HILLS NO	HILLS SO	ROCKINGHAM	MERRIMACK	STRAFFORD	CHESHIRE	BELKNAP	SULLIVAN	CARROLL	COOS/GRAFTON
MO/WK	Judges	Judges	Judges	Judges	Judges	Judges	Judges	Judges	Judges	Judges
5/23/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire Sr. Judge	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
5/30/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire Sr. Judge	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
6/6/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire Nadeau (7,8,9)	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
6/13/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire Sr. Judge (14,15,16)	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard Ignatius	+Honigberg		+Bornstein MacLeod
6/20/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
6/27/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod

+Supervisory Justice

Assignments commence on the first Monday of each month

Schedule is subject to change.

Effective 4/20/22



## US District Court Decision Listing

April 2022

\* Published

### COPYRIGHT; CONTRACTS

4/13/22 *InSync Training, LLC v. American Society for Training and Development, Inc.*  
Case No. 21-cv-594-JL, Opinion No. 2022 DNH 047

In this copyright and contract-based action, the defendant obtained course materials from the plaintiff through a contract between the parties. The plaintiff claims that the defendant copied and/or used the plaintiff's course materials to develop competing offerings and asserts four claims, for breach of contract, copyright infringement, unfair competition under the New Hampshire Consumer Protection Act, and fraudulent misrepresentation. The plaintiff sought to amend its complaint, and the defendant objected on futility grounds, arguing that the amended complaint would fail to state a claim upon which relief could be granted. The court granted the motion to amend as to the copyright, breach of contract, and unfair competition claims, but it denied the motion as to the fraudulent misrepresentation claim, finding that the plaintiff failed to allege facts from which the court could infer scienter. 23 pages. Judge Joseph N. Laplante.

### FAIR LABOR STANDARDS

4/4/22 *McCarthy v. Medicus*  
Case No. 21-cv-668-JL, Opinion No. 2022 DNH 048

In this putative collective action for unpaid overtime wages under the Fair Labor Standards Act, the defendant moved to dismiss, arguing that the plaintiff's claim was untimely. Plaintiff sought to utilize the FLSA's three-year limitations period, which requires proof of a willful violation of the statute. The parties disputed the level of pleading detail required to establish a willful violation at the pleadings stage. The court found, however, that even under a stricter standard, the plaintiff's complaint contained sufficient factual allegations (and not bald legal conclusions or mere recitations of the elements of proof) to defeat the defendant's motion to dismiss. 11 pages. Judge Joseph N. Laplante.

### PRELIMINARY INJUNCTION

\*4/4/22 *Doe v. Trustees of Dartmouth College*  
Case No. 22-cv-018-LM, Opinion No. 2022 DNH 049P

The plaintiff moved for a preliminary injunction enjoining Dartmouth's Geisel School of Medicine from enforcing his expulsion following the school's finding that he was responsible for sexual assault. The court denied the motion, finding that the plaintiff had not shown a likelihood of irreparable harm absent an injunction. Because irreparable harm is a necessary threshold showing for a preliminary injunction, the court did not address the other elements of likelihood of success on the merits, the balance of

harms, and the public interest. 9 pages. Judge Landya McCafferty.

### PRISONER CIVIL RIGHTS; JURISDICTION

April 11, 2022 *Fox v. Warden, FCI Berlin*  
Case No. 21-cv-158-SE, Opinion No. 2022 DNH 051

While incarcerated at the Federal Correctional Institution in Berlin, New Hampshire, a federal inmate filed a petition for habeas corpus under 28 U.S.C. § 2241, challenging prison disciplinary proceedings that resulted in lost good-conduct time. The Bureau of Prisons subsequently transferred the petitioner to the FCI in Terre Haute, Indiana. The warden moved to dismiss the petition, arguing that the petitioner's transfer deprived the court of jurisdiction. The court denied the motion. The court determined that it had properly acquired jurisdiction over the petition when it was filed because the petition named the petitioner's immediate custodian as the respondent and was filed in the district of confinement. United States Supreme Court precedent allows the court to retain jurisdiction over a properly filed petition after the petitioner has been transferred to another jurisdiction if there is a respondent within the court's jurisdiction with the authority to carry out any order the court may issue. The court concluded that the Bureau of Prisons is the petitioner's "ultimate custodian" and can take any necessary action resulting from the court's order(s) on this petition. 10 pages. Judge Samantha D. Elliott.

### PRODUCT; DESIGN DEFECT

4/1/22 *Ortiz v. Sig Sauer*  
Case No. 19-cv-1025-JL, Opinion No. 2022 DNH 047

This is a putative class action concerning an alleged design defect in a semi-automatic pistol, the SIG P320, which makes it susceptible to "drop firing," or discharging after being dropped. The plaintiff, an Arizona resident, purchased the pistol in 2016. In 2017, the manufacturer launched the Voluntary Upgrade Program, through which it offered to make adjustments to the pistol to improve drop safety, at no cost to the customer. The plaintiff asserts several claims against the manufacturer, including breach of express and implied warranty, fraud, and unjust enrichment, and the defendant moved for summary judgment. The court granted summary judgment to the defendant as to the warranty claims, after finding that Arizona law applied to these claims, and the plaintiff failed to satisfy Arizona's privity requirement. The defendant also moved for summary judgment as to all of the plaintiff's claims on the basis that the VUP can make him whole, so he was not entitled to further damages. The court denied the motion as to the remaining claims, finding this damages-based argument unavailing. The plaintiff provided evidence establishing genuine disputes of material fact as to the VUP's availability to him and its effectiveness in curing the alleged drop defect. These factual disputes precluded the court from concluding that the VUP can make the plaintiff whole and thereby obviates the need for any further damages. 39 pages. Judge Joseph N. Laplante.

## Supreme Court Orders

Pursuant to Supreme Court Rule 37(4), the Supreme Court appoints Peter J. Kiriakoutsos to the Hearings Committee of the Attorney Discipline System. Mr. Kiriakoutsos, a non-attorney, is appointed to serve a three-year term commencing April 15, 2022, and expiring April 14, 2025.

Issued: April 14, 2022  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire



The Supreme Court of New Hampshire, pursuant to RSA 490:4, directs that proceedings in any State court in New Hampshire may be suspended on Friday, June 17, 2022, to facilitate continuing judicial and legal education and to accommodate any judges' meetings being held in conjunction with the annual meeting of the New Hampshire Bar Association.

Issued: April 19, 2022  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire



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

**I. New Hampshire Rule of Evidence 902 – Evidence That Is Self-Authenticating**  
(This amendment expands the list of items

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

1. Amend New Hampshire Rule of Evidence 902 and adopt a 2022 Supreme Court Comment to follow the 2016 NHRE Update Committee Note, as set forth in Appendix A.

### Effective Dates

The amendment to New Hampshire Rule of Evidence 902 shall take effect on July 1, 2022.

Date: April 20, 2022  
ATTEST: Timothy A. Gudas, Clerk  
Supreme Court of New Hampshire



In accordance with Supreme Court Rule 39(2)(a)(1), the Supreme Court reappoints Superior Court Justice Neals-Erik William Delker to serve as a member of the Committee on Judicial Conduct (JCC) for a three-year term commencing July 1, 2022, and expiring on July 1, 2025.

In accordance with Supreme Court Rule 39(2)(a)(5), the Supreme Court reappoints Larry Gilpin to serve as a member of the JCC for a three-year term commencing July 1, 2022, and expiring on July 1, 2025.

Issued: April 21, 2022  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

## Classifieds

# DCYF – Attorney II

NH Department of Health & Human Services  
Concord, Rochester and Littleton District Offices

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

The N.H. Department of Health and Human Services, under the supervision of the N.H. Department of Justice, currently has three full time attorney positions and one part time attorney position available representing the Division for Children Youth and Families. The positions available are:

**#40098 and #44217 – Full time in the Rochester District Office.**

**Position #44560 – Full time in the Concord District Office.**

**Position #TMPPT5726 – Part time telework in the Littleton District Office**

**Duties include:** Representation of the Division for Children, Youth and Families in litigation involving the DCYF's child protection program. Litigation activities include drafting pleadings and motions, conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.

**Requirements:** J.D. from a recognized law school, N.H. Bar membership, a driver's license and/or access to transportation for statewide travel and four years' experience in the practice of law, preferably in the area of abuse and neglect or family law.

**How to a APPLY:** Please go to the following website to submit your application electronically through NH 1st: <http://das.nh.gov/jobsearch/employment.aspx>. Please reference the position number that you are applying for. Position will remain open until a qualified candidate is found. EOE.

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

## NH Professional Conduct Committee

NOTICE OF ANDREW G. BRONSON  
REQUEST FOR REINSTATEMENT  
TO THE NEW HAMPSHIRE BAR  
LD-2013-0010

The New Hampshire Supreme Court Hearings Committee is considering Andrew G. Bronson's Request for Reinstatement to the New Hampshire Bar. Mr. Bronson was suspended on October 22, 2013. Anyone who wishes to com-

ment on his request may do so in writing within twenty (20) days of the publication of this notice by sending said comments to: Barbara Guay, Legal Assistant, New Hampshire Supreme Court, Professional Conduct Committee, 4 Chenell Drive, Suite 102, Concord, New Hampshire 03301, [bguay@nhattyreg.org](mailto:bguay@nhattyreg.org).

April 27, 2022



## POSITIONS AVAILABLE

**ATTORNEY** – Beasley & Ferber, PA is seeking an attorney to practice in the field of Elder Law, including estate planning, Medicaid planning & Medicaid applications, guardianships & probate administration. Experience preferred but not necessary. Competitive salary and benefits. All inquiries will be held in strict confidence. Please e mail resume to **david@beasleyferber.com**.

**ESTATE PLANNING/PROBATE ATTORNEY** – Well established, mid-sized, Nashua multi-practice firm, is seeking an estate planning/probate attorney to take over an existing position. Two to four years of experience is preferred but not required. An interest in Medicaid planning and guardianships is a plus. Candidates should be licensed to practice in New Hampshire or possess a license from a reciprocal state. Excellent benefits package and competitive salary. Email Resume and salary requirements to Veronica Hamilton at **vhamilton@lawyersnh.com**.

**ATTORNEY III** – The Department of Safety is seeking a NH admitted attorney to serve as a full time Attorney III located at the Concord office. Minimum qualifications include being a member of the NH Bar and five years' experience in the active practice of law. To see the full job description and contact information, please go to **http://das.nh.gov/jobsearch/employment.aspx** and type in Job ID #25455.

**LEGISLATIVE AND BILL DRAFTING ATTORNEY.** Office of Legislative Services - The General Court's Office of Legislative Services (OLS) is seeking a full-time attorney in its Legal and Drafting Division at the State House in Concord. Responsibilities include: drafting legislation and amendments for members of the House of Representatives and the Senate; ensuring that all legislative documents meet the technical and editorial standards of OLS; advising members of the legislature in resolving practical, technical, and legal issues in their drafting requests; compilation and review of statutory changes enacted in each legislative session for publication in the New Hampshire Revised statutes annotated (RSA); and assisting the OLS Administrative Rules Division in reviewing and presenting agency rules to the Joint Legislative Committee on Administrative Rules. Candidates for the position must be a graduate of an accredited law school and eligible to become a member of the NH Bar Association. More information may be found at **www.gencourt.state.nh.us**. Minimum Salary: \$71,136. The position will remain open until filled. To apply, please submit a resume and cover letter to: David J. Alukonis, Director, Office of Legislative Services, **David.alukonis@leg.state.nh.us**.

**DEPUTY CHIEF COUNSEL** – The Committee for Public Counsel Services, the Massachusetts public defender agency, is seeking a dynamic and experienced leader to serve as Deputy Chief Counsel of the Mental Health Litigation Division. We provide trial and appellate representation to indigent persons when petitions seeking commitment to public or private psychiatric facilities and petitions seeking to impose guardianships are filed against them. The Deputy Chief Counsel of the Mental Health Litigation Division reports to the Chief Counsel and is a member of CPCS Senior Leadership, which develops and implements agency fiscal, operational, human resource, and legislative policies. Please go to **https://careers-publiccounsel.icims.com/jobs/2180/deputy-chief-counsel%2c-mental-health-litigation-division/job** for further information, including additional position responsibilities and detailed qualifications, and instructions on how to apply.

**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**.

**LITIGATION ATTORNEY** – 5 Attorney law firm in Manchester, NH seeking a full-time civil litigation attorney to support the law firm's litigation activity related to condominiums, contracts, business and corporate. Flexible Hours. Salary commensurate with experience. Please send cover letter and resume to **guliasz@fenigeranduliasz.com**.

**REAL ESTATE ATTORNEY** – 5 Attorney firm in Manchester, NH seeking a real estate attorney with 0-5 years experience in residential or commercial real estate to work with our other attorneys in all aspects of these transactions. Flexible hours. Salary commensurate with experience. Please send cover letter and resume to **guliasz@fenigeranduliasz.com**.

**ASSOCIATE:** Friedman Feeney, PLLC is seeking an associate with 2+ yrs litigation experience to handle discovery, drafting motions, and pretrial preparation, in state and federal courts, for our busy Concord based practice. Candidates should be admitted to practice in NH and MA, and have familiarity with case management in both states. We offer a flexible work environment and competitive benefits. The successful candidate will have an excellent opportunity for career growth. Please send your resume in confidence to: **ngetman@friedmanfeeney.com**.

**GENERAL COUNSEL – REAL ESTATE ATTORNEY** – Unique opportunity to join a boutique full-service commercial real estate company as GC of title, closing, and property tax abatement services. Ideal candidate will have 5+ years of experience in all aspects of New Hampshire commercial real estate closings - placing title insurance, ensuring clean title, conducting closings and other related matters. Preference will be given to candidates with additional experience in Massachusetts, Maine, or Vermont practice. Candidate must have an ability to work both independently without supervision and collaboratively with a team of professionals. Salary and bonus structure is competitive with partner level compensation at top-tier NH law firms. Benefits package includes health insurance, 401K, and paid time off. Remote, in-office, or hybrid work arrangements available. Please direct resume to **jim@csuite-exec.com**.

**ATTORNEY** – Manchester firm with north country satellite office seeks attorney for permanent position. 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 **cpatt@cda-law.com**.

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

**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 **spatrinquin@wyattlegalservices.com**.

**ATTORNEY** – Long established Manchester law firm seeking to fill vacant attorney position (0-4 years experience preferred but not required). Firm handles mostly Family Law and Criminal Defense cases. Position offers competitive salary, benefits and the opportunity to appear in Court immediately. If interested, please submit your curriculum vitae to **NHAttorneyPosition@gmail.com**.

**REAL ESTATE ASSOCIATE** – Concord, NH law firm seeks to hire a real estate associate with 5+ years' experience in the area of commercial and residential real estate handling closings, purchase and sale agreements, leases, financings, and title matters. Health insurance and 401(k) available for full-time employees. Please contact Deb Alfano at **dalfano@alfanolawoffice.com**, 4 Park Street, Concord, NH 03301 or 603.715.2543.

**ASSOCIATE ATTORNEY** – Well established Upper Valley/West Central New Hampshire Law Firm is seeking an associate for general civil practice. Two to four years experience preferred. Small firm atmosphere with fast track to partnership for the right candidate. Reply to: **nhlawfirm.hiring@gmail.com**.

**FULL-TIME PARALEGAL** – Friedman Feeney, PLLC seeks experienced full-time paralegal. Background in litigation required. Successful candidate must have excellent organizational skills with respect to file management, client contact, time entry, and computer skills. Prospect of primarily remote work options after training. Competitive salary and benefits offered. Please send resume and salary requirements to **Ngetman@friedmanfeeney.com**.

**PART-TIME PARALEGAL** – Law office located in Henniker/Hillsboro area seeks part-time (20 hours/week) paralegal. Will consider full-time if desired. Successful candidate will have excellent organizational and communication skills. Ability to multi-task is essential. Experience supporting attorneys in real estate, probate and/or litigation a plus. Email resume and salary requirements to: **jill@roberthowardlaw.com**.

## FOR SALE

**COMPLETE SET OF RSAs.** Updated, only needs 2021 pocket parts. \$325.00 Fernald Law Office - 924-3361.

## SCHREIBER LAW, LLC – LITIGATION ATTORNEY

Schreiber Law, LLC is a creditors' rights law firm. We have an immediate fulltime opening for a litigation attorney to represent clients in all NH state courts. The primary roles for the person who fills this position will be courtroom appearances, motion practice, discovery, trials, postjudgment actions and legal document review. The ideal candidate must be duly admitted to, and in good standing with, the New Hampshire bar, have at least 1-3 years of law firm (or the equivalent) experience, be able to travel to court appearances throughout New Hampshire, be adaptable, confident, organized, computer savvy, and a team player. The candidate must also be eager to work in a fast-paced environment handling a high volume case load and be able to take cases from initial review through postjudgment collection.

You will provide support to non-attorney staff including, but not limited to, researching law, reviewing pleadings, answering questions, and providing general guidance on consumer collection matters. You will work with clients representing them in contested/complex matters, prepare witnesses for trial, and, among other things, make recommendations to clients and other in-firm lawyers to achieve the best results. You will communicate with counsel and pro se defendants to resolve disputes and negotiate settlements. You will comply with all state and federal laws and adhere to all court procedures and processes. You must have the ability to think creatively, sometimes outside of the box, problem solve, and work collaboratively and respectfully. You will have excellent written and verbal communication skills. Working remotely is a possibility.

We are offering an annual salary ranging between \$60,000 and \$75,000 depending upon the length and breadth of your legal experience. We also offer medical, dental coverages and 401(k) matching, paid holidays and paid time off.

If interested, please e-mail your resume to **jschreiber@schreiblaw.com**.

## LITIGATION ASSOCIATES

Sulloway & Hollis, P.L.L.C., a growing regional law firm with offices across New England, seeks litigation associates with 1 – 5 years of experience to work primarily in our Concord, NH office. This position offers direct client contact, opportunities for significant responsibilities, and experience in all phases of a rewarding litigation practice.

Candidates should have strong academic credentials and excellent verbal and written communication skills; experience with depositions, hearings, mediations, and trials; and a desire to work in a team-oriented environment. Admission to practice in NH is preferred but not required.

Sulloway offers a competitive salary, supportive culture, professional development training, and other excellent benefits.

Qualified candidates are encouraged to submit their resume for consideration to: Jennifer L. Iacopino, Human Resources Manager, **jiacopino@sulloway.com**

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

New Hampshire | Massachusetts | Maine | Vermont | Rhode Island | Connecticut

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

An Equal Opportunity Employer.

## Construction/Litigation Attorney

Preti Flaherty is seeking a mid-level or senior associate to work in our Construction and Litigation Practice Groups in either of the firm's Boston, MA or Concord, NH offices. The ideal candidate will have experience working in a sophisticated litigation practice and an excellent academic record and exceptional written and oral communication skills. Construction litigation and/or experience in Massachusetts is desirable, but not required. Practical experience in construction and/or engineering is also desirable, but not required.

The position offers an excellent opportunity to assume significant responsibility and hands-on experience in a collaborative, sophisticated and team-oriented work environment. We are looking for someone who is highly motivated and has the ability to work both independently and as part of a larger team. Preti Flaherty offers a competitive salary, incentive bonuses, a generous benefits package, and an ideal working environment. Please email cover letter and resume to Mary Johnston, Recruitment Coordinator at: **mjohnston@preti.com**.



# CHIEF OPERATING OFFICER

*Sulloway & Hollis, P.L.L.C., seeks an experienced Chief Operating Officer to join our team.*

The COO will work closely with the Managing Director, three-person Executive Committee, and our team of Equity Members to provide operational insights and develop strategic plans that fuel the growth of our multi-state, 30 attorney firm.

The ideal candidate will have a demonstrated record of success within a large or mid-sized firm, strong communication, planning, and financial skills and experience supervising a business office team.

The COO is responsible for the Firm's day-to-day administrative and operational functions and will participate in and help execute our strategic initiatives with a focus on increasing the Firm's productivity, efficiency, and profitability. The COO will oversee all of the Firm's business and financial matters, including operations, human resources, finance, marketing & business development, information technology and facilities management.

This is an exciting opportunity as the firm grows and strengthens our regional presence. This position will be based in our Concord, NH headquarters. Qualified candidates may go to our website at [Sulloway.com](http://Sulloway.com) to learn more. Please send confidential resumes to the Managing Director at [cpyles@sulloway.com](mailto:cpyles@sulloway.com).

In addition to a commitment to exceptional client service, Sulloway is committed to increasing diversity in the legal profession and to supporting the communities where we live and work. People from all backgrounds are valued and integrated into every part of our Firm. Diverse candidates, including veterans and individuals with disabilities, are encouraged to apply.



New Hampshire | Massachusetts | Maine | Vermont | Rhode Island | Connecticut

[Sulloway.com](http://Sulloway.com) | [Info@Sulloway.com](mailto:Info@Sulloway.com) | 603-223-2800



COOPER  
CARGILL  
CHANT  
ATTORNEYS AT LAW

## North Conway NEW HAMPSHIRE

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

### CORPORATE ATTORNEY:

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

### 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)



COOPER  
CARGILL  
CHANT  
ATTORNEYS AT LAW

**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).





### PROBATE, TRUSTS AND ESTATE PLANNING ATTORNEY

Morneau Law, a steadily growing Nashua firm, is seeking a probate, trusts, and estate planning attorney with 5-10+ years of experience to join our team. The right candidate would be proficient in probate, estate, and trust administration and have experience drafting estate planning documents.

Someone who is dedicated to giving back to the community and a self-motivated team player would thrive in our position. We are a community-focused and team-based firm with an emphasis on work/life balance that includes the opportunity for a flexible schedule, working remotely as well as in office. We provide a collegial and upbeat work environment with many perks to be appreciated by a new member to our team.

Please send your cover letter, resume and salary requirements to:  
**Employment @MorneauLaw.com**

## Estate Planning Paralegal

McDonald & Kanyuk, PLLC, a boutique estate planning firm with offices in Concord, New Hampshire and Wellesley, Massachusetts, has an excellent opportunity for a full time estate planning paralegal.

Ideal candidate must have a broad base of estate planning experience, be able to work with multiple attorneys, and have experience working directly with clients. The position requires an understanding of estate planning concepts, and experience drafting estate planning documents. Knowledge of trust and estate administration and tax preparation experience would be a plus. Must be well-versed in Microsoft Office, particularly Word, Excel and Outlook. This is full time, in-office position for our Concord, New Hampshire office, but we would consider flexible working arrangements for the right candidate.

Please submit resume, cover letter and salary requirements to Attorney Megan Knox, [mknox@mckan.com](mailto:mknox@mckan.com).

Devine Millimet, one of Northern New England's largest and most dynamic business and litigation law firms, is looking to expand our team.



### WE HAVE THE FOLLOWING OPPORTUNITY AVAILABLE:

#### ***Litigation Associate***

Admission to the NH Bar and 2+ years of legal experience required.

For consideration, please apply online at:  
[www.devinemillimet.com/careers/current-openings](http://www.devinemillimet.com/careers/current-openings)

**Join our team. Make an impact.**

Join us in making a difference in the lives of our colleagues, clients, and communities.

## Workers' Compensation Attorney

Patch & FitzGerald has an immediate opening for an experienced workers' compensation associate to join our team. The successful candidate will have 3 plus years of experience in NH workers' compensation and be a member in good standing of the NH Bar. Experience in personal injury is a plus. We are looking for a results-oriented self-starter to work independently and collaboratively with our team.

We offer a competitive salary and benefits package including health insurance, flexible spending account, generous paid time off, and 401(k) with employer match. For confidential consideration, please direct resumes to [dgauthier@patchfitz.com](mailto:dgauthier@patchfitz.com).



### LITIGATION ATTORNEY

Downs Rachlin Martin — one of Northern New England's largest law firms — has an exciting opportunity for a litigation attorney in its Lebanon office. The ideal candidate would have experience litigating in New Hampshire courts and an interest in doing sophisticated litigation.

### CORPORATE/COMMERCIAL ATTORNEY (LEBANON, NH)

We seek an experienced corporate/commercial attorney to join its Lebanon office.

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

### LABOR & EMPLOYMENT ASSOCIATE

DRM has a great opportunity for a labor and employment attorney in its Burlington, Vermont or Lebanon, New Hampshire office.

Helpful experience includes representing clients before administrative agencies in employment-related claims, litigating on behalf of management, counseling on employment matters and familiarity with traditional labor matters. The ideal candidate has 1 to 3 years of relevant experience, including a clerkship, and wants to be part of a team of attorneys committed to delivering top-quality service to growing and successful businesses. From its offices in Vermont and New Hampshire, DRM's labor and employment law group has a sophisticated regional employment practice and a national labor practice.

### TAX ATTORNEY

Downs Rachlin Martin is seeking an attorney with at least 3 years of experience to join its tax practice at its Burlington, Vermont office.

Qualified candidates should have substantial experience addressing complex commercial transactions, with a strong background in partnership and corporate tax matters.

Experience should include structuring mergers and acquisitions, business formations, debt and equity financings, workouts, private equity and venture capital transactions. Experience with executive compensation, New Markets and other tax credit issues would be valuable in this position. Our practice includes controversy representation across a wide range of state and local tax matters necessitating excellent research, writing and verbal skills. There is an opportunity to succeed to an established tax practice.

### CORPORATE/COMMERCIAL ATTORNEY (BURLINGTON, VT)

Downs Rachlin Martin — one of Northern New England's largest law firms — has an opportunity for a corporate/commercial attorney to practice within its dynamic business law group in Burlington, Vermont.

The ideal candidate will have over six (6) years of relevant experience working with colleagues and clients on matters involving venture capital transactions (entity formation, seed financings, capitalization tables, portfolio management), mergers and acquisitions (asset and stock purchases, mergers, due diligence) and debt and equity financings (mortgages, Uniform Commercial Code, promissory notes and loan agreements). The firm's business law group is engaged in wide a variety of transactions locally, nationally and internationally. A partial book of business is preferred. This is an opportunity to become part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

### LITIGATION ASSOCIATE

Northern New England's largest law firms — has a great opportunity for a litigation associate in its Burlington office.

The ideal candidate will have 1-3 years of relevant experience, excellent academic credentials and strong research and writing skills. DRM's litigation group is engaged in white collar defense and criminal and civil government enforcement matters, internal investigations, complex litigation including antitrust, securities and class actions, health care fraud, medical malpractice defense and professional licensing and in a wide variety of sophisticated commercial litigation. We are looking for a candidate that wants to be part of a team of attorneys committed to delivering top-quality service to individuals, institutions and growing and successful businesses.

DRM is committed to investing in our attorneys' professional growth and development. We offer excellent mentorship, and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two generous retirement plans.

Please submit a cover letter and transcript along with resume for consideration. APPLY HERE: [https://www.appone.com/MainInfoReq.asp?R\\_ID=4440732&B\\_ID=83&fid=1&Adid=0&ssb\\_gcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2](https://www.appone.com/MainInfoReq.asp?R_ID=4440732&B_ID=83&fid=1&Adid=0&ssb_gcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2)



## ASSISTANT COUNTY ATTORNEY (COUNTY ATTORNEY'S OFFICE)



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

### COME JOIN OUR TEAM!

Salary range \$62,212-\$86,112

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

Please send resume and cover letter to:

Grafton County Human Resources

3855 Dartmouth College Hwy., Box 3, North Haverhill, NH 03774

(Apply online, visit: [www.co.grafton.nh.us/employment-opportunities](http://www.co.grafton.nh.us/employment-opportunities))

E-mail: [hr@co.grafton.nh.us](mailto:hr@co.grafton.nh.us)

E.O.E.




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### ASSISTANT COUNTY ATTORNEY

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

**ESSENTIAL JOB FUNCTIONS:**

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

**REQUIRED EDUCATION AND EXPERIENCE:**

- Juris Doctor from accredited law school.
- Must be admitted into the New Hampshire Bar Association.

**SALARY RANGE:** \$62,566 – \$87,609 Dependent upon experience  
**STATUS:** Full Time / Exempt  
**SUBMISSION REQUIREMENTS:**  
 Employment application and resume required.  
 Apply online: [Careers@co.rockingham.nh.us](mailto:Careers@co.rockingham.nh.us)  
 Walk-in / Mail Applications: 111 North Rd, Brentwood, NH 03833  
 Equal employment Opportunity

## Assistant County Attorney - Belknap County

The Belknap County Attorney's Office is seeking a prosecutor to work in a team environment as a full time Assistant County Attorney. Under the general supervision of the Belknap County Attorney, the Assistant County Attorneys enforce the laws of the State of New Hampshire by preparing charges for the Grand Jury, meeting and interviewing witnesses and victims, seeking indictment and prosecuting felony crimes and misdemeanor appeals in the Superior Court. Other responsibilities may include "on-call" duties and providing advice and guidance to local law enforcement. For further information visit our website listed below.

**Salary Range:** \$63,814 – \$89,502 commensurate with experience along with a competitive benefits program.

**Minimum Qualifications:** Bachelor's Degree and Juris Doctor of Law, membership in the New Hampshire Bar Association. Some prior litigation experience preferred, and a strong preference for prior criminal prosecution experience.

Application Send resume and cover to letter to Deb Laflamme, Human Resources Generalist, 34 County Dr., Laconia, NH, 03246 by no later than May 31, 2022. Phone: 729-1245; email [dlaflamme@belknapcounty.org](mailto:dlaflamme@belknapcounty.org) or visit our website at <http://www.belknapcounty.org> for additional information or a complete Job Description. A criminal history & background check will be required of any applicant prior to being offered a position.

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## Insurance Defense Attorney

### Description:

At Liberty Mutual, we're committed to delivering exceptional legal services to our customers around the world, working to uphold and protect our policyholders' rights and positively impacting our business. As an Insurance Defense Attorney at Liberty Mutual, you'll join a diverse team that values a healthy work/life balance and enjoy benefits that include eligible performance bonuses, 20 days of flexible time off each year, personal holidays, a pension plan and a 401(k) plan with matching contributions. If you're looking for a place to build a long-term career while making a positive difference, consider joining our legal team where you'll represent Liberty Mutual and our policyholders in moderately complex civil litigation and workers' compensation matters involving claims for monetary damages or compensation for personal injuries or property damage of a moderate value.

We encourage you to apply and bring your expertise if you're a:

- Engaged legal professional: You'll manage the entire legal process, from investigation and discovery through trial prep and court proceedings, representing clients in depositions, site inspections, court hearings, trials, etc. and negotiating settlements as required.
- Strategic partner: Researching all applicable laws and findings, you will develop appropriate legal strategies for all stages of litigation and share them with claims representatives and insured clients.
- People person: You'll establish and maintain good relationships with claims representatives and insured clients and occasionally conduct training sessions for Legal, Claims or other departments.
- Effective communicator: You'll develop and

render clear, unambiguous legal opinions and strategies, and draft legal documents including pleadings and motions

What you've got:

### Experience

- Membership in the NH Bar
- Appropriate special licenses to practice before boards or federal courts preferred
- A minimum of one-year experience as an attorney

### Skills

- Talent for cultivating strong working relationships with internal and external partners
- Aptitude for detailed, analytical thinking
- Process-oriented mindset, with proven ability to meet deadlines and stay organized
- Excellent oral and written communication skills

### Knowledge

- Familiarity with the latest developments in the practice of law, as well as pertinent knowledge in related fields
- Familiarity with insurance law a plus
- Proficiency with technologies that reduce costs and facilitate the practice of law and remote work

### Education

- A JD degree

Please apply online <https://jobs.libertymutualgroup.com/job/15362220/insurance-defense-attorney-bedford-nh/?mode=job&iis=Job+Board&iisn=Indeed.com&extcmp=Indd-paid-text-Legal+by+contacting+Jamie+Shumway+Jamie.shumway@libertymutual.com>

## Appellate Attorney

New Hampshire Employment Security  
Attorney III \$63,921.00 - \$91,825.50  
Classified

New Hampshire Employment Security is seeking to fill a full-time remote position, primarily serving as an appellate attorney for the Department. Responsibilities include reviewing case records, conducting legal research and analysis, and drafting decisions of second level benefit appeals. Other assignments may include arguing cases to the NHES Appellate Board, litigating benefit overpayment cases in the District and Superior Courts, and handling right-to know requests. Position requires a JD, five years of practice experience and membership in the NH Bar Association or eligibility to waive in. Interested persons should forward a completed resume or State Employment application to

Karen A. Levchuk, General Counsel  
New Hampshire Employment Security  
45 South Fruit Street, Concord, NH 03301  
[Karen.A.Levchuk@nhes.nh.gov](mailto:Karen.A.Levchuk@nhes.nh.gov)  
603-228-4070

Will remain open until a qualified applicant is found. EOE.

## 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 – Prosecutes domestic violence and stalking cases within the 9th Circuit Court – Manchester as a member of the City's Domestic Violence Prosecution Unit, partnering with the Manchester Police Department as a team of prosecutors, victim advocates, administrators, and working with community partners on behalf of survivors of domestic violence.

**General Statement of Duties:** Provides professional legal representation for the City of 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 in good standing; New Hampshire driver's license or access to transportation.

**Additional Experience/Information related to the position:** Prosecutes domestic violence and stalking cases within the 9th Circuit Court – Manchester as a member of the City's Domestic Violence Prosecution Unit, partnering with the Manchester Police Department as a team of prosecutors, victim advocates, administrators, and working with community partners on behalf of survivors of domestic violence.

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  
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## Assistant Vice President – Legal/In-House Counsel

Service Credit Union is searching for an **Assistant Vice President – Legal/In-House Counsel** where will provide legal support and counsel to Service Credit Union, to include review, negotiate, and revise credit union third party contracts; review and advise on subpoenas, search warrants and other legal requests for member documents and information; review and advise other departments on legal questions, including escalated questions on member Trusts, Power of Attorneys, and guardianships; and manage the Legal Department.

**Pay:** Salaried position.

**Hours:** Full time, Core hours.

**Work location:** Portsmouth, NH

### Benefits Include:

- Great health and dental benefits starting day one!
- PTO, long-term disability, and paid holidays.
- 401k with 8% company contribution after one year of employment.
- Tuition reimbursement.
- Training and career growth opportunities.

### The Day to Day:

- Review, negotiate, and revise credit union third party contracts, working with credit union contract owners. Includes the review of the European Union's General Data Protection Regulation data processing agreements.
- Draft credit union contracts where the need arises, including, but not limited to non-disclosure agreements and data privacy agreements.
- Perform legal research on a range of legal questions as issues arise and convey legal analysis to the appropriate internal stakeholders.
- Review and advise on compliance with subpoenas and other legal requests for member documents and information.

- Review and provide legal input on various credit union forms, procedures, disclosures, and other documents as requested by other credit union departments.
- Review legal issues involving escalated member Power of Attorneys and guardianships and advise the Member Service Department and Inheritor Services Department on related legal issues, including court orders.
- Perform other job-related duties as assigned.

### Experience and Qualifications:

- Attorney licensed in Massachusetts or New Hampshire
- Juris Doctor degree from an accredited United States law school
- Experience working with third party relationships and contracts preferred
- Financial institution experience preferred
- Able to work independently and effectively in a continually changing environment, with little supervision
- Able to interpret and analyze legal documents including business contracts, trusts, and Power of Attorneys
- Able to perform legal research and review of laws and regulations
- Strong organizational skills and keen ability to multi-task and prioritize assignments
- Ability to develop strong relationships and work with all organizational levels
- Strong written and oral communication skills; able to translate legal concepts into layperson's terms and interface confidently with upper-level management and outside vendors
- Solid business acumen, management, and problem-solving skills
- Proficient in Microsoft Word, Excel, and Outlook

If you are looking for an exciting career, Service Credit Union is the place! Join us today!

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## NH Department of Labor Attorney II - Legislative Liaison Position # 19278

The N.H. Department of Labor, Legal Bureau seeks a full time Attorney II. This position will analyze and interpret state statutes and regulations and draft proposed legislation. This position will represent the Department at administrative hearings, as well as at State legislative hearings, tracking legislation, and make reports to the Commissioner on legislative matters relative to the Department's mission.

**Duties include:** Representation of the Department of Labor at agency hearings and court proceedings. Litigation activities including drafting pleadings and motions, conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.

**Requirements:** J.D. from a recognized law school, N.H. Bar membership, a driver's license, and four years' experience in the practice of law, preferably

in the area Workers' Compensation, Wage and Hour, Managed care, and Self-Insurance.

Must be an active member of the New Hampshire Bar Association and in Good Standing.

**How to apply:** Please go to the following website to submit your application electronically through NH 1st: <http://das.nh.gov/jobsearch/employment.aspx>. Please reference the position number that you are applying for: #19278 Attorney II, or Job ID #24642. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

For questions about these positions please contact Wesley Gardner, General Counsel at (603) 271-0201.



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## Staff Attorney

Pease Development Authority, a New Hampshire State Agency with operational authority for two airports, a deep water sea port, a 27-hole golf course and a thriving business park, seeks a full time Staff Attorney for a challenging position in its Legal Department. The Staff Attorney reports to the General Counsel/Deputy Executive Director, and is responsible for providing legal counsel and support to the Pease Development Authority (PDA) Board of Directors, Executive Director, and Staff on a wide range of issues. Essential duties include:

- Preparing, reviewing and interpreting lease and sublease agreements, amendments, contracts, licenses, insurance, service, and other agreements; working directly with third parties and their counsel to promote and protect the contractual, business, and legal interests of the PDA.
- Overseeing the PDA procurement and contracting process, including but not limited to preparation of bid documents and contracts and securing goods and services consistent with statutory requirements.
- Overseeing our comprehensive risk management program for obtaining, administering, and maintaining PDA insurance coverages.
- Reviewing proposed business plans, policies, and practices and providing recommendations to ensure legal and ethical compliance in achieving business objectives.
- Provide assistance to Human Resources Division regarding labor and employment law matters, including but not limited to the initial review of complaints, grievances, inquiries, incidents and related disciplinary matters for PDA employees.
- Conducting research and providing legal expertise and advice to the General Counsel and PDA management staff; assisting outside counsel as needed.
- Reviewing and coordinating approvals of sub-subleases and mortgages entered into by tenants of the PDA within approved authority.

### Education and/or Experience

- Juris Doctorate from an American Bar Association recognized law school and a minimum of 3 years of experience practicing law.

### Knowledge/Skills/Abilities

- Ability to apply principles of logical or scientific thinking to a wide range of intellectual and practical problems.
- Knowledge and ability to establish, implement and maintain compliance with Federal and State laws. Ability to stay abreast of changes and updates in laws and regulations.
- Ability to negotiate complex real estate transactions related to development and leasing of airport lands, buildings, warehouses, hangars and other properties.
- Knowledge of general business, real estate, and airport law practices.
- Knowledge of public policy development.
- Knowledge of employment law.
- Knowledge of environmental law.
- Knowledge of procurement and contracting.
- Knowledge of risk management and insurance.
- Demonstrated ability to prioritize and execute numerous projects simultaneously under tight deadlines

The salary range for this position is \$75,000-\$120,000. The PDA offers an excellent benefits package including comprehensive medical and dental insurance, life and disability coverage, paid leave, and enrollment in the NH Retirement System.

For more information or to apply, please send your resume and cover letter to:

Pease Development Authority, Human Resources  
55 International Drive, Portsmouth, NH 03801  
Attn: Tanya Coppeta  
[t.coppeta@peasedev.org](mailto:t.coppeta@peasedev.org)

## Doreen Connor

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