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NEW HAMPSHIRE BAR NEWS

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New Centralized Involuntary Emergency Admissions Process for Mental Health Facilities is Already Delivering Significant Results

By Tom Jarvis

On March 21, 2022, the New Hampshire Circuit Court implemented a new centralized process for involuntary emergency admissions (IEA) to mental health facilities. According to the NH Judicial Branch, the process is a key step in the Court's broader initiative to centralize all mental health-related cases in the system. The new process was developed in response to an ongoing issue with patients failing to receive a probable cause hearing within three days of an IEA, as required by RSA 135-C:31.

Before the program's inception, more than half of these cases were being dismissed due to the three-day period expiring before the cases were heard. Since there are approximately 2,000 IEAs per year in NH, this translates to a large number of patients being released without access to treatment due to a shortage of hearings. However, from March 21 (process inception) to July 1, the Circuit Court dismissed only eight out of 768 hearings for failure to meet the three-day requirement.

The Honorable David D. King, Administrative Judge of the NH Circuit Court. Judge King was awarded the Vickie M. Bunnell Award for Community Service in 2005 and honored as 2021 Innovator of the Year by the National Council of Juvenile and Family Court Judges. Courtesy Photo.

An Involuntary Emergency Admission (IEA) occurs when someone is believed to be a danger to themselves or others as a result of a mental health condition. The patient is brought to a local hospital emergency department for evaluation by a doctor or nurse practitioner, who then signs a certificate recommending their admission to a Designated Receiving Facility (DRF), such as New Hampshire Hospital in Concord, for treatment. This process is called Emergency Department Boarding or ED Boarding.

The patient is then entitled to a probable cause hearing in front of the Circuit Court within three days – not counting Sundays and holidays. For upwards of eight or nine years, some patients were held in the ED for two to three weeks without access to treatment and then had their cases dismissed without being heard. The problem, which is not limited to NH, was caused by two issues. The first is a lack of psychiatric beds (still an issue), the second was a two-fold problem with the hearings process.

Figuring out when the three-day period begins was brought to light by the case, *Jane Doe v. Commissioner of the New Hampshire Department of Health and Human Services*, 174 N.H. 239

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"I Could Be a Lawyer" – Attorney Susanne Gilliam Expands the Definition of a New Lawyer

By Kathie Ragsdale

When Susanne Gilliam started law school – at age 55 – she had no idea the move would lead her to a detention center in El Paso, Texas, or a street plaza ringed with armed security forces in Tijuana, Mexico. But Gilliam, an active member of the New Hampshire Bar's New Lawyers Committee, and a recent graduate of its Leadership Academy, is no stranger to taking on a challenge.

Now a full-time immigration lawyer with a focus on asylum cases, Gilliam grew up in California and developed arthritis at the age of 12, limiting her mobility. "I needed to do things differently," she says.

At the University of California, Irvine, she majored in computer science and went on to spend two-plus decades as a programmer because, "I could earn really good money, and I could do it sitting down," Gilliam says with a laugh.

She and her husband, Clint, decided they didn't want to raise children in crowded California, so they moved to Philadelphia for 20 years before settling in New England, where she had family roots.

However, working full-time cut into time with her husband and three kids, so Gilliam finally quit her job to homeschool the children. Some 10 years later, she decided to return to the workforce – with rusty computer skills and an outdated resumé – determined that a new career was in order.

"'I could be a lawyer' stuck with me in that nagging way," she remembers thinking.

She was accepted at New England Law in Boston, where she was the oldest in her class by 18 years. Her younger peers were resolutely polite, she says, but when she mentioned once that she was preparing for her daughter's birthday party and a fellow student asked how old her daughter was, "I told him, and he went absolutely white and said, 'that's how old I am.'" She also recalls telling her children, half-joking, "there will be no dating of my classmates while I'm still in school."

While at New England Law, she had four internships, in areas ranging from land use to patent law, "but my favorite internship was when I worked as a mediator at the EEOC (Equal Employment Opportunity Commission) and I absolutely loved that, to give people the chance in a less formal setting to help them distill what it is they want and need the most." The experience left her

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When Is Crowdfunding Okay? In newly issued Ethics Opinion, the NHBA Ethics Committee determined that representing a client in a matter funded in whole or in part through donation-based crowdfunding is not unethical *per se*. **PAGE 18**

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The Value of Your Bar Membership

President's Perspective

By Sandra Cabrera

Waystack Frizzell
Trial Lawyers,
Colebrook, NH

"The closer you look, the better we look." This was former NHBA President Ed Philpot's line about what the New Hampshire Bar Association has to offer its members.

Ever since I first participated in the NHBA Board of Governors' strategic planning workshops more than a decade ago, we've frequently discussed how important it is to develop our "elevator speech" about the benefits our Association provides. The same remains true today.

NHBA Past President, Richard Guerriero, often noted that "we want to be the type of organization you would want to join, even if you were not required to." The NHBA staff uses similar language as its guiding star as they develops and reinvigorate programs and events for our members.

I am very proud of the work our Association has done – and continues to do – as it serves our members, the judiciary, the public, and the profession as a whole. As I enter the next step in my legal career, I want to share my "elevator speech" via the accompanying chart and show you how, years later, we *still* look better the closer you look at us.

Our participation in the national "We the People" program introduces New Hampshire high-school students to the value of civics education. As I mentioned at the Annual Meeting this year, we have budgeted additional funds for this program this year, as we hope to recruit additional schools to participate. Please consider reaching out to a local school to encourage them!

Our Annual and Midyear Member Meetings provide exceptional networking and educational opportunities. Our Lawyer Referral Service helps bridge the justice gap while helping attorneys build their practices. Our CLE team offers relevant live events and webcasts led by the attorneys you know and trust. The NHBA Leadership Academy develops future bar leaders, our Mentor Advice Program matches senior attorneys with newer ones. Our monthly *Bar News* newspaper recently won two awards for editorial excellence. We offer a number of specialty publications, including the ACLEA award-winning Succession Guide. Many of them – such as our Member Guide – are updated multiple times throughout the year and conveniently downloadable to your favorite mobile device. The list goes on and on.

A more detailed version of this chart, which more fully explains everything the Bar has to offer, was not complete by press time. Watch this page for a URL later.

The NHBA Serves its Members and the Public by Improving the Administration of Justice

Working with the Judiciary

- Administering Attorney License Renewal, Trust Account Compliance, and Collection of Court Fees
- Providing NHMCLE Administration on Behalf of Courts
- Administering Public Protection Fund on Behalf of Courts
- NHBA Committee on Cooperation with the Courts
- Peer Review of Judicial Nominations

Fostering High Standards of Professional Excellence & Conduct

- Ethics Opinions
- Ethics Opinion Helpline
- CLE Programs
- Leadership Academy
- Mentor Advice Program (MAP)
- Solace (Non-Financial Support to Legal Community Members and their Families for Injuries, Illness, or Other Crises)

Helping Attorneys Better Serve Their Clients

- Lead Generation via Lawyer Referral Service
- Free Conference Rooms at Bar Center
- Free and Discounted Practice Management Tools and Services (*e.g.*, Fastcase, MyCase)
- Dispute Resolution Service (Free Mediation Between Clients and Lawyers for Fee Disputes)

Educating Lawyers and the Public

- CLEs (Affordable, High Quality, NH-Specific)
- Membership Meetings (Annual, Midyear)
- *Bar News*, eBulletin, Specialty Publications
- Law Related Education (inc. We the People, *Beyond High School*)
- NHBA Law-Substantive Sections
- NHBA Committees and Task Forces

Promoting Access to Justice

- Lawyer Referral Service Modest Means Program, Free Legal Answers, and LawLine
- Cooperation with Civil Legal Aid Organizations
- Representation on Access to Justice Commission
- Coverage of Justice-Related Issues in NHBA Publications
- Grants from the New Hampshire Bar Foundation

Monitoring Proposed Legislation

- NHBA Legislation Committee Closely Monitors Proposed Law
- Bar President Testimony Before Legislature Where Warranted Under *Chapman* and Approved by NHBA Board of Governors
- NHBA Legislation Tracking Database

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NHBA Welcomes New Board of Governor Members

The New Hampshire Bar Association's Board of Governors is its governing body, as authorized by the NH Supreme Court. Its operation and role are defined in the NHBA Constitution, Article V, and NHBA Bylaws, Article III. The Board shapes the policies of the NHBA, approves new sections, creates new committees, and chooses the overall theme of NHBA events throughout the year.

Elections for the Board are held annually each spring, to replace members whose terms have expired, who choose not to seek reelection, or whose principal offices are no longer in the counties they represent. We are pleased to welcome (and in some cases, welcome back) the following recently elected Board members, who were recognized at last month's Annual Meeting:

Paul W. Chant
Vice-President

Paul W. Chant is a shareholder with Cooper Cargill Chant in North Conway. He is a litigator, with an emphasis on personal injury, medical malpractice, and workers' compensation matters. He has practiced in Nashua and North Conway during his career.

Chant attended the University of Vermont for undergrad and Boston University for law school. He is admitted to the New Hampshire and Massachusetts Bars.

Chant previously served on the NHBA Board of Governors as both a Hillsborough County representative, Carroll County representative, and as a Governor-at-Large. He chaired the New Hampshire Bar Foundation (NHBF) Board during years where it generated the highest IOLTA revenues. He also served on and chaired the NH Association for Justice (NHAJ) Board. Chant is currently a member of the Access to Justice Commission as an NHBA appointee.

Over the years, Chant has sat on and/or served as chair or president of a wide variety of boards, including the Mount Washington Valley Economic Council, The Barnstormers Theatre, the Ham Arena, the NH Charitable Foundation North Country Advisory Board, the Book Love Foundation, the Tamworth Foundation, the Nashua Chamber of Commerce, and the CASA NH Board; he also serves as the Tamworth School Moderator.

As a young lawyer, Chant received the NHBA's President's Award for Service to the Public when he chaired the NHBA's New Lawyers Committee. He has also twice received the NHAJ's President's Award for Service.

Chant is an avid skier and kayaker. He lives in Chocorua, NH with his wife, Anne.

Steven F. Hyde
Strafford County Rep.

Steven F. Hyde is a 1998 graduate of UNH (Durham) and a 2001 graduate of the Massachusetts School of Law at Andover. He is a 2002 admittee to the Massachusetts, New Hampshire, and Maine bars, each by examination. He worked as a solo practitioner from 2002 through 2006, as an associate at Shaines & McEachern, PA (Portsmouth, NH) from 2006 to 2007, and as a Managing Member of Coakley & Hyde, PLLC from 2007 through 2021. Hyde's current solo practice, Law Offices of Steven F. Hyde, PLLC, focuses on serving the needs of clients in real estate and business litigation primarily in Strafford, Rockingham, and Carroll counties and York County, Maine.

Hyde is a 2019 appointee to the New Hampshire Real Estate Commission, where he serves as the Attorney Member and as the Commission's chair. He also currently serves as a trustee on the Massachusetts School of Law Board of Trustees and as a member of the Board of Directors of the Charles C. Doe American Inns of Court and the Skyhaven Flying Club (formerly the UNH Flying Club).

When he is not working or serving in one of the foregoing capacities, he serves the Town of Middleton, NH as a patrolman with the Middleton Police Department and as an adjunct professor at the Massachusetts School of Law. Additionally, he enjoys boating, flying, and hiking, and is currently working on the NH 48 "four-thousand footers" and smaller NH peaks.

Kyle D. Robidas
Hillsborough North County Rep.

Since 2013, Kyle D. Robidas has worked as a staff attorney at the New Hampshire Public Defender (Manchester, NH), where he defends indigent clients. He is a member of the Hillsborough County North Drug Court Team, liaison to the Manchester Veterans Court, and a member of the New Hampshire Public Defender Trial Skills Training Team. He is also an active mentor to several new lawyers. Robidas is a graduate of Norwich University and the University of New Hampshire School of Law. Robidas is a native of NH, originally from Colebrook. When he is not practicing law, he enjoys spending time outside with his family.

Barry C. Schuster
Grafton County Rep.

Barry C. Schuster has practiced business, real estate, and municipal law since 1978. He represents individuals, businesses, and municipalities in a wide range of transactions and resolves disputes involving land use, real estate, and corporate and business matters. Schuster regularly appears before municipal boards, litigates in New Hampshire and Vermont trial courts, and has appeared in more than thirty appeals before the Supreme Courts of New Hampshire and Vermont. He also served for many years as a superior court mediator.

Schuster actively participates in a number of civic organizations and has served on the boards of health care organizations, bank advisory committees and numerous community service boards and committees. He was elected to the Lebanon School Board for eight years and chaired the Board for a three-year term where he has served for over 20 years. An active cyclist, he and his wife have logged miles biking over hill and dale throughout NH and VT, over mountain passes in Colorado and "cols" of the French Alps.

Schuster is a graduate of Brown University and Villanova University School of Law and pursued a year of study at the Amos Tuck School of Business Administration at Dartmouth College.

Schuster is admitted to practice in New Hampshire and Vermont and is a member of the New Hampshire Bar Association, the Vermont Bar Association, and the Grafton County Bar Association.

Kara M. Simard
Hillsborough South County Rep.

Kara M. Simard is a staff attorney at the New Hampshire Public Defender (Nashua, NH) where she represents people accused of crimes who cannot afford a lawyer. Prior to representing indigent defendants, she worked for a law firm in Manchester, practicing primarily in civil litigation.

Simard serves on the National Board of Directors of the American Civil Liberties Union as the New Hampshire Affiliate Representative. She has been serving on the Board of Directors of the ACLU of NH in different roles since 2010. She served for many years on the Board of the New Hampshire Women's Bar Association, serving as President from 2016-2018, and is currently a sustaining member. She is a member of the Executive Committee of the Manchester Bar Association and served as its president from 2015-2016. She is also a member of the NHBA's Ethics Committee and the New Hampshire Association of Criminal Defense Lawyers.

Simard received her JD from Suffolk University Law School and her BA from Stonehill College. At Suffolk, she served as Editor-in-Chief of the *Suffolk Transnational Law Review*. She grew up in NH, and is committed to serving the public, the legal profession, and giving back to her community.

The NHBA also wishes to thank the following departing Board members for their service to the organization:
Abby Sykas Karoutas (Strafford County)
Viktoriya A. Kovalenko (Grafton County)
Leslie C. Nixon (Hillsborough North)
Donald S. Sienkiewicz (Hillsborough South).

Each was also recognized for their dedication and insight during the recent Annual Meeting.

For complete Board contact information, please log into the Member Portal or contact the Bar Center at (603) 715-3279.

Megg Acquilano Named NHBA Director of Professional Development

The New Hampshire Bar Association is pleased to announce that Megg Acquilano has been named Director of Professional Development. She is experienced in content and curriculum creation, budgets, vendor management, creation of marketing plans for programs, scheduling, e-learning, and more.

Immediately prior to joining the NHBA, Megg was employed with the Londonderry School District as the district-wide technology trainer for approximately 750 faculty and staff. There, she focused on designing, developing, and facilitating instructional technology training curricula. Her goal was to help teachers build their capacity to better instruct students, and in turn, deepen learning.

Megg's multi-faceted skillset as a teacher, trainer, and administrator proved particularly useful during the COVID-19 pandemic, which started during her first year at the District. As an educator herself, she understood and responded to the challenges of "teaching the teachers" remotely. She helped educators gain proficiency to enhance teaching and learning with a variety of digital media technologies. Megg was also involved in evaluating the effectiveness of software and applications, creating video tutorials, and curating the teacher training program.

Megg is excited about how much of her experience is directly transferrable to the NHBA, particularly the creation and delivery of CLEs in a variety of formats that meet the evolving needs of its growing membership.

Says Acquilano, "I'm incredibly honored to become part of the NHBA team. I am excited to be here, grateful for the opportunity, and couldn't have asked for a better place to land!"

Acquilano earned two master's degrees from Plymouth State University: one in Educational Leadership and the other in Digital Media.

Roe v. Wade Overturned: What *Dobbs* Means for New Hampshire Lawyers, Clients, Women, and All People Capable of Becoming Pregnant

In anticipation of the demise of federal protection for abortion and reproductive rights, many states have passed abortion restrictions and, in some cases, outright bans, calculated to take effect upon the release of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022), which overturned *Roe v. Wade*, 410 U.S. 113 (1973) nearly 50 years after the opinion was issued on January 22, 1973. Unfortunately, New Hampshire is one of those states. Our state's first modern abortion ban took effect this past January, prohibiting abortion after 24 weeks of gestation and requiring an ultrasound for any person seeking an abortion. *See* N.H. RSA 329:44.

In May 2022, a draft opinion of *Dobbs v. Jackson Women's Health Organization* was leaked. The draft opinion indicating that the Supreme Court would overturn *Roe v. Wade* caused grave concerns not only for our judicial system, but also for what the end of *Roe* could mean for our country and the freedoms we have enjoyed for so long.

On June 24, 2022, the end of *Roe v. Wade* became a reality. Not only did *Dobbs* overturn *Roe v. Wade*, but the opinion, and especially Justice Clarence Thomas's concurring opinion, indicate that all current civil liberties based on the right to privacy under the Fourteenth Amendment are potentially at risk. The *Dobbs* decision overturned 50 years of precedent.

While some may think we are lucky that we live and work in New England, abortion is not a guaranteed right in New Hampshire. New Hampshire is the only state in New England that does not have a law on the books protecting abortion rights.

In the past year alone, there have been several bills that were presented to the House Judiciary Committee in New Hampshire. The House voted on all but two. The bills and their outcomes are as follows: 1) HB 1181 – which would allow a biological father to prevent an abortion (*referred for interim study*); (2) HB 1477 – which would prohibit abortions after detection of fetal heartbeat (similar to the Texas six-week abortion ban) (*tabled*); (3) HB 1625 – which would repeal the prohibition on entering or remaining on a public way or sidewalk adjacent to a reproductive healthcare facility (*passed*); (4) HB 1080 – "right of conscience" legislation, which would allow healthcare workers to refuse to provide or participate in the delivery of contraception, sterilization, or abortion care (*passed*); BUT see (5) HB 1673 – initially repealed both the 24-week abortion ban and the ultrasound mandate, but amended to only clarify that the ultrasound mandate provision applies only to pregnancies of 24 weeks or more (*passed and adopted in the Senate*); (6) HB 1674 – which would codify *Roe v. Wade* in New Hampshire should *Roe* be overturned (*tabled*); and finally (7) CACR 18 – which is a proposed Constitutional amendment to keep the government from infringing on individual medical decisions (*tabled*).

Although Governor Sununu has publicly stated that he is not concerned that abortions will become completely banned or further restricted in NH, given the seven bills that were introduced in the last year alone, the Governor's speculative optimism is far from a guarantee that abortion rights will continue to be protected in our State.

The majority opinion in *Dobbs* relied on the fact that there is no express constitutional protection for abortion, nor is there any express constitutional protection for privacy. Rather, the opinion looks to the "framers' intent," at the time the Constitution was written. The originalist canon of interpretation used by the Majority and the Thomas concurrence is particularly flawed in this case because even though women had no constitutionally protected rights in 1776, the United States Constitution has since been modified to provide women the right to vote and equal protection under the law, making reliance on the state of the law prior to the Nineteenth Amendment inapposite.

In his concurrence in *Dobbs*, Justice Thomas goes further and calls the Court to action, urging the Court to take future cases with the purpose of reconsidering other precedential cases that rely on the implicit right to privacy recognized in *Roe*, including *Griswold v. Connecticut* (right to use birth control), *Lawrence v. Texas* (legalizing same-sex sexual activity), and *Obergefell v. Hodges* (legalized marriage between people of the same sex). Pointedly, Justice Thomas did not include *Loving v. Virginia* (allowing interracial marriages, such as his own), but that decision could also be at risk, as it is rooted in the same implicit right to privacy delegitimized in *Dobbs*.

Within days of the issuance of the *Dobbs* decision, New Hampshire lawyers have been inundated with inquiries from women, people capable of becoming pregnant, and businesses asking what *Dobbs* means for them as individuals, for their families, for their children, or for their employees. For now, people in New Hampshire can obtain an abortion up to 24 weeks of gestation without qualification, but that is not an absolute guaranteed right.

The *Dobbs* decision has put gender equality 50 years backwards in time. In fact, the women of the 1700 and 1800s had more municipal reproductive rights than women in states where abortion has recently been banned. It should not be left up to individual states to decide what reproductive rights women and people capable of becoming pregnant should have, because, among other reasons, this results in inequality based on race, geography, and socio-economic class. Women and people capable of becoming pregnant have been stripped of their bodily autonomy. Before *Dobbs*, while there was still much work to be done for women and people capable of becoming pregnant to achieve full equality in this country, we had made significant strides toward gender equality. While the Supreme Court was not able to undo all the progress that had been made from our nation's founding to the present, it has set gender equality and reproductive justice back 50 years. The challenge before us is to begin pushing that boulder back up the mountain to regain our bodily autonomy and do what we can to protect the other civil rights and liberties this Court's decision in *Dobbs* has put squarely at risk.

Lyndsay N. Robinson & Leah Cole Durst, Shaheen & Gordon PA.

Endnote

1. https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america

Letter to the Editor

In his (or should I say *their*?) zeal to lecture me on the subject of philology, Attorney John C. Carroll misses the point of my LTE in the May 18th issue, which was to question how much deference must be given to demands made by (or, more accurately, made on behalf of) any victim class identified and infantilized by guilt-ridden White Liberals, if one is to avoid opprobrium as being "non-inclusive" or "unwelcoming," which is to say, a bigot. The level of deference is apparently very high indeed, given that the class in this case is defined by nothing more compelling than the shared delusion of its ostensible members, in fealty to which it is demanded that we degrade the common language that is at the core of our political and cultural cohesion.

Obviously, the English language has evolved greatly since the days of Chaucer, but for well over 300 years – no doubt driven by the wide availability of inexpensive books leading to increased rates of literacy – it has been blessed with remarkable stability: standard diction, inflexion, syntax, grammar, punctuation, and (more recently) spelling. Its words have been assembled, spelled, defined, and committed to dictionaries easily accessible by anyone. While it is true that new words are continually being added, English's structural framework has remained essentially constant. This happy circumstance enables one today to read and understand, without the assistance of an Oxford-trained linguist, the works of Defoe, Swift, and Fielding with the same pleasure as when they first appeared, not to mention those of Locke, Burke, Smith, Madison, and Hamilton. And this happy circumstance was one of the factors cited by John Jay in No. 2 of *The Federalist* as making feasible the melding of 13 self-contained and very contentious states into a single nation larger than Great Britain, France, and Spain combined.

Like it or not, each of us is judged by how he writes or speaks. Sheridan and Shaw wrote memorable plays satirizing this fact. Shaw's Henry Higgins (by way of Alan Jay Lerner) sums it up neatly:

An Englishman's way of speaking absolutely classifies him.
The moment he talks, he makes some other Englishman despise him.

We all engage in such judgment, whether we admit, or even recognize it. It plays out in the clearly observable ongoing American tragedy that people who speak sub-standard English generally find their job prospects severely limited. And who among us wants to deal for any length of time with people who punctuate their sentences with "ah," "um," "OK?" or "you know"?

We are all to some extent critics of how others write or speak. Insisting upon the retention of features of the English language so basic as clear and long-established rules of subject-verb and singular-plural agreement hardly qualifies one as a pedantic grammar scold unless every teacher of English prior to the Age of Woke is to be so characterized. We tinker with such rules at our peril, lest by degrees we lose touch with our linguistic roots and fall victim to one of those new words, "balkanization." A threshold for taking this path higher than the imputed preferences of a class comprised of delusional people is required.

Gregory M. Sorg
Franconia

Roe Has Been Weighed in the Balances and Found Wanting

Introduction

Mr. Ford delivers a passionate invective against *Dobbs v. Jackson Women's Health Organization*, the Supreme Court draft opinion that would overturn *Roe v. Wade* (*Roe*). But he offers no defense of *Roe*. And the legitimacy of *Roe* is the real issue. After all, Sandra Day O'Connor prophesied (in dissent) that the "*Roe* framework…is clearly on a collision course with itself." *City of Akron v. Akron Center for Reproductive Health*, 462 U. S. 416, 458 (1983). So, perhaps we would do well to examine the roots of *Roe*. Doing so will, I hope, provide a counterweight to Mr. Ford's article. The following demonstrates how *Roe* utterly lacks legitimacy; in the words of an old book, it has been weighed in the balances and found wanting.

I. Early Criticism Of *Roe*

Roe's bluff was called early on. A few examples will suffice. Professor John Hart Ely wrote:

> What is frightening about *Roe* is that this super-protected right is not inferable from the language of the Constitution, the framers' thinking respecting the specific problem in issue, any general value derivable from the provisions they included, or the nation's governmental structure….
>
> 82 Yale L. J. 920, 935 (1973)

As another example, Lawrence Tribe wrote:

> One of the most curious things about *Roe* is that, behind its own verbal smokescreen, the substantive judgment on which it rests is nowhere to be found.
>
> 87 Harvard L. R. 1, 7 (1973)

Lastly, Harry H. Wellington (Dean of Yale Law School for a decade) noted:

> *Roe* perpetuates what seems to me a basic terminological mistake: The court insists on describing the plaintiff's interest as "fundamental." This is misleading….
>
> 83 Yale L. J. 221, 299, (1973)

Perhaps the scholars' views of *Roe* were best summarized a decade later by Mark V. Tushnet (who was, at the time of *Roe*, clerk to Thurgood Marshall):

> It seems to be generally agreed that, as a matter of simple craft, Justice Blackmun's opinion for the court was dreadful.
>
> 96 Harvard L. R. 781, 820 (1983)

And what else would we expect? Harry Blackmun wove *Roe* from whole cloth, "finding" the right to abortion not in the text of the Constitution, but in its "exhalations" and "penumbras," the same places inhabited by ghosts, Bigfoot, and the Loch Ness monster.

II. Principle Of Interpretation

Mr. Ford focuses on principles of interpretation. The one (which he favors) goes by many names, but "dynamic" will do. This views the Constitution as a living document, and is code for "anything goes." The other is known as the "deeply rooted in history" approach. He then accuses – with a tabloid-like "grabber" headline – Justice Alito of dishonesty. But, like a tabloid, when we examine the actual text, the story is far different from what the headline promised. Dishonesty? No; Justice Alito simply chose – as was his prerogative – the "deeply rooted in history" interpretive lens through which to view the Constitution. This interpretive lens is just as (if not more than) legitimate as the "dynamic" principle. In fact, it was used in the two Supreme Court cases (one in 2010 and the other in 2019) Mr. Ford cites in his footnote 5. He actually concedes this point in the same footnote: "The fact that there may be two analytic approaches to finding rights does not mean that one of the two must be in error." Which makes us wonder yet more where the charge of dishonesty came from. True, Mr. Ford furnishes a long quote from *McDonald v. City of Chicago* (2010), supposedly supporting his preference for dynamic interpretation; but when we examine the fine print of the footnotes, it turns out the quote was from the dissent!

III. What Really Counts

But in the end, abortion is not about semantics, grammar, or precedent; it is about killing babies. And however dressed up with the noble language of "choice" and "rights," killing babies is never in style. Many, of course, will object in knee-jerk fashion, that "it's not a baby, it's a fetus!" But Margaret Sanger herself, founder of Planned Parenthood, called them "babies in the womb." *Woman and the New Race* (1920). And to get an idea of where Sanger was coming from, she wrote, on December 10, 1939: "We do not want word to go out that we want to exterminate the Negro population…." Good grief. If this does not shock my readers, I don't know what will.

Conclusion

Let me close by thanking – and I mean that sincerely – Mr. Ford for his article, as it inspired me to do a little digging on my own. What I found, summarized above, shocked me; and my hope is that it enlightens my readers.

William G. Gillespie
Yarmouth Port, MA

Newly Enacted Paraprofessional Pilot Program Helps Promote Access to Justice

By Tom Jarvis

HB 1343, known as the Paraprofessional Pilot Program, was signed into law by Governor Chris Sununu on June 17, 2022. It allows paralegals to provide limited legal services to underserved Granite Staters in circuit courts.

The program is available exclusively to clients who earn no more than 300 percent of the federal poverty level (*e.g.,* $40,770 for a one-person household, $54,930 for a two-person household). Participating paralegals must hold either a bachelor's degree in any field or an associate degree in a law-related field, as well as at least two years of work experience in a law-related setting. They must also act under the supervision of an active attorney.

The first phase of the pilot program takes effect January 1, 2023, and allows paralegals to assist qualifying clients in family and landlord/tenant matters with case preparation tasks (such as drafting pleadings, parenting plans, protection orders, and financial affidavits). The second phase, which begins January 1, 2025, permits paralegals to provide what is being referred to as "paraprofessional representation" in family and district courts in Manchester, Berlin, and Franklin.

The new law also requires that qualified clients must receive written notice that the paralegal is a non-attorney acting under the supervision of an attorney admitted to practice under RSA 311:2 and include the attorney's name. Any pleadings filed in court must disclose the same.

Attorney Katherine Morneau (left) and paralegal Alycia Gelin of Morneau Law. Courtesy Photo

In the bill's initial public hearing on January 26, its prime sponsor, State Representative Ned Gordon, noted that approximately 80 to 90 percent of people who currently appear in the Family Division are *pro se*. He compares this to the 1980s, stating that "virtually all litigants" in divorce and custody matters were represented by lawyers.

NHLA Executive Director Sarah Mattson Dustin also testified at the January hearing. She noted that, "in the majority of family law cases, both parties represent themselves. Upwards of 90 percent of tenants facing evictions are going it alone."

Further, in *How NH Could Increase Access to Justice Through Occupational Licensing Reform* by Andrew Cline, only 13 percent of alleged domestic violence victims have legal representation.

"That is awful," Attorney Katherine Morneau of Morneau Law says of the domestic violence percentage. "It's a high burden to establish to get an order of protection, and if you have to go it on your own – that in and of itself deters a lot of people from even going. I would love to see more attorneys taking pro bono cases for domestic violence victims, but I think this [program] is another piece of that puzzle."

Morneau and her firm support the program. "I see a lot of really great potential in this pilot project," she says. "In my opinion, this is going to help the courts, the judges, the clerks – people are going to be coming more prepared to these hearings and have a better understanding of what they are talking about."

Morneau noted the value paralegals working under an active attorney can bring to the process. "I have a paralegal that has been doing this for 15-20 years, assisting me. She certainly knows what the law is and how I prepare cases, so she can very easily go in and make a big impact on some of these cases. And she'd like to."

"I'm really looking forward to it. Professionally, this is the most exciting thing," say Alycia Gelin, a paralegal at Morneau Law. "The NH Paralegal Association is in favor of it and my firm is in favor of it. It's a good use of our skills to let us help people to bridge the gap to access to justice."

Gelin continues, "Some *pro se* litigants are signing documents they don't understand, so maybe there will be some preventative assistance for them. And it's also nice that the state is giving us a chance to show the legal world what we can do."

Attorney John Driscoll was more skeptical of the program, but sees the value that paralegals can bring to the legal process. "When I first went to work in 1998, I worked for Boynton Waldron in Portsmouth, fresh out of law school," he says. "I didn't know anything about the practice of law, because they don't really teach you that in law school. I directed 85 percent of the questions I had to Joan Skewes, a paralegal who still works there. She worked with experienced lawyers like Chuck Doleac and Bill Scott, and she knew more than any kid coming out of law school. So, a qualified paralegal is invaluable and can do almost everything."

Driscoll sees some opportunities under the new law, especially in the first phase. "The administrative part of it, the forms, and the paperwork are pitfalls for the uninitiated, and paralegals can really help with that."

However, he has some reservations about the use of paralegals for trial management. "It's higher-level work that even young attorneys struggle to get right…. A lawyer still has to look at it."

Driscoll also notes that there are questions as to whether paralegals would be covered under an attorney's malpractice insurance, as the new law does not provide guidance on that matter.

"I would be concerned about my liability insurance carriers," Driscoll says. "I

PARALEGAL *continued on page 17*

Exponential Growth in Technology: A Subtle Difference Becomes a Nearly Straight Vertical Line Over Time

By Ryan Barton

We often hear of technology growing "exponentially" without pausing to reflect on its meaning. Linear growth is in a straight line. 2 + 2 + 2 is 6. Exponential is cumulative. 2 x 2 x 2 is 8. A subtle difference at first becomes a nearly straight vertical line over time.

There is an ancient Persian tale of the inventor of the game of chess. When the ruler of the land was presented with the chessboard, he was so pleased that he offered a gift of the inventor's choosing. The inventor asked for rice. He put a single grain of rice on the first square, and his request was simple: he asked that the rice double for each square. The emperor readily agreed, believing he had gotten off easily!

The result? For the final square alone, the king owed 18,446,744,073,709,551,616 grains of rice. The entire country's wealth was forfeited to keep the promise.

Those familiar with technology often refer to "Moore's Law" – so named for the Intel co-founder Gordon Moore, who postulated it in 1965. He predicted that transistors on processors (used for processing power) would double every two years. Many predicted this would be a short-term law and could not continue for long. Yet nearly 50 years later, *it is continuing*.

Ever heard of the "Cray Supercomputer?" It was the fastest machine in the *world* in 1985. The Apple Watch is more powerful than *two of them*.

Processing speed isn't the only area of technology advancing at an exponential pace.

We are accustomed to rapid change, so it can be difficult to comprehend how rapidly technology is reshaping our society. The smartphone in your pocket provides a better communication tool than the President of the United States had access to just 30 years ago, and it provides access to more data than he had access to just 15 years ago.

Technology impacts the shape of our lives – it influences the people we stay in contact with, the people we date (and marry), the type of information we consume, the way we consume it, and what we do with it.

What do the next 50 years hold? One can only imagine what exponential technological growth will do to the field of personalized medicine, to the clean water shortages of Africa, and to business innovation in America.

Technology's exponential growth rate means we are now accomplishing in one year what previously took centuries. The degree of innovation that is occurring – even at this moment as you read this article – is staggering. We are living amidst an explosion of technology.

How should this shape your thinking, as an attorney or leader of a law firm?

Personal skills. Your own skills with technology matter more each year. Think of technology the way a musician thinks of her instrument. Can you play it well? Are you thinking of it as a skill to improve? Consider your typing speed, ease with applications, skill with data, knowledge of industry trends, and the like.

Corporate perspective. Ensure you are investing in technology – fast equipment, cutting-edge security, and innovative software. Concerned about the cost? Invest with perspective. Imagine you just hired a new employee who costs you $100,000 per year. You give them *one* tool. A computer. The employee uses it nearly *all day every day* of their employment. Over four years, you've paid the employee $400,000 and they've done nearly all that work on a computer. Is it worth worrying about the cost difference between a $1,000 computer and a $2,000 computer? I would argue that an extra $250 per year to ensure that employee's one tool is reliable and fast, is well worth it (obviously, the computer is not the only technology cost, but the perspective principle applies to all technology investments).

Client leadership. Increasingly, your clients see themselves as leading "technology businesses" who happen to specialize in a certain industry. Exponential technology explosion leaves no organization untouched. Good business advice and wise risk mitigation requires careful consideration of today's technology, along with awareness for the future.

Let us not be complacent about technology and instead be thoughtful about the risks and opportunities of exponential growth.

Ryan Barton is the founder and CEO of Mainstay Technologies, an award-winning IT and Information Security services firm based in New Hampshire. They believe all organizations must have IT they trust from a team they enjoy. You can learn more about the company at ***www.mstech.com*** *or reach Ryan on LinkedIn at* ***www.ryanbarton.com****.*

Supporting Mental Wellness in Legal Practice: The Difference You Can Make

By Dan Wise and Jill O'Neill

Content warning: This article contains content about suicide.

In an article published in the May 2022 issue of *Bar News*, we presented a fictional scene where colleagues and friends recall encounters they had with troubled small-town lawyer, Andy Kreuger, before his death by suicide. With remorse, they review the things they said – and what they had **not** said and **not** done. The article then discussed some of the real-life concerns that prevent people from offering meaningful help and introduced the NH Lawyers Assistance Program as a resource, which offers confidential assistance to members of the legal community on any issue that may be negatively impacting their ability to practice.

In this article, we return to fictional Abenaki County, NH, where solo attorney Andy Kreuger is still alive. We rewind our story to a time when different responses pull him back from the brink of taking his own life.

It was going to be a perfect fall weekend in Abenaki County, NH. And yet, Andy Kreuger, Lucas Verville's friend and reliable hunting partner, was going to stay home. Lucas had just listened to a rambling, apologetic voicemail from Andy declining to go hunting the next morning. Lucas was annoyed, as he did not like hunting by himself. He was about to shrug it off, like he did the last time Andy canceled on him.

"Damn, what's up with Andy?" Lucas asked his wife, Adele. "He told me he has some stuff to do around the house – like that ever stopped him from going hunting before!"

His wife did not reply – she was rooting for Lucas to stay home and do some chores, too. But she could sense his concern for his friend. "Call him," she said. Lucas picked up the phone.

"Hey, Andy. Yeah, I got your message. Listen pal, I need you tomorrow. That work you have around the house – if it's that important, I'll help you with it – AFTER we go hunting." Adele saw her husband's smile broaden as he listened on the phone. He agreed on a time to meet at Andy's house and hung up the phone. He turned to Adele: "After I told him I needed him, he started joking with me. He sounds better already."

Andy put down his phone. It felt good to be looking forward to something. He imagined tromping through the woods, the sounds, the bracing air, enjoying the comfortable companionship of a longtime friend. He thought to himself, "maybe it's a good idea. It'll get me out of this silent house and get my mind off of how hard it is to get moving in the morning."

Saturday went well. It was a long day with lots of laughs, but no deer. Andy returned home, flush with energy and a little hungry. He glimpsed the half-open door to his home office. That damned letter. That costly mistake. The rising pile of neglected files. He suddenly felt very tired. Without turning on any lights, he walked by a kitchen full of tasteless food and went to bed.

On Sunday night, Beth Grandison was thinking about the call she must make the next day to Andy Kreuger, who is defending on an assault case. The County Attorney won't let her make a deal to lower the charges. It will be an uncomfortable conversation with Andy, whom she used to see as a mentor. He is a good man and a good lawyer, but he has not been himself lately. He had been keeping to himself more, seeming preoccupied – almost haunted. In this case, he did not provide much of an argument or new evidence to warrant downgrading the charges. Although she is on the other side of the case, Beth thinks about Andy's client, the defendant, who, dare she say it – is not being adequately represented.

She felt a responsibility to that client, to Andy, and to the system. She remembered a recent presentation by the NH Lawyers Assistance Program during a brown bag lunch at the courthouse. She wondered if she should call them and ask them to talk to Andy. He did not seem to be under the influence, but it was clear he'd been struggling in recent months. If she called NHLAP, they would keep her name out of it and perhaps find a way to help Andy.

A few days later, Julian Davis sat outside the Abenaki County building drinking coffee with Andy. "Andy, I am not the only person to notice you seem down lately." He did not try to fill the silence that followed as Andy sat across from him, shoulders hunched and gripping his cup. Andy swirled his coffee around for a bit and then started to speak without looking up.

"It's a problem with a mistake I made, that turned out to be bigger than I ever thought it could get. I don't know how to fix it. I'm gonna get sued, or worse."

Julian then told Andy that as a volunteer for the NH Lawyers Assistance Program, anything he confided would be confidential under Supreme Court rule 58.8, which covers volunteers. Andy then told Julian more about a deal gone bad, the mistake he'd made, and the dollars at stake. His attempt to fix the mistake only made things worse. "I don't see a way out of this," Andy said, still not looking up. "I'll be broke and my reputation will be gone." Julian, who knew less about real estate law than Andy, made some legal suggestions, but his real focus was on Andy's state of mind.

"Andy, have you talked to anyone else about this?" Julian asked. "It seems like you are stuck in a place where you are afraid to do anything. What are some different steps you could take next?" They continued to talk until the fall chill made them uncomfortable. Julian offered to follow Andy home so they could talk some more.

At Andy's house, after more coffee was made, Julian looked around the room and asked, "Have you ever wished you could go to sleep and not wake up?"

Andy nodded. He had. After a few minutes of listening to the ticking of an old clock, he asked Andy, "Have you thought about killing yourself?"

Andy opened his mouth, paused, then said, "no, I have not gotten to that point yet." Julian waited as the clock ticked some more. Andy continued: "There's no way I could do it with my rifle. My dad gave me that gun."

"Since all this came up," Julian said. "Have you done anything, prepared to do anything, or started to do anything – to end your life?"

Andy straightened up, as if he had decided something. "If I did, I would use my pistol," he declared.

"Andy, why don't I keep your pistol for you for a while until we help you get things cleared up," Julian said. Andy immediately rose, went to a chest of drawers near the bedroom door, and came back with the gun wrapped in a towel.

"Yeah, you keep it," he said, placing the gun on the table. He looked at the other end of the table where a banker's box and stacks of files sat. "Maybe I will talk to a lawyer about this. Maybe there is another way to look at it."

"Andy, I am no expert on this. I want to make sure we are doing all we can to keep you safe," Julian said. "I am going to call the mental health hotline and have you talk to them. I will be right here, too." As guided by the crisis hotline clinician, Andy agreed for Julian to temporarily hold onto the rifle, as well. Julian promised to keep them locked in a gun safe. After the call, Andy reported feeling a burden lifted in sharing his emotional pain. Julian said: "Andy, you are part of this community. We need you around here."

Getting back in his car, the guns locked in the trunk, Julian took a deep breath. He had put Andy in touch with a mental health crisis hotline, told him he would call him the next day, and assured him he would be there for him throughout. The tenseness Julian had felt during the entire encounter relaxed a little. Andy wasn't out of the woods yet, but he had taken a step back from a very dark place.

Four months later in Abenaki County, winter was on the way out. The tall mounds of dirty snow were retreating from the edges of the road, the bobhouses were being towed off the ponds, and people had put away their heaviest coats. Andy came out of the county courthouse on a Thursday afternoon. He saw Julian across the street, about to head into the diner. It seemed such a long time ago when Julian came to his house and Andy gave him his guns. Before that conversation, Andy wasn't sure how long he was going to live. He felt like he was in the shadow a big, dark mountain. Today, it was not a mountain. The problem that had driven him to despair had shrunk. It was still an unpleasant part of his life, but it was a problem, and Andy had overcome problems before.

Returning to real life, we have one last comment. Kevin Hines, who in an almost stranger-than-fiction story, is one of the very rare survivors of a suicidal leap from the Golden Gate Bridge in 2000. "The moment I hit free fall was an instant regret. I recognized that I made the greatest mistake in my life, and I thought it was too late," says Hines, who has gone to become a speaker and author on suicide prevention.

He urges anyone who sees someone suffering and upset, like he was that day on the Golden Gate Bridge, or whom they suspect may be having suicidal thoughts, to reach out. This person struggling with thoughts of suicide, "needs to hear what I needed to hear. That we care about you, your life does matter, and that all we want is for you to stay," he says. "If someone had looked at me on that bridge or on that bus and said that to me, I would have begged for help."

NHLAP offers free and confidential support to legal professionals, concerned colleagues, and family members. Find out more at **www.lapnh.org** or call 877-224-6060.

If you or someone you know is suicidal or in emotional distress, contact the **National Suicide Prevention Lifeline** at 800-273-8255. Trained crisis workers are available to talk 24 hours a day, seven days a week. Effective July 16, the hotline will be available by dialing 988.

Dan Wise, former editor of Bar News*, works with the NH Coalition for Suicide Prevention. Find out more about the organization at zerosuicidesnh.org. Jill O'Neill is Executive Director of NH Lawyers Assistance Program.*

UNH Franklin Pierce Law Library Extends Free Access to All NH Bar Members

The University of New Hampshire Franklin Pierce School of Law Library has announced its reopening to the public after closing in 2020 due to the pandemic, but they have made a major change: all NH Bar members now have FREE access! Historically, it was only free to UNH Law graduates, but evolving from their longstanding Attorney Membership program, they now welcome all Bar members and alumni to the library for free Monday through Friday from 8:30 am to 4:30 pm. Law librarians are available to assist during those business hours.

Visitors should use the law school's main entrance on 2 White Street and ring the doorbell for entrance. Security staff will ask for a current bar ID card for NHBA Members, an employee ID from a firm or employer for law firm staff members, or relevant ID from alumni. The library will also ask for your signature in the visitors' book.

Visitors may review print collections while in the library, but books are not available for circulation at this time. The law library boasts robust Wi-Fi and high-powered scanners. There are also many databases for visitors to use including HeinOnline, Lexis University, the EBSCO family of databases, ProQuest databases, Project Muse, and JSTOR. Please note that the library does not offer a public Westlaw account.

The UNH Franklin Pierce Law Library is located at 2 White St., Concord, NH 03301.

NEW HAMPSHIRE
BAR FOUNDATION NEWS

IOLTA Grants Help Those Who Would Otherwise Fall Into a Legal Services Gap

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 with its Modest Means Program (LRS-MM).

Money given to the Bar Foundation from participating banks and resulting from interest on lawyer trust accounts is distributed to a number of civil legal aid organizations each year. In addition to the Modest Means Program, IOLTA grants also support the work of the Disability Rights Center – NH, 603 Legal Aid and New Hampshire Legal Assistance.

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.

"IOLTA grants are integral to keeping the Modest Means program operational," says Jennifer Greenwald, NHBA Lawyer Referral Service Coordinator. "We apply grant monies to our general operating costs to help defray salary costs. This allows us to hire experienced call center personnel who connect people in need of legal services with qualified attorneys who are willing to accept a reduced fee to help them."

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.

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 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.

To learn more about the Bar Foundation's IOLTA grant program or to make a donation to the NHBF, visit **nhbar.org/nh-bar-foundation**.

IOLTA

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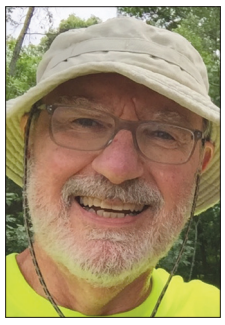
In Memoriam

David Connell

David Richard Connell died from metastatic pancreatic cancer on June 21, 2022, at his home in Fairfax, Va., surrounded by family.



Dave was born August 11, 1950, in Stamford, Conn., to Philip J. Connell Sr. and Ruth M. (Walsh) Connell and grew up in Darien, Conn. He graduated from Darien High School in 1968 and Syracuse University in 1972.

After a couple of years working as a machinist helper on the railroad and then as a magazine editor while he pondered studying history in graduate school, Dave enrolled at the University of Connecticut School of Law, where he served on the law review. At law school he met the love of his life, Linda Crandall. Dave and Linda decided to move to New Hampshire and were married on June 21, 1980, in Moultonborough, N.H. They both practiced law in New Hampshire for over 30 years, living first in Deerfield and later in Manchester while raising their four children.

Dave's law practice concentrated on municipal law. He served as Portsmouth City Attorney, Nashua Corporate Counsel, and Counsel at the New Hampshire Municipal Association, and for many years represented various towns while working at the Derry firm of Grinnell & Bureau. Dave also served a term in the New Hampshire House of Representatives.

Dave enjoyed coaching his children's youth athletics. He also became an avid hiker, climbing all 48 of New Hampshire's 4,000-footers after the age of 40. Dave and Linda enjoyed eight years of active, healthy retirement, moving to Fairfax in 2016 to be near grandchildren. Dave and Linda enjoyed hiking in the Blue Ridge Mountains frequently and completed a project to take a day-hike on the Appalachian Trail in all 15 states where it runs.

Dave is survived by his wife, Linda; his children, Mary Stankus and husband Chris, of Fairfax, Va.; Katherine Howell and husband Ryan, of Annandale, Va.; Patrick Connell and wife Andrea of Lancaster, Pa.; and Ellen Connell of Brooklyn, N.Y.; as well as his grandchildren, Samuel Stankus, Madeleine Stankus, Tobias Howell, Peter Howell, and Rory Connell. Dave was preceded in death by his brother, Philip J. Connell Jr.

A Mass of Christian burial was celebrated on June 27 at Holy Spirit Catholic Church in Annandale, Va. Donations may be made in memory of Dave to the New Hampshire Food Bank or Catholic Charities New Hampshire.

Jennifer Beck Kitchel Reining

Jennifer Beck Kitchel Reining died January 13, 2022, of metastatic breast cancer, at her home in East Thetford, Vermont. She was 56 years old. Born on February 19, 1965, in St. Johnsbury, Vermont, Jennifer was the daughter of Brinna (Baird) Sands and Douglas Binney Kitchel, Jr. She spent her early years in Vermont's Northeast Kingdom, attending rural elementary schools before moving with her mother, brother (Davis Kitchel), sister (Ellen Kitchel), and a number of barnyard animals to Lexington, Massachusetts. In high school, Jennifer moved to the Upper Valley with her mother, siblings, and stepfather, Frank Sands.

Jennifer attended Dartmouth College, graduating in 1987 with a major in art history and a minor in geology. She rowed varsity crew for four years, earning the Warren C. Nagle Jr. Award for women who "persevere" toward the goal of giving their absolute best. Jennifer's athleticism was a fundamental feature of her life, and she could be found running, walking, rowing, and biking in every kind of environment and weather.

Jennifer earned a master's degree in 1990 from the Yale School of Forestry and Environmental Studies (now the Yale School of the Environment). There, she met Conrad Reining, whom she married in 1994. Jennifer and Conrad have two children, Charlotte and Anabel Reining. She was an extraordinary mother.

In 1995, Jennifer received a JD from Vermont Law School, graduating magna cum laude and third in her class. She clerked for the Vermont Supreme Court in 1995 and 1996 before taking a position at the Environmental Protection Agency in Washington, DC, as a staff attorney in the Office of General Counsel. Jennifer and Conrad moved back to Vermont in 1997, eventually settling in their beloved house in East Thetford.

After their return, Jennifer worked at the Hubbard Brook Research Foundation, then as an associate at Hershenson, Carter, Scott, and McGee and as an assistant attorney general in the Vermont Attorney General's Office. In 2005, she took a position as assistant director with the Hitchcock Foundation, an entity within the Dartmouth-Hitchcock hospital system dedicated to aiding and advancing the study and investigation of human ailments and injuries. She became the foundation's executive director and stayed with the organization for the rest of her career.

Jennifer brought a fierce intellect, wry sense of humor, and deep humanity to everything she did. During her time with the Hitchcock Foundation, she met Deogratias "Deo" Niyizonkiza, who escaped Burundi's civil war in the 1990s. With little fanfare, Jennifer crafted the legal documents to help Deo achieve his dream of creating a model rural healthcare system, Village Health Works, in his native Burundi. Today, VHW is finishing construction of a state-of-the-art teaching hospital that will provide critical medical care to some of the world's poorest people.

Jennifer was a lover of animals and there was a constant flow of rescue dogs through the Reining household. The two most recent, Lucy and James, are pit bull mixes that came from Puerto Rico via the Student Rescue Project, an organization that works with Upper Valley high school and college students to relocate abandoned dogs to homes in New England. Jennifer was instrumental in creating the legal structure the Student Rescue Project needed to become a successful non-profit organization.

A fundamentally humane and humble person, Jennifer had a steely determination when confronted with injustice and incompetence, and she rarely lost a debate. She also knew how to really enjoy life, ferreting out the most exquisite music, food, and art, regaling you with side-splitting stories, singing in perfect tune, and performing stand-up comedy, all while wearing her signature red lipstick that was invariably purchased at a most amazing discount price! And let us not forget, as she would say, to "text your Mom" and in everything you do, "be kind, and make it fun."

Sam Silverman

Sam Silverman, 96 of Lexington, MA, died peacefully at home on April 23, 2022.

A retired physicist and lawyer, his lifelong curiosity led him to study and publish in multiple fields. His primary focus was upper atmospheric physics and the aurora borealis, and he also published hundreds of articles and book reviews about a wide range of topics in the social sciences, biblical studies, psychology, and music. One of his proudest moments was securing the release of an innocent, incarcerated man. He was an elected member of Lexington Town Meeting for over 40 years. He is survived by his partner, Rachel Rosenblum, his five children, nine grandchildren, and two great granddaughters.

He was predeceased by his wife of 50 years, Phyllis Silverman, and his first wife, Jacqueline Alon. Funeral services will be at 12 pm on Tuesday, April 26, 2022, at Temple Emunah in Lexington, MA. Burial to follow at Beit Olam East Cemetery, Wayland, MA. Memorial donations can be made to: Cary Memorial Library, Lexington, MA, or the Yiddish Book Center, Amherst, MA.

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

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

Community Notes

NH Women's Bar Association

Join the New Hampshire Women's Bar Association on July 28 from 5 to 8 pm, for a fun Friday evening at LaBelle Winery in Derry! Guests shall arrive around 5 pm. We will start with a private wine tasting in LaBelle Derry's new barn with a wine tasting guide. We will sample 10 wines from LaBelle Derry.

Londonderry Police Department Retirement Party

The Londonderry Police Department (LPD) would like to invite you to join them for a retirement party celebration honoring Chief William Ryan Hart, Jr.; Chief Hart graduated from the Boston College School of Law in 1986. He was elected Rockingham County Attorney in 1994 and served from 1995-1999. He also prosecuted for the towns of Stratham, Kensington, Deerfield, and Nottingham. He joined the LPD in 2000 and was promoted to Chief of Police in 2009. The retirement celebration will be held on Friday, August 5, 2022, from 4 to 8 pm at Fratello's Ristorante, 155 Dow Street, Manchester, NH. There will be a cash bar with complimentary hors d'oeuvres. Presentations begin at 5 pm. RSVP requested if you wish to attend, and please note if you wish to speak or make a presentation. Please contact: **hartparty@londonderrynhpd.gov**, 603-432-1113.

Ryan Lirette Graduates from Leadership Seacoast

Sheehan Phinney attorney, Ryan P. Lirette, has graduated from the 2022 class of Leadership Seacoast. Lirette joins 38 other individuals from Seacoast businesses, government, and the general community who graduated from the program. The Leadership Seacoast program provides existing and future community leaders the opportunity to engage with the people and organizations that shape the Seacoast's economic structure and social fabric.

Sheehan Phinney Employees Participate in Beach Clean Up

On June 23, 2022 in Portsmouth, NH, Sheehan's Environment & Energy Group joined efforts with the Blue Ocean Society for Marine Conservation to help clean up debris from Hampton Beach to help protect our environment and the wildlife on the coast. A group of Sheehan Phinney employees and family members volunteered to help in debris tracking and recording the finds to further aid marine conservation research. The 17 volunteers cleared a total of 38.5 pounds of debris from the beach.

Blue Ocean Society prides itself on protecting marine life through research, education, and inspiring action. For more information, go to **www.blueoceansociety.org**.

Coming and Going

Shaheen & Gordon, PA, is proud to welcome Attorneys Colleen O'Connell and Laura Tetrault to their Trusts, Estates, and Guardianships practice group. The two will be based out of the firm's Manchester office.

McLane Middleton is pleased to announce that Attorney Brian B. Garrett has been admitted to the New Hampshire Bar. Brian is Vice Chair of McLane Middleton's Education Law Group.

NHBA Leadership Academy Class of 2022 Graduated at Last Month's Annual Meeting

(L-R) Row 1: Staff Liaison Rebecca Bunyard, Lissa D. Mascio, Lyndsay N. Robinson, Jacqueline A. Leary, Marta A. Hurgin, Susanne L. Gilliam, Co-Chair Talesha L. Saint-Marc. Row 2: Co-Chair Jaye L. Rancourt, Scott J. Whitaker, Duncan A. Edgar, Gar Y. Chiang, Israel F. Piedra.

On Saturday, June 18, 2022, the NHBA Leadership Academy Class of 2022 was recognized during a graduation ceremony at the Bar's Annual Meeting. This event is the culmination of a rigorous nine-month program designed to develop future bar leaders. During this time, participants were exposed to various facets of New Hampshire legal practice via modules covering business, public interest and nonprofit entities, the media, and all three branches of government. These modules also allowed the Class of 2022 the opportunity to interact one-on-one with leaders in each of these fields. Leadership Academy participants also worked on and completed a project enabling them to use and demonstrate the skills they have acquired.

The June graduation ceremony was bittersweet because it marked the final event under the guidance of Leadership Academy Steering Committee co-chairs Jaye L. Rancourt and Talesha L. Saint-Marc who will be passing the torch. Both have been instrumental in building and executing a quality program and will be missed.

It's not too early to start thinking about applying to be a member of the Class of 2024. Attorneys who will be in practice between three and ten years as of Summer 2023 are invited to learn more at **nhbar.org/nhba-leadership-academy/**.

Ethics Corner

Ethics Committee Helpline Is Useful to all Attorneys

Dear Ethics Committee:

What is the Ethics Committee Helpline and when would I use it?

In addition to issuing Ethics Committee Formal Opinions and Practical Ethics articles, the volunteer members of the Ethics Committee provide informal assistance to members of the Bar via the Committee's Helpline service. Committee members who handle Helpline calls act as "sounding boards" and provide "reality checks" to the inquiring attorney, and will help to focus the further research of the inquirer. However, they will not provide definitive answers to Helpline questions or legal advice.

In order for the Helpline to assist you, your question must: (1) involve proposed conduct and not past conduct; (2) it must involve your own conduct and NOT the conduct of another attorney; (3) and it cannot involve conduct which is an issue of pending litigation or disciplinary action. The Helpline WILL NOT provide legal representation, only guidance.

Helpline communications are not Ethics Committee communications, but are subject to the restrictions and limitations that are generally applicable to Ethics Committee decisions and deliberations. In particular, the comments and guidance offered by Committee members during these calls do not constitute the opinions of the Ethics Committee or legal advice from individual Committee members. Also, since there is no attorney-client relationship between the inquiring attorney and the Ethics Committee member, there is no confidentiality or privilege with respect to such communications in the legal sense. However, as with opinion inquiries, the Committee will limit the voluntary disclosure of the identity of the inquiring attorney, and all discussions, deliberations, files and records of the Committee, to the extent that they may disclose the identity of the inquiring attorney to members of the Committee and Bar staff assigned to the Committee, unless otherwise ordered by compulsory legal process or unless the inquiring attorney waives these protections in writing.

The Ethics Committee provides several services for members of the New Hampshire Bar. The Ethics Committee studies questions of lawyer ethics and publishes its opinions in the Bar News, on the NH Bar Website, and on the NH Bar Social Media Outlets. The Ethics Committee also contributes a periodic column to Bar News entitled "Ethics Corner" containing helpful advice and practical information on common ethical dilemmas that are also published on the NH Bar Website and on the NH Bar Social Media Outlets.

If you have reviewed the New Hampshire Rules of Professional Conduct and perused the New Hampshire Bar Association's website for relevant Ethics Opinions and Corners, and you still have questions about the Rules of Professional Conduct and their application, you can contact the Ethics Committee's Staff Liaison Robin E. Knippers at 603-715-3259 or **reknippers@nhbar.org** to be referred to an Ethics Committee member to discuss your question.

Shaheen & Gordon
ATTORNEYS AT LAW

Welcoming Attorney Lauren Breda!

Concord • Dover • Manchester • Nashua • Portland
shaheengordon.com

Lauren adds her unique experience to our Criminal Defense Group.

Prior to joining Shaheen & Gordon, Lauren worked at the New Hampshire Public Defender as a trial attorney. During her tenure, Lauren represented over a thousand clients facing charges ranging from driving offenses to homicides. She has extensive courtroom and trial experience in several counties in New Hampshire.

Lauren will represent clients charged with serious misdemeanor and felony crimes.

lbreda@shaheengordon.com
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107 Storrs Street, Concord, NH

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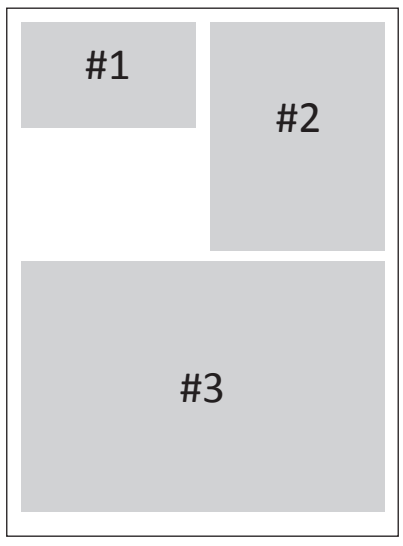
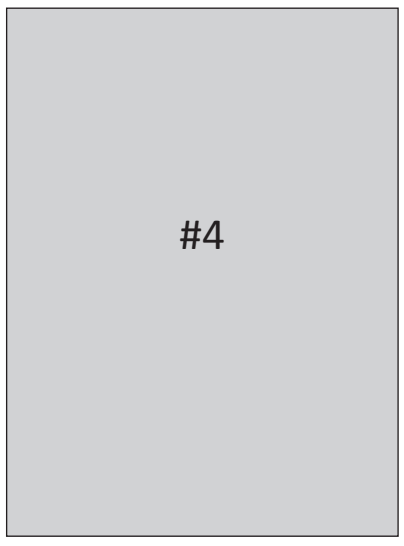
New Hampshire Bar Association

Rates & Sizes

JANUARY - DECEMBER 2022





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

JacksonLewis

PORTSMOUTH

Welcome to the Firm!
Ashley Theodore

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

100 International Drive, Suite 363
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2022 NHBA Annual Meeting Highlights

On June 17-19, 2022, 165 attorneys and guests attended the 2022 Annual Meeting at the Mountain View Grand Resort and Spa (Whitefield, NH). While the weather was wetter and chillier than anyone expected, spirits were still warmed since it was the first live Annual Meeting since 2019.

Friday afternoon started with a brief Annual Business meeting, followed by a CLE video replay. Attendees then had the option of taking a tour of the hotel or otherwise exploring the grounds. These were followed by a cocktail reception and an Honors and Award Banquet. Recognized at this event were newly appointed and retiring judges, as well as the Justice William Grimes Award for Judicial Professionalism recipient, Hon. M. Kristin Spath; the Distinguished Service to the Legal Profession Award recipient, Mitchell M. Simon, and the E. Donald Dufresne Award for Outstanding Professionalism recipient, Pamela E. Phelan. For those ready for even more socializing, a campfire and s'mores were available until 11 p.m.

Saturday offered a buffet breakfast for overnight guests. Daytime activities included golf, ax throwing, bocce, spa services, visiting the working onsite farm, another video replay, and more. Several guests elected to take short trips into nearby communities, as the weather lended itself more to antiques hunting than swimming. After a late-afternoon cocktail reception, attendees enjoyed the President's Banquet, which included the Passing of the Gavel from Richard Guerriero to Incoming Bar President, Sandra L. Cabrera and the graduation of the Leadership Academy Class of 2022. Topping off the night was a comedy performance by Juston McKinney.

After a buffet breakfast, guests were on their own to celebrate the rest of Father's Day weekend and plan for the next time they would gather with their colleagues, family, and friends.

The NHBA extends its sincerest thanks to the sponsors, advertisers, and attendees who made this event possible and looks forward to seeing you next February at the Midyear Meeting in Manchester.

We intentionally omitted captions to fit in more photos.


New Hampshire Supreme Court
Certificate of Appreciation Presented to
Bruce W. Felmly


RICHARD
PRESIDENT
ANNE

IEA from page 1

(2021). In *Doe,* the plaintiff, who had been held for 17 days, sought her release from the NH Hospital on the grounds that she failed to receive a probable cause hearing within three days of her IEA, as required by state law. The trial court found for the plaintiff; the NH Supreme Court affirmed. As the case worked its way through the courts, it was determined that the issue stemmed from when the three-day period begins. The NH Supreme Court held, "The plain language of RSA 135-C:31, I, entitles the person to a probable cause hearing within three days 'after an involuntary emergency admission, not including Sundays and holidays.' The time for a probable cause hearing, therefore, is triggered by the completion of a certificate, not by the person's delivery to a designated receiving facility." *Doe,* 174 N.H. at 242.

"Up until March [2022], petitions [for admission] were held until a bed opened up," says Administrative Judge of the Circuit Court, David King, who has been instrumental in the implementation of this new process. "For example, someone might be at the Concord Hospital, the doctor signs the certificate on Day One and then on Day 14, a bed opens up. At that point, DHHS transferred the petition to the court, and we held a hearing within three days. That did not give the person the due process [that they are entitled to under law], because they had already been in the hospital for 14 days before [the courts] even knew about it."

Judge King continued, "The issue in the earlier Federal litigation and later in the state Supreme Court was whether the three days starts to run when the admissions certificate is signed or when the patient arrives at the DRF. The District Court for NH said the three-day clock starts to run as soon as the doctor signs the certification [and the Supreme Court agreed.]"

> "There were a lot of skeptics out there – including me – who thought it was going to be nearly impossible to hold hearings with patients who were suffering from mental illness from a hospital emergency department, but it has been a remarkable partnership with the hospitals, DHHS, and with the lawyers who represent these patients." – Judge King

Once this had been resolved, the next challenge was determining how to hear the cases within the three-day period. In March 2022, Governor Chris Sununu asked the Circuit Court to find a solution. Judge King advised that there are only two solutions: creating enough bed space and holding hearings while the patient is still in the emergency department.

At first, hospitals were adamant about not turning their emergency rooms into courtrooms. So Judge King worked with them, DHHS, and lawyers representing IEA petitioners to develop a process whereby the court receives the petition generally on the same day a certificate is signed by a physician and, within three days, conducts telephonic hearings.

Using American Rescue Plan Act funds approved by the Governor, Executive Council, and the Joint Legislative Fiscal Committee, the Judicial Branch was able to convert two vacant marital master positions into two judicial positions and to provide support staff who will be devoted to IEA and similar mental health case types.

"Right now, we are using whatever judicial resources we can to make sure we are holding those hearings five days a week," Judge King says. "As the Administrative Judge of the Circuit Court, I'm not normally routinely sitting on these cases. But, I'm filling in as one of the judges two or three days a week."

He indicates that when they are fully staffed, they plan to have a dedicated mental health docket in Concord performing IEA hearings. The Court has already hired two case managers dedicated to the docket who will be available to assist the judges, work with families who may be struggling to file petitions on their own and ensure that the three-day deadline is met.

"While the bed crisis [is unresolved], we have really done a good job improving the process," Judge King says. "There were a lot of skeptics out there – including me – who thought it was going to be nearly impossible to hold hearings with patients who were suffering from mental illness from a hospital emergency department, but it has been a remarkable partnership with the hospitals, DHHS, and with the lawyers who represent these patients."

In June 2022, Judge King and the Circuit Court presented a one-hour webinar on the new IEA process to members of NAMI New Hampshire (National Alliance on Mental Illness). "Involuntary Emergency Admissions (IEAs) in NH – A Judicial Primer on Navigating the Process" can be found at www.youtube.com/watch?v=b5zHy1Hf9ok.

"The efforts of the Circuit Court in creating the [IEA] docket have been truly remarkable," says NAMI NH Executive Director Susan Stearns. "It's a huge accomplishment in a very short amount of time, and it speaks to the fact that we can work collectively to really see change."

NAMI NH had filed an amicus brief in the *Doe* NHSC case. "The reality is that the mental health docket would not be happening if not for the courage of [Jane Doe], who endured what must have been a truly traumatic experience," Stearns says. "I think we have a lot to thank Jane Doe for."


Susan Stearns, Executive Director of NAMI NH. Courtesy Photo.

Stearns continued, "This new process ensures, in most cases, that these patients are getting their hearings while they are boarding. Because they still need to get to an inpatient facility and on to their probate hearing, it's not a victory lap yet. But in terms of protecting the civil rights of people with mental illness, [the IEA process] is definitely a step in the right direction."

Like Judge King, Ms. Stearns agrees that the shortage of inpatient beds at the receiving facilities still needs to be addressed.

"We need to have better resources in terms of the mental health system in order to ensure that people have better access to the level of care they need, when they need it," Stearns said. "We need a robust system of care that is responsive to people's needs."

Paralegal from page 6

don't know if that's been thought through. I would be worried about getting sued. I've managed to avoid being sued, and I'd like to continue to manage that."

Morneau shares this concern, saying that "one of the boxes I'd like to check is to get into those details with my malpractice insurance." She notes that New Hampshire is not the first state to allow paralegal representation under certain circumstances and that other states have had to address the issue of malpractice insurance. "I think it will still be covered because it's under the umbrella of the attorney. I don't know if it's going to be an issue."


Attorney John Driscoll of Driscoll Law Office. Courtesy Photo

Gelin said she has been in contact with her firm's insurance carriers. "I'm trying to get some clarification. Not just interpretation," she says. "I want to hear from the underwriters – I want them to truly examine this. I don't want it to be just presumed that we 'should be' covered. We as paralegals definitely want to know that we are covered. None of us would ever want to cause any harm or negative consequences to the firms that we work for."

Crowdfunding Legal Fees
Ethics Committee Opinion #2021-22/02

ABSTRACT:

Representing a client in a matter funded in whole or in part through donation-based crowdfunding is not unethical *per se*. Lawyers are encouraged to exercise substantial caution when undertaking a crowdfunded matter, however, as ethical concerns abound and increase as an attorney's involvement with the fundraising increases.

ANNOTATIONS:

Lawyers contemplating undertaking a crowdfunded matter are encouraged to exercise caution.

Lawyers are encouraged to employ a written engagement letter and must satisfy the client consent and other duties arising where a third-party funds litigation. Lawyers should understand a contemplated crowdfunding platform's functionality, and alternatives, sufficiently to enable them to reasonably counsel the client about the potential impact on the client's matter, with particular attention to privilege.

Lawyers should consider their duties to potential donors, including truthful disclosure.

Lawyers should consider how funds will make their way from the platform to the lawyer's operating account and how funds raised in excess of the cost of the representation will be disposed of. Bear in mind that at the end of the day, fees and expenses must be "reasonable" and "earned."

OPINION

Background:

This Opinion discusses the ethical concerns presented by donation-based crowdfunding, which appears to be growing in popularity as a means of financing legal representation for those who might not otherwise be able to afford it.

Through Internet-based crowdfunding, typically small amounts of money are raised from a large number of people. Funds may be raised for virtually any legal purpose, using one of the many platforms designed for that purpose. Crowdfunding platforms offer five basic types of incentives that projects seeking funding may offer funders: debt, equity, royalty, and donation (with or without "rewards").

In the emerging scenario we consider here, legal services are funded though donation-based crowdfunding ("DBC"). Contributions are solicited to fund a specific individual's specific legal matter. Donors acquire neither any control over the matter nor any direct financial interest in its outcome. Solicitation of donations may take various forms and typically involves processing donations through one of the many Internet platforms designed for that purpose. If contributors are offered "rewards," the rewards are limited in type and value as discussed below.

The DBC model is distinct from equity-based crowdfunding and other forms of alternative litigation finance. Those funding sources raise some of the same ethical concerns as DBC; note the Committee's prior guidance concerning non-recourse litigation funding. New Hampshire Ethics Committee Advisory Opinion #2004-05/01 *Non-Recourse Lawsuit Financing*.

DBC presents a variety of ethical concerns, concerns that increase as the attorney's involvement in the fundraising increases.

I. Commencing the Engagement

Engagement Letters. The Committee strongly encourages the use of written engagement letters in matters involving DBC. *Cf.* NHRPC Rule 1.5(b) (written agreement preferable but not required). The engagement letter should be clear regarding the terms under which the funds will be drawn down. NHRPC Rule 1.5(b). It should also be clear how lawyer and client will proceed not just if donations exceed costs (whether due to natural conclusion, settlement, or the client's decision not to pursue the matter) but also if costs exceed donations, or because for whatever reason the attorney-client relationship terminates. Subject to NHRPC Rule 1.6, plans for these contingencies ought to be disclosed to donors if necessary to make the pitch truthful. NHRPC Rules 1.1, 1.3, 2.1., 4.1 and 7.1.

Duties Where Receiving Funds From Other Than the Client. Compensation may be accepted from a source other than the client only when the following conditions set forth in NHRPC 1.8(f) are satisfied: "(1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6." NHRPC 1.8(f).

Potential Business Transaction. A lawyer should always be alert to the possibility that their contemplated conduct might constitute a "business transaction" with a client, triggering the disclosure and documentation requirements set forth in NHRPC Rule 1.8(a). Where a lawyer entangles themself deeply with a client's DBC fundraising, at some point it becomes reasonable to assume that those disclosure and documentation requirements must be satisfied.

We do not believe, however, that the mere fact that a lawyer expects to receive fees and costs from an arrangement a client enters into with a third party, alone, even if the resulting financing were a condition of, and built into, the lawyer's fee agreement with the client as a means to pay for the representation, would give rise to a "business transaction" between lawyer and client. To the extent our prior guidance suggested as much, we now believe that language to have been overbroad. We previously reasoned, in the context of non-recourse financing:

> to the extent that a lawyer knows or has reason to know he/she will obtain some form of benefit, such as payment of fees and costs, through the client's participation in non-recourse lawsuit financing, such an arrangement could well constitute a "business transaction" between the lawyer and client.

NH Opinion 2004-05/1. In a footnote we added:

> This would be especially true if participation in non-recourse lawsuit financing was a condition of and built into the lawyer's fee agreement as a means to pay for the litigation.

Id., FN 5. We believe that opinion's determination that the disclosure and documentation requirements of Rule 1.8(a) might be implicated was based on the attorney's intensive involvement in a commercial transaction, rather than by the attorney's mere receipt of funds arising from an arrangement between client and a third party. Thus, we overstated the likelihood that non-recourse lawsuit financing, and by implication, DBC, would *per se* give rise to a "business transaction" as contemplated by NHRPC Rule 1.8(a). To that extent, we modify the language of the prior opinion.

Understand How the Platform Works. Even if the lawyer does not intend to be involved with the client's use of a crowdfunding platform, the lawyer cannot adequately meet their obligations to counsel the client, discussed below, unless the lawyer understands the basic functionality of the platform, including how it treats funds raised on behalf of the client. A lawyer who intends to be directly involved with use of a platform must bear in mind their obligation to understand the risks and advantages associated with technology they use in their practice. NHRPC Rule 1.1.

Legal Duties. Lawyers must take reasonable steps to identify their legal obligations and to avoid entangling themselves in illegal conduct.[1] NHRPC Rules 8.4(b) and (c). For example, in addition to potential fraud and money-laundering, a lawyer may also have an obligation to identify the source of overseas funding. Bear in mind the scope of an attorney's duties and the limits of the safe harbor set forth in NHRPC Rule 1.2 (d) and (e).

II. Counseling the Client

Duty to Consult with Client Generally. Nothing in the manner funds are raised excuses any of an attorney's obligations to their client. This includes, for example, the duty to consult with the client and abide by their decisions. NHRPC 1.2 and 1.4.

Duty to Counsel Client re: Privilege. In particular, an attorney must consider and counsel the client about the risks of disclosing information. As a practical matter, the success of a crowdfunding appeal often turns on how compelling the client's story is. A crowdfunding website post seeking donations, like any other public social media, can provide an adversary with valuable information. Communications with funders may later be deemed to be unprivileged, an issue which has arisen in third-party funded matters in other jurisdictions.[2] Bear in mind the treacherous doctrine of subject matter waiver under which an entire topic can be rendered non-privileged. If confidentiality may already have been compromised, consider what damage control can be implemented.

Duty to Counsel Client re: Relevant Considerations: Even if the lawyer plans to have no involvement in a client's fundraising, the lawyer has a duty to discuss with their client the potential impacts of the fundraising on the contemplated litigation, including available alternatives, the pros and cons of such financing, the ramifications on a potential recovery and any other material considerations. NHRPC Rule 1.3. See New Hampshire Ethics Committee Advisory Opinion #2004-05/01. The lawyer's duty to

counsel the client extends to potential legal consequences of soliciting donations which the client might not otherwise anticipate. NHRPC Rules 1.1, 1.4(b) and 2.1. Where a lawyer is more deeply involved with the client's engagement with the DBC platform, the lawyer may have a duty to familiarize themself with the platform's terms of service and to advise the client about potentially significant terms, e.g., waiving jury trial rights or agreeing to binding arbitration.

Tax Issues: The IRS may deem funds raised through DBC to be income taxable to the client. The lawyer should advise their client to seek appropriate guidance. The risk of a client neglecting this issue may be heightened due to some crowdfunding platforms reportedly structuring disbursements to avoid triggering the platforms' IRS reporting obligations

.

III. Communications with Potential Donors

Disclosure Duties. Communications between the attorney and potential donors must be truthful and must not raise "an unjustified expectation about results the lawyer can achieve." *See* NHRPC Rules 4.1 (truthfulness in statements to others) and 7.1 (communications concerning a lawyer's services). Donors should be informed where their funds will be nonrefundable, how any unearned donated funds will be distributed at the conclusion to the matter, that donors will not receive confidential information about the client's matter, and that donors will not have any opportunity to exert control over the lawyer's work. Depending on the circumstances, the attorney may be obligated to make such disclosures, *see* NHRPC Rules 4.1 and 7.1, or may be obligated to advise the client to make the disclosures. *See* NHRPC Rules 1.1, 1.3 and 2.1.

The Ethics of Attorney Advertising May Apply: Some online DBC platforms collect payment processing fees and receive a percentage of the funds raised if a campaign is successful. A lawyer compensating a third party to raise funds for a specific case would be wise to assume that the lawyer is engaged in advertising. In addition to the usual ethical concerns raised by attorney advertising, see in particular NHRPC Rules 7.1 and 7.2 and the comments thereto, and usual practices (such as disclosing the name, office address and jurisdictions of admission of at least one involved attorney) consider that any compensation the platform receives (or retains) must not exceed the "reasonable costs" permitted under Rule 7.2(b)(1). Consider any relevant disclaimers, e.g., that a donation neither establishes an attorney-client relationship, nor entitles a donor to an equity interest or to any control over the matter.

Beware of "Perks" and "Rewards." With respect to "perks" and "rewards" for donors, the coin of the crowdfunding realm, lawyers must tread cautiously. For example, there is no clear ethical bar to a lawyer committing to providing periodic updates to donors concerning the matter, provided communications are client-approved, and contain no confidential information. The thoughtful lawyer may be cautious however, about the risk of suggesting that donors will have any influence over the lawyer's prosecution of the matter.

IV. Treatment of Raised Funds

Disbursement of Funds. The functionality of the platform utilized will determine how raised funds may be disbursed and how unutilized funds may be returned to donors or otherwise disposed of. For example, funds may be received by the client and disbursed to the attorney as billed, held by the crowdfunding platform and disbursed to the lawyer upon invoice, or deposited in the attorney's client trust account as raised, to be drawn down as earned by the attorney.

Fees and Expenses Must be "Reasonable" and "Earned." Whether paid upon invoice or drawn down from the attorney's trust account, fees must be both "reasonable" and "earned," even if the retainer sets forth a flat-fee agreement. NHRPC Rules 1.5(a) and 1.15.[3] Any such funds not reasonably earned by the conclusion of the matter remain the property of the client, unless otherwise set forth in the client engagement letter, if not also the solicitation to donors. While we see no obstacle to excess funds being donated to a non-profit or allocated to fund similar litigation involving another client, it would be unethical for an attorney to personally retain a windfall that is not both "reasonable" and "earned" in a non-contingent matter. NHRPC Rule 1.5(a).

Funds Raised by a Lawyer for Legal Costs Cannot be used for the Client's Assistance: A lawyer who becomes so materially involved in the fund-raising process as to be raising funds on behalf of the client must bear in mind the prohibition on providing financial assistance set forth in Rule 1.8(e). Note that New Hampshire chose not to adopt the ABA's Model Rule 1.8(e)(3) permitting lawyers to offer such assistance to indigent clients.

Donations Exceeding Reasonable Costs: The solicitation of donations in excess of reasonably anticipated costs could raise various ethical concerns. *See, e.g.*, NHRPC Rules 4.1 (Truthfulness in Statement to Others), 8.4(c) (which prohibits a lawyer from engaging in dishonest or deceitful conduct) and 1.5(a) (which prohibits a lawyer from seeking an unreasonable fee). Ethics authorities in other jurisdictions[4] have identified the risk that a lawyer might be perceived as seeking an unreasonable fee due to the potential to raise funds in excess of the costs of the representation and a perception that the client might exercise less rigorous oversight over the lawyer's billings than if the funds were the client's own. The lawyer should ensure that a plan is in place to terminate fundraising when sufficient funds have been raised.

NH RULES OF PROFESSIONAL CONDUCT:
Rule 1.1 (Competence)
Rule 1.2(a), (d) and (e) (Scope of Representation)
Rule 1.3 (Diligence and Zeal)
Rule 1.4 (a) and (b) (Communication)
Rule 1.5(a) (Fees)
Rule 1.6 (a) (Confidentiality of Information)
Rule 1.8 (a), (e) and (f) (Conflicts of Interest: Specific Rules)
Rule 1.15 (Safekeeping of Property)
Rule 2.1 (Advisor)
Rule 4.1 (Truthfulness in Statements to Others)
Rule 5.4 (c) (Professional Independence of a Lawyer)
Rule 7.1 (Communications Concerning a Lawyer's Services)
Rule 7.2(b) (Advertising)
Rule 8.4(b) and (c) (Misconduct)

NH ETHICS COMMITTEE OPINIONS AND ARTICLES:
"Non-Recourse Lawsuit Financing," Ethics Committee Advisory Opinion #2004-05/01 (2005)

SUBJECTS:
Crowdsourcing
Crowdfunding
Donation-based funding of legal services

- **By the NHBA Ethics Committee**

This opinion was submitted for publication to the NHBA Board of Governors at its June 17, 2022 meeting.

Endnotes

1. For further discussion of potential attorney exposure under ethics rules and substantive law where clients engage in money laundering or use criminal proceeds to fund legal services, see DC Bar - Ethics Opinion 375 (2018); ABA Formal Op. 463 (2013); "Houston, We Have a Problem: Clients Who Engage in Unlawful Conduct During Your Representation," Winter / Spring 2015 Edition of the ABA White Collar Crime Committee Newsletter, pages 1 and 9-11.
2. *See, e.g., Leader Techns., Inc. v. Facebook, Inc.*, 719 F. Supp. 2d 373 (D. Del. 2010) (compelling disclosure of documents shared with financing companies during discussions about potential financing); *see also Abrams v. First Tenn. Bank Nat'l Ass'n*, No. 3:03-cv-428, 2007 WL 320966, at *1 (E.D. Tenn. Jan. 30, 2007); *see also Nate Raymond, Litigation Funders Face Discovery Woes,* NAT'L L.J., Feb. 21, 2011 (reporting that in at least one case, the initial conversations between a funding company and the client were not protected from disclosure by the attorney-client privilege).
3. *See Practical Suggestions for Flat Fees or Minimum Fees in Criminal Cases*, Ethics Committee Practical Ethics Article, presented to the Board of Governors January 17, 2008 (*available at:* https://www.nhbar.org/resources/ethics/ethics-corner-practical-ethics-articles/2008-01)
4. *See, e.g.,* "Ethical Considerations of Crowdfunding," DC Bar - Ethics Opinion 375 (November 2018); Philadelphia Bar Association Professional Guidance Committee Opinion 2015-6 (2015); and Palmer, Mark, "Is Crowdfunding Legal Services Ethically Permissible?" Web blog post, *2Civility*, Illinois Supreme Court Commission on Professionalism; January 21, 2019 (updated August 16, 2020).

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.

AUGUST 2022

WED, AUG 24 – 12:00 – 1:00 p.m.
Vaccine Injury Law 101
- Webcast; 60 NHMCLE min.

SEPTEMBER 2022

WED, SEP 21 – 9:00 a.m. – 4:30 p.m.
Chapter 11 Bankruptcy Practice in NH
- Format TBD; 360 NHMCLE min.

FRI, SEP 23 – 12:00 – 1:00 p.m.
The Ethics of Venting
- Webcast; 60 NHMCLE ethics min.

TUE, SEP 27 – 8:30 a.m. – 4:30 p.m.
2022 Emerging Leaders Summit
- Manchester • Institute of Politics, St. Anselm
- Credits TBD

WED, SEP 28 – 12:00 – 1:00 p.m.
Tech Topic w/James Casey TBD
- Webcast; 60 NHMCLE min.

THU, SEP 29 – Time TBD
Short-term Rentals
- In-Person • Webcast; Credits TBD
- Concord • NHBA Seminar Room

OCTOBER 2022

FRI, OCT 14 – 8:30 a.m. – 1:30 p.m.
Appellate Advocacy 2022
- 240 NHMCLE min.
- Concord • NHBA Seminar Room

NOVEMBER 2022

MON, NOV 7 – 9:00 a.m. – 4:30 p.m.
Developments in the Law 2022
- Manchester • DoubleTree by Hilton
- 360 NHMCLE min., incl., 60 ethics/prof. min.

MON, NOV 21 – Time TBD
40th Annual Tax Forum
- Concord • Grappone Conf. Center
- Credits TBD

40th Annual Tax Forum

Monday, November 21

Live, In-person at the Grappone Conference Center, Concord

(Co-sponsored with the NH Society of CPAs)

** Additional details will be forthcoming **

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Developments in the Law 2022

Monday
Nov. 7

9:00 a.m. - 4:30 p.m.
360 NHMCLE min.
incl. 60 ethics/prof. min.
★In person★

DoubleTree by Hilton, Manchester

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

Faculty

Corey M. Belobrow, Program Chair, Friedman Feeney, PLLC (of counsel), Concord

Tracey G. Cote, Shaheen & Gordon, PA, Concord

Alyssa G. Garrigan, Ansell & Anderson, PA, Bedford

Timothy A. Gudas, Clerk of Court, New Hampshire Supreme Court, Concord

Gregory A. Moffett, Preti Flaherty Beliveau & Pachios, PLLP, Concord

Thomas J. Pappas, Primmer Piper Eggleston & Cramer, PC, Manchester

Laura Spector-Morgan, Mitchell Municipal Group, PA, Laconia

Roy W. Tilsley, Jr., Bernstein Shur Sawyer & Nelson, PA, Manchester

(Additional Faculty TBD)

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Upcoming Webcasts

Vaccine Injury Law 101

Wednesday, August 24, 2022 – 12:00 – 1:00 p.m.
60 NHMCLE min.

Did you know that injuries caused by certain vaccines are covered under a special federal program? There is also an entirely separate program for injuries from the COVID-19 vaccines. This presentation will highlight the basics of the National Vaccine Injury Compensation Program and the Countermeasures Injury Compensation Program.

Heather V. Menezes, Shaheen & Gordon, Manchester

Jack P. Crisp, The Crisp Law Firm, Concord

The Ethics of Venting

Friday, September 23, 2022 – 12:00 – 1:00 p.m. – 60 NHMCLE ethics/prof. min.

Talking about cases, clients, and the scope of your work as an attorney can have ethical ramifications. Attorneys from the Attorney Discipline Office and Ethics Committee will discuss some of the Professional Rules tied to discussing your work with others, while providing tips to prevent disclosure and protect client confidences.

Katie A. Mosher, Sulloway & Hollis, PLLC, Concord

Mark P. Cornell, NH Attorney Discipline Office, Concord

Geoffrey M. Gallagher, Sulloway & Hollis, PLLC, Concord

Brooke L. Lovett Shilo, Upton & Hatfield, LLP, Concord

Tech Topic w/James Casey

Wednesday, September 28, 2022 – 12:00 – 1:00 p.m. – 60 NHMCLE min.

More info to come.

Chapter 11 Bankruptcy Practice in New Hampshire

Wednesday
Sept 21

9:00 a.m. - 4:30 p.m.
360 NHMCLE min.

Format TBD

Chapter 11 bankruptcy practice in New Hampshire from beginning to end, including the business problem, counseling the client, the new Sub-V cases, use of the 11 to sell a business, ethical issues, first day orders, plan confirmation, traps for the unwary and a discussion with Bankruptcy Judge Bruce A. Harwood and retired Bankruptcy Judge J. Michael Deasy.

Faculty

Edmond J. Ford, CLE Committee Member, Ford, McDonald, McPartlin & Borden, PA, Portsmouth

Christopher M. Candon, Sheehan Phinney Bass & Green, PA, Manchester

Eleanor Wm. Dahar, Dahar Law Firm, Manchester

Hon. J. Michael Deasy, US Bankruptcy Court (ret.)

Ann Marie Dirsa, Office of the US Trustee, Concord

Jeremy R. Fischer, Drummond Woodsum, Portland, ME

William S. Gannon, William S. Gannon, PLLC, Manchester

Hon. Bruce A. Harwood, Chief Judge, US Bankruptcy Court

James S. LaMontagne, Sheehan Phinney Bass & Green, Portsmouth

Jason Mills, BCM Advisory Group, Portland, ME

Lindsay Zahradka Milne, Bernstein Shur Sawyer & Nelson, PA, Portland, ME

Michael K. O'Neil, Rath, Young & Pignatelli, PC, Concord

APPELLATE ADVOCACY 2022

Featuring the Entire NH Supreme Court

Monday
Oct. 14

8:30 a.m. - 1:30 p.m.
240 NHMCLE min.

Webcast
In person

NHBA Seminar Room, Concord

Special Resources:

Attendees will receive copies of the newly revised Appellate Practice Manual produced by NHBA•CLE

Whether you regularly appear before the NH Supreme Court, or only occasionally handle an appeal in that Court, this is a must-see seminar. Program highlights will include a topical panel discussion and Q&A session featuring all five members of the New Hampshire Supreme Court, including Chief Justice Gordon J. MacDonald, Senior Associate Justice Gary E. Hicks, and Justices James P. Bassett, Patrick E. Donovan, and Anna Barbara Hantz Marconi. Hear the latest insights on brief preparation, oral argument, motions practice, and the best practices for preservation of issues in lower courts from faculty members who, together, have briefed and argued hundreds of appeals, along with the Clerk of the Supreme Court.

Who Should Attend?

Attorneys in civil or criminal practice who regularly appear before the NH Supreme Court or only occasionally handle appeals will benefit. Even litigators who don't do appeals will benefit from insights into best practices for preservation of issues. This program is not offered annually – it was last presented in 2019 – so don't miss this rare opportunity.

Faculty

Doreen F. Connor, Program Co-Chair, Primmer Piper Eggleston & Cramer, Manchester

Theodore M. Lothstein, Program Co-Chair, Lothstein Guerriero, PLLC, Concord

Anthony J. Galdieri, Solicitor General, NH Attorney General's Office, Concord

Timothy A. Gudas, Clerk, NH Supreme Court

Stephanie C. Hausman, NH Appellate Defender Program, Concord

Laura B. Lombardi, NH Attorney General's Office, Concord

Laura Spector-Morgan, Mitchell Municipal Law Group, Laconia

NH SUPREME COURT
Hon. Gordon J. MacDonald, Chief Justice
Hon. Gary E. Hicks, Senior Associate Justice
Hon. James P. Bassett, Associate Justice
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Hon. Patrick E. Donovan, Associate Justice

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Gilliam from page 1

with a continuing interest in alternative dispute resolution, which she sometimes incorporates into her later practice.

After her 2015 graduation, with no interest in courtroom appearances, but an abiding desire for face-to-face work with clients, she founded Gilliam Law LLC, intending to focus on elder law. She had been helping her mother and aunt through their downsizing, and thought being older herself might be an advantage working with elderly clients.

Then, in 2018, she read about the Trump administration's policy, intended to curb illegal immigration, of separating asylum-seeking parents and their children at the border. "I just didn't feel I could sit on the sidelines," she says.

She volunteered with the Immigration Justice Campaign, and soon found herself at a detention center in El Paso, Texas, working with volunteer interpreters to interview parents who had been separated from their children.

"None of them had seen their children for at least two months," Gilliam says. "Fewer than half had even spoken to their child in that time. The thing that got overlooked is, these people left their home country for some kind of incredibly compelling reason. So, they'd already had the trauma of their home country, the trauma of their journey, then this trauma."

One Guatemalan woman had been there two months without speaking to anyone because no one could figure out which indigenous Guatemalan language she spoke, Gilliam adds, "and the heartbreaking thing is, her child was out there somewhere."

Gilliam worked 20 hours a day, posted her impressions on Facebook, slept four hours and started over again. "When I flew home, I was so very changed by the experience, but I was also positively exhausted," she recalls.

But her work had attracted notice. No sooner was she back in Boston than she found out the American Civil Liberties Union had filed suit against the US Immigration and Customs Enforcement in the US District Court for the Southern District of California, seeking a stay of removal for recently reunited families. The case, which addressed the confusion of parents who signed "reunification" forms under coercion or without sufficient translation, included a declaration from Gilliam about her interview experience in El Paso and the "pressure tactics" she saw used on parents to sign documents they did not understand.

Still, "I came away thinking 'I'm only half-done with this job,'" Gilliam says. "I need to speak about what I've seen, the 'bear witness' mentality… If you're the one who has the privilege of witnessing history up close, it doesn't matter if you write about it or speak about it or do art about it, I didn't really feel it was an option not to."

So, she did a second volunteer stint, this time traveling to Tijuana in February 2019, to join other pro bono workers in preparing people for what they would face with customs and border patrol agents when they crossed the border.

"They overly air-condition their facilities," she says of the border agents. "They want to make the experience as uncomfortable and unpleasant as possible so you won't cross the border again. They would make you take off every layer of clothing except the one that was touching your skin."

People hoping to cross the border would gather daily on a plaza which was surrounded on three sides by Mexican National Guard members and on the fourth by Mexican police. Gang members sometimes came to the plaza looking for people who had crossed them and, if you happened to get between them and their target, "you could be collateral damage," Gilliam says.

It rained most of the time she was there. The weather turned cold, and Gilliam ended up with bronchitis, pneumonia, and a foot infection.

She also picked up her first three asylum cases, two of which remain active. Her third client was granted asylum.

Since then, Gilliam has developed ties with other immigration lawyers, in part through her participation in the Bar's Leadership Academy, from which she recently graduated. "You do form bonds with other members of your academy class," she notes.

Though she lives in Sudbury, MA, Gilliam is more active in NH Bar activities than those in her resident state, finding the NH Bar smaller and more congenial. "There was a lot of encouragement for people to sign up for (Bar) committees, and I got to the New Lawyers Committee and said, 'I can relate to that' and then it was like a stepping stone," she adds.

Laurie Young, co-chair of the New Lawyers Committee, says Gilliam "has tremendous passion for making the Bar better and more accessible, not just as an access to justice issue, but as to new lawyer and solo practice issues… She brings that wealth of experience to her practice and her professionalism, but also shows that being a new lawyer shouldn't be about age."

The committee's other co-chair, Stephanie Tymula, seconds that, adding, "Susanne is absolutely wonderful and brings a lot to the NLC."

Gilliam is also the New Hampshire Bar's delegate to the American Bar Association's Young Lawyers Division and has been active in the New England chapter of the American Immigration Lawyers Association.

Longtime friend Laura Keeler, who met Gilliam when at a Practical Skills Workshop while Keeler was working for the NHBA, calls her "brilliant, curious, eager to help others, a loyal volunteer, and an active member of the Bar."

"I am happy to see her rise with her positions as ABA Delegate and in the Leadership Academy Program, where she brings an important voice and perspective," Keeler adds. "One of her many assets is that she helps people recognize the expanded definition of a new lawyer; some people go from college directly to law school, some have years of experience in between, and some like Susanne, have whole careers in other fields before joining the law."

Gilliam continues to speak for free to any group wishing to hear about her work on the border, but also discusses mental health, the importance of treatment, and her own struggles with PTSD after her work there. "It mostly manifests as nightmares, but you never know when something's going to trigger it," she says, adding she had to leave a movie theater in the middle of the latest James Bond movie because a prison scene reminded her of the detention center. "And I can't cross open plazas anymore," she adds.

When not working, Gilliam enjoys piano lessons, gardening, sewing, and weekly Zoom meetings with a 12-year-old South Korean girl she met through Eldera, an organization that matches people over 60 with young people from around the world.

She offers her immigration legal services on a pro bono basis, saying her husband's salary is adequate for their needs. She says she looks forward to continuing work with asylum-seekers.

"I'm not going to be the one who could have done something and didn't," she says.

Focus on Federal Practice

Gathering Evidence in Foreign Proceedings: Supreme Court Limits US Discovery in Foreign Arbitration Proceedings

By Robert R. Lucic

On June 13, 2022, the United States Supreme Court unanimously ruled that foreign, private arbitration disputes do not have access to US federal courts to obtain orders for discovery from US citizens. Although the case, *ZF Automotive US, Inc. et al. v. Luxshare, Ltd.* did not receive the press of other, more controversial recent decisions, it was a clear indication from the Court that it was not willing to allow federal courts to become involved in enforcing discovery requests that clearly do not involve foreign governmental tribunals. This may strike some of us as contrary to the more open, freewheeling discovery that is the norm in the US and seems somewhat at odds with the general US policy favoring arbitration. But the dispute as to whether federal law allowed foreign, private arbitration panels to gather evidence from US citizens had led to a split among the circuits and now has been (mostly) definitively resolved. At issue was 28 U.S.C. §1782(a) which states:

> "The consolidated cases before the Court, on appeal from the 6th and 2nd Circuits, gave the Court a path to define the central issue, namely whether "foreign or international tribunal" included private arbitration panels."

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

The consolidated cases before the Court, on appeal from the 6th and 2nd Circuits, gave the Court a path to define the central issue, namely whether "foreign or international tribunal" included private arbitration panels. The answer was a definitive "no," although the history of §1782 left some doubt. Prior to 1964, §1782 applied to "any judicial proceeding" in "any court or foreign country." There is no question in the pre-1964 version that private arbitration panels were not included. The statute was changed, however, to apply to "foreign or international tribunals." The intent was to expand the scope, but to whom?

The consolidated case, *Alixpartners, LLP v. The Fund for Protection of Investors' Rights in Foreign States*, from the 2nd Circuit gives something of an unsatisfying answer. The 2nd Circuit was among the Circuit courts that had determined that §1782 did **not** apply to foreign private arbitration proceedings. However, the "tribunal" in that case was expressly sanctioned by the governments of Russia and Lithuania (in perhaps a simpler time) to resolve disputes. The 2nd Circuit allowed the discovery to proceed because, in its view, the governmental sanction meant that it was a "foreign or international tribunal." The Supreme Court disagreed, although admitting that *Alixpartners* presented a harder case than a purely private panel. It held that the *ad hoc* arbitration panel in that case was not sufficiently "imbued" with governmental authority. The central question for all of us practitioners is to determine whether the foreign nations "intend" to have the tribunal exercise governmental authority.

If this all seems a bit esoteric, it is, until you are confronted with the necessity of finding evidence outside of the jurisdiction you are in. Many of us represent multinational clients and most of our US business clients have complex foreign supply chain and distribution issues. Many of those supply chain or distribution contracts include arbitration clauses that provide for private arbitration proceedings before panels throughout the world.

My firm has the privilege of being a member of Lex Mundi, a global association of independent law firms, with member firms in 125 countries, with over 22,000 lawyers. We recently created a free guide for all lawyers (not just Lex Mundi members) for gathering evidence in foreign jurisdictions, which was begun during our virtual Asia Pacific Meeting of the Lex Mundi Litigation, Arbitration, and Dispute Resolution Practice Group in 2021. We learned from our colleagues that obtaining discovery (that many of us in the US take for granted) can be extremely difficult and time consuming and requires an enormous amount of planning. It is extremely helpful to have local firms that know the courts and procedures, and to line them up early to help. The free guide can be accessed at https://interactiveguides.lexmundi.com/lexmundi/gathering-evidence-in-aid-of-foreign-litigation.

Bob Lucic is Sheehan Phinney's liaison with Lex Mundi, the world's leading association of independent law firms. He is currently Regional Vice Chair for North America of their Litigation, Arbitration and Dispute Resolution Practice Group and is the Chair Emeritus for the Environmental Practice Group.

Focus on Bankruptcy Law

Can a Distribution to Equity Owners for Payment of Taxes Arising from Pass-Through Profits Constitute a Fraudulent Transfer?

By Joseph A. Foster, Christopher M. Dube, and Scott H. Harris


Foster


Dube


Harris

The vast majority of entities formed are set up to pass the federal tax attributes of the company's operations through to the owners. These so-called "pass-through" entities include limited liability companies and corporations that elect S corporation status. Passing the tax on profits through to the owners avoids tax at the entity level.

A potential problem with "pass-through" entities is that, while the tax liability flows automatically to the owners, the company does not automatically distribute sufficient cash to pay the resulting tax. The company could, for instance, reinvest its profits, leaving the owners with a large tax bill that they must cover out of their own pockets. To ensure the equity owners' ability to pay the tax, limited liability companies and S corporations generally make distributions to cover the tax liability.

What happens when a profitable company that made tax distributions suffers a catastrophic financial reversal that lands the company in bankruptcy? In a number of cases, a bankruptcy trustee has sued the recipients of the tax distributions to recover the payments, alleging that the payments constitute a constructively fraudulent transfer. To make out the claim, the trustee must prove two key elements.

> "Although cases addressing the issue are few, some courts have held that a tax distribution can never be for reasonably equivalent value because the tax was due from the equity owners, not the bankrupt company."

First, the trustee must prove the entity was insolvent at the time the tax distribution was made or became so as a result of the distribution. Proving that an entity was "insolvent" under the Bankruptcy Code or the Uniform Fraudulent Conveyance Act is complex and often requires extensive discovery and costly expert witness analysis.

Second, the trustee must prove that the tax distribution was made for "reasonably equivalent value." While the term is not defined in the relevant statutes, some courts have held that a party receives reasonably equivalent value for what it gives up if it gets "roughly the value it gave." *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 631 (3d. Cir. 2007). *In re Feeley*, 429 B.R. 56, 63 (Bankr. D. Mass 2010) (If a court determines that some value was exchanged, it should then "compare what was given with what was received.") The policy here is that if the transfer made was for roughly equivalent value, it was fair to the entity and its other creditors.

Although cases addressing the issue are few, some courts have held that a tax distribution can never be for reasonably equivalent value because the tax was due from the equity owners, not the bankrupt company. *See In re SGK Ventures, LLC*, 521 B.R. 842, 859 (Bankr. N.D. Ill. 2014) ("Assuming that SGK had committed to pay its members enough cash to satisfy their tax liability for a given year, this arrangement—even if called a contract—was equivalent to a corporate dividend; fulfilling the commitment would not produce any benefit to SGK"). *See also In re TC Liquidations LLC*, 463 B.R. 257, 271 (Bankr. E.D.N.Y. 2011) ("It was improper for the Debtors to issue the Tax Dividends and essentially pay Defendants' personal tax obligations. There is no shown consideration provided to the Debtors for these payments.") These courts ignore that the company's choice to form as a limited liability company or elect S corporation status avoids double taxation, and that may enhance the company's ability to raise and conserve capital.

Other courts find reasonably equivalent value if the bankrupt company's organic documents or some other binding agreement obligates the company to make the tax distribution. *See, In re Northlake Foods, Inc.*, 715 F.3d 1251 (11th Cir. 2013) (in which the shareholder agreement provided that if the corporation's income ever becomes taxable to the shareholders, the corporation shall pay out of the dividend, the tax distribution was found to be for reasonably equivalent value because it conferred an economic benefit on the company); and *In re Kenrob Information Technology Solutions, Inc.*, 474 B.R. 799 (E.D. Va. 2012) (testimony of shareholders that there was an agreement to make tax distributions was sufficient to conclude reasonably equivalent value was given).

The obligation to make the payment in a governance document need not be absolute to satisfy the requirement. In the case of *In re F-Squared Investment Management, LLC*, 633 B.R. 663 (Bankr. D. Del. 2021), the debtor converted from a C corporation to a limited liability company taxed as a partnership; a change that required shareholder approval. To convince the shareholders to vote in favor of the conversion and assuage their fears about pass-through tax liability, a provision was included in the operating agreement to pay taxes, but it was not absolute. It provided:

> 5.1 (a) Tax Distributions. The Members shall be entitled to receive distributions from the Company only at the following times:
>
> (1) With respect to any taxable year prior to the year in which the Company liquidates or sells all or substantially all of its assets, the Company will use reasonable efforts to distribute to each Member on an annual basis…

The trustee argued that the "reasonable efforts" language was not enough because the distributions were not mandatory. The Court disagreed. It focused on the "shall be entitled" language in the prefatory portion of the section of the operating agreement and noted that under Delaware law, "reasonable efforts" creates an affirmative obligation to act. F-Squared, 633 at 675.

One takeaway from the cases is to be sure that the operating agreement, shareholder agreement, or other governance document obligates the company to make tax distributions to the greatest extent permitted by law. While the law in the First Circuit remains undeveloped, having a clear contractual obligation to point to makes it less likely that the equity owners will have to disgorge payments they received and used to pay the Internal Revenue Service. In addition, if a company is in financial distress, but has made tax distributions to its equity owners, check to see what the governance documents provide and assess the risk of a claim being made before recommending to the owners to file a bankruptcy case.

Joseph Foster is a director in McLane Middleton's Corporate Department. He can be reached at (603) 628-1175 or joseph.foster@mclane.com.

Christopher Dube is a director in McLane Middleton's Corporate Department. He can be reached at (603) 628-1437 or christopher.dube@mclane.com.

Scott Harris is a director in McLane Middleton's Litigation Department. He can be reached at (603) 628-1459 or scott.harris@mclane.com.

Even Lacking Formal Notice, a Creditor with Actual Knowledge Can Doom a Late-Filed Claim

By Ryan M. Borden

Deadlines. We practice in fear of missing a deadline. In bankruptcy, the most common deadline is the proof of claim deadline. The deadline is powerful: the official court notice tells your client that "If you do not file a proof of claim by the deadline, you might not be paid on your claim."[1]

But, as careful as lawyers can be, sometimes the deadline is missed, and for good reason. Perhaps the debtor did not list the client or the address was wrong. Is your client out of luck, or is there compassion for creditors in the Bankruptcy Code?

The Bankruptcy Code has compassion for creditors who, through no fault of their own, were unaware of the bankruptcy case. But if the creditor had notice of, or actual knowledge of, the bankruptcy proceeding in time to file a claim, the creditor misses the deadline at its peril.

The deadline is created by Bankruptcy Rule 3002. The effect of missing the deadline is statutory and is that the claim is disallowed and no payment is permitted. 11 U.S.C. §502(b)(9). The statute creates two exceptions: (a) as permitted by 11 U.S.C. §726; or (b) if the Bankruptcy Rules permit the tardily-filed claim.

The first exception is Section 726(a), which governs the distribution to unsecured creditors in a Chapter 7 case. The distribution is first to priority claims. If a priority proof of claim is filed late, it is still allowed and paid if it is filed before ten (10) days after the mailing of the summary of the Trustee's final report. 11 U.S.C. §726(a)(1)(A). In Chapter 7, a priority claim can be very late and still be paid.

After priority claims are paid in full, Section 726(a) requires payment to timely-filed general unsecured claims and tardily-filed claims if the creditor "did not have notice or actual knowledge of the case in time for timely filing" and if the claim is filed "in time to permit" its payment. 11 U.S.C.A. § 726 (a)(2)(C). In Chapter 7, a general unsecured claim can be filed very late and still be paid if the creditor had neither notice nor actual knowledge of the bankruptcy.

After the other claims are paid in full, Section 726(a) requires payment to tardily filed general unsecured claims. In Chapter 7 even egregiously tardy claims have some (small) hope of payment.

In Chapter 13 the statute is not so compassionate to creditors: only "allowed" unsecured claims are paid. 11 U.S.C. §1325(a)(4). Creditors must look to the Bankruptcy Rules for compassion.

The rule providing solace to late-filed creditors is Bankruptcy Rule 3002(c)(6)(A), which allows a claim to be considered timely filed if (1) notice to the creditor was insufficient (2) to permit the creditor a reasonable time to file a proof of claim (3) as a result of the debtor's failure to timely file its list of creditors. It's important to note that this rule is scheduled to change on December 1, 2022. After that, the rule will be that the Bankruptcy Court may grant an extension if "the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim." Fed. R. Bankr. P. 3002(c)(6) (Eff. 12/1/2022).

What if a creditor does not receive formal notice, but has actual knowledge of the bankruptcy case and still fails to file? The most likely answer for a non-priority unsecured claim is they are out of luck; a general unsecured creditor with actual knowledge of the bankruptcy case likely cannot obtain relief under Rule 3002(c)(6)(A) if it failed to protect its interest by filing a timely claim.

The answer is probably bad for the late creditor in Chapter 7 cases, because in Chapter 7, the Bankruptcy Code provides that a general unsecured creditor with actual knowledge of the bankruptcy is required to file on time to be paid with other general unsecured creditors. The Rule cannot countermand the statute, see 28 U.S.C. § 2075, so the rule has to be understood to incorporate the statute's treatment of actual knowledge. Where the rule has to have a meaning consistent with the statute in Chapter 7, and where the rule applies with same words in both Chapters 7 and 13, it must have the same meaning in Chapter 13: actual knowledge debars relief from the deadline.

The case law is consistent with that understanding and establishes that actual knowledge of the case is sufficient to satisfy due process, imposes a duty to monitor the case claim deadline, and precludes relief. *See In re Gaffney*, No. 19-71492, 2020 WL 6066004, at *7 (Bankr. C.D. Ill. Sept. 29, 2020); *In re Vrusho*, 634. B.R. 660, 669 (Bankr. D.N.H. 2021) (*citing In re San Miguel Sandoval*, 327 B.R. 493, 510 (B.A.P. 1st Cir. 2005)); *see In re Sun Prop. Consultants, Inc.*, 629 B.R. 682, 704 (Bankr. E.D.N.Y. 2021) (*citing In the Matter of Pence*, 905 F.2d 1107, 1109 (7th Cir. 1990) ("[d]ue process does not always require formal, written notice of court proceedings; informal actual notice will suffice."); *In re Price*, 2019 WL 2895006 (Bankr. W.D. Va. July 3, 2019) (Actual notice is sufficient); *See In re Slaiby*, 50 B.R. 245, 249 (Bankr. D.N.H. 1985) (*citing Matter of Derrico Constr. Corp.*, 10 B.R. 553, 555 (M.D. Fla. 1981) (actual notice "from whatever source" effective); *In re Davis*, 9 B.R. 487(S.D. Fla. 1982) (oral notice sufficient)).

If a creditor is omitted from the list of creditors but has knowledge of a bankruptcy case in time to file a claim, it has a duty to discover the deadline and file its claim.

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1. Official Forms B 309 B, B 309 D, https://www.uscourts.gov/forms/bankruptcy-forms.

Director and Officer Liability: Does Financial Distress Change Fiduciary Duties?

By Christopher Candon

In the wake of the COVID-19 pandemic and recent economic instability, companies are being forced to assess their financial health and stability. While most will weather the storm, many companies may find the past few years have overwhelmed their ability to continue operating as they once had, and even a return to "normal" will not be a sustainable business model. If a company finds itself facing insolvency, or approaching it, its directors and officers must continue to fulfill their fiduciary duties. However, directors and officers should take care to identify to whom these duties are owed as the financial health of the company changes over time. How these obligations function during solvency, insolvency, and the "zone of insolvency" requires careful consideration.

During the normal course of business, directors and officers (D&O) owe fiduciary duties to the company. These duties include the duty of care and the duty of loyalty. Within these duties there is also the duty of good faith.

The *duty of care* requires D&O to use that amount of care which ordinarily careful and prudent persons would use in similar circumstances, and to consider all material information reasonably available. *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 749 (Del. Ch. 2005); *See also Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985); Robert Clark, Corporate Law Section 3.4, 123 (Aspen Publishers, Inc. 1986).

The *duty of loyalty* prohibits the fiduciaries from taking advantage of their beneficiaries by means of fraudulent or unfair transactions. Robert Clark, Section 4.1 at 141. *See also Lewis v. Vogelstein*, 699 A.2d 327 (Del. Ch. 327); Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983). Directors must be in a position to base their decisions on the merits of the issues rather than being governed by extraneous considerations or influences, including their own personal interests. Directors should be disinterested and independent in their decision making.

The *duty of good faith* requires that directors act in what they honestly believe to be in the corporation's best interest rather than any other interest another director might have.

Business Judgment Rule: Liability Considerations

Generally speaking, D&O are protected from decisions that go awry by the "business judgment rule." Under that rule, a director or officer, in making an informed decision in good faith with a rational business purpose, will not be second-guessed by a court if the decision turns out badly. D&O should take care to review all reasonably available materials and information concerning the subject matter of any decision, and the board should actively and critically discuss and evaluate all decisions. Courts generally presume that all directors are acting within the business judgment rule; however, this presumption can be rebutted by a plaintiff in court, which then shifts the burden to the directors to prove that the transaction in question was "entirely fair."

Various states permit corporations to eliminate or limit the personal liability of directors for breaches of the duty of care in their certificates of incorporation. However, these exculpatory provisions typically do not allow a corporation to limit the personal liability of directors for breaching the duty of loyalty. In addition to limiting director liability through exculpation provisions, some states allow directors protection if they rely in good faith on the corporation's records, as well as employee and professional advisor information, opinions, and statements. Thus, directors generally will not be held liable for the consequences of their exercise of business judgment. This is true even for decisions that appear to have been clear mistakes unless certain exceptions apply, such as fraud, conflict of interest, or gross negligence.

Financial Distress: Shifting of Fiduciary Duty Obligations?

Given the current economic uncertainties and continued distress caused by COVID-19, companies are increasingly being called upon to evaluate their financial stability. As a company begins to experience operational difficulties and solvency concerns, D&O need to frame their decisions with those realities in mind and consider to whom fiduciary duties may be owed.

Much has been made about the potential shifting of fiduciary duty obligations when a company enters the "zone of insolvency." *Credit Lyonnais Bank Nederland, N.V. v. Pathe Commc'ns Corp.*, No. CIV. A. 12150, 1991 WL 277613, at *34 n.55 (Del. Ch. Dec. 30, 1991). When this occurs, "circumstances may arise when the right… course to follow for the corporation may diverge from the choice that the stockholders (or the creditors, or the employees, or any single group interested in the corporation) would make if given the opportunity to act." *Id.* Following *Credit Lyonnais*, some courts and commentators determined that when a corporation approaches the "zone of insolvency," that D&O fiduciary duty obligations shift to include creditors. This approach, however, has been reigned in over the years, and the shifting of fiduciary obligations under Delaware corporate law has been narrowed.

In decisions subsequent to *Credit Lyonnais*, the Delaware courts clarified that the "zone of insolvency" has no implications for fiduciary duty claims. "The only transition point that affects fiduciary duty analysis is insolvency itself." *Quadrant Structured Products Co. v. Vertin*, 115 A.3d 535, 546 (Del. Ch. 2015). At the point of insolvency, creditors have derivative standing to enforce the fiduciary duties that are owed to the corporation, but they cannot bring direct claims for breach of fiduciary duty. *See N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 103 (Del. 2007); *Quadrant Structured Products Co. v. Vertin*, 102 A.3d 155, 176 (Del. Ch. 2014). This derivative standing right exists because when a corporation becomes insolvent, there is no longer any equity. As a result, in insolvency, creditors become the beneficiaries of the corporation's residual value. *Global Asset Capital, LLC v. Rubicon US REIT, Inc*. CA 5071-VCL Tr. at 59. (Del. Ch. Nov. 26, 2009). And because directors owe fiduciary duties to the corporation itself for the benefit of its residual claimants, when the corporation is insolvent the fiduciary duties shift and expand to include creditors on a derivative basis.

A corporation is deemed insolvent for purposes of determining whether creditors have derivative standing in two circumstances: (1) balance sheet insolvency – when a corporation's liabilities are greater than the fair market value of its assets; or (2) equitable cash flow insolvency – when a corporation is unable to pay its debts as they come due. However, the exact point in which the corporation becomes insolvent may not be easily determined, further complicating and increasing the need for D&O to be fully informed in carrying out their fiduciary duties.

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The New Hampshire Homestead Exemption Right: Is Double-Dipping Allowed?

By Richard McPartlin

The strong residential housing market has created substantial value that bankruptcy debtors have sought to keep from creditors through the New Hampshire homestead exemption. The exemption is $120,000 of statutory protection for both the owner and spouse. If both spouses own the marital homestead as joint tenants, then the amount of the homestead is $240,000 ($120,000 for each owner) but does that result change if only one of the spouses owns the residence?

In a series of opinions issued during the last eight months, the Bankruptcy Court has provided an answer: when there is only one owner, there is only one exemption amount – $120,000 not $240,000. *See In re Hopkins*, 2021 BNHH 004 (November 5, 2021); *In re Delong*, 2021 BNH 005 (November 22, 2021); and *In re Brady*, 2022 BNH 003 (June 3, 2022).[1]

In New Hampshire, the homestead exemption right is created by RSA 480:1, which states:

> Every person is entitled to $120,000 worth of his or her homestead, or of his or her interest therein, as a homestead. The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person but shall not exist in the land upon which the manufactured housing is situated if that land is not also owned by the owner of the manufactured housing. NH RSA 480:1

The homestead right of 480:1 is extended to the owner's spouse by RSA 480:3-a, which states:

> The owner and the husband or wife of the owner are entitled to occupy the homestead right during the owner's lifetime. After the decease of the owner, the surviving wife or husband of the owner is entitled to the homestead right during the lifetime of such survivor. NH RSA 480:3-a.

The Court began its recent exploration of homestead with *Hopkins.* In *Hopkins*, the debtor and his deceased, non-debtor spouse had owned the marital home jointly. During the course of a Chapter 13 bankruptcy, the property was sold, and the Debtor sought to keep $240,000 of sale proceeds by asserting both his own 480:1 exemption and, as the surviving spouse, that of his wife pursuant to 480:3-a. The Bankruptcy Court held that 480:3-a was designed to protect a homestead interest only where a spouse lacks their own ownership interest. As the debtor was an owner of the property, 480:3-a was inapplicable. The Court did not answer the question: one owner, two spouses, how many exemptions?

Shortly after *Hopkins,* in *Delong*, the Court hinted at its answer. In *Delong,* a debtor seeking to strip off a judicial lien against the marital home under 11 U.S.C. §522(f), asserted both his own $120,000 homestead exemption and an additional $120,000 for his non-owner spouse pursuant to 480:3. Unlike in *Hopkins*, 480:3-a was arguably applicable as the debtor's spouse held no ownership interest in the marital home. However, the Court's opinion did not need to reach the question. Rather, holding that the language of §522 expressly allows the avoidance of a lien that impairs "**an exemption to which the debtor would have been entitled,**" the Court determined that the "Bankruptcy Code does not provide for the avoidance of a lien. as impairing an exemption to which the **non-debtor's spouse** would have been or is entitled." The Court left open the question of what the nature of the non-debtor spouse's rights, if any, might be.

The Court definitively answered that question in its opinion dated June 3, 2022, in *In re Brady*: where there is one owner, the total exemption is limited to $120,000. In *Brady*, a debtor seeking to protect equity in a marital home owned solely in her name, asserted both her own $120,000 480:1 exemption and an additional $120,000 exemption on behalf of her non-debtor, non-owner spouse pursuant to 480:1 (for a total claimed exemption of $240,000). The Court noted that while the first sentence of 480:1 did not mention "ownership," the second did, and that requiring ownership for one form of housing and not the other would be "nonsensical" from a public policy standpoint. Reading the statute as a whole, the Court held that the 480:1 required ownership and that occupancy alone was insufficient to give rise to a homestead exemption right. The non-debtor spouse's lack of an ownership interest was fatal to the second 480:1 claim.

Examining the issue further, the Court noted that characterizing the non-debtor spouse exemption claim under 480:3-a would not have changed the outcome. The Court found that the 480:3-a right to assert the dollar value of the homestead exemption arises in the non-owner spouse only upon the death of the owner spouse. The spouses were not entitled to two homestead exemptions because allowing such a "double-dip" would render the 480:1 ownership requirement irrelevant.

The Bankruptcy Court's recent opinions have clarified that the homestead right in New Hampshire arises out of NH RSA 480:1, which requires ownership and occupancy. Although NH RSA 480:3-a provides a non-owner spouse with certain rights to that homestead right, it does not function to double it.

Endnote

1. The *Brady* Debtor has filed a Motion to Reconsider the Court's ruling citing Judge Wageling's Feb 2, 2015 decision in *Robitaille v. Roy* (Case #218-2014-cv-00406), and legislative history regarding the 1961 revision of the Homestead Act, which resulted in the enactment of RSA 480:3-a and the 1983 amendment to 480:1 regarding manufactured homes. The Chapter 13 Trustee has responded, contending that grounds do not exist to reconsider and that the legislative history support rather than undermines the Bankruptcy Court's order. The Motion to Reconsider is set for hearing on August 3, 2022.

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With Reinstated Debt Limit, Subchapter V Remains Viable Option for Struggling Small Businesses and Individuals

By James S. LaMontagne

On February 19, 2020, the Small Business Reorganization Act (SBRA) was enacted. The SBRA amended the Bankruptcy Code (the Code) to add Subchapter V, a new streamlined chapter 11 process for small businesses and individuals. The CARES Act amended the SBRA and Subchapter V by temporarily increasing, until March 26, 2021, the debt-eligibility limit for debtors from $2,725,625 to $7,500,000. The debt-eligibility limit of $7,500,000 was then extended to March 27, 2022, under the COVID-19 Bankruptcy Relief Extension Act of 2021.

The United States Senate was unable to address a further extension of the debt-eligibility limit prior to March 27, 2022, and as a result, on March 28, 2022, the debt-eligibility limit for a Subchapter V debtor returned to the original limit of $2,725,625. Four days later, on April 1, 2022, the debt-eligibility limit increased to $3,025,725 by operation of section 104 of the Code; however, this limit, without Congressional intervention, would not have been increased for another three years, potentially preventing many small businesses and individuals from utilizing the streamlined chapter 11 process.

> "With the reinstatement of the $7,500,000 debt-eligibility limit, Subchapter V will continue to be a viable option for many struggling small businesses and individuals. In the more than two years since the SBRA was enacted, during which the debt-eligibility limit was $7,500,000 for all but approximately four months (sans the retroactive effect of the Act), Subchapter V has proven to be a success."

Fortunately for many prospective debtors, the Bankruptcy Threshold Adjustment and Technical Corrections Act was signed into law on June 21, 2022, reinstating the Subchapter V debt-eligibility limit of $7,500,000 for another two (2) years until June 21, 2024. The reinstatement of the $7,500,000 debt-eligibility limit was also made retroactive to March 27, 2022, thereby potentially protecting those Subchapter V cases filed between March 28, 2022 and June 20, 2022 from debt-eligibility limit issues arising from the reduction of the debt-eligibility limits in March 2022.

With the reinstatement of the $7,500,000 debt-eligibility limit, Subchapter V will continue to be a viable option for many struggling small businesses and individuals. In the more than two years since the SBRA was enacted, during which the debt-eligibility limit was $7,500,000 for all but approximately four months (*sans* the retroactive effect of the Act), Subchapter V has proven to be a success.

According to the American Bankruptcy Institute's SBRA Resource Page, as of June 29, 2022, 3524 Subchapter V cases have been filed in the United States since SBRA's enactment. The US Trustee's website reports that for the fiscal years 2020 and 2021, 53 percent of Subchapter V plans were confirmed versus 22 percent of non-Subchapter V small business plans during the same time period. During Fiscal Years 2020 and 2021, Subchapter V cases also had lower conversion rates than non-Subchapter V small business cases (nine percent versus 20 percent) and lower dismissal rates (23 percent to 47 percent). Finally, Subchapter V cases are being confirmed more quickly than non-Subchapter V small business cases with median months to confirmation of 6.1 versus 10.3 for non-Subchapter V small business cases.

Subchapter V affords a debtor all the advantages of a traditional chapter 11 case (the ability to restructure and cram down debt, the ability to reject unfavorable leases and contracts, and, at the end of the process, produce a financially healthier debtor), but Subchapter V also offers a quicker and less expensive process. In a Subchapter V case:

a) The debtor remains in possession of its assets and operates its business;
b) No creditor committee is appointed unless ordered by the court for cause;
c) A trustee is appointed in each case and his/her primary task is to facilitate a consensual plan of reorganization, thereby providing the debtor and creditors with an independent third party to assist in expediting the process;
d) The debtor must appear before the court for a status conference within 60 days of the bankruptcy filing and file a status report on the progress of its plan 14 days prior to that status conference;
e) No disclosure statement is required, thereby eliminating the time and expense associated with drafting and obtaining approval of a disclosure statement;
f) Only the debtor can file a chapter 11 plan;
g) The debtor must file its plan within 90 days of the order for relief unless such time is extended by the court;
h) Confirmation requirements are made easier: a debtor does not need a class of creditors to accept its plan provided that the plan does not discriminate unfairly and is fair and equitable to each class of claims that has not accepted the plan;
i) The Absolute Priority Rule is not applicable in Subchapter V cases;
j) Administrative expenses may be paid over time through the plan; and
k) Debtors do not pay quarterly fees to the United States Trustee's office thereby reducing the debtor's costs in its chapter 11 case.

Subchapter V has proven to be a successful tool for struggling small businesses. The reinstatement of the $7,500,000 debt-eligibility limit for another two years ensures that a large number of struggling small businesses will continue to have access to the advantages of Subchapter V.

Jim LaMontagne is Sheehan Phinney's practice group leader of the Bankruptcy, Restructuring, and Creditor's Rights Group. His diverse practice includes the representation of clients involved in financially distressed situations, insolvency, and commercial disputes.

Focus on International Law

Enforcing War Crimes in Ukraine: The World is Watching

By Luke A. Webster and Ryan C. Ollis

(From L to R) Captain Ryan C. Ollis and Major Luke A. Webster.

Recent events in Ukraine have generated renewed focus on the Law of War. Through the fog of battle, Nuremberg Prosecutor Telford Taylor's admonition still holds true: those who take up arms do not cease to be moral beings. War does not grant license to kill for personal reasons but confers an obligation to not inflict suffering for its own sake. On the battlefield, rules matter. With the world watching, enforcement of the rules matters even more.

Russia's invasion of the Ukraine in February 2022 marked Europe's deadliest conflict in decades. Russia stands accused of repeated war crimes by Ukraine, non-governmental agencies, the United Nations, multiple nation states, and US President Joe Biden. Since the end of May, Ukraine's chief prosecutor, Iryna Venediktova, has reported more than 15,000 suspected war crimes, with hundreds more added daily. The Ukrainian military is also suspected of torturing and executing Russian detainees as revealed in video footage released in April 2022. But both countries are running very sophisticated propaganda campaigns, which have played a critical role in influencing media coverage, the conflict, and the alleged war crimes.

At a time when we can livestream the battlefield from our devices, the calls for justice are growing. Mass graves of bound civilians in Bucha, an attack on a theater in Maripol marked as a shelter for children, and the destruction of a railway station in Kramatorsk that caused excessive civilian casualties warrant the public's demand for action from the International Criminal Court. However, not since the Second World War has an international court convened to address serious war crimes of this nature and scale, and we are all watching closely. Russia's invasion of Ukraine is a critical test of the ICC's ability to hold persecutors from a world power accountable for gross human rights violations.

The Rules of War

In the face of chaos and harsh violence, is it idealistic to expect soldiers to fight honorably and follow national and international law? This is not just a pipe dream; the law of war demands it. Treaties like the Geneva Conventions and other international laws and agreements, require forces to maintain control and avoid action influenced by hatred, bloodlust, and wanton destruction.

War causes horrible suffering. The earliest cultures practiced rules for waging warfare, but the just war tradition did not originate until the 19th century and form the foundation for the international treatise followed today. Just warfare is comprised of two broad categories: the Hague Law, regulating the means and methods of warfare; and the Geneva Law, respecting and protecting the victims of war. The means and methods of warfare relate to military tactics, weapons and targeting guidance, protection of cultural property, and prohibitions of certain weapons. Concurrently, the Geneva Law, exemplified by the 1949 Geneva Conventions, confers certain protections on victims of war, like the wounded and sick, prisoners of war, and civilian populations. The Hague and Geneva laws culminate by their inclusion in the 1977 treaties that supplement the 1949 Geneva Conventions: Additional Protocol I (AP I) and Additional Protocol II (AP II). Both Ukraine and Russia are parties to the 1949 Geneva Conventions and AP I, along with several other regional and international treaties.

Military targeting operations are the basis for the most severe war crimes. To limit atrocities, military professionals must apply four critical principles to targeting decisions: military necessity, distinction, proportionality, and humanity. Necessity acknowledges that violence is justified to defeat the enemy, but humanity, on balance, prohibits those acts that cause unnecessary suffering, such as the use of chemical weapons. At the tactical level, distinction requires that targeting effects only be directed against military objectives. Proportionality accepts civilian harm, but not if it is excessive in relation to a direct and concrete anticipated military advantage or absent feasible precautions to protect civilians.

Prosecution Complexities

War crime prosecution, like any other, requires proof and persuasion. Evidence of civilian death and property destruction is not illegal, per se. Granted, a pattern of targeting civilians is powerful evidence. Decision makers may be held personally liable for illegitimate targeting decisions, but the proper application of law of war principles provides a layer of protection. Notably, review of battle judgements become increasingly complex when the enemy uses a school, orphanage, or hospital for command and control. This creates a possible dual-use object and blurs the lines of distinction. In addition, proportionality condones incidental civilian death to achieve mission accomplishment. Another accepted standard, the Rendulic Rule, which is based on prior International Military Tribunal precedent, precludes criminal liability due to a mistake of fact. In other words, a commander is only judged on the information available at the time of attack; information obtained later is irrelevant.

Enforcement Challenges

The International Criminal Court (ICC) bears responsibility for holding individuals accountable for serious war crimes. A legacy of the Nuremberg trials, which prosecuted key Nazi leaders in 1945, the ICC is a court of last resort investigating and prosecuting individual war criminals when states are unwilling or unable to act. This sometimes strikes close to home, with the ICC currently investigating American military actions in Afghanistan between 2003 and 2004.

Since its founding in 2002 in The Hague, the ICC has successfully prosecuted over 40 high-ranking politicians, warlords, and heads of state for genocide, war crimes, and crimes against humanity. Historically, the International Criminal Court has almost exclusively prosecuted individuals from smaller nations like Uganda, Libya, and the Democratic Republic of Congo.

The ICC now faces the challenge of prosecuting military leaders from a world power, unlikely to take any action. The ICC's prosecutorial power over war crimes in Ukraine remains uncertain. Notably, the ICC is limited by its lack of police force and reliance on individual states to arrest and extradite suspects. Russia is not a member of the ICC, nor bound to cooperate with the court, making suspect extraditions to The Hague unlikely. Ukraine is also not a member of the ICC but has accepted the court's jurisdiction since November 2013.

There are many legitimate critiques of the ICC. Spending over $1.2 billion over the past 12 years to convict three individuals from dozens of prosecutions, it is a slow, cumbersome, and expensive form of justice. However, the ICC remains invaluable for its ability to empower victims of war crimes, giving them a voice and venue on an international stage.

When applied as intended, the laws of war save lives, reduce suffering, and ensure dignity and respect to victims. Both civilians and combatants benefit from the promotion of peace and a hastier conclusion to hostilities. With continued global demands to prosecute serious war crimes, the ICC will be called to task and face its ultimate test. The question remains: can the ICC's power and importance reach beyond verdicts to empower war crime victims? The outcome will set a historic precedence that will forge the future of the laws of war. The ICC is capable of rising to meet the challenge with all the international support that gross violations of human rights deserve; the world is watching closely.

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Photo by Sergeant Mark Hayward, 197 Field Artillery Brigade Public Affairs Officer

Implementing the Hague Convention on the Civil Aspects of International Child Abduction in US Courts

By: Naomi Kalies McNeill

The Hague Convention on the Civil Aspects of International Child Abduction (the Convention) was signed in 1980 and entered into force in 1983. The goal of this treaty is to facilitate the expeditious return of a child under the age of sixteen wrongfully removed from one member country and taken to another, and therefore, the treaty aims to maintain the status quo custody arrangement before the wrongful removal. The drafters hoped that the treaty would deter parents from crossing international boundaries in search of a more sympathetic court in child custody disputes. As of 2021, 101 countries were parties to this Convention.

> "The recent US Supreme Court decision in *Golan v. Saada*, 142 S. Ct. 1880 (2022), addresses how US courts should balance those goals, particularly where an objection based on a grave risk of harm is raised."

For US courts to have jurisdiction to hear claims under the Convention, Congress had to pass implementing legislation. In 1988 Congress passed the International Child Abduction Remedies Act (ICARA) 102 Stat. 437, as amended, 22 U.S.C. § 9001 et seq. ICARA grants jurisdiction to both state and federal courts to hear petitions for the return of a child. ICARA mirrors the main provisions of the Convention and empowers US courts to determine rights under the Convention only, not to address any underlying custody claims.

Both the Convention and ICARA aim to achieve the expeditious return of children to their country of habitual residence while also protecting the interests of children and parents. Article 12 of the Convention requires the prompt return of the child, but Article 13(b) provides that return is not required if "[t]here is a grave risk that ... return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

Similarly, ICARA sets forth a burden-shifting procedure to determine the parents' rights while also respecting the custody determinations of foreign courts. Under § 9003(e)(1) of ICARA, the petitioning parent bears the burden of establishing, by a preponderance of the evidence, that the child was wrongfully removed or retained. If that burden is met, the objecting parent bears the higher burden of establishing that an exception to the return requirement applies. Section 9003(e)(2) creates a clear and convincing burden for exceptions set forth in Articles 13b or 20 of the Convention (the child would be exposed to grave risk of harm or a violation of basic human rights and fundamental freedoms if returned) and a preponderance of the evidence burden for exceptions set forth in Articles 12 or 13 of the Convention (more than a year passed since the removal, the child was removed with consent, the child is old and mature enough to object and does object to returning).

The recent US Supreme Court decision in *Golan v. Saada,* 142 S. Ct. 1880 (2022), addresses how US courts should balance those goals, particularly where an objection based on a grave risk of harm is raised. In *Golan*, the mother, a US citizen, married an Italian, and they had a child in Italy. The parties' relationship was marked by conflict and violence. When the child was two years old, the mother brought the child to the US to attend a wedding, but instead of returning to Italy, the mother and child moved into a domestic violence shelter. The father filed a petition for return of the child in the US District Court for the Eastern District of New York.

The District Court concluded that the mother had established that the child would suffer a grave risk of harm if returned due the evidence of domestic abuse. Following Second Circuit precedent, however, the court continued its analysis and ordered the child's return subject to "ameliorative measures." The Second Circuit position required the return of the child "if at all possible."

Over the course of the litigation in the Eastern District of New York and the Second Circuit, the US courts delved into the details of the parties' custody arrangements, ordering financial support to facilitate the mother and child's relocating to Italy and requiring the parties to obtain a restraining order from the Italian court prohibiting the father from having contact with the mother for one year. The Italian courts also ordered the father to undergo therapy, have supervised visits, and drop kidnapping charges brought against the mother. When all these provisions were in place, the District Court determined the child could be returned. The mother appealed, and the Second Circuit affirmed.

In a unanimous decision, the US Supreme Court reversed. The Court held that the Second Circuit's requirements that courts consider "ameliorative measures" and return the child "if at all possible" were not required by the Convention. The Court looked to the text of the Convention, applying the same theories of construction as when interpreting a statute, and found that the Convention vests courts with discretion to order return if an exception applies.

The Court determined that the "grave risk" inquiry is separate from any "ameliorative measures" inquiry, although for practical purposes they will often be combined. Additionally, the Second Circuit's rule requiring return "if at all possible" improperly focused the analysis on return over the other objectives of the Convention, such as protecting the interests of children and parents. Finally, there will be occasions where it is proper to decline to consider "ameliorative measures" because the risk of harm is so grave that return is not sensible: cases involving sexual abuse or where a parent has a history of refusing to follow court orders. Courts applying the Convention should remember that the Convention emphasizes expeditious determinations of petitions, so proceedings should be resolved quickly and should not usurp the role of the court actually adjudicating any custody dispute.

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Supreme Court At-a-Glance

June 2022

Employment Law

Appeal of Elba Hawes
June 3, 2022
Reverse and remand

- Whether the New Hampshire Compensation Appeals Board erred in determining the claimant was not entitled to workers' compensation benefits.

The claimant was injured on the way home to rest during a weather related shift break. He was in his personal vehicle and was disable from working. The insurance carrier denied benefits on the grounds that the injury was not causally related to him employment. The claimant appealed and the CAB reviewed the matter de novo finding the claim was barred by the "coming and going rule" and this appeal followed after a request for a rehearing.

Per RSA 281:-A:2 "to obtain workers' compensation benefits a claimant must shows that his or her injuries arose "out of and in the course of employment. Harrington v. Brooks, highlights that the claim must meet the three part test. Here, the claimant argued an exception to the "comings and goings rule" claiming a "special errand exception" where "special duties.. thus subject him to special travel risks." In evaluating the review of the claim, the Court compared and contrasted Donovan, Heinz, and Henderson concluding the claimant's injuries were compensable under the special errand exception. The Court found that the claimant was "acting within the course of his employment and in accordance with the directions of his employer at the time" when he left at noon. Furthermore, because he had been instructed to return for 8:00, his work day was not completed.

The Court concluded that the second and third elements of the Murphy test were met. The Court found the CAB did not reach the first element "whether the claimant's injury resulted from a risk created by the employment" but found as a matter of law that a "reasonable fact finder necessarily would reach a certain conclusion" based on the record and decided that where the vehicle crossed the center lane the risk was neither personal nor mixed. Appeal of Margeson. The Court reversed and remanded the CAB's decision because the travel home in the middle of the day was occasioned by the claimant's employment and the risk associated with the travel was employment created.

Douglas, Leonard & Garvey, P.C., of Concord, (Benjamin T. King on the brief and orally) for claimant. Mullen & McGourty, P.C., of Salem (Craig A. Russo on the brief and orally and Matthew Solomon on the brief) for the employer.

Criminal Law

State of New Hampshire v. Ernesto Rivera
June 3, 2022
Affirm in part, vacate in part and remand

- Whether the trial court erred in denying a motion to vacate prior convictions.
- Whether the trial court erred in rejecting the defendant's claim of ineffective assistance of counsel.

The defendant, by agreement of the parties, was sentenced in a single hearing in 2015 to an aggregate prison terms of 33.7 to 67 years from the charges of two separate jury trials. The parties agreed that *State v. Folds* rendered the defendant's armed criminal convictions unlawful and the defendant's move to vacate them was granted and were replaced with felon-in-possession convictions. The defendant was resentenced in a single hearing by agreement of the parties in 2020 to an aggregate prison term of 18 to 41 years. The defendant moved to vacate the sentences for his second trial was denied and an appeal followed.

The defendant argued that the sentencing decision violated his constitutional rights so the Court reviewed *de novo*. The Court disagreed with the defendant's argument related to the sentencing on convictions from the second trial. The Court found they disagreed with the defendant's reliance on the federal "sentencing package" doctrine because the parties agreed the defendant would be resentenced on all counts, including those from the second trial.

Next, the defendant argues the trial court violated his due process rights for the convictions in his second trial to the extent it increased those sentences. N.H.CONST. pt1. I, art.15. The Court agrees with the trial court that the defendant's reliance on case law is misplaced because the defendant was sentenced "anew" at the request of the parties. The original sentence was vacated not modified.

Due process requires the imposition of the increased sentence after appeal not be a result of "judicial or prosecutorial vindictiveness." Here, presumption of vindictiveness does not arise because the defendant was sentenced by two different judges. Therefore, to establish a due process violation the defendant is required to prove and the Court does not find "actual vindictiveness." The record establishes a reasonable basis for the increased sentences in the record where they considered aggravating factors and specific circumstances of the crimes.

Next, to prevail on his assertion of ineffective assistance of counsel in connection with his resentencing the defendant is required to meet both parts of the two prong test. The trial court rejected the defendant's assertion finding that in relation to the second prong, the defendant could not show the result would have been different. The Court sided with the defendant, and vacated the ruling on the prejudice prong, because an objection would have been sustained and the result would have been different. However, the Court highlights that just because the result would have been different doesn't mean the second prong is satisfied; it's an open question. The Court points out that the trial court must consider other counts in deciding sentencing. In doing so, the Court found that the aggregate prison term is no more favorable than the one imposed in 2020. On remand, the trial court may choose to address the first prong of the ineffective assistance of counsel test regarding whether the "agreement by the defendant's trial counsel to the resentencing process "fell below an objective standard of reasonableness." Strickland.

John M. Formella, attorney general and Anthony J. Galdieri, solicitor general (Elizabeth C. Woodcock, senior assistant attorney general, on the memorandum of law and orally) for the State. Christopher M. Johnson, chief appellate defender, of Concord, on the brief and orally for the defendant.

Administrative Law

Appeal of New Hampshire Division of

AT-A-GLANCE *continued on page 32*

At-a-Glance Contributor

Stacie Ayn Murphy Corcoran

2011 graduate of Suffolk University Law School, practicing in Mass. and NH

A Different and Better Nation

U.S. District Court Chief Judge Landya B. McCafferty, NH Supreme Court Associate Justice James P. Bassett, and US Senator Jeanne Shaheen at the citizenship ceremony at Strawbery Banke in Portsmouth on Monday, July 4. Justine Mompremier from Haiti and her daughter were among the 72 people from 32 countries sworn in as new US citizens.

On July 4th, 72 people from 32 countries were sworn in as new US citizens at a naturalization ceremony at Strawbery Banke in Portsmouth. The event was the first of its kind since the start of the pandemic, and was presided over by the Honorable Landya McCafferty, US District Court Chief Judge.

Associate Justice James Bassett of the state Supreme Court joined in welcoming the new citizens. He noted that his maternal grandfather, Johan Pietre Jorgenson, came from Denmark to America through Ellis Island in New York in 1905 as an orphan, knowing not a word of English. Immigration officials at Ellis Island changed his name to John Peter Johnson. In six years' time, Johnson got a job shoveling coal on a steam engine, learned English, and became a U.S. citizen. During World War I, he returned to Europe as a Dough Boy. Johnson could not have imagined that 101 years after he became a citizen, his grandson, Justice Bassett, would become a state supreme court justice.

Joined by three generations of his family, including his 96-year-old mother (Johnson's daughter), his son, and two grandchildren, Justice Bassett recalled, "When I was a young boy and my grandfather was well into his 70's, each Memorial Day, he would put on his army uniform from World War I, and he would march at the front of our town's Memorial Day Parade. There was no prouder American."

He told the new citizens that they too have earned the same rights and responsibilities, share the same dreams as his grandfather, and should feel the same pride.

"America will be a different and better nation," Justice Bassett said, "because you are now US citizens."

At-a-Glance from page 31

State Police
June 7, 2022
Affirm in part, reverse in part

- Whether the Personnel Appeals Board (PAB) erred by reversing the employees removal; and exceeded its statutory authority by ordering the employee's reinstatement subject to certain conditions.

The Court concluded that the Division failed to meet its burden of demonstrating "that the PAB's decision to reverse the employee's removal was clearly unreasonable or unlawful." Additionally, the Court concluded that the PAB "exceeded its authority by imposing certain conditions upon the employee's reinstatement. The PABs findings of fact are deemed prima facie lawful and reasonable and must be shown to be clearly unreasonable or unlawful by a clear preponderance of the evidence, while interpretations of statutes are reviewed de novo.

The Division asked the employee to request assessments from their treatment providers to determine if they were mentally able to perform their positions essential functions. They deemed their submissions "unresponsive," ordered an independent medical assessment, and removed the employee for non-disciplinary reasons. The employee appealed to the PAB.

The Division argued, and the Court disagrees, that the PAB erred in ruling that the assessments provided were responsive. The Division contends that an assessment is unresponsive because none of the responses "contained a written assessment regarding [the employee's] general state of health related to performing the essential functions of his position nor the specific nature of his psychiatric diagnosis, as required by the rule." Per 1003.02(a). The Court was unpersuaded because nothing in the request sent to the providers requested an assessment that met the requirements of Per 1003.02(a). Based on the Division's actions that provision was rendered inapplicable to the Court's review. Therefore, the Court only considered whether the employee's providers submitted the information that the Division actually requested in it's letters. The Court concludes and agrees with the PAB that the employee's providers were responsive.

The Division counters, and the Court disagrees, that the employer has the sole discretion to determine if an assessment is responsive. Therefore, their determination and request for an IME pursuant to Per 1003.02(e) is subject to review by the PAB. The Court concludes that the PAB did not err in their ruling and affirmed the PABs reversal of the employee's non-disciplinary termination.

The Division also argues, and the Court agrees, that the PAB exceeded its statutory authority (RSA 21-I:58) by imposing certain conditions on the employees reinstatement. The Court highlighted that RSA 21-I:58, I provides the PAB with the statutory authority to review and if appropriate order relief from a decision made by the "appointing authority." However, the Court concluded that the PAB exceeded that authority by imposing conditions related to work hours, treatment participation and continued jurisdiction. Those were ultra vires and therefore invalid. In contrast, the Court concluded that because the PAB did not err in ordering the employee's reinstatement, conditions related to reinstatement of rank, back-pay and benefits and removal of the letter of dismissal did not exceed the PAB's statutory authority to review termination decisions pursuant to RSA 21-I:58, I.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Jessica A. King, assistant attorney general, on the brief and orally) for the New Hampshire Division of State Police. Milner & Krupski, PLLC, of Concord, (John S. Krupski and Marc G. Beaudoin on the brief, Marc G. Beaudoin orally) for the respondent.

Constitutional Law

The State of New Hampshire v. Juan Alberto Monegro-Diaz
June 14, 2022
Affirm and Remand

- Did the circuit court err by ruling that a warrantless seizure violated Part I, Article 19 of the State Constitution and the Fourth and Fourteenth Amendments to the Federal Constitution.

The defendant moved to suppress all evidence obtained as a result of a motor vehicle stop. The defendant argued that the stop was contrary to Part I, Article 19 of the State Constitution and the Fourth and Fourteenth Amendments to the Federal Constitution because the officer lacked reasonable suspicion that the defendant was driving with a suspended license or to have identified him as the driver of the vehicle before initiating the stop.

The circuit court held a hearing and granted the defendant's motion to suppress. The State moved for reconsideration. The court denied the motion and reiterated that based on the totality of the circumstances "there was not an articulable suspicion for the stop." The Court reviewed the circuit court's findings de novo.

A traffic stop is a seizure for purposes of the State Constitution. Absent an exception, such as an investigatory stop, a warrantless seizure is per se unreasonable. The Court looked at the sufficiency of the officer's suspicion, focusing on the particular and objective basis and in light of all of the surrounding circumstances. The State, relying on Richter, argued that "based on proper investigative techniques the officer determined that the driver of the vehicle was the defendant, and the defendant had a suspended license." The Court in light of Richter agrees with the State that the following was reasonable: officer's use of mobile data terminal to search vehicle license plates and subsequent license status search. However, the Court points out, as the State acknowledges, that an "additional investigative step was necessary to identify the defendant as the driver of the vehicle." Dalton. The officer lacked reasonable suspicion to initiate the stop and the circuit court did not credit his testimony regarding the identification of the defendant because he couldn't remember certain details about the identification of the defendant and could not observe several descriptors of the defendant from his cruiser. The Court concludes that the circuit court's credibility finding is reasonable and supported by the evidence of the suppression hearing.

The State also relies on the "known association between the defendant and the owner of the vehicle" to support its reasonable suspicion argument and the Court disagrees. Without identifying the driver, holding the defendant's prior arrest was reasonable suspicion would run contrary to Part I, Article 19 of the State Constitution which requires "particularize and objective basis" warranting "intrusion into protected privacy rights." Therefore, the Court concluded that the circuit court properly ruled that the officer who stopped the defendant

NH Superior Court Judicial Assignments: July - September 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*
7/25/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
8/1/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
8/8/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
8/15/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard Ignatius	+Honigberg		+Bornstein MacLeod
8/22/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
8/29/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
9/5/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
9/12/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard Ignatius	+Honigberg		+Bornstein MacLeod
9/19/22	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Attorri St. Hilaire	+Kissinger Schulman Tucker	+Howard Will	+Smith	+Leonard	+Honigberg	+Ignatius	+Bornstein MacLeod
9/26/22	+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 6/21/22

lacked reasonable suspicion that the defendant was driving with a suspended license, so the Court affirmed and remanded the case.

John M. Formella, attorney general (Zachary L. Higham, assistant attorney general on the brief and orally) for the State. Dixon & Associates, of Lawrence, MA (Simon Dixon on the brief and orally) for the defendant. New Hampshire Association of Criminal Defense Lawyers, of Epping, (Matthew McNicoll on the brief and orally) as amicus curiae.

Contract Law

Dylan O'Malley-Joyce & a. v. Travelers Home and Marine Insurance Company
June 28, 2022
Affirm

- Whether the Superior Court err in granting a motion of summary judgement for the defendant.

Homeowners' property was damaged by leaks and they filed a claim with the insurance company. The two parties could not agree and the homeowner brought a claim against the insurer. At trial, the insurer moved for and was granted summary judgment. The homeowner did not move for reconsideration and filed an instant appeal.

On appeal, the homeowner contented that the trial court erred ruling their participation in the appraisal process barred their breach of contract and breach of implied covenant claims. Additionally, they argue that the insurer as not entitled to summary judgement because they failed to "demonstrate affirmatively" that it complied with certain regulatory rules. In contrast, the insurer contends that the homeowner's arguments are not preserved for the Court's review. The Court finds that because the homeowner's did not object and file a motion to reconsider after the summary judgment was granted, they failed to preserve them for the Court's review.

Nonetheless, the Court considers the legal consequences of the homeowner's failure to preserve their arguments. If the opposing party fails to object or file contradictory affidavits its up to the judge to apply the correct law to undisputed facts and review de novo. The Court is not inclined to waive preservation because the homeowner has not cited any cases. Additionally, they are not inclined to dismiss the appeal. Instead, they review the homeowner's appellate arguments under the plain error rule. Sup. CT. R. 16-A.

An error is plain if "governing law was clearly settled" and doesn't apply to questions of first impression. The homeowners contend that the trial court incorrectly viewed the appraisal clause as binding. Two court's have addressed this issue, and both rejected the contention that an appraisal provision is not binding unless it includes the word "binding." Farmer's Auto Ins. Ass'n v. Union Pac. Ry. Therefore, because this presents an issue of first impression any error is not "plain" the Court concludes that the homeowners failed to demonstrate plain error when they granted summary judgement for the insurer.

Steiner Law Office PLLC, of Concord (R. James Steiner on the brief and orally) for the plaintiffs. Primmer Piper Eggleston & Cramer PC, of Manchester (Doreen F. Connor on the brief and orally) for the defendant.

Supreme Court Orders

The Supreme Court reappoints Jackie Waters, the New Hampshire Judicial Branch's Access and Engagement Coordinator, to the Access to Justice Commission. Ms. Waters is appointed to serve a three-year term effective June 1, 2022, and expiring May 31, 2025.

Issued: June 16, 2022
ATTEST: Timothy A. Gudas, Clerk of Court Supreme Court of New Hampshire

◆

Pursuant to Supreme Court Rule 37(4), the Supreme Court appoints Attorney Stephanie Annunziata and Alyson Mahler to the Hearings Committee of the Attorney Discipline System. Each is appointed to serve a three-year term commencing June 20, 2022, and expiring June 19, 2025.

Issued: June 16, 2022
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆

In accordance with Supreme Court Rule 39(2)(a)(2), the Supreme Court appoints Sherry Bisson, clerk of the 9th Circuit Court – Nashua, to serve as a member of the Committee on Judicial Conduct (JCC) for a three-year term commencing July 2, 2022, and expiring July 1, 2025. Clerk Bisson is appointed to replace W. Michael Scanlon, clerk of Hillsborough County Superior Court North, whose term on the JCC expires July 1, 2022.

In accordance with Supreme Court Rule 39(2)(a)(2), the Supreme Court appoints Amy M. Feliciano, clerk of Hillsborough County Superior Court South, to serve as an alternate member of the JCC. Clerk Feliciano is appointed to replace Clerk Bisson as of July 2, 2022, when Clerk Bisson will become a member of the JCC and will cease to be an alternate member. Clerk Feliciano will serve the unexpired portion of Clerk Bisson's term as an alternate member, which expires July 1, 2024.

Issued: June 21, 2022
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆

In accordance with Supreme Court Rule 37(3)(a), the Supreme Court appoints Everett Grass, a non-attorney, to the Professional Conduct Committee (PCC). Mr. Grass is appointed to replace Richard Darling, who has resigned from the PCC. Mr. Grass will serve the unexpired portion of a three-year term, commencing immediately and expiring March 31, 2025.

Issued: June 21, 2022
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

◆

ADM-2021-0017, In the Matter of Elizabeth Doyon, Esquire

On November 19, 2021, Attorney Elizabeth Doyon was suspended from the practice of law in New Hampshire for failing to comply with the following New Hampshire bar licensure renewal obligations:

1. **Bar Dues and Court Fees** - Attorney Doyon had not paid the $100 in assessed delinquency fees associated with late payment of 2021/2022 bar dues. See Supreme Court Rule 42A.
2. **Trust Accounting Certification** - Attorney Doyon had not paid the $300 in assessed delinquency fees for late filing of the annual trust accounting certification, as required by Supreme Court Rule 50-A.
3. **NHMCLE Certification** - Attorney Doyon had not fulfilled NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending May 31, 2021, and had not paid the $300 in assessed delinquency fees.

Attorney Doyon filed a motion for reinstatement on June 16, 2022. The New Hampshire Bar Association has confirmed that Attorney Doyon's bar licensure renewal obligations are now satisfied.

Upon review of the motion for reinstatement, the court orders that Attorney Elizabeth Doyon be reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: July 7, 2022
ATTEST: Timothy A. Gudas, Clerk

New Hampshire Supreme Court Advisory Committee on Rules Notice Seeking Public Comment

The New Hampshire Supreme Court Advisory Committee on Rules is considering amendments to Supreme Court Rule 37(9-A) and 37(9-B). The proposed amendments are attached to this notice. Additional information is available at: **https://www.courts.nh.gov/sites/g/files/ehbemt471/files/inline-documents/sonh/report-of-subcommittee-established-to-review-supreme-court-rule-37-9-and-37-16.pdf**

Comments on 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 September 8, 2022. Comments may be emailed to the Committee on or before September 8, 2022 at: r**ulescomment@courts.state.nh.us**

Comments may also be mailed or delivered to the Committee by September 8, 2022 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 in the attachment may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

New Hampshire Supreme Court
Advisory Committee on Rules
By: Patrick E. Donovan, Chairperson
June 9, 2022
and Lorrie Platt, Secretary

Rule 37(9-A) Proceedings ~~Where~~ When an Attorney is Alleged to have Engaged in Conduct that Poses a Substantial Threat of Serious Harm.

(a) The attorney discipline office may file a petition for interim suspension or other relief in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public. **[If the attorney discipline office's petition alleges that an attorney's serious misconduct poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession, the provisions of (9-B),** ***Summary Suspension Procedure*****, shall apply.]**

(b) The term "substantial threat of serious harm" encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney's ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

(c) The petition must state with particularity the conduct alleged as well as **the bases upon which** ~~why~~ the interim suspension is necessary to prevent a threat of serious harm to the public. The attorney discipline office shall serve the petition on the attorney by first-class mail, and service shall be deemed complete upon mailing. Service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient. The attorney shall have twenty (20) days from the date of mailing to respond. If the attorney contests the interim suspension, the court will convene a hearing before a judicial referee or a hearing panel of the professional conduct committee. If the attorney consents to the interim suspension, the court may issue an order of interim suspension which will be effective immediately. If the attorney fails to respond to the petition, the allegations of the petition shall be deemed to be admitted, and no hearing shall be required.

(d) The hearing on the petition shall be recorded. The parties shall have thirty (30) days to prepare for the hearing, but no continuance of the hearing shall be granted absent extraordinary circumstances. The attorney discipline office shall have the burden to prove the need for interim suspension by clear and convincing evidence. The referee or panel may consider whether measures short of interim suspension adequately safeguard the public against the threat of substantial harm.

(e) After the hearing, the referee or panel shall issue a recommendation with regard to the need for interim suspension within ten (10) days, and shall forward that recommendation, with the record of the hearing, to the court. The court shall review the recommendation and the record. It may enter an order of interim suspension, dismiss the petition for interim suspension, issue an order directing the attorney to abide by specific conditions in lieu of interim suspension, or remand the matter for further proceedings. Any order issued by the court shall be effective immediately, and shall remain in effect unless it is modified by the court, or it is superseded by an order stemming from disciplinary proceedings arising out of the same or related conduct.

Rule 37(9-B) Summary Suspension Procedure.

(a) **[[The Summary Suspension Procedure shall apply to cases in which the attorney discipline office alleges that a lawyer has:**

(1) engaged in serious misconduct **which poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession, or;**

(2) failed] ~~failure of an attorney under investigation~~ to comply with a subpoena validly issued under Rule 37(8), or **[failed]** ~~failure of an attorney under investigation~~ to respond to requests for information ~~by attorneys~~ from the attorney discipline office made in the course of investigating a docketed matter. ~~may be grounds for summary suspension as set forth herein.~~

(b) "Serious misconduct," for purposes of this Rule, is any misconduct involving (1) mishandling or misappropriation of client or third party property or funds or (2) any other misconduct which by itself could result in a suspension or disbarment.

(c) The attorney discipline office may file a petition for summary suspension with this court, with copies to the subject attorney, which sets forth **[with specificity]** the violation of this section**[. The petition must state with particularity the conduct alleged as well as the bases upon which the summary suspension is necessary to prevent an immediate and substantial threat of serious harm to the public or the integrity of the legal profession. When the petition for summary suspension is based upon a lawyer's failure to respond pursuant to Rule 37 (9-B)(a)(2), the petition shall be]** supported by an affidavit of the attorney discipline office affirming the facts set forth in subsection (d). Upon such filing, this court may enter an order of summary suspension and may order such emergency relief as this court deems necessary to protect the public **[or the integrity of the legal profession.]**

(d) The affidavit in support of the petition for summary suspension shall affirm:

(1) that the lawyer was served with the subpoena or was mailed the request(s) for information at the latest address provided to the New Hampshire Bar Association;

(2) that the lawyer was afforded a reasonable period of time to **[comply]** ~~for compliance~~ with the request for information or the subpoena, and has failed to comply, to answer, or to appear; and

(3) that the subpoena or request for information was accompanied by a statement advising the attorney that failure to comply with the subpoena or request for information may result in summary suspension without further hearing.

(4) Notice of intent to seek summary suspension was both sent by certified mail and was provided in hand to the attorney or attempted in hand without success, despite reasonable efforts.

(e) Any suspension under the provisions of **[this Rule]** ~~subsection (c) above~~ shall be immediately effective upon entry of the suspension order and shall be subject to the provisions of Rule 37(16)(g).

(f) An attorney suspended under the provisions of subsection (c) above may request a hearing by the deadline set forth in the order of suspension. The hearing shall be conducted by a judicial referee or a hearing panel, and shall occur within ten (10) days of the effective date of the suspension. The judicial referee or hearing panel shall issue a report within ten (10) days of the hearing recommending whether the suspension should be lifted.

(g) **[In the interest of justice, the court may, upon the filing of a petition for reinstatement, terminate such suspension at any time after affording the attorney discipline office an opportunity to be heard.]** ~~If an attorney cures the failure to comply with the subpoena or other request for information, the attorney may file a petition for reinstatement with this court.~~ The petition **[for reinstatement]** shall be accompanied by an affidavit of compliance stating the extent to which **[the lawyer]** ~~he or she~~ has **[cured or abated the immediate threat of serious harm to the public or the integrity of the legal profession, or has otherwise]** complied with the subpoena or request for information. A copy of the petition and affidavit shall be sent to the attorney discipline office, which may file a response to the petition and affidavit within 10 days. The court may take such action on the petition as it deems appropriate.

(h) If not reinstated pursuant to Rule 37(9-B)(f) or (g), the attorney shall become subject to the provisions of Rule 37(17).

(i) A lawyer suspended in another jurisdiction pursuant to a procedure similar to that set forth herein may be suspended in this jurisdiction on a reciprocal basis as provided in Rule 37(12)

US District Court Decision Listing

June 2022

* Published

EIGHTH AMENDMENT; PRISONER CIVIL RIGHTS

6/24/22 *Gray v. Perkins et al*
Case No. 18-cv-874-JL, No Opinion Number

In this case, the pro se prisoner plaintiff claims that various medical and dental providers at the prison exhibited deliberate indifference to his dental needs, in violation of the Eighth Amendment. One of the defendants moved for summary judgment, asserting that the plaintiff (i) failed to exhaust available administrative remedies before filing suit, as required under the Prison Litigation Reform Act, and (ii) did not provide evidence to support his claim that the defendant exhibited deliberate indifference. The plaintiff argued that he cured his exhaustion defect by filing an amended complaint after his release, at which point, according to the plaintiff, he was no longer subject to the PLRA exhaustion requirement. The court declined to decide the summary judgment motion on the exhaustion issue, given the lack of binding authority on the question of whether a plaintiff can cure a prior exhaustion defect by filing an amended complaint after his or her release. The court granted the motion based on the evidentiary argument, however, finding that the plaintiff did not present any evidence to rebut the defendant's contention that he lacked the subjective awareness to act with deliberate indifference towards the plaintiff's dental needs during the relevant period. 13 pages. Judge Joseph N. Laplante.

FEDERAL CIVIL RIGHTS, NEGLIGENCE

6/17/22 *Sacco v. Hillsborough County House of Corrections, et al.*
Case No. 20-cv-447-JL, Opinion No. 2022 DNH 074

In a wrongful death suit by the Estate of a former detainee at the Valley Street Jail, a group of defendants (the Jail's third-party medical contractors) moved for summary judgment on the plaintiff's § 1983 claim for deliberately indifferent medical care and medical negligence claim under state law. The court granted the motion as to the § 1983 claim, finding that based on the undisputed factual record – and construing every inference from that record in the plaintiff's favor – no rational factfinder could conclude that the plaintiff could satisfy its burden of proving the "subjective" element of a deliberate indifference claim. The outside providers had no knowledge of the decedent's serious medical needs and the facts did not give rise to trial worthy theories of willful blindness or supervisory liability. As for the negligence claim, the court found that it could not conclude – as the defendants argued – that they owed no tort duties toward the decedent, and summary judgment was thus not warranted on that claim. 47 pages. Judge Joseph N. Laplante.

PERMISSIVE INTERVENTION; PSEUDONYMOUS LITIGATION

6/22/22 *Doe v. Town of Lisbon, NH*
Case No. 21-cv-944-JL, Opinion No. 2022 DNH 075

In a former police officer's suit to challenge his placement on New Hampshire's exculpatory evidence schedule, third party Eugene Volokh, a law professor at the UCLA School of Law, moved to intervene and to oppose the continued pseudonymity of the plaintiff. Professor Volokh argued that the presumption of open court proceedings and his common law and First Amendment right to access court records outweighed any interest the plaintiff had in maintaining pseudonymity in the lawsuit. The court granted Professor Volokh's motion to intervene, but denied his motion to oppose pseudonymity. It found that the balance of factors weighed in favor of allowing the plaintiff to continue proceeding under a pseudonym, in particular, the plaintiff's reasonable concern that he will be subjected to severe reputational damage absent anonymity, regardless of the outcome of this litigation, and the strong public interest (as reflected in RSA 105:13-d) that officers challenging placement on the EES should be allowed to maintain their anonymity during such challenges. 16 pages. Judge Joseph N. Laplante.

Classifieds

POSITIONS AVAILABLE

HEALTHCARE LITIGATION ATTORNEY - Associate position for the healthcare litigation defense group at mid-sized law firm. Offices in Hampton, NH and Woburn, Boston, and Hingham, MA. Opportunity to work on a team of highly experienced attorneys serving some of the most prestigious healthcare institutions and providers in New England. Competitive salary, excellent benefits, and reasonable billing requirement. Excellent verbal communication and writing skills required. Ability to work collaboratively with team members on cases. Candidates with admission to MA bar and at least 3 years of civil defense litigation experience will be considered, prior medical malpractice experience a plus. Send resume and cover letter, in confidence, to **tbright@hmdrslaw.com.**

ASSOCIATE ATTORNEY POSITION. Manchester-based law firm is presently seeking an attorney licensed in New Hampshire. Office mainly handles civil litigation, but willing to train the right candidate. Please submit resume, cover letter and writing sample to **accountmgr23@yahoo.com.**

ATTORNEY POSITION – Wolfeboro's oldest and most experienced law firm seeks an energetic attorney as an equity partner or junior associate. An excellent opportunity for a motivated attorney who desires to work in a busy general practice law firm and reside in the community. Salary based upon experience with future adjustments based upon performance. This is a long term position with growth and partnership potential or start as a partner. Please send resume to Randy Walker at Walker & Varney P.C., P.O. Box 509, Wolfeboro, NH 03894 (603-569-2000).

JUNIOR ASSOCIATE – Full time Junior Associate sought for busy firm in Keene, NH. 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; court complaints; discovery documents, motions, 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 taking the Bar in July 2022 are also encouraged to apply. Demonstrated experience or exposure to employment law is a plus, but not required. We are currently on a hybrid schedule of 1 day per week in office (otherwise remote, except for travel related to client matters). Please email a cover letter and resume to **spatriquin@wyattlegalservices.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 – Well established seacoast general practice law firm seeks an attorney licensed in New Hampshire (Maine license helpful but not required). Minimum of two years' experience preferred. Areas of law include commercial and residential lending, consumer collections, probate, business counseling, personal injury and general civil litigation. Candidate must have excellent communication and writing skills, be detail oriented, organized, and self-motivated. All replies are confidential. Salary commensurate with experience. Qualified candidates should forward a resume, cover letter and references to: Kalil & LaCount, 681 Wallis Road, Rye, NH 03870 at **hiring.nhlegal@gmail.com**

ASSOCIATE – Brennan, Lenehan, Iacopino & Hickey seeks a full-time associate with 1-3 years of experience and a NH license to join its dynamic law practice, including criminal defense, family law, estate planning, personal injury and general litigation. Strong writing skills, interpersonal skills and an ability to work in a fast-paced environment required. Must be comfortable working in a team setting and providing pre-trial litigation support and second chair trial support to start. Competitive wages, health insurance, retirement and payment of Bar dues and CLE credits. Please email resume to **khickey@brennanlenehan.com**.

ASSOCIATE ATTORNEY – Well established Claremont, New Hampshire Law Firm is seeking a motivated associate attorney. Buckley & Zopf is a busy general practice firm which has been serving the Sullivan County/Upper Valley area for over 75 years. We offer a small firm atmosphere with a fast track to partnership for the right candidate. Reply to **abelaire@buckleyzopf.com.**

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

ASSOCIATE: Wiberg Law Office, PLLC is seeking an attorney with 2+ yrs experience for felony and criminal defense and personal injury practice. Must be admitted to practice in NH. Unique fast track to partnership for the right candidate. Please send your resume in confidence to **trish@nhcriminaldefense.com.**

ATTORNEY: Partner track opportunity in a well-established Southern VT/NH law firm. Experience preferred, but newly admitted attorneys with a strong work ethic and motivation will be considered too. We are a general practice firm, licensed in NH and VT, with an emphasis on civil litigation, family law, real estate, estate planning, and probate. Competitive pay and benefits offered. Please send your resume and cover letter to: Steve Bonnette, Law Office of Steve J. Bonnette, P.C., 20 Central Square Suite 2A, Keene, NH 03431 or **sbonnette@bonnettelaw.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.

PARALEGAL – Manchester, NH Law Firm seeks a full-time paralegal for estate planning, estate administration and litigation support. Candidate must have a minimum of 3 years of experience drafting estate plans and administering estates and trusts, including probate court filings and inventory and account preparation. Must have excellent communication skills, ability to work independently and be detail oriented. Pay based on experience. Submit cover letter and resume to **Skaufold@russmanlaw.com**.

PARALEGAL – Getman, Schulthess, Steere & Poulin, P.A. a Manchester, NH law firm seeks a full time Paralegal with 3-5 years' litigation experience. Must be detail-oriented and have the ability to work independently. We offer a competitive salary and benefits which include medical, dental, disability and life insurance, 401 (k), paid vacation, sick leave, and holidays. Potential for remote work options. Send resume via email to **law@gssp-lawyers.com**.

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

FULL-TIME LEGAL ASSISTANT – Getman, Schulthess, Steere & Poulin, P.A. a Manchester, NH law firm seeks a full time legal assistant with 3-5 years' litigation experience. Must be detail-oriented, have experience with transcription and have the ability to work independently. We offer a competitive salary and benefits which include medical, dental, disability and life insurance, 401 (k), paid vacation, sick leave, and holidays. Potential for remote work options. Send resume via email to **law@gssp-lawyers.com**.

SERVICES

TITLE ABSTRACTING SERVICES – Landscape Title Services, LLC. Serving ME & NH. **landscapetitleservices@gmail.com**, 603-965-5816.

OFFICE SPACE

MEDICAL MALPRACTICE PLAINTIFFS' ATTORNEY admitted in 1977 seeks office sharing arrangement in Manchester, NH. Need one to two dedicated offices and occasional use of conference room. Please call 603-668-2343 on Mondays, Wednesdays or Fridays and ask for Johnna.

FOR RENT/HANOVER, NH. 918sf 2nd floor Main Street office suite next to the Hanover Inn. Windows on 3 sides. Part of former law office of Boies Schiller Flexner. $28 sf NNN. Contact: **ewarshell@gmail.com**.

WILL SEARCH

ATTENTION!!! **URGENT MATTER** – Requesting your help in locating the original or a copy of the Will of Nathan R. Smith (DOD 12/01/2021) of 141 Northeast Pond Road, Milton, New Hampshire. If found, please send the Will and /or any related documents to Attorney Carl W. Potvin, at PO Box 1776, Rochester, NH 03867, (email: **cpotvin@metrocast.net**), and/or call Atty. Potvin at 603-332-3669.

Associate Attorney Position
Littleton, NH
Live, Work & Play in New Hampshire's White Mountains

Ward Law Group is seeking an associate attorney for our Littleton office. The ideal candidate will have at least 1 year of experience in one or more of the following practice areas: civil law, family law, and estate planning. We are willing to train the right person, but our ideal candidate will have strong leadership and management skills as the expectation is that this attorney will take on a management role over the next few years.

This position offers competitive compensation and benefits commensurate with qualifications and experience. Interested candidates should submit a cover letter and resume to ljusczak@wardlawnh.com.

Ward Law Group, PLLC WardLawNH.com

BOYLE | SHAUGHNESSY LAW

Associate Attorney – Manchester

Boyle | Shaughnessy Law is a premier trial focused law firm with offices throughout the Northeast. We are currently hiring talented associate attorneys for our Manchester location.

This is an opportunity for an attorney who wants to develop skills and experience litigating cases. Associate attorneys at BSL work directly with experienced trial attorneys on high exposure, complicated civil matters. For those interested in the details of trial strategy and tactics, there are significant opportunities for professional and financial growth. Our firm's benefits and professional offices offer a good work life balance.

The ideal candidate will:
- Want to become a skilled trial attorney
- Want to work in a team focused environment
- Have NH licensing

BSL offers excellent benefits, including the following:
- Health/Dental/Vision/Life/STD/LTD Insurance, Paid Parental Leave, Flexible Schedule, 401(k) + Matching, Wellness Benefit, Corporate Discounts, FSA, Commuter Plans

If you are interested in joining our team, please submit a letter of interest and resume to **employment@boyleshaughnessy.com**.

Experienced Trust and Estate Attorney

Orr & Reno PA is seeking an experienced (6-9 years) Trust and Estate attorney. The right candidate will be experienced in estate planning, and estate and trust administration, including federal gift, estate, GST, and fiduciary income taxes. Business succession planning is a plus. The candidate would join our expanded Trusts and Estates practice area, strengthened by the addition by merger of Flood, Sheehan & Tobin, PLLC, a well-established estate planning law firm.

Orr & Reno prides itself on its market-competitive compensation and comprehensive benefits, its team-based approach to practice, excellent employee and attorney retention, and demonstrated commitment to fostering a fun, friendly, and positive work culture.

Please submit a cover letter and resume to:

Orr & Reno P.A.
Attention: HR Coordinator
PO Box 3550, Concord, NH 03302-3550
Fax: 603 223-9060
Email: **resumes@orr-reno.com**

Probate & Trust Paralegal

Laboe & Tasker, PLLC of Concord has an opening for an experienced probate and trust paralegal.

The ideal candidate must have an understanding of fundamental probate and trust concepts, experience administering estates, and be proficient in preparing fiduciary inventories, accountings, court pleadings, and correspondence. The position involves the management of deadlines and significant direct communication with clients and other parties. Strong organizational skills, people skills, and competency with Microsoft 365 Outlook, Word, and Excel required.

Please send cover letter and resume to Attorney Kerri S. Tasker at **ktasker@laboelaw.com**.

PRIMMER PIPER EGGLESTON & CRAMER PC
ATTORNEYS AT LAW

ASSOCIATE ATTORNEY - LITTLETON

PRIMMER PIPER EGGLESTON & CRAMER PC, a regional law firm with offices in New Hampshire, Vermont, and Washington, DC, seeks an associate attorney to join the legal team in its Littleton, NH office. Littleton is preferable, but we are also open to candidates who would prefer to work out of our Manchester or Portsmouth, NH locations. Qualified candidates will have 2-3 years' experience in commercial transactions and real estate matters. Experience in regulatory and agency practice is a plus. This position requires strong academic and excellent research, writing and analytical skills.

ASSOCIATE ATTORNEY - MANCHESTER

We are seeking an associate attorney to join the legal team in commercial and insurance defense litigation at its Manchester, New Hampshire office. The position requires 1 to 3 years' litigation experience and will involve all phases of trial work from drafting pleadings, working on discovery, engaging in motion practice, and participating in evidentiary hearings. We are seeking candidates with strong academic credentials and excellent research, writing and analytical skills.

Our associate attorneys benefit from a formal mentorship program designed to merge the goals of the attorney and the firm. In addition, associates regularly participate in performance evaluations and goalsetting meetings to determine professional development and advancement opportunities. We believe in creating a work environment that fosters professional and personal growth, ultimately leading to long and successful careers at our firm.

Both attorneys and staff may choose to work primarily in the office or a hybrid schedule of remote and in-office workdays to ensure a positive work-life balance.

Please submit a letter of interest and resume to **careers@primmer.com**.

Ransmeier & Spellman P.C.

RANSMEIER & SPELLMAN P.C. is seeking to fill the following positions in its Concord office, which offer an excellent opportunity to join a firm committed to delivering high-quality legal services while maintaining a collaborative and collegial work environment. The firm offers a competitive compensation and benefits package commensurate with qualifications and experience, work-life balance, and the option for some remote work.

To apply for any of the below positions, please submit a cover letter and resume to Biron L. Bedard, Esq. at **gblodgett@ranspell.com**.

ASSOCIATE

The ideal candidate will have an interest in transactional work, particularly real estate, land conservation, business formation, and/or estate planning; a solid academic record; 0-3 years' experience; and be able to demonstrate exceptional written and oral communication and practice management skills. JD from an accredited law school and a NH Bar license are required.

EXPERIENCED CIVIL LITIGATION ATTORNEY

The ideal candidate will be licensed to practice in NH and have a minimum of 10 years of civil litigation experience and an established client base or referral network.

PARALEGAL

The ideal candidate will possess a certificate from a qualified program, Associate's degree or higher in legal/paralegal studies, or an equivalent combination of experience and training that provides the required knowledge, skills, and abilities to work in the practice areas of probate and trust administration, and/or real estate, especially title work; some litigation experience may be helpful. The successful candidate must possess the ability to work independently and have good communication and writing skills. Duties may include assisting with: probate and trust administration, including preparation of accountings, inventories and other pleadings, and assisting with creditor issues; guardianships; and/or real estate closings, including deed preparation and title work. Excellent understanding of electronic filing processes required, as is a working knowledge and competency of computer skills, including Office 365, Word, Excel, and a willingness to learn other specific document management software programs.

Schwartzberg Law

is offering a unique opportunity for an attorney who wishes to join our Family Law Team.

Our attorneys are generouslycompensated ……. yet enjoy 3 day weekends.

Our office is in Plymouth, New Hampshire. Attorneys seeking to work remotely, should not apply.

If you think this opportunity will improve your "work-life balance," contact Ora at **oralaw@gmail.com**.

Associate

Preti Flaherty seeks an associate to join its fast-growing and dynamic Litigation Practice Group based out of either its Portland, ME or Concord, NH office.

The ideal candidate will have:

- 2-4 years of legal experience
- Strong academic credentials
- Excellent written and verbal communication skills
- Clerkship (encouraged but not a requirement)
- The ability to excel in a fast paced, challenging work environment

Preti Flaherty is a full-service law firm with more than 100 attorneys and offices in ME, NH, MA and D.C. This position offers a competitive salary, incentive bonuses, a generous benefits package, flexible work arrangements, robust IT support, a full service marketing and business development team, a professional development program for associates and a collegial working environment.

To apply, please email cover letter, resume and list of references to Mary Johnston at: **mjohnston@preti.com**.

Estate and Trust Administration 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 and trust administration paralegal.

Ideal candidate must have a broad base of estate and trust administration experience, be able to work with multiple attorneys, and have experience working directly with clients. The position requires an understanding of estate and trust concepts, and experience administering estates and trusts. Knowledge of drafting estate planning documents 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, and we would consider flexible working arrangements for the right candidate.

Please submit resume, cover letter and salary requirements to Lisa Roy, Office Manager at **lroy@mckan.com**.

Experienced Associate

Is your job an unnecessary hardship? Are you looking to vary your work environment? Or has your joy in your current practice simply abated? MMG is a practice focused exclusively on municipal law with clients throughout the state. We are looking to merge an experienced associate into the fold.

M·M·G MITCHELL *Municipal Group, P.A.*

We take pride in our work, and the relationships we have built with our clients over the past several decades. Although our clientele is specific, the problems we solve come from a wide variety of intriguing factual and legal situations. No day is like the next. We take a practical, common sense approach to guiding our clients through the challenges that they face every day, and any successful candidate will be able to do the same. Our ideal applicant is an experienced associate (5+ years preferred) with excellent writing and courtroom skills. No book of business is expected.

If this sounds like the right type of road to travel for you, please submit your cover letter and resume to **laura@mitchellmunigroup.com**.

NIXON PEABODY

Labor & Employment Department Attorney

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

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

At Nixon Peabody, our priority is to attract, retain, and promote talented individuals from a wide range of racial, ethnic, social, economic, religious, and personal backgrounds, genders and sexual orientations. We encourage all qualified individuals to apply.

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

A career at Nixon Peabody is the opportunity to do work that matters. It's a chance to use your knowledge to shape what's ahead, to innovate, to learn at a firm that taps into the power of collaboration and collective thinking.

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

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

DRM

LITIGATION ATTORNEY (LEBANON, NH)

Downs Rachlin Martin PLLC – 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 at least three years of experience litigating in New Hampshire courts and an interest in doing sophisticated litigation. The ideal candidate will also have strong academic credentials, excellent writing, research, and analytical skills and share a commitment to excellence, teamwork, and responsive client service.

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.

TAX ATTORNEY (BURLINGTON, VT)

Downs Rachlin Martin is seeking an attorney with at least three 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 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 (BURLINGTON, VT)

Northern New England's largest law firms – has a great opportunity for a litigation associate in its Burlington office.

The ideal candidate will have one to three 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&ssbgcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2

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.
For further information, visit www.coopercargillchant.com

GOOD PEOPLE. GREAT LAWYERS.

ACCOUNTING MANAGER / BOOKKEEPER

COOPER CARGILL CHANT
Attorneys at Law

Cooper Cargill Chant, northern NH's largest law firm, is offering a unique career opportunity to join our vibrant firm, as an Accounting Manager/Bookkeeper.

RESPONSIBILITIES INCLUDE:

A/P, A/R, G/L, billing/e-billing, trust accounting, bank account reconciliations, monthly, quarterly, and year-end financial reporting, fixed asset and debt activity, and miscellaneous related accounting tasks. Experience with QuickBooks and TABS preferred but not required.

Cooper Cargill Chant offers a comprehensive benefits package, excellent salary, and an opportunity to join an outstanding, supportive team. Candidates should submit a resume, with cover letter stating salary requirement, to John Gosnell at jgosnell@coopercargillchant.com

Assistant City Prosecutor
City of Concord, NH

The City of Concord is seeking a highly skilled attorney with 3-5 years' experience to fill an Assistant City Prosecutor position to manage criminal cases in the City Prosecutor's Office.

Salary Range: $74,526.40 - $107,910.40, plus a competitive benefits package. Submit cover letter and resume to the Human Resources Department via the Application: at **https://www.governmentjobs.com/careers/concordnh**. The position will remain open until filled.

For more information visit **www.concordnh.gov** or call (603) 225-8535, or TTY at 1-800-735-2964 or 7-1-1. "An Equal Opportunity Employer M/F/DP/V and LGBTQ"

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. Phone: 729-1245; email **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.

Equal Opportunity Employer

NH Department of Labor
Attorney II - Legislative Liaison Position # 26242
Recent Graduates Encouraged to Apply

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.

***Please take note that we encourage recent graduates to apply, and exceptions may be requested for the years of experience.**

For questions regarding exceptions please direct questions directly to Wesley Gardner, General Counsel, at the contact below before applying.

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.

ALFANO LAW OFFICE, PLLC

LANDLOCKED?
DISCONTINUED ROAD?
WHO OWNS IT?

- HISTORICAL RESEARCH
- EXPERT TESTIMONY
- BRIEF WRITING
- TRIALS

PAUL J. ALFANO

PAUL@ALFANOLAWOFFICE.COM
(603) 226 -1188

JOSHUA GORDON
Appeals Lawyer

Effective strategic advocacy in New Hampshire and Federal appellate courts.

603.226.4225
jlgordon@appealslawyer.net
AppealsLawyer.net

Allenstown Police Department
District Court Prosecutor

The Allenstown Police Department has an opening for a full-time Prosecutor. We are looking for a hard working individual that can provide the highest quality of legal services, while maintaining the highest degree of courtesy and professionalism, assuring fair and equal treatment for all. Applicants must be admitted to or eligible for the NH Bar and must successfully complete a full background investigation. Applicants ideally would have experience in NH District Court prosecution, but we are willing to train the right candidate.

The salary range for this position is $64,079-$79,654 with a flexible, independent, and family friendly work environment, and a competitive benefits package.

The position has opportunities to work remotely when not needed in court. We are also open to discussing a contract for prosecutor services if desired by a qualified candidate.

Resumes and a cover letter should be mailed to: Chief Michael R. Stark, 40 Allenstown Rd., Allenstown, NH 03275.

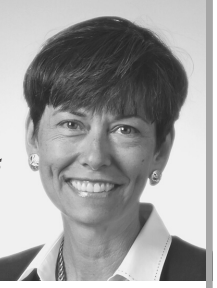
or emailed to: **mstark@allenstownnh.gov**; review of submissions will begin as they are received. Please feel free to reach out with questions. All inquiries will be kept confidential.

ADA/EOE

Doreen Connor
dconnor@primmer.com

Member of American Academy of Appellate lawyers

603.626.3304



ATTORNEYS AT LAW
PRIMMER PIPER EGGLESTON & CRAMER PC

Massachusetts Workers Comp
Atty. John Wolkowski
Backus, Meyer & Branch, LLP

Do you have a client injured in Massachusetts?

I honor referral fees

jwolkowski@backusmeyer.com
www.backusmeyer.com
(603) 668-7272
116 Lowell Street
Manchester, NH 03104

ROCKINGHAM COUNTY

ASSISTANT COUNTY ATTORNEY

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

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

REQUIRED EDUCATION AND EXPERIENCE
- Juris Doctor from accredited law school.
- Must be admitted into the New Hampshire Bar Association.

Salary Range: $68,827.20 - $96,366.40, dependent on experience.
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