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Vicarious Trauma: It's Okay to Not Be Okay

By Tom Jarvis

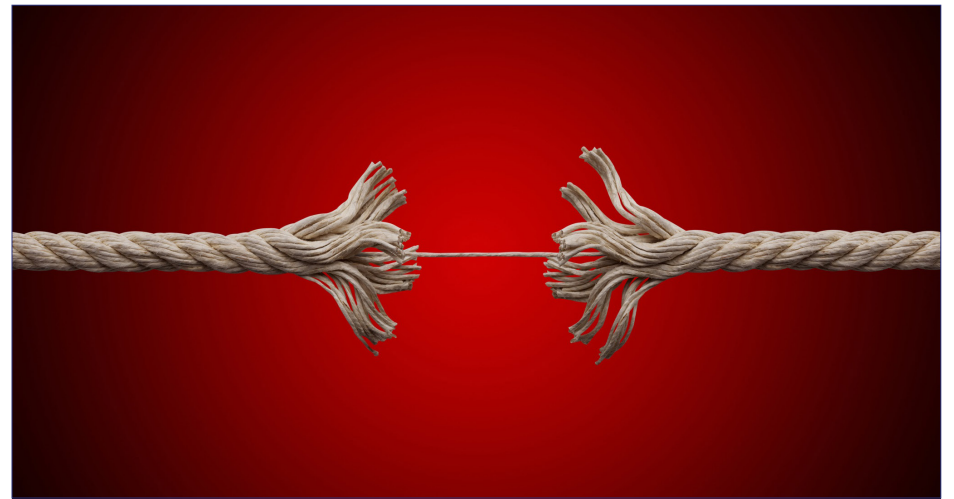
To say lawyering can be stressful is an understatement, especially in the post-pandemic world of staffing shortages and overwhelming caseloads that legal professionals currently practice in.

But for some lawyers and judges, who are continuously exposed to traumatic material, that stress can be compounded by a condition called vicarious trauma. This can have a significant negative impact on their mental health, and without the right boundaries can lead to a higher risk of depression and anxiety.

Vicarious trauma, also known as secondary trauma or secondary traumatic stress, affects people in the helping professions, like lawyers and judges. It can be described as mental anguish due to ongoing, indirect exposure to traumatic events through firsthand account or narrative.

“Attorneys often represent people who have been traumatized as victims of abuse, crime, or other adversity,” attorneys Becky Howlett and Cynthia Sharp say of vicarious trauma in their American Bar Association CLE, *How Secondary Trauma Affects Attorney Mental Health*.

Continuously hearing disturbing recounting of traumatic experiences from clients and witnesses can be overwhelm-



ing and lead lawyers—and judges to a lesser extent—to experience the same feelings faced by the trauma survivors in their care. Vicarious trauma typically involves a shift in world view, resulting in beliefs about the world being altered and/or damaged by the repeated exposure.

“As the matter unfolds, lawyers, staff, and judges alike may be exposed to emotional stories, highly charged situations, as well as gruesome and disturbing evidence, which can lead to secondary or vicarious trauma,” Howlett and Sharp say. “Symptoms include burnout, PTSD, irritability, difficulties

with sleep and concentration, as well as diminished pleasure and interest in activities.”

While vicarious trauma exists in other fields—and other professions such as firefighting and policing—vicarious trauma is more prevalent in legal professionals who work in criminal, family, juvenile justice, and domestic violence cases, especially those involving harm to children. Those who have their own history of trauma are also more susceptible to vicarious trauma.

A precursor for vicarious trauma in

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PRACTITIONER PROFILE

Joseph Caulfield – Martial Artist and Magician

By Kathie Ragsdale

When Lyndeborough attorney Joseph Caulfield takes on a case, he approaches it with the skills of a martial artist, and with a sprinkling of magic.

“The martial arts inform all my life,” says the legal practitioner of 40-plus years, who is also a highly ranked martial arts instructor and magician/mystery entertainer. “It enables me to function, enables me to overcome my shyness.”

Caulfield is the founder and chief instructor of Black Sword Aikido, a martial arts discipline that recommends “when force is presented against you, any aggressive action, you don’t butt heads against it, you join with it and lead it to a position of harmony,” he says. “That really infuses my practice of law.”

He sees that approach as particularly

valuable in family law, which constitutes about 80 percent of his practice. Criminal cases make up most of the remainder.

“I try to do as little harm in the world as possible, and I think the way to resolve a situation, especially a family law situation, is through discussion, negotiation—each person having the opportunity to present their needs and try to resolve them,” he says. “Litigation is a horrible way to resolve anything; though it’s necessary if mediation fails.”

A certified guardian ad litem and certified family mediator, Caulfield is presi-



dent of the New Hampshire Guardian Ad Litem Association and a founding member of the Academy of Professional Family Mediators.

He is also president of the Granite State Magicians and a member of the International Brotherhood of Magicians and performs at a variety of fundraisers and other events throughout the state.

That avocation, too, complements his legal work, Caulfield says.

“Anytime I’m in court is basically a performance,” he says. “The same stage presence, those are all things you use in the courtroom. I’m not minimizing the intellectual part of the law, but an awful lot is showmanship and stagecraft. There’s something more to being a lawyer than just knowing the law.”

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Opportunities Abound for Participation Through Your Bar Association

Over the years, I have found that the carefree days of summer, when the warm weather seems to create more opportunities (or at least a greater desire) to relax, provide a welcome and necessary opportunity to reflect and assess all aspects of my life. While taking in a beautiful view from a mountaintop vista, sitting beside a serene body of water, lounging in an Adirondack chair, or driving in my car on a sunny summer day, my mind sometimes wanders to my plans for the future, either immediate or distant. In this frame of mind, it is a time of year when each of us can consider how to maximize the benefits of our New Hampshire Bar Association membership and pursue the opportunities that it provides for each of us.

In many ways, what a member of the NHBA gets out of their membership is directly correlated to what that attorney puts into it. Attorney participation is at the core of fully utilizing the NHBA's services and benefiting from one's membership.

Participating in the NHBA is also in the public good. Committees of the Bar, including the Law Related Education committee, serve an important public purpose. As many NHBA members know, LRE is a leader in civics education in our state. Through important programs like *We the People*, *A Lawyer and Judge in Every School*, *Civics in Action*, and *Beyond High School*, LRE reaches New Hampshire's students year after year, and helps to make them better informed citizens. For those students, LRE's programs provide important exposure and bedrock instruction that help those students as they develop into contributing members of society. Volunteer opportunities with LRE (including limited-length volunteer commitments, such as volunteering for a single day or visiting a school for a block of hours) abound for New Hampshire lawyers, and for those who care deeply about the importance of civics education, LRE provides a valuable means of advancing that cause.

Most of our members are also familiar with the numerous NHBA Sections and the benefits of shared knowledge through participation in section meetings and on online forums. The NHBA Sections offer motivated lawyers the chance to further develop their subject matter expertise and share knowledge and strategies with other practitioners.

Other NHBA programs are important for developing future leadership, both in the profession in general and within the As-

President's Perspective



By Jonathan M. Eck

Orr & Reno
Concord, NH

sociation. The NHBA's Leadership Academy has proven to be a valuable pipeline to board positions with the Association's Board of Governors for many relatively recently admitted members of the Bar. These next-generation or second-career attorneys have proven to be capable and well-prepared leaders for our profession in board business, and they tend to join the board energized and with ideas for how to improve the practice of law in our state and to enhance the Association's means of supporting practitioners.

The NHBA also has multiple committees that serve important functions for New Hampshire lawyers, including the Continuing Legal Education committee, which is tasked each year with developing timely, informative, and interesting CLE programming. In my experience, many of the best CLE programs I have attended were developed and put on by the NHBA CLE Committee. Experienced members of our Association are well suited to provide state-specific guidance and training in all areas and aspects of practice in our state. Another critically important NHBA committee is the Committee on Cooperation with the Courts, which facilitates important dialogue between practitioners and members of the bench about virtually all aspects of the operations at the state and federal courts in New Hampshire. The Committee on Cooperation provides practitioners with a critical and unique opportunity to provide input to leadership from the courts on court operations. I served on this committee for several years and regularly saw the valuable exchange of ideas and potential improvements between members of the bench and practitioners. The list of NHBA Committees is too long and numerous to identify each of them but suffice it to say that virtually every interest a member might have is likely addressed through one or more of the committees.

I have been active in the Bar Association throughout most of my legal career, and I have found both my board service and general participation to be professionally and personally rewarding. My involvement on the Board of Governors for more than a decade now has given me the means to participate on numerous matters of great importance to our profession. Work on such projects and issues has increased my pride in being a lawyer and has helped me feel like I had a clear voice in our profession. I have also found my participation in myriad NHBA programs and committees has provided me with a means of interacting with other lawyers who I otherwise never would have had occasion to get to know. This valuable relationship building has helped me more effectively represent my clients by allowing me to develop relationships and trust with other practitioners, which helps me efficiently get to the essence of core matters for my clients.

I am proud to be a member of this association and my practice has benefited immensely through the countless programs, resources, and opportunities that have been available to me through the NHBA. While it provides many member benefits for even passive members of the Bar, active involvement is the best way to leverage the value of both our Association and a member's membership. I encourage all our members to explore the opportunities available through the Association and to pursue those that are of greatest interest or importance to them. This time of year is the perfect time to become more involved in the Bar and all of its offerings. I encourage you to take advantage of these opportunities.

Editor's Note: Soon after the presidential gavel was passed to Sandra Cabrera, she was nominated to become a Circuit Court Judge and is scheduled to be sworn in on August 15, 2022. As she was unable to fulfill her term, President-Elect Jonathan Eck became Bar President and Vice President Paul Chant acceded to President-Elect. Accordingly, a special election will be held to fill the seat of Vice President. See Page 3 for details.

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NHBA Attorney License Renewal Explained: Court Fees, Dues, and Statuses



The NHBA Attorney License Renewal team from left to right: Michele Gilbert, Member Records Coordinator; Arielle Van De Water, Database & Website Coordinator; Susan Belair, Accounts Receivable Administrator; Kelsey Binnie, NHMCLE Program Coordinator; Paula Lewis, Associate Executive Director for Operations; and Dawn Trask, License Renewal Support Administrator. Photo by Tom Jarvis

By Tom Jarvis

The New Hampshire Bar Association (NHBA) is a non-profit 501(c)(6) whose purpose is to serve the legal community, the court system, and the public at large. As a unified bar, all attorneys licensed to practice in New Hampshire, along with New Hampshire judges, must belong to the NHBA. Per the New Hampshire Supreme Court (the Court), all members, with a few exceptions, are required each year to file a Trust Account Compliance certificate for their IOLTA accounts, submit an affidavit stating they have obtained at least the minimum amount of continuing legal education, and pay Court fees and NHBA membership dues.

In May of each year, the Court issues orders for their annual court fee assessments. The NHBA collects those fees on behalf of the Court as part of its attorney license renewal process and disburses them to the following court agencies on behalf of its members:

Attorney Discipline Office / Professional Conduct Committee Fees

The NH Supreme Court Attorney Discipline System is designed to protect client rights and guarantee lawyers a full and fair evaluation of complaints against them. The system is composed of the Attorney Discipline Office, the Complaint Screen-

RENEWAL continued on page 14



Call for Nominations - Special Election NHBA Board of Governors - Vice President

Under Article IV, Section 4 of the NHBA Bylaws, when the President is unable to serve their term, the President-Elect accedes to this seat, the Vice President accedes to the President-Elect seat, and a special election is held to fill the seat of the Vice President.

On August 15, 2022, Sandra Cabrera was sworn in as a Circuit Court Judge. Accordingly, she is unable to fulfill her term. Therefore, a special election needs to be held to elect a new Vice President of the Association.

Any interested active members must file a nomination petition signed by at least 25 ACTIVE Members by October 3, 2022.

For a nomination petition, please contact Debbie Hawkins at dhawkins@nhbar.org or 603-715-3269.

For further information regarding serving in this position, please contact Executive Director, George Moore, at gmoore@nhbar.org.

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Attorney Sorg's position purports to be a thesis on language; specifically, American language. He decries the use of words and phrases that he deems "sub-standard," especially if they appear to him to come from "guilt-ridden White Liberals." If he were a linguist, he would understand that to stay alive, a spoken language must grow, adapt, and change over time. Unlike his apparent supposition, this does not happen over a mere few hundred years, but happens, eventually it does. American language would be destined to die as sure a death as Latin if it did not continually add words that reflect changes in technology, science, the arts, and yes, social culture.

He seems to be of the opinion that differences in spoken language should be used to distinguish among various classes of people, and that recognizing those differences enables one to judge another. And judge he does, readily. (Ironically, he himself has used the word "comprise" incorrectly, but I suspect his incorrect usage will eventually make its way into acceptable American language, whether I like it or not). In his case, obviously, the distinctions he makes in others' language are put to negative and judgmental uses. Surely, he believes, without polished and "correct" language, one cannot advance in life or achieve any measure of success. To him that is obvious. To me, the example of our last president comes to mind, who rose to more power than could be imagined. A more monosyllabic, incoherent, uneducated, and impoverished speaker in the public arena is hard to find, although others may challenge this conclusion with further examples. In this country, however,

wealth and power overrule any other considerations of competence, intelligence, or compassion.

It is my hope that the *Bar News* will no longer print Attorney Sorg's sneering invectives filled with disdain, ridicule, and contempt of "delusional people" in the guise of "both sides."

Pamela D. Kelly,
Nottingham

Dobbs, Dishonesty, Lenses, and the Rule of Law

I wrote a piece in the May 2022 issue of *NH Bar News*, criticizing the *Dobbs* decision (then in draft) as dishonest. In the July 2022 issue, Attorney William Gillespie defends *Dobbs* and characterizes my analysis as "tabloid" headline. My analysis was neither tabloid nor inaccurate. Instead, Attorney Gillespie's defense of *Dobbs* highlights the raw and undisciplined exercise of power by the Conservative majority of the Court.

I said *Dobbs* was dishonest because it overturned *Roe v. Wade* claiming that *Roe* was wrong in *Roe's* examination of the history of abortion practices. In truth, while *Dobbs* and *Roe* differ in immaterial respects on their recitation of history, what *Dobbs* changed was the way that history affects the interpretation of the Constitution. *Dobbs* held that to be a right protected by the 14th Amendment, the right must be "deeply rooted in [our] history and tradition." *Dobbs v. Jackson Women's Health*

Org., 142 S. Ct. 2228, 2246 (2022). *Dobbs* held that a right that is not reflected in history is not protected. In contrast, *Roe* and *Casey* looked beyond history: "[n]either the Bill of Rights nor the specific practices of States at the time of the adoption of the Fourteenth Amendment marks the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects." *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 848, 112 S. Ct. 2791, 2805, 120 L. Ed. 2d 674 (1992), *overruled by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). *Roe* and *Casey* used a "reasoned judgment" approach;¹ *Dobbs* rejects that approach. The *Dobbs* rejection of the reasoned judgment approach by the adoption of a "deeply rooted in history approach" ineluctably leads it to reject a woman's right to bodily autonomy, the right to choose an abortion. The *Dobbs* Court overruled both the right of a woman to autonomy and the reasoned judgment approach to the interpretation of the Constitution.

The "reasoned judgment" approach to finding "liberty" interests protected by the 14th Amendment was a law about law – it was a rule used by the Supreme Court to find rights. The *Dobbs* Court overturned that rule. The *Dobbs* Court engaged in no *stare decisis* analysis to justify overturning the reasoned judgment rule. The *Dobbs* Court exercised pure power to change the law. The publication of a sixty-plus page decision that fails to address the change is hiding the exercise of power behind a smoke screen of historical analysis and by that smoke is dishonest.

Attorney Gillespie wrote to defend the *Dobbs* decision. The core of Attorney Gillespie's defense is the assertion that "Justice Alito **simply chose – as was his prerogative** – the 'deeply rooted in history' interpretive lens through which to view the Constitution." (emphasis added).

The "interpretive lens" is law. It is law just like any other law except that it governs how judges judge. Justices Blackmun, Burger, Marshall, Powell, Stewart, Brennan, and Douglas (the majority in *Roe*) and Justices Souter, O'Connor, Kennedy, Stevens, and Blackmun (the five justices concurring in affirming *Roe* in *Casey*) used the "reasoned judgment" approach. Justice Alito now holds that the Judges who used the reasoned judgment approach committed egregious error.

Attorney Gillespie's assertion that it is Justice Alito's "prerogative" to choose one interpretive rule over another without explanation or justification is an assertion that Justice Alito is above the law of judging – that Justice Alito may use whatever interpretive lens he chooses – that the law of judging is whatever Justice Alito says it is. Such a law of judging is not about a law, but a man. A law of judging that is a rule of a man, not law destroys the rule of law and with it, the Constitution.

Endnote

1. *Casey*, 505 U.S. at 849.

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New Member Benefit: WordRake Helps Lawyers Write with Clarity

By Misty Griffith

The NHBA has expanded its robust member benefits to offer a 10% member discount on WordRake editing software designed specifically for attorneys. Created in 2012 by attorney, author, and teacher of legal writing, Gary Kinder, WordRake's mission is to help professionals write clearly and concisely.

Thomas Jefferson, who was renowned for his abilities as a wordsmith, advised, "No stile (*sic*) of writing is so delightful as that which is all pith, which never omits a necessary word, nor uses an unnecessary one." Lawyers are notorious for their verbosity, often becoming excessively wordy in pursuit of written eloquence. WordRake can help with this by pointing out excess words which obscure rather than enhance the intended meaning.

Self-editing is challenging. Even the best writers can benefit from thoughtful editing. WordRake is not a grammar/spelling checker. It relies on the built-in functionality of Microsoft Word for that. Instead, WordRake integrates Word and Outlook, offering suggested line editing to tighten language and increase clarity. Users do not have to exit Word to uti-



WORDRAKE

lize the WordRake function. When ready to edit, a user simply selects a block of text or an entire document and clicks the "Rake" button. Suggested edits are offered in the track change format, giving users the control to accept or reject each suggestion.

In their article "Learn to Write Well," Jeffrey Allen and Ashley Hallene recommend WordRake stating, "You will find it improves your writing and makes your final product read better, clearer, and crisper." *ABA Voice of Experience*, March 2021. Mass. Law Office Management Assistance Program (LOMAP) suggests WordRake as a tool for better legal writing. LOMAP blogger, attorney Scott Bassett, says, "WordRake is used for all of my documents, not just appellate briefs. There is even a version that works with Outlook, so emails are concise and readable."

Many other state bar associations, including those of Washington, Minnesota, Texas, North Carolina, Iowa, Indiana, and Oklahoma, offer WordRake as a member benefit. The New Hampshire Bar Association is pleased to add WordRake to our growing list of member benefits.

WordRake offers a free seven-day trial to allow you to discover for yourself if it is right for you and your practice. After the free trial period, NHBA members receive a 10% discount off the regular subscription price (currently \$129 for one

year, or \$259 for a three-year subscription).

To take advantage of your 10% member discount, use code **NHBA** when you check out from the Member Services page

at <https://www.nhbar.org/resources/member-services-benefits/>.

To learn more about WordRake or other great NHBA member benefits, visit [nhbar.org](https://www.nhbar.org) or contact Member Services Coordinator Misty Griffith for more details. Email mgriffith@nhbar.org or call (603) 715-3227.

NHBA Wins Two Awards for Outstanding Achievement in Continuing Legal Education

Last month, the New Hampshire Bar Association received two awards from the Association for Continuing Legal Education (ACLEA) at their 58th Annual Meeting held in Vancouver, B.C. Each year, ACLEA recognizes outstanding work in five categories, for a total of 10 awards.

The newly updated *NHBA Succession Planning Guide* received the Award of Outstanding Achievement for Best Publication. This award is given to a publication that is practical, well-organized, easy to read, easily accessible, innovative, cost-effective to produce, and demonstrates an effective use of the organization's resources. The Guide, authored by NHBA Executive Director, George Moore, can be found at [nhbar.org/succession-planning-guide](https://www.nhbar.org/succession-planning-guide).

The NHBA Law Related Education infomercial, *We the People: The Citizen and the Constitution*, received an Award of Outstanding Achievement for Best Use of Technology. This award is given to a submission that is an innovative use of technology, provides a useful example for other ACLEA members to follow, is well-designed and well-executed, well-received by the target audience, provides significant benefit to its customers, and demonstrates an effective use of the organization's resources. The *We the People* video, which is currently being used to recruit participating schools, can be viewed at vimeo.com/705843134.

To learn more about ACLEA, visit [aclea.org](https://www.aclea.org).

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The NHBA is Committed to Helping Students Succeed Beyond High School

By Tom Jarvis

Beyond High School: A Guide to Your Rights and Responsibilities is a book written by Attorney Jennifer A. Eber, and published by the New Hampshire Bar Association's Law Related Education program. It is designed to provide students with basic information about their legal rights and responsibilities when they reach the age of 18 and are considered adults. The updated second edition was published in 2019 and is available through the NHBA.

"Students graduating from high school have unlimited opportunities," author Jennifer Eber says. "*Beyond High School* will help these students understand not only their legal responsibilities, but also inspire them to pursue rights they now enjoy, such as voting or running for an elected office. In addition, *Beyond High School* explains a person's rights when facing new experiences after high school, such as renting an apartment, marrying, credit, or in searching for employment. There is also information on higher education and financial aid...it is a great resource for anybody who wants to understand their basic rights and responsibilities and learn how and where they can obtain more information."

On June 21, 2018, the book was featured on WMUR's



Law Related Education Coordinator, Robin Knippers, getting a box of *Beyond High School* books ready for delivery. Photo by Tom Jarvis

New Hampshire Chronicle. The episode followed the graduating class of Windham High School from graduation rehearsal to a *Beyond High School* presentation and finally to graduation, interviewing students and lawyers along the way about the purpose and effectiveness of the publication. A video of the episode can be found at nhbar.org/beyond-high-school-2019.

The NHBA is committed to providing these books to all high school seniors, as well as juniors who will graduate early. The goal has been to have the book in the hands of these students by the end of the school year, but this year the Bar would like to get them out at the start of the school year. This will give the students time to digest the contents before they graduate.

The books are delivered across the state by volunteer attorneys and NHBA staff members. Judges and attorneys can also sign up to provide a presentation to a classroom with the book delivery. To volunteer for a book delivery or a presentation with book delivery, contact Law Related Education Coordinator, Robin E. Knippers at 603-715-3259 or reknippers@nhbar.org.

UNH Franklin Pierce School of Law Invites Alumni to Attend Reunion 2022



The University of New Hampshire Franklin Pierce School of Law will be holding an all-class reunion weekend on September 30 - October 2, 2022. Local alumni and graduates from all over the world are invited to return to campus to reconnect with alumni and friends, reminisce about the past, and experience all that is happening at the law school today.

Scheduled events include complimentary CLE courses, the Dean's cocktail reception in the law library overlooking White Park, the 15th-anniversary celebration of the Daniel Webster Scholars program at the Hotel Concord, a golf tournament at Beaver Meadow, and the special alumni gala at the McAuliffe-Shepard Discovery Center.

To register, or for more details, visit the alumni page at law.unh.edu/people/alumni.



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Trauma from page 1

the helping professions can be a condition called compassion fatigue, which is characterized by emotional and physical exhaustion leading to a diminished ability to empathize or feel compassion for others. According to online mental health resource, GoodTherapy, while some of the symptoms are similar, “compassion fatigue differs from vicarious trauma in that it is not typically characterized by the presence of trauma-related symptoms and does not necessarily involve a change in one’s world view.”

The term “vicarious trauma” was originally coined in 1996 by authors, Karen W. Saakvitne and Laurie Anne Pearlman, in their book entitled, *Transforming the Pain: A Workbook on Vicarious Traumatization*. In the book, they explore the contributing factors to vicarious trauma and compassion fatigue and how they affect each person, which includes the individual’s current life circumstances, history of trauma, coping style, and personality type.

Jill O’Neill, Executive Director of the New Hampshire Lawyers Assistance Program (NHLAP), says that paying attention to your emotional wellbeing is key to reducing the risk of vicarious trauma. She cautions against dismissing some of these symptoms in favor of putting up a front.

“Paying attention, having self-awareness, and not being afraid to reach out are very important,” O’Neill says. “Oftentimes we see individuals who start to isolate and retreat. Things have been stewing a while, and they will internalize it as a character deficit, rather than really understanding they may be experiencing one or all of the signs of burnout, compassion fatigue, or secondary traumatic stress. Instead of recognizing it, they see it as a character flaw. But it’s important, if you’re feeling these things, to reach out and talk to a professional.”

O’Neill says that NHLAP is available to help struggling attorneys. The organization has a collection of resources and self-tests on their website, lapnh.org, and they can refer lawyers to in-network providers.

“We can make it easy for busy professionals and



NH Lawyer Assistance Program Executive Director, Jill O’Neill, standing outside of her office in Concord. NH LAP provides free, 100 percent confidential assistance to NH lawyers, judges, and law students. Photo by Tom Jarvis

do a lot of the legwork,” she says. “And under NH Supreme Court Rule 58.8, any contact with NHLAP is 100 percent confidential.”

The American Bar Association says vicarious trauma and compassion fatigue can be mitigated by being aware of the conditions and periodically self-assessing for them. They also say it can be helpful to talk regularly with other practitioners about how traumatic material affects you. And of course, O’Neill stressed, seeking professional assistance specializing in trauma may be beneficial.

“There is still a fear and stigma that prevents people from reaching out and acknowledging that these types of vulnerabilities—whether it’s burnout, secondary traumatic stress, or compassion fatigue—are real and are treatable conditions,” O’Neill says. “But we are starting to see a positive shift in the field where more individuals are calling in [to NHLAP] self-referred. It indicates more of the message is out there, that professionals are not alone, and that it’s okay to not be okay.”

Don Crandlemire Inn of Court Scholarship

The Daniel Webster Batchelder American Inn of Court is accepting applications for the Don Crandlemire Inn of Court Scholarship. Award recipients will receive a one-year free membership to our Inn.

Donald Crandlemire was a beloved member of the New Hampshire Bar and the Daniel Webster Batchelder American Inn of Court who unexpectedly passed away on March 5, 2016. For 23 years, Don practiced law in New Hampshire and made a lasting impact not only because of his expertise, but because of the person he was. Don was a devoted parent and husband, as well as a remembered friend – generous with his time, loyal, and always available to listen. Don will be especially remembered for his willingness to mentor less experienced attorneys and share his wealth of knowledge and experience.

To celebrate Don’s life, the Daniel Webster Batchelder American Inn of Court created a scholarship in his memory. Eligible candidates must be admitted to the New Hampshire Bar, be a graduate of the University of New Hampshire Franklin Pierce School of Law, and have less than five years of experience. They must be motivated and have a strong desire to participate in the Daniel Webster Batchelder American Inn of Court. Special consideration will be given to those applicants who work at smaller firms and are cross-trained professionals. Applicants should also be members of other collegial or professional organizations, demonstrating their commitment to the New Hampshire legal community.

All are welcome to apply including current members of the Daniel Webster Batchelder American Inn of Court. Applications due September 1. For more information or to submit statements of interest, please contact Jack Crisp at jack.crisp@crisplaw.com.

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I'm Not a Real Lawyer – Personal Injury in a Virtual World

Editor's Note: Although originally submitted as a personal injury practice area article, the concept of practicing as a "virtual lawyer" could apply to many types of practice. This article provides an example of how technology may be creatively used to serve clients and increase the geographic reach of an attorney's practice.

By Kirk Simoneau

For my entire practice, I was a real lawyer. Then, last year, I stopped being a real lawyer and became a virtual lawyer. I hadn't planned on it; it just happened. Here's how:

Our story begins with an email from a lawyer, Meganne O'Neil, licensed in New Hampshire, Arizona, and Tennessee. It read, in part, "I read your column in the *New Hampshire Bar News*. In addition to being beautifully written, it was also incredibly informative and inspiring. I read your column shortly after my husband was hit by a car..." My first virtual case started with this email asking me to consider a referral, an Arizona referral.



Lesson One: Virtual doesn't mean you can't be old school.

I wrote an article, for a print publication, and, about a year later, I got a case working with some great people; that's old school. I don't do any online advertising. I don't have a firm Facebook. My website is a single page. I'm not listed on Google. I neither Tik nor Tok. I do sometimes snap when I chat, but virtual doesn't mean everything you do has to be high-tech or in the cloud.

Who isn't going to follow up with such a flattering email, let alone someone as vain as I am? I did go to all the trouble of writing an article just to publish those compliments about myself. Anyway, I called Meg. We had a nice chat about the case, about why she was unhappy with the big-advertising, national firm she'd been working with on the case, and how awesome my article was. You know, the usual conversation with a referring attorney. Of course, I took the call on my "office number" as it was routed to my cell phone, which has a whole separate number, by an app, as I was nowhere near my desk because I'm not a real lawyer.

Until this point, I'd never represented anyone I hadn't met in person, but it was a good case with its only real problem being its location. Personal injury lawyers must meet the client. The client makes or breaks every case. It's one of the first rules. Luckily, in a Covid world, everyone knows about Zoom. Because I enjoyed the

call and thought working with Meg would be nice, I Zoomed with her and her husband, John. We had a face-to-face with my laptop, literally, on my lap as I sat on a couch in front of the fireplace because I'm not a real lawyer.

Lesson Two: Virtual doesn't mean you can't really meet.

Once, I thought I couldn't take the measure of a client if we weren't sitting in the same room. Then, I thought about why I started videoing all my depositions; so that a decision maker later could see what the deponent was really like. Why would talking to real people, in real time, face to face, but via a camera, be any less telling than a video depo, especially if that's similar to the format a decision maker might see later like at a Zoom mediation? I do still meet folks in person using co-working space for conference rooms.

But, I wondered, should a New Hampshire lawyer take an Arizona case? The case hit all my criteria, I liked both Meg and John, and I thought I could really help them, so the real question was: could I take the case according to the Rules of Professional Conduct? As you know, the answer is "it depends." For me, here, the "it depends" of Rule 5.5 was a "yes."

Our Ethics Committee makes this comment: "prior interpretations of the Rule assumed that attorneys practice in fixed physical offices and only deal with legal issues related to the States in which

their offices are located. The increased mobility of attorneys, and, in particular, the ability of attorneys to continue to communicate with and represent their clients from anywhere in the world, are circumstances that were never contemplated by the Rule. The adoption of Rules 5.5(b) and (c) in 2008 reflected the State's growing recognition that multi-jurisdictional practice is a modern reality that must be accommodated by the Rules." By the way, I read that Rule sitting under the pergola my wife made me build because I'm not a real lawyer.

Lesson Three: Virtual doesn't mean you don't need to know the law.

Beyond reading Arizona's Rules of Professional Conduct, even though I had great, local co-counsel, I did my own independent research on several legal questions. Real lawyer or virtual lawyer, you need to know the law applicable to the case.

Satisfied I wasn't going to be disbarred, at least not for this, I sent a specially drafted fee agreement and the usual intake forms to the client. Over the course of the case, I sent for medical records, both through portals and via mail. I worked with local co-counsel on our demand. I emailed and spoke with adjusters and generally worked the case. We used fillable PDF files. We printed, filled out, and scanned. We edited and exchanged using a secure online portal. We used regular mail. We texted. We downloaded. We talked on the

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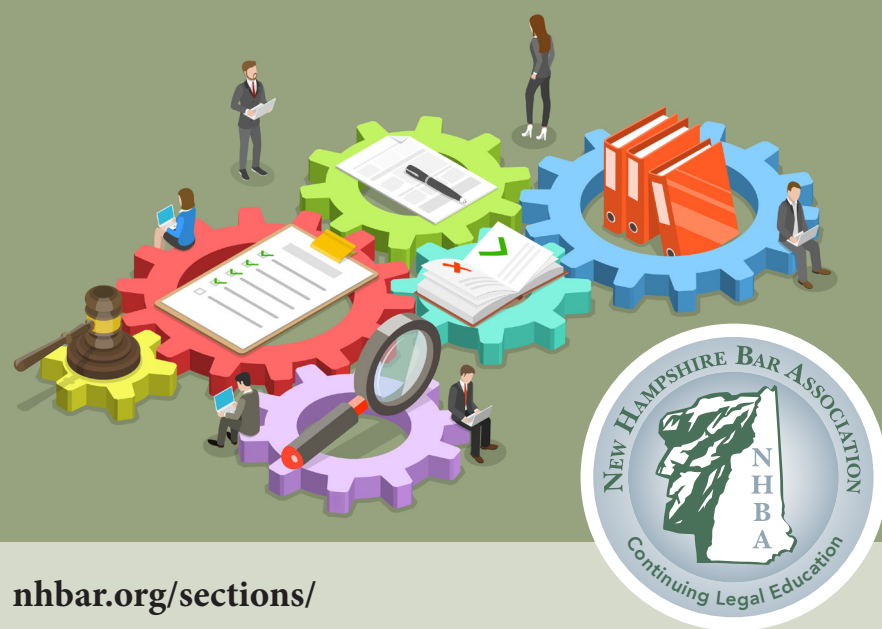
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nhbar.org/sections/

phone. I don't know, maybe I am a real lawyer: I did some of that stuff sitting at my desk in my home office.

Lesson Four: Virtual doesn't mean everything is virtual.

We all use email and have cell phones, but we all have varying degrees of technological savvy. So, in this case, we adapted. We used various types of technology to accommodate the different levels of tech adoption of the participants in the case. To be virtually successful, you must be flexible and willing to use the methods best suited to the situation. In other words, the same things you have to do to be really successful. You need to stay educated on those methods and how to use them securely while securing the record. But just because you've got a fancy, encrypted, password-protected online client portal, doesn't mean you won't still need stamps.

You guessed it, the case settled. Funds were disbursed electronically so no one had to run to the bank, saving a fortune in gas.

Lesson Five: Virtual doesn't have to be scary.

If the idea of going virtual scares you, trust me: if I can do it, virtually anyone can. After all, I'm not a real lawyer.

Kirk became a lawyer because he didn't like the way lawyers treated his family, especially his Deaf mother, when his pedestrian father was killed, while reaching to shake Kirk's hand, by a hit-and-run drunk driver. Kirk runs Red Sneaker Law, PLLC, a personal tragedy firm, in Nashua.

Section Connection

Meet the NHBA Corporation, Banking, and Business Law Section

By John DeWispelaere and Stephanie Lee, Co-Clerks



DeWispelaere



Lee

The Corporation, Banking, and Business Law Section of the New Hampshire Bar Association is an active and growing network of business law professionals interested in meeting others in the community, expanding their knowledge in these practice areas, monitoring pending legislation in the areas of business and banking law, and facilitating relationships within the business bar. The Section Officers for the June 1, 2022 – May 31, 2023 member year are Ramey Sylvester, Chair; Amelia Elacqua, Vice-Chair; and John DeWispelaere and Stephanie Lee, Co-Clerks. Section leadership is committed to facilitating an inclusive and interactive section focused on aligning its members with business professionals and other organizations serving the business and banking community in New Hampshire. We would also like to be able to offer Continuing Legal Education programs tailored towards the



business, banking, and corporate law practice.

After two years of virtual meetings, the Corporation, Banking, and Business Law Section held its first in-person event in May, with a cocktail reception and roundtable discussion moderated by John DeWispelaere about current issues facing the national and local banking industries at McLane Middleton's Manchester office. Panelists for the event included Kristy Merrill, President of the New Hampshire Bankers Association; Carlton Goss, Counsel at Hunton, Andrews, Kurth, LLP; and Emilia Galdieri, Bank Commissioner of the State of New Hampshire. The panelists discussed several current banking topics, including cannabis banking regulation, cryptocurrencies and non-fungible assets, the *de novo* bank market, and COVID-19's impact on the banking industry. Following the discussion, the panelists took questions from the members in attendance.

A joint meeting with the Business Litigation section of the NHBA is scheduled for October 5, at the Manchester office of

McLane Middleton. The event is scheduled to begin around 5:00 pm, but further details will be sent out closer to the date. This joint meeting will be a discussion with New Hampshire Superior Court Judge, David A. Anderson, in which we will discuss his recent orders and the underlying current business law topics that are prevalent in his courtroom. After the event, there will be a networking reception. Please save the date and plan to join us for this opportunity to meet Judge Anderson, our Business Litigation colleagues, and other members of the section.

Our section also welcomes new members and ideas for upcoming events. If you have any suggestions for future events and programs, or have any personal contacts who might be interested in offering a CLE program or presenting at an event, please reach out to John DeWispelaere at John.DeWispelaere@McLane.com and Stephanie Lee at Stephanie.Lee@McLane.com. We look forward to hearing from you and hope to meet you soon at one of our events.

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2020	28	8
2019	46	5
2018	33	8
2017	38	5
2016	38	8
2015	50	12
2014	31	6
2013	29	3
2012	26	6
2011	36	5
2010	21	5
2009	22	9
2008	25	8

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



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- \$5.75 MILLION**
Maternal death after delivery during procedure results in death
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$4.8 MILLION**
Anoxic brain injury after patient denied admission with cardiac tamponade
Andrew C. Meyer, Jr. and William J. Thompson
- \$3.9 MILLION**
Birth injury
Andrew C. Meyer, Jr. and William J. Thompson
- \$3.6 MILLION**
Failure to administer anticoagulation results in death
Andrew C. Meyer, Jr. and Nicholas D. Cappiello
- \$3.5 MILLION**
Failure to diagnose epidural abscess leads to paralysis
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$2.95 MILLION**
Failure to recognize fetal distress results in uterine rupture, maternal/fetal deaths
Andrew C. Meyer, Jr. and Krysia J. Syska
- \$2.75 MILLION**
Death from peritonitis following hernia repair
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$2.5 MILLION**
Death from failure to diagnose acute liver failure
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$2.45 MILLION**
Failure to monitor vital signs during procedure results in death
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$2.1 MILLION**
Failure to properly manage airway post-operatively results in death*
Andrew C. Meyer, Jr. and Nicholas D. Cappiello
- \$2 MILLION**
Improper treatment of recurrent bladder cancer results in death
Andrew C. Meyer, Jr. and Adam R. Satin
- \$2 MILLION**
Brain injury to newborn
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$1.8 MILLION**
Delay in diagnosis of prostate cancer*
Andrew C. Meyer, Jr. and Nicholas D. Cappiello
- \$1.5 MILLION**
Delay in recognition of cardiopulmonary arrest results in brain damage and death of 9-month-old boy
Andrew C. Meyer, Jr. and Krysia J. Syska
- \$1.5 MILLION**
Necrotizing fasciitis after surgery
Andrew C. Meyer, Jr. and William J. Thompson
- \$1.5 MILLION**
Delay in diagnosis of gleason 9 prostate cancer leads to advanced disease
Andrew C. Meyer, Jr. and Adam R. Satin
- \$1.5 MILLION**
Improper antibiotic use leads to colitis and death of 9-year-old boy
Andrew C. Meyer, Jr. and Adam R. Satin
- \$1.5 MILLION**
Misdiagnosed stroke leads to death
Andrew C. Meyer, Jr. and William J. Thompson
- \$1.5 MILLION**
Death of 19-day-old baby from birth injury
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$1.5 MILLION**
Spinal cord injury following epidural steroid injection for pain management
Andrew C. Meyer, Jr. and William J. Thompson
- \$1.25 MILLION**
Failure to properly manage anticoagulation medication results in debilitating stroke
Andrew C. Meyer, Jr. and Adam R. Satin
- \$1 MILLION**
Failure to test for strep in mother leads to permanent neurologic injury in baby
Andrew C. Meyer, Jr. and Krysia J. Syska
- \$1 MILLION**
Delay in diagnosis and treatment of sepsis results in death of 76-year-old woman
Andrew C. Meyer, Jr. and Adam R. Satin
- \$1 MILLION**
Delay in diagnosis and treatment of multiple myeloma results in death of 72-year-old man
Andrew C. Meyer, Jr. and Krysia J. Syska
- \$1 MILLION**
Medication error leads to death of 90-year-old woman
Andrew C. Meyer, Jr. and Nicholas D. Cappiello
- \$1 MILLION**
Failure to diagnose a bowel perforation leads to death
Andrew C. Meyer, Jr. and Robert M. Higgins
- \$1 MILLION**
Delayed diagnosis of ruptured spleen after car crash
Andrew C. Meyer, Jr. and William J. Thompson
- \$1 MILLION**
Improperly performed gallbladder surgery requiring reconstructive surgery
Andrew C. Meyer, Jr. and Nicholas D. Cappiello

*Unpublished settlement





NEW HAMPSHIRE

BAR FOUNDATION NEWS

NHBF Establishes Vincent A. Wenners, Jr. Fund to Support Access to Justice

The New Hampshire Bar Foundation is happy to announce that through the generosity of Vincent A. Wenners, Jr. and his family, an endowed fund has been established in the name of Vincent A. Wenners, Jr.

This summer, Wenners retired from his law practice after 55 years. Vin received his law degree from Boston College Law School, with honors, and his Master of Law in Taxation from Boston University School of Law. He was first admitted to the NH Bar in 1967 and began his career as a staff attorney at the Attorney General's office, then led by George Pappagianis. He went on to cofound the firm of Craig & Wenners, P.A., where he focused on plaintiffs' personal injury matters, including product liability, medical malpractice, workers' compensation, social security disability, and veterans' disability claims, as well as employment and labor matters.

Over his career, Attorney Wenners has litigated more than a hundred jury trials, 2,000 non-jury trials, and numerous Supreme Court appeals. He has also authored and co-authored several New Hampshire Supreme Court, First Circuit, and Court of Veterans Appeals briefs.

Though he represented several large corporations, including New Hampshire health systems, banks, credit unions, and

housing and airport authorities, among the clients Vin has been proudest to represent are various labor unions, including the United Auto Workers, Steelworkers, PACE, Chemical Workers, AFSCME, Firefighters, and Police Supervisors. One of his more memorable professional moments was serving as counsel to Manchester firefighters during a two-week strike. In 2000, Vin was awarded the Friend of Labor Award by New Hampshire AFL-CIO and was nominated to the College of Labor and Employment Lawyers.

Vin has been married to his wife, Judy, for the past 54 years. Together, they raised two children, Doug Wenners and Mary Ellen Morse, both of whom are also attorneys and members of the New Hampshire Bar. Vin and Judy are also blessed with seven grandchildren.

According to Doug and Mary Ellen, they have learned a lot personally and professionally from their father's 55 years of practice.

"We learned that integrity is everything. He taught us that you never cheat, lie, or even stretch the truth. And to maintain the confidence and trust of a client means never, ever discussing the client's matter with anyone – not even at home," says Mary Ellen.

"Our dad is a great example of how

lawyers can positively change their communities by leveling the playing field and creating equal opportunity for those less privileged or fortunate. He was a relentless advocate and powerful ally to hundreds of New Hampshire families. One of his gifts was the ability to challenge assumptions and make arguments so concisely and simply that they became almost impossible to disagree with," adds Doug.

Vin's family admires the way he balanced family and work over his career. "He taught us that great lawyers commit themselves to perfection in their craft, but they don't marry it. He logged long hours in his office and the courtroom, but he always came home for family dinner, did school drop offs, and took family vacations. He was a great lawyer, but an even better fa-



The Vincent A. Wenners, Jr. Fund helps to support access to justice for wage earners of modest means and provides public education about labor laws. Contributions can be made at nhbar.org/nh-bar-foundation. Courtesy Photo.

ther," says Mary Ellen.

The Vincent A. Wenners, Jr. Fund is established support access to justice for wage earners of modest means and provide public education about labor laws. The Fund may also be used to improve the legal standing of workers throughout New Hampshire.

The founders of the endowment hope that others who knew Vincent will make contributions in his honor to the New Hampshire Bar Foundation to support the work that meant the most to him.

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In Memoriam

David K. Bamford

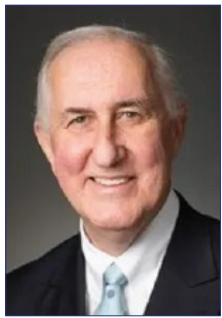
David K. Bamford, a beloved husband, father, grandfather, and friend, 75, of Dover passed away peacefully on Saturday, July 16, 2022, at his home surrounded by his loving family.

The son of George and Beatrice (Ray) Bamford, he was born Sept. 17, 1946 in Exeter but was raised in Durham. Bamford graduated from ORHS in June 1964. He entered the University of New Hampshire that September and graduated with honors in January 1969. He was named a Distinguished Military Graduate upon graduation.

Bamford served in Vietnam, where he was awarded the Bronze Star. He left active service in 1971 and enrolled at Suffolk University Law School, where he graduated in 1975. He worked as an Executive Officer and later as Commander of the Artillery Battery in Dover, NH. He also began to invest in real estate, which he continued throughout his adult life. Bamford established his own law practice – Bamford, Dedopoulos & Regan – in Durham and Dover.

In March 1976, Bamford and then-wife Kathy (Hannon), lovingly welcomed daughter Kristen. In 1996, he married Deb (Bamford) with whom he felt incredibly fortunate to spend his life. He welcomed her children Josh, Mattie, Dynn, Beka, and Bobby into his life and loved them as his own. A longtime resident of Dover, Bamford cared deeply about his community. He continued to grow his real estate business and engaged in a wide variety of community initiatives, particularly those related to education. He was named the Citizen of the Year by the Greater Dover Chamber of Commerce in 2016.

A true fighter, but never a complainer, Bamford lived with aggressive lung disease



for more than 12 years. In 2014, he was blessed with the ultimate gift of a donor lung, which extended his life by more than seven years.

A deeply loving man, Bamford was beloved by his family and friends. He will be remembered for his integrity, wisdom, wit, humor, and friendliness.

His family members include his wife of 26 years, Deborah Bamford of Dover; five children: Kristen Sebastian and her husband, Scott, of Durham; Joshua Cote and his wife, Kyle of Dover; Deborah-Lynn Cote of Dover; Rebekah Krieger and her husband, Ross, of Dover; and Robert Cote, Jr. and his wife, Jill, of Dover; 11 grandchildren: Lexie, Addy, Asher, Aidan, Cameryn, Mayer, Quinn, Ella, Ryann, Leven, and Elliot; two brothers Stephen Bamford and his wife, Donna, of North Port, Florida and Paul Bamford and his wife, Mary, of Stratham; and many dear nieces and nephews.

He was predeceased by his parents and his son, Matthew Cote.

Charles "Chad" M. Belmer, Jr.

Charles Miller Belmer, Jr. (Chad) of Marblehead, Massachusetts passed away suddenly on Sunday, January 2 at the age of 72. He was born in Lebanon, Pennsylvania and was the devoted son of Charles M. Belmer, Sr. and Helen (Kreider) Belmer.

Chad was the beloved husband of Merrill Belmer, with whom he shared 45 years of marriage. He was the devoted and endlessly supportive father of Charlie and Thurston Belmer, the loving father-in-law of Cynthia Belmer, and the cherished grandfather of Lianna and Oliver Belmer, to whom he was affectionately known as Grambo.

He leaves his sister Susan Harris of Bethle-



hem, Pennsylvania and her husband Bill, as well as his sisters-in-law Hope G. Arns and Cornelia G. Stutz. He also leaves his nieces Katherine Kollet and CJ Stutz Cormier, his nephews Jack Garrity and Jackson Cormier, and numerous extended family.

Chad grew up in Lebanon, Pennsylvania. He graduated from Blair Academy and Franklin Pierce Law Center. He was a highly respected litigation attorney for over 40 years, with his own law practice in Salem, Massachusetts. Chad was an amazing advocate with unbending high moral standards, who enjoyed the practice of law, the thrill of courtroom litigation, and helping his clients resolve difficult disputes. Chad was licensed to practice law in several states and was a member of the American Bar Association, the Massachusetts Bar, the Maine State Bar, the New Hampshire Bar, the Pennsylvania Bar, and the Essex County Bar Association. He was a Court Mediator and served on the Board of Bar Overseers reviewing attorney disciplinary cases.

Chad was an avid sailor and a member of the Eastern Yacht Club for 44 years. He enjoyed cruising and overnight sailing on his Bristol 32 "Hard Tack," and he did all the maintenance on the boat and the engine himself. He had a lifelong love of skiing, hiking, sailing, camping, kayaking, and almost any outdoor activity presented to him. He loved his home on Kezar Lake in Maine, where he spent many happy days hiking, boating, and just spending time in the woods. He was known to those who knew him best as a daredevil, living life to the fullest with a smile and taking risks to be sure to never miss a moment of life. He was a happy, warm, and loving person with great

joy in his wife, children, and grandchildren.

In lieu of flowers, donations to the Kezar Lake Watershed Association, Greater Lovell Land Trust, The Mass Audubon Society Ipswich River Sanctuary, or the charity of your choice would be appreciated.

Fond memories and expressions of sympathy may be shared at www.EustisandCornellFuneralHome.com for the Belmer family.

Louis Paul Faustini

Louis Paul Faustini, 96, of Fort Myers Beach, Florida, and formerly of Dunbar-

ton, New Hampshire, passed away on Friday, July 15, 2022, in Piermont, NH. Born on July 20, 1925, in Quincy, Massachusetts to the proud parents of Luigi & Anna (DuBois) Faustini, Louis was a retired trial attorney who had practiced for more than 50 years. During his career, the judges who heard his cases referred to him as "Houdini." He was very proud that several of his trials were used as case studies in Law Schools, and he was voted by his fellow colleagues as one of the best lawyers in the United States. Louis was also a WWII Army Veteran, and he was very proud to have served under General Patton. He was an accomplished pilot and thoroughly en-



IN MEMORIAM continued on page 12

Community Notes

The Board of Directors of the New Hampshire Public Defender is pleased to announce the appointment of Sarah Rothman as the next Executive Director of the New Hampshire Public Defender. Ms. Rothman succeeds outgoing executive director, Randy Hawkes, who announced his retirement earlier this year.

Ms. Rothman received her law degree from Northeastern University School of Law in May 2007 and joined NHPD immediately upon graduation. After serving as a staff attorney for nine years, she was appointed Managing Attorney of the Manchester Office of NHPD in 2016.

LawLine Thank You

The NH Bar Association thanks Paul Alfano and Melissa Farr of Alfano Law Offices and Keri Welch of SK Lawyers for volunteering their time and services to LawLine on July 13, 2022. It was the first in-house LawLine event for more than two years.

LawLine is a public hotline hosted by volunteer attorneys and held on the second Wednesday of each month from 6-8 p.m. For more information, or to volunteer to host a LawLine event, please contact NHBA LawLine Coordinator Anna Winiarz at awiniarz@nhbar.org. Volunteers are still needed for the Dec. 14, 2022 event, as well as multiple dates in 2023.



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In Memoriam from page 11

joyed flying. Louis also loved camping and hunting, along with being a competitive shooter on a national level.

Survivors include his beloved wife of 35 years, Rose Marie Musty-Faustini; his loving children: son, Paul (Charlotte) Faustini and two daughters, Meridith McGraw and Louise Faustini; three grandchildren: Jessica, Kate, and Nick; and six great-grandchildren: McKayla, Nevaeh, Parker, Landon, Brooke, and Deacon. He was preceded in death by his parents and his three brothers, George, Phil, and Frank, as well as his grandson, Scott.

A Private Celebration of Life Memorial Service, including US Army Honors, will be held at a later date. In lieu of flowers, donations may be made in Louis' memory to the Alzheimer's Association at www.alz.org.

Katherine "Kathi" Rogers

After a lifetime in the political arena and public service, Katherine Diane Rogers of Concord was taken by cancer on April 10, 2022. The daughter of Albert and Alta Whittier Rogers, Kathi was born on March 7, 1955, in Concord, the city she served and represented for three decades.

A child of the Heights, where she lived her whole life, Kathi made her neighborhood her constituency. In 1977, she graduated from Clark University and became president of the New



Hampshire Young Democrats and served eight terms on its Executive Committee until her tenure ended with her passing. She was long a mainstay of both the Concord City and Merrimack County Democratic Committees, both of which she chaired. The party honored her service with the McIntyre Shaheen Legacy Award in 2014 and Kathy Sullivan Courage and Leadership Award in 2021. She has received many awards for her service as an exceptional elected official.

In 1980, Kathi embarked on a career as a political consultant, serving on the campaigns of Governor Hugh Gallen, US Senator John Durkin, and House Democratic Leader Chris Spirou. She was a delegate to the Democratic National Convention in 1976, 1980, 1984, 1986, and 1988.

Kathi was elected to the first of eight terms on the Concord City Council in 1991, to the first of eight terms in the New Hampshire House of Representatives in 1992, and to the first of five terms on the Merrimack County Commission in 1998. She consistently championed the interests of the most vulnerable and least fortunate of her fellow citizens. As chair of the County Commission, she oversaw construction of a new jail and nursing home.

Kathi left the Legislature in 1998 to earn a law degree at Suffolk University School of Law in 2002, then served as the town prosecutor in Allentown until 2008, when she was the first woman elected Merrimack County Attorney. As a city councilor, she had introduced Project Next Generation, and as County Attorney, pursued her commitment to young people by leading a Juvenile Justice Task Force and founding a Child Advocacy Center to investigate and prosecute child abuse.

In 2012, Kathi returned to the House, where after serving earlier on the Public Works and Criminal Justice committees, she

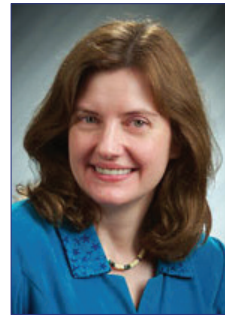
joined the Finance Committee. In her role as a budget writer, she sought to ensure sufficient funding for social services, mental health, juvenile justice, and other programs assisting those in greatest need. As a lawmaker, she tempered partisanship with pragmatism by reaching across the aisle to address issues as divisive as the ownership of firearms and as popular as the rights of animals.

Predeceased by her parents, Kathi leaves her brother Stephen Whittier, Sr. and his wife Gayle of Rustburg, Virginia, a nephew Stephen Whittier, Jr., and grandniece Dalton Whittier of Mattapoisett, Massachusetts and several cousins. She is survived by a close circle of friends, her chosen family, who she loved greatly, Raymond Buckley and Donna Soucy of Manchester, Mike, Caitlin and Elizabeth Rollo of Hopkinton, Kris Schultz and Gene Taylor, John DeJoie, Jim Demers, William Stetson, and Wayne Eldgride, all of Concord, Michael Kitch, Beth, and Doug Campbell all of Penacook, and Michael Bartlett of Henniker.

Lisa Rule

Lisa Rule, 64, passed on July 2, 2022, after a long illness. The family is immeasurably grateful to the people at the Birches and at Granite VNA Hospice for their compassionate and extraordinary care.

Lisa was born in Philadelphia, PA on June 28, 1958, the daughter of Frank and Jean Rule, who both predeceased her. She had an older sister, Pam, who predeceased her and an



older brother, Mathew, who survives her.

As a child and teenager, Lisa loved the nationwide camping trips she took with her family. She was passionate about giving back—volunteering to support inmates at a local jail, learning to be an EMT, and becoming proficient in American Sign Language. Lisa also devoted time to her physical development. She attained the junior equivalent of a brown belt in judo and was a serious runner until well into her 30s.

Lisa earned her baccalaureate degree in philosophy at George Washington University, and her law degree at the Franklin Pierce Law Center. She spent her legal career at Bianco PA, until she retired in 2017 as a senior attorney.

Lisa took joy in the small things of wandering the farmer's market, meals, shopping, going to concerts, or watching the Red Sox. She was passionate about her family, relishing the everyday time she spent with them, as well as devoting herself to making traditional family holidays special. It would not be Christmas without Lisa in the role of Christmas elf. She also particularly enjoyed family vacations at Disney World and on Caribbean cruises. Lisa was civilly involved as well, working as a longtime member of the Zonta Club of Concord.

Lisa is survived by her husband, Larry Smukler; her children, Shanon Rule and Kara Smukler; and her two grandchildren, Maddex and Sydney Harris.

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.



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Wescott Law Welcomes Three New Attorneys

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Connor J. O'Neill

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Commercial & Residential Real Estate
Land Use & Zoning
Estate Planning & Probate



Kelley L. Stonebraker

Labor and Employment
Business Formation & Transactions
Civil Litigation
Commercial & Residential Real Estate



Mark E. Waldner, Jr.

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and Meredith

McDonald & Kanyuk PLLC
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We are pleased to announce that

Michael P. Panebianco, Esq.



has joined McDonald & Kanyuk, PLLC

Michael will continue his practice in the areas of estate planning and estate and trust administration for high net worth individuals and families. Michael is a Fellow of the American College of Trust and Estate Counsel (ACTEC). Michael has been a Director for the National Association of Estate Planners and Councils since 2017, is a past President of the New Hampshire Estate Planning Council, past Chair of the Trust & Estate Section of the New Hampshire Bar Association, and has been a Fellow of the American Bar Foundation since 2016. Michael can be reached at mpanebianco@mckan.com.

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DEVINE MILLIMET

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*Welcomes
Matthew Solomon
to the firm!*



Devine Millimet is pleased to welcome Matthew Solomon to the firm as a Litigation Associate in our Manchester office. Matthew is a 2019 graduate of UNH Law School and has practiced for several years in the New Hampshire office of a regional law firm. As part of the Devine litigation team, he will work with businesses and individuals in a variety of civil litigation matters, including complex commercial litigation, probate litigation and insurance defense work.

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Emily E. Peterson

Emily joined the firm in 2022. Prior to joining the firm, she interned with the New Hampshire Judicial Council, the 9th NH Circuit Court in Nashua and for a criminal defense firm in Exeter, NH. Emily was a summer associate at Wadleigh in 2021.

Emily earned her law degree at UNH Franklin Pierce School of Law where she was a member of the Daniel Webster Scholar's Honors Program.



Founded in 1899, Wadleigh, Starr & Peters, P.L.L.C. offers a full range of legal services to local and national clients. Located in historic Manchester, NH, we are proud of our history and draw on our vast experience and historical perspective to address the ever-shifting demands of the law.

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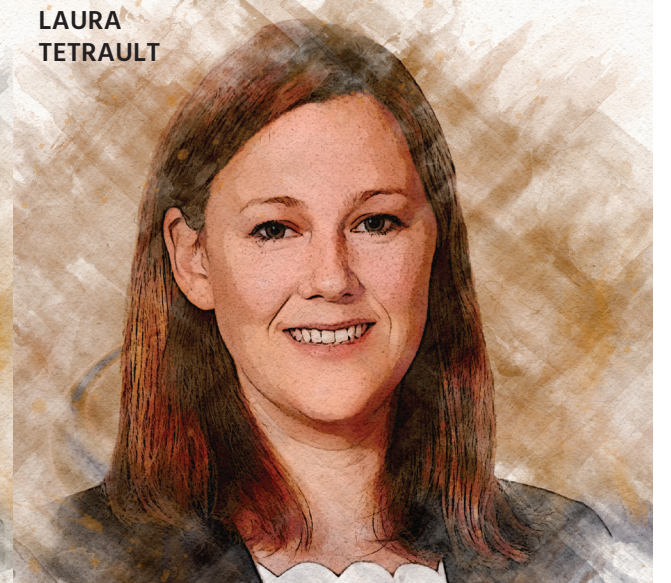


Attorney Colleen O'Connell

With over 35 years of experience, Attorney O'Connell concentrates her practice in estate planning, trusts and estates administration, business succession planning, charitable planned giving, and federal estate and gift tax planning. Prior to joining Shaheen & Gordon, Colleen was a shareholder, director, and founding member of Barradale, O'Connell, Newkirk & Dwyer, P.A. (BOND). Colleen holds a Master of Laws degree in taxation.

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LAURA
TETRAULT



Attorney Laura Tetrault

Attorney Laura Tetrault works with clients to develop estate plans tailored to their needs, including simple estate plans, sophisticated planning to reduce estate and gift taxes, planning for the needs of a special needs beneficiary, succession planning, and planning for long-term care. She is an active member and treasurer of the New Hampshire Chapter of the National Academy of Elder Law Attorneys.

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ing Committee, Hearings Committee, and the Professional Conduct Committee. Judicial, honorary, military, and limited active members are exempt from this fee.

New Hampshire Mandatory Continuing Legal Education (NHMCLE) Fees

Under NH Supreme Court Rule 53, all active attorneys are required to obtain a minimum of 720 minutes of NHMCLE-approved credit, including 120 minutes of ethics and/or professionalism. Judicial, honorary, military, and inactive members are exempt from this fee.

Public Protection Fund Fees

Under NH Supreme Court Rule 55, the Public Protection Fund was established to provide a public service and to promote confidence in the administration of justice and the integrity of the legal profession by providing some measure of reimbursement to victims who have lost money or property because of theft or misappropriation by a New Hampshire attorney. Honorary, military, and limited active members are exempt from this fee.

New Hampshire Lawyers Assistance Program Fees

NH Supreme Court Rule 58 established the statewide lawyer assistance program, NH LAP, which provides immediate and continuing help to members of the legal profession regardless of their status, who are affected by any physical or mental health condition that affects their ability to practice their profession, quality of life, or study of law. The services by NH LAP are 100 percent confidential. Honorary, military, and limited active members are exempt from this fee.

At times, the Court may decide to suspend a particular fee. For example, the NHMCLE fee has been suspended for the past two years.

The annual attorney license renewal process was formerly referred to as 3-1-1, which NHBA Associate Execu-

tive Director Paula Lewis describes as a catchy way to refer to members' three obligations (NHMCLE affidavit, Trust Account Compliance certificate, and payment of NH Supreme Court fees and NHBA dues), all in one place, all due on one date.

"Not all members must complete all three obligations, though," Lewis says. "For example, if an attorney is on inactive status for the entire reporting year, they don't need to fill out a trust compliance form. Or, if they have been active for less than six months, they don't have to take NHMCLE – although, they may still need to file an exempt NHMCLE affidavit."

The Court's deadline to fulfill the obligations required for license renewal is July 1 of each year. If a member attorney does not process their license renewal and/or fulfill each of the three obligations required for their NHBA membership status, the Court assesses delinquency fees. Delinquency fees are assessed on August 2 and are charged as follows: \$300 for not filing the NHMCLE affidavit, \$300 for not filing a Trust Account Compliance certificate, and \$100 for non-payment of NH Supreme Court fees and/or NHBA dues.

In addition to the annual Court fees, members of the bar must also pay annual NHBA membership dues. The dues vary based upon a practitioner's membership status and have remained unchanged for 11 years. This is the result of expense management and development of non-dues revenue sources, including NHBA Continuing Legal Education offerings and advertising opportunities in various NHBA periodicals such as the *New Hampshire Bar News*.

Annual NHBA dues for members who have been active more than three years are \$310, whereas newly admitted members under three years pay \$260. Judicial members pay \$255 per year if they are full time and \$175 if they are part time. Inactive members (members of the NH Bar practicing in a different state) pay \$175 per year. If members are retired, or if they hold a limited-active status (their practice is limited to providing unpaid volunteer pro bono services), their annual dues are only \$25.

In recognition of their services, the NHBA waives dues for members that have been practicing law for 50 years or more (50 years total, not just practice in New Hampshire), and are considered Honorary Active (prac-

ing in NH) or Honorary Inactive (practicing in a different state or retired from the practice of law but remain a member of the NHBA).

The NHBA also recognizes military status by not charging dues for members who are active-duty military for three months or more during a renewal period.

"With an annual budget of \$3.4 to \$3.5 million, about 50 percent of the total revenue of the Bar Association is from member dues," Lewis says. "The other half comes from other sources such as CLEs, grants, publication advertisements, and other NHBA offerings and partnerships."

The member dues collected by the NHBA are largely used to serve its membership by offering free services such as Fastcase and TechConnect and by offering space at the Bar Center. The space includes conference rooms, meeting rooms, and the Seminar Room for attending CLE courses. In addition to member services, dues are also used to support the many NHBA programs, such as the Lawyer Referral Service and Law Related Education.

When the COVID-19 pandemic began, the NHBA rallied for its members by optimizing on its technology and website to quickly add pandemic information, updates, and member service-related offerings that the pandemic brought about for its members. A dedicated page was established on the NHBA website with links to court updates, COVID-19 updates, and attorney welfare information, to name a few.

Throughout the pandemic, Bar staff remained available, working remotely to assist members by offering support, answering questions, and identifying sources to fill needs resulting from the change in the way business had been done pre-pandemic.

The NHBA continues to monitor the changing needs of its members and will continue with new member service offerings, along with an updated website planned for the end of the calendar year.

For a full list of member benefits and services, navigate to nhbar.org/resources/member-services-benefits. If you would like more information on the NHBA, Court fees, membership dues, and types of membership statuses, look under the About Us dropdown menu at nhbar.org.

NHBA 50-Year Member Celebration Continues with Recommended Reads

As part of our 50-Year Member Celebration this year, we asked the 71 lawyers who have been practicing for 50 years which books they have recently read and would recommend. From their responses, we compiled a list of 40 books. If you are looking for a good read, this is what they suggest.

Watergate: A New History by Garrett M. Graff

The Fate of Empires and Search for Survival by Sir John Glub

Lifespan: Why We Age and Why We Don't Have To by David A. Sinclair, PhD

Company of One: Why Staying Small is the Next Big Thing for Business by Paul Jarvis

A Farewell to Arms by Ernest Hemingway

These Truths: A History of the United States by Jill Lepore

Dead Wake by Erik Larson

She Has Her Mothers Laugh by Carl Zimmer

Mary Magdalene, Women, the Church, and the Great Deception by Adriana Valerio

The Lincoln Highway by Amor Towles

In the Garden of Beasts by Erik Larson

Sooley by John Grisham

Truman by David McCullough

Alexander Hamilton by Ron Chernow

The Origins of Our Discontents by Isabel Wilkerson

I Alone Can Fix It by Carol Leonig & Philip Rucker

Atlantic Fever by Joe Jackson

The Silk Roads by Peter Frankopal

Made in America by Bill Bryson

Golf in the Kingdom by Michael Murphy

The Dawn of Everything by David Graeber & Donald Wengrow

Into the Storm: Chronicle of a Year in Crisis by Christopher R. Altieri

The Warmth of Other Suns by Isabelle Wilkerson

In the Heart of the Sea by Daniel Philbrick

New York by Edward Rutherford

Rationality by Steven Pinker

Thinking, Fast and Slow by Daniel Kahneman

The Surrogate Wife by Archer Mayor

Zealot by Reza Aslan

Sapiens: A Brief History of Humankind by Yuval Noah Harari

The Devil's Chess Board by David Talbot

The Wrecking Crew by Thomas Frank

Harlem Shuffle by Colson Whitehead

Pachinko by Min Jin Lee

Trilogy by Bob Woodward

The Revenge of Geography by Robert D. Kaplan

The Book of Job

The Splendid and the Vile by Erik Larson

What the Constitution Means to the Citizen by Chief Justice George W. Maxey

Definer of a Nation by Jean Edward Smith & John Marshall

Nominations Sought for the 2022 Bruce Friedman Award

By 603 Legal Aid Staff

Becoming an attorney is a solemn acceptance of the unique privilege that lawyers have to practice law. Bruce Friedman, the late founder of the Civil Practice Clinic at UNH Franklin Pierce School of Law and a legend in the world of civil legal services in New Hampshire, was vocal and active in developing a culture in New Hampshire where lawyers utilized this privilege to serve those who needed it most. This award pays tribute to Bruce Friedman's legacy by honoring the accomplishments of a UNH Law graduate and New Hampshire Bar member who exemplifies the commitment to public service of Bruce Friedman.

On October 26, 2022, we will be honoring yet another recipient. As this award is intended to honor a member of the Bar who stands out as an exemplar of Bruce's commitment to public service, it is only fitting that we look to the Bar for nominations for this honor. Who is it that

comes to mind when you think of public service? Whom among your colleagues and friends reminds you that you can always do better, do more, and use your privilege to serve those with no privilege? The nominations should be of a practicing New Hampshire Bar Member who is a graduate of the UNH Franklin Pierce School of Law (formally Franklin Pierce Law Center). In your nomination, please include a reason why this individual is deserving of the award. Nominations should be sent to 603 Legal Aid Pro Bono Manager, Emma M. Sisti, at esisti@603legalaids.org. Nominations must be received by September 6, 2022.

The 2021 recipient, Katherine J. Morneau, earned this award for her commitment to empowering women, her collegiality among her fellow attorneys, and her respect for her clients. Kate also is a pro bono volunteer and ambassador, touting its relevance to the legal profession and promoting participation to new lawyers and law students.

Past recipients include:

2021	Katherine Morneau, Morneau Law
2020	Suspended due to COVID-19
2019	Thomas Fredenburg (posthumously), Legal Advice & Referral Center
2018	Kirk Simoneau, Nixon, Vogelmann, Slawsky, Simoneau PA
2017	Marilyn Mahoney, Harvey & Mahoney
2016	Catherine E. Shanelaris, Shanelaris & Schirch, PLLC
2015	Jack P. Crisp, The Crisp Law Firm, PLLC
2014	Quentin J. Blaine, Blaine Law Office, PLLC
2013	Steven B. Scudder, Committee Counsel, ABA Standing Committee on Pro Bono and Public Service
2012	Marilyn Billings McNamara, Upton & Hatfield LLP



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New Hampshire Bar Association Budget for Fiscal Year 2023

Dues Level Maintained for June 1, 2022 — to May 31, 2023

The 2022-2023 fiscal year budget for the New Hampshire Bar Association was presented to and approved by the NHBA Board of Governors in May.

The NHBA budget is balanced, reporting an expected two percent increase in revenue and expenses over the prior year's budget.

A conservative, creative approach, along with a dedicated and motivated staff, have enabled the budget to retain the capacity for member and public service – in particular, through continued support of the NH Bar Foundation, NHBA's Law Related Education program, and NHBA's Lawyer Referral Service –without increasing membership dues. In addition, the NHBA supports the state's Pro Bono Program

administered through 603 Legal Aid, the Public Protection Fund, NH Minimum Continuing Legal Education, and the NH Lawyer Assistance Program.

Budget Highlights

NH Bar Association Budget totals \$3.614 Million

Revenue Breakdown

- Fifty-five percent – Membership Dues and Fees (\$1,970,611) which is expected to increase slightly by \$9,352 compared to the prior fiscal year. Membership continues to increase by about 100 members or less, and has done so over the past six

years.

- Thirty-three percent – Registration and Fees, of which the majority is Continuing Legal Education revenue (\$1,205,951).
- Seven percent – Publications and Merchandise Sales which includes *NH Bar News* advertising and subscriptions (\$278,121).
- Three percent – Substantive Law Section Membership Revenue (\$103,720).
- One percent – Other, which includes investment income, and other miscellaneous revenue (\$27,368).
- One percent – Grant and other funding for NHBA programs (\$28,500).

New Hampshire Bar Association

	PROPOSED BUDGET	APPROVED BUDGET	
	May 31, 2023	May 31, 2022	Change
REVENUE			
Membership Dues & Fees	1,970,611	1,961,259	9,352
Registrations & Fees	1,205,951	1,169,698	36,253
Publications & Merchandise Sales	278,121	257,380	20,741
Grant & Funding Revenue	28,500	20,543	7,957
Other Revenue	131,088	133,888	(2,800)
TOTAL REVENUE	3,614,271	3,542,768	71,503
EXPENDITURES			
Personnel Expenses	2,128,500	2,212,432	(83,932)
Overhead Expenses	451,380	655,040	(203,660)
Program Expenses	1,034,391	675,296	359,095
TOTAL EXPENDITURES	3,614,271	3,542,768	71,503
Net Asset Contribution	-	-	-
EXCESS OF REVENUE OVER EXPENSES	-	-	-

New Hampshire Bar Association Explanation of Largest Expenditure - Personnel Costs

Department	Budget Year Ended, May 31, 2023				Budget Year Ended, May 31, 2022			
	Personnel Costs	Full Time Staff Equivalent (FTE)	Positions All or Partially Funded	% Expense of Total Budget	Personnel Costs	Full Time Staff Equivalent (FTE)	Positions All or Partially Funded	% Expense of Total Budget
Executive	411,191	4.100		11.38%	420,975	4.100		11.88%
Business Operations	546,389	7.220		15.12%	607,177	8.700		17.14%
Program Development	424,560	6.270		11.75%	435,818	6.200		12.30%
Marketing, Communications & Member Outreach	502,052	6.200		13.89%	495,392	7.000		13.98%
Lawyer Referral Service - Full Fee	93,842	1.600	1.600	2.60%	147,012	1.900	1.900	4.15%
Lawyer Referral Service - Modest Means	93,842	1.600	1.600	2.60%	50,378	0.850	0.850	1.42%
Law Related Education	56,625	0.800	0.800	1.57%	55,681	0.800		1.57%
Total Personnel Costs	2,128,501	27.790		58.89%	2,212,433	29.550		62.45%

New Hampshire Bar Association Budget for Fiscal Year 2023

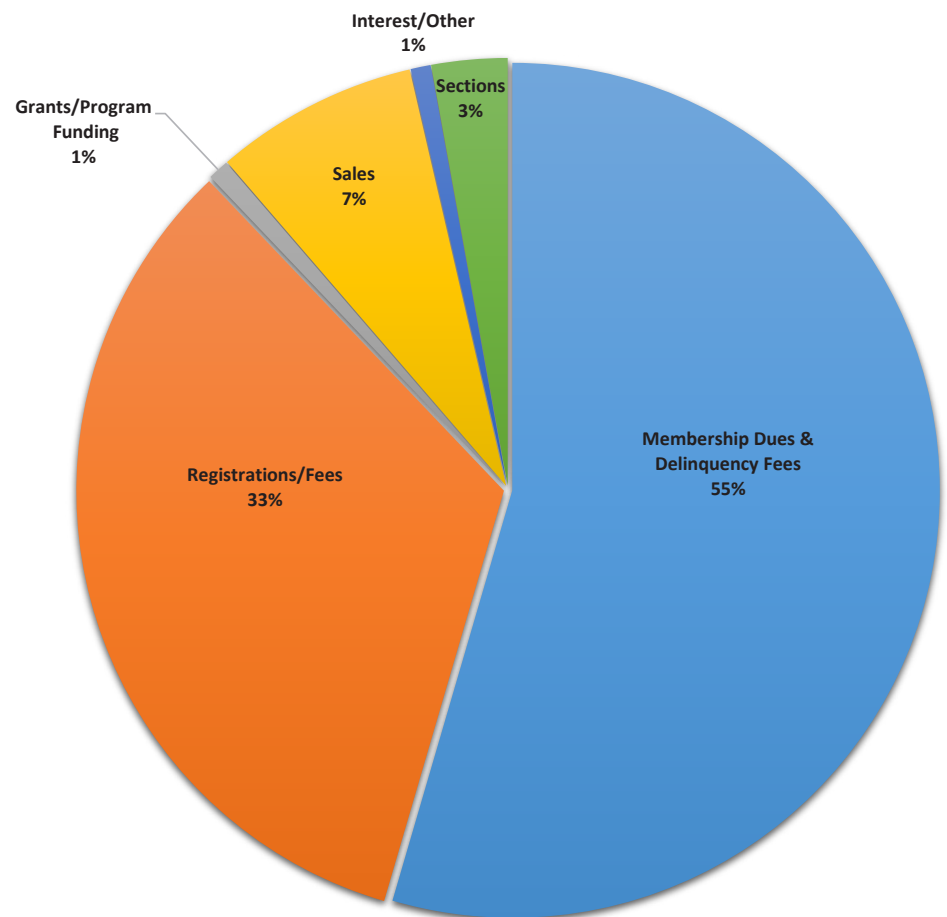
Expense Breakdown

- Program Expenses are 29 percent of the total expenditure budget and relate to member and public programming and services (\$1,034,391).
- Overhead costs are 13 percent of the total expenditure budget, with the largest expenses being facilities, information technology services/data processing and credit card processing fees (\$451,380).
- The largest expense for most service-intensive organizations, are personnel costs (salary, wages, and benefits). Virtually all activities at the Bar Center are service-related; hence the single-largest expense in the budget is staffing to provide programs and services at 58 percent of the total expenditure budget (\$2,128,500).

As noted above, the NHBA supports affiliates that share the Bar Center offices to include, NH Bar Foundation, the charitable arm of the NH Bar Association, and NH Minimum Continuing Legal Education (NH Supreme Court Rule 53). In addition, NHBA staff also support the Public Protection Fund Committee by administering NH Supreme Court Rule 55, support NH Supreme Court Rule 50-A by administering the annual Trust Account Compliance Form filing, and assists 603 Legal Aid and NH Lawyer Assistance Program with marketing and other support.

Please attend the Budget Information Session on Thursday, September 15, 2022, at 2:00 p.m. for questions and discussion regarding this fiscal year's budget. Please respond to nhbainfo@nhbar.org of your intent to attend. Any questions or comments in advance of the meeting may be emailed to the NHBA's Associate Executive Director for Operations, Paula D. Lewis, at plewis@nhbar.org.

NH Bar Association 2022-2023 Budgeted Revenue Sources



Notice of Budget Information Session – All Members Welcome

Please join us at the Budget Information Session to be held on Thursday, September 15, 2022, at 2:00 p.m. for questions and discussion regarding this fiscal year's budget. Please respond to nhbainfo@nhbar.org of your intent to attend. Any questions or comments in advance of the meeting may be emailed to the NHBA's Associate Executive Director for Operations, Paula D. Lewis, at plewis@nhbar.org.

New Hampshire Bar Association Largest Expenditure, Excluding Personnel Costs

	Budget Year Ended, May 31, 2023			Budget Year Ended, May 31, 2022		
	Budgeted Cost	Expense Funded by Grant or Award	% Expense of Budget	Budgeted Cost	Expense Funded by Grant or Award	% Expense of Budget
Overhead Expenses						
Occupancy (mortgage interest, CAM, maintenance)	233,413		6.46%	242,127		6.83%
Miscellaneous (includes credit card processing fees)	162,571		4.50%	139,615		3.94%
Information Services/Data Processing	90,247		2.50%	97,023		2.74%
Professional Fees (includes annual financial audit)	65,345		1.81%	53,597		1.51%
Program Expenses						
Midyear Meeting Expenses	93,720		2.59%	64,782		1.83%
Printing & Materials (includes CLE materials for members)	70,825		1.96%	61,270		1.73%
Member Services Affinity Partners	62,892		1.74%	62,892		1.78%
Postage	54,148		1.50%	51,118		1.44%
Program Development & Training	48,405		1.34%	40,162		1.13%
Practical Skills Member Workshops	43,785		1.21%	35,952		1.01%
Committee Expenses	34,750		0.96%	38,240		1.08%
Publicity & Advertising (including CLE advertising)	28,072		0.78%	40,684		1.15%
Total Percentage of Budget			27%			26%

Caulfield from page 1

A native of Norwood, Massachusetts, Caulfield was born to lawyer parents. His father was a Boston trial lawyer and one-time acting dean of Suffolk Law School, and his mother was what he calls a “Renaissance woman,” who started as a legal secretary before volunteering in World War II, getting her bachelor’s and master’s degrees and then going on to Suffolk Law School.

They discouraged him from becoming a lawyer, thinking “the time for lawyers was gone from this world,” Caulfield says; they suggested that he become a doctor instead. He entered a pre-med program at Boston College, but during his second year saw his father try a court case. “It enthralled me,” he remembers. He switched majors.

He received his juris doctor *cum laude* from Suffolk Law and practiced law briefly in downtown Boston. He later accepted a teaching position at Suffolk Law, where he became executive director of legal assistance, lecturing in family law practice and trial tactics. He ran a legal assistance program in Charlestown, often representing battered women from the inner city.

Caulfield then accepted an offer to become a partner at a New Hampshire law

firm and worked at a few others before starting his own firm in 1982.

Attorney Brian Snow met Caulfield when both were practicing in Nashua District Court as young lawyers; the two have remained close since then. “He was a tough adversary at the time, and out of such adversity comes friendship,” Snow recalls. “He is an extremely talented lawyer, sometimes strident but very talented. He is also a marvelous magician and a martial artist, as well.”

The attraction to martial arts came early. Caulfield studied karate as a boy, then moved on to Aikido “to keep myself sane” in college. He later learned other martial arts forms before starting Black Sword Aikido.

“I think the martial artists who know how to defend themselves are the most peaceful people, because they don’t have to prove anything,” he says. “To me, it’s not just fighting: it’s doing the perfect technique.”

Jon Beyer has been a martial arts student of Caulfield’s for some 29 years. He believes in the approach where “what you try to do is remain calm and redirect, so you both get to a point of mutual respect, and it’s not conflict meeting conflict.”

“The reason I kept studying with [Caulfield] is, I thought he was one of the best martial artists I’ve seen, technically more

advanced,” he adds. “I think he honestly cares about people; I really do. He cares about the common good.”

Caulfield’s interest in magic predates even his martial arts history. His grandfather, born in Ireland, was also a magician, and “he used to utterly amaze me as a kid doing magic tricks,” he says. One such trick involved taking Caulfield’s mother’s mink stole, repeating magic words over it, then “bringing it to life” so it would crawl across the floor and up the wall before settling to stillness again. (Only later did Caulfield learn his grandfather had taken thread from a sewing basket and roped it through the room to pull the stole along.)

Caulfield joined a Boston magic club as a boy and is now a member of the International Brotherhood of Magicians, Order of Merlin Excelsior, Society of American Magicians, and other magician associations.

He has graduated from what he calls “mainstream magic” (“where the magician approaches the audience and basically says ‘see how clever I am’”) to a style of magic called “mystery performing.” “It’s me and the audience revealing mysteries together,” he says. “[W]hen my audience leaves, I want them to have a moment of transcendence, and for one brief moment say, ‘maybe there is magic in the world.’”

Fellow magician Robert Granville has performed with Caulfield many times over the 10-plus years of their acquaintance and shares his philosophy on mystery entertainment. “Rather than seeking to amaze an audience with feats of the impossible, mystery entertainers prefer to create an atmosphere that takes the audience slightly out of its comfort zone to a place where bizarre and mysterious things can happen.”

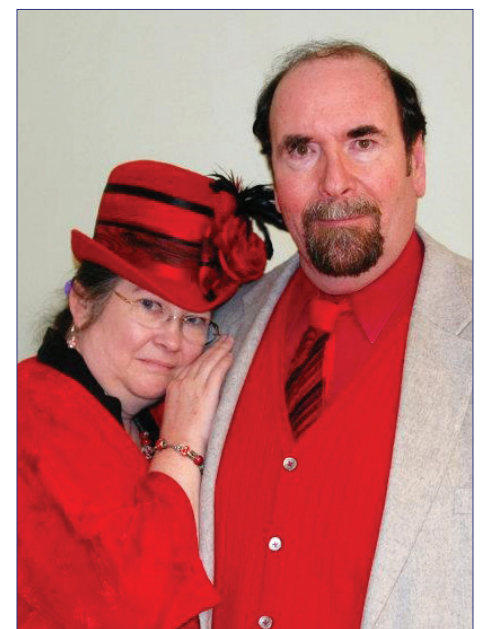
Granville adds that Caulfield has been president of the Granite State Magic and Mystery Entertainers for several years. “Under his leadership, our club has performed numerous shows over the years, both as charitable donations where we take no fees, such as fundraisers for a local police department to fund its K-9 program and institutions that shelter at-risk children, as well as shows open to the public where the proceeds are used to cover the expenses of the club.”

Caulfield has tried more than 1,000 cases in the last 43 years, obtaining settlements in cases involving everything from exploding propane tanks and wrongful deaths to multi-vehicle collisions. But those are not the ones that stand out in his mind. “If I try a murder case or a rape case, it’s over with, and I go on with my life. But the cases that linger for me are these cases where I’m a guardian *ad litem*,” he says. “Years later, I lie awake at night wondering if I made the right decision. Those are the cases that linger and bother me.”

“I think the martial artists who know how to defend themselves are the most peaceful people, because they don’t have to prove anything. To me, it’s not just fighting: it’s doing the perfect technique.”



Joseph Caulfield instructing a student in the art of Black Sword Aikido. Courtesy Photo



Lord and Lady Blacksword – Joseph Caulfield with his wife and magic partner of 22 years, Kathy Caulfield. Courtesy Photo

So it is especially gratifying to him when a parent contacts him years later to thank him for his handling of a case or when someone calls to say, “you were my guardian *ad litem*, and now I’m in college.”

“It’s important to do as little harm in this world as you can,” Caulfield adds. “Sometimes, you have to do harm. But even when you have to do harm – be it physical or emotional or legal – you should do as little as possible. I don’t think you should try to crush anybody. When you do violence in the world, you really do violence to yourself.”

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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 NHCLE min.

SEPTEMBER 2022

WED, SEP 21 – 9:00 a.m. – 4:00 p.m.
Chapter 11 Bankruptcy Practice in NH
• Webcast; 370 NHCLE min., incl. 60 ethics/prof.

FRI, SEP 23 – 12:00 – 1:00 p.m.
The Ethics of Venting
• Webcast; 60 NHCLE 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 – 1:30 p.m.
At the Intersection of Law & Technology
w/James Casey
• Webcast; 90 NHCLE min.

THU, SEP 29 – Time TBD
The Long-Term Implications of Short-Term Rentals
• 210 NHCLE min.
• Concord • NHBA Seminar Room

OCTOBER 2022

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

MON, OCT 31 – 9:00 a.m. – 4:30 p.m.
21st Annual Labor & Employment Law Update
• 360 NHCLE min., incl. 60 ethics/prof.
• Concord • NHBA Seminar Room

NOVEMBER 2022

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

WED, NOV 9 – 9:00 a.m. – 12:30 p.m.
Bankruptcy & Municipalities in NH
• Webcast; 195 NHCLE min.

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



40th Annual Tax Forum

**Monday,
November 21, 2022**

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

*(Co-sponsored with the NH
Society of CPAs)*

**** Additional details will be
forthcoming ****

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



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How to Register

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

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



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<https://www.nhbar.org/nhbacle/nhbacle-club>

Co-sponsored with the NH Bankers Assn and the
NH Society of CPAs

2022 Emerging Leaders' Summit

Tuesday, September 27, 2022

8:30 a.m. – 4:30 p.m.

NH Institute of Politics-Saint Anselm
College, Manchester

This event is designed to help financial and legal professionals expand their knowledge of tools and strategies to assist them on their path to being a true leader. Don't miss this amazing opportunity to network with your peers and gain the skills you need to reach your goals! Special luncheon speaker: Former Governor John H. Lynch.

Register today at:

https://www.nhscpa.org/professional_development/courses/2/ELS22/2022_emerging_leaders_summit_w_the_nh_bankers_assoc_nh_bar_assoc

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

Upcoming Webcasts

Vaccine Injury Law 101

Wednesday, August 24, 2022 – 12:00 – 1:00 p.m.
60 NHCLE 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 NHCLE 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 the NHBA's 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

At the Intersection of Law & Technology w/ James Casey

Wednesday, September 28, 2022 – 12:00 – 1:30 p.m. – 90 NHCLE min.

This webinar covers legal and non-legal dimensions at the law/technology interface, including the U.S. Bill of Rights, algorithms, human choice and consent, and impacts upon broader American society.

Chapter 11 Bankruptcy Practice in New Hampshire

Wednesday

9:00 a.m. - 4:00 p.m.



Webcast only

Sept 21



370 NHCLE min.
incl. 60 ethics/prof. min.



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, Program Chair/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 Dirs, 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

The Long-Term Implications of Short-Term Rentals

Thursday

9:00 a.m. - 12:45 p.m.



Webcast

Sept. 29



210 NHCLE min.



In person



NHBA Seminar Room, Concord

Short-term rentals are a controversial topic in most towns, especially small and resort communities. There are several ways to address this use, however, we have little guidance from the courts or the legislature to date. We will review what case law exists, as well as legislative acts and failures to act on the topic.

Who Should Attend?

Municipal and land use lawyers, as well as town officials interested in the topic.

Faculty

Laura Spector-Morgan, Program Chair/CLE Committee Member, Mitchell Municipal Group, PA, Laconia
Margaret M.L. Byrnes, NH Municipal Association, Concord
Jason D. Reimers, BCM Environmental & Land Law, PLLC, Concord

Bankruptcy & Municipalities in NH

Wednesday

9:00 a.m. - 12:30 p.m.



Webcast only

Nov 9



195 NHCLE min..



Every general practitioner in New Hampshire represents clients in real estate law and transactions; every transaction entails consideration of the municipality and its police powers, rights and liens. This program will provide guidance to navigate those powers, rights and liens in the context of bankruptcy. For lawyers representing a municipality this program will address important issues of the treatment of a municipality in bankruptcy. For lawyers who do not represent a municipality, this program will benefit any who deal (or find themselves forced to deal) with a municipality in connection with the bankruptcy of their client, their client's borrower, their client's landlord or their client's real estate seller.

Faculty

Edmond J. Ford, Program Chair/CLE Committee Member, Ford, McDonald, McPartlin & Borden, PA, Portsmouth
Christopher M. Candon, Sheehan Phinney Bass & Green, PA, Manchester
James W. Kennedy, City Solicitor, City of Concord
Richard K. McPartlin, Ford, McDonald, McPartlin & Borden, PA, Portsmouth
Charles R. Powell, Devine, Millimet & Branch, PA, Manchester
Peter C.L. Roth, NH Department of Revenue Administration, Concord

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

APPELLATE ADVOCACY 2022

**Featuring
the Entire
NH Supreme
Court**

Friday
Oct. 14

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



Webcast
In person



Special Resources:

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

NHBA Seminar Room, Concord

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

NH SUPREME COURT

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Hon. Gary E. Hicks, Senior Associate Justice
Hon. James P. Bassett, Associate Justice
Hon. Anna Barbara Hantz Marconi, Associate Justice
Hon. Patrick E. Donovan, Associate Justice

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

Timothy A. Gudas, Clerk of Court, 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, PA, Laconia

Elizabeth C. Woodcock, NH Attorney General's Office, Concord

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

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21st Annual Labor & Employment Law Update

Monday, October 31, 2022

9:00 a.m. – 4:30 p.m.

NHBA Seminar Room, Concord

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

NHBA•CLE Volunteer Faculty



Continuing through another year of COVID...over 150 individual members of our Bar and over 30 non-NHBA members volunteered (some multiple times) during the 2021-2022 CLE year as faculty panelists, program chairs and moderators in more than 60 high quality, live and remote NHBA•CLE seminars. Together, faculty donated thousands of hours of time to share their knowledge and expertise with colleagues statewide and beyond. Without the professional commitment of these volunteers, the New Hampshire Bar's CLE programs would not have been available to the many individual Bar members who attended. NHBA•CLE programs consistently receive very positive participant evaluations. Please – When you see these individuals let them know you appreciate their important contributions to the competency and professionalism of the New Hampshire Bar Association. On behalf of the entire CLE Committee and staff, we wish to thank all members for their continued support of NHBA•CLE efforts.

***Please let us know if we have left you off our list in error. We apologize for any oversights.**

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Focus on Workers' Compensation and Personal Injury Law

A Legal Principle of Doubtful Utility: The “Going and Coming” Rule in New Hampshire After *Pelmac* and *Hawes*

By Benjamin T. King

As long ago as 1957, the New Hampshire Supreme Court expressed skepticism at the soundness of the “going and coming” rule—the principle of workers’ compensation law that an employee’s injuries suffered traveling to and from work are not compensable because such injuries do not arise out of and in the course of employment. “The so-called rule has proved to be of doubtful utility,” said the Court, and has been “discovered to be...unjust when applied in all cases of travel to and from the home of the employee.”¹ Despite the Court’s long-standing reservations about the “going and coming” rule, the Court has “repeatedly held that the ordinary perils of travel are not considered hazards of employment and, therefore, that injuries arising from such travel are non-compensable.” *Cook v. Wickson Trucking Co.* in 1991.²

Historically, the Court has recognized two exceptions to the rule, one for “injuries sustained while traveling to or from [the] place of employment if the employee is on a ‘special duty or errand’ for the employer,” and the second for injuries that an employee sustains during personal activities that are “reasonably to be expected” and “not forbidden,” or if the activities “confer a mutual benefit on the employee and employer.”³

Two recent cases have held employees entitled to workers’ compensation benefits for injuries suffered while the employee traveled home, the “going and coming” rule notwithstanding. The earlier decision, *Appeal of Pelmac Industries, Inc.*, on October 13, 2021, seemed to repudiate the rule without expressly doing so. The Court observed that New Hampshire law has “developed” since adopting the rule and now recognizes that the operative question is not whether the em-



ployee is going to or coming from work, “but whether or *not* at the time of injury he is within the zone ‘[i.e. the scope] of his employment.’”⁴

The *Pelmac* Court held compensable injuries suffered by an alarm technician as he traveled home to Manchester from a job site in Berlin. In so doing, the Court abandoned the traditional analysis in earlier cases such as *Cook*. In *Cook* and older cases, the Court resolved the question by stating the general rule of non-compensability, identifying the exceptions, and analyzing whether the circumstances rendered an exception applicable.⁵ The *Pelmac* Court instead applied a test for “determining whether peripheral or ancillary activities are within the scope of employment” derived from a 1986 case involving whether a volunteer firefighter was entitled to workers’ compensation benefits for a softball injury suffered during an employee gathering.⁶

The three-element *Pelmac* test requires: (1) that *the injury arose out of employment* by demonstrating that the injury resulted from a risk created by the employment; and (2) that *the injury arose in the course of employment* by demonstrating that: (a) the injury occurred within the boundaries of time and space created by the terms of employment; **and** (b) the injury occurred in the performance of an activity related to employment, which may include a personal activity if reasonably expected and not forbidden, **or** an activity of mutual benefit to employer and employee.⁷ An injured employee must prove each element of the test in order to qualify for workers’ compensation benefits.⁸

The *Pelmac* Court found all elements of the test satisfied. The Court held that the employee’s travel-related injuries arose out of the employment, based primarily on a finding that the employee was a “traveling employee.” Looking to Maine law, the *Pelmac* Court defined a “traveling employee as an employee ‘for whom travel is an integral part of [the job], such as those who travel to different locations to perform their duties, as differentiated from employees who commute daily from home to a single workplace.’”⁹ For traveling em-

ployees, injuries suffered during travel arise out of the employment because the employment creates the risk of injury, by increasing the extent to which employees must travel and thus increasing their exposure to the associated hazards. “[T]he hazards of the route become the hazards of the employment.”¹⁰

decided only eight months before *Hawes*. *Hawes* also dispels any notion suggested by *Pelmac* that the Court may now consider the rule obsolete. “[W]e have declined to overrule [the going-and-coming rule],” the *Hawes* Court clarified, “because of our concern that doing so would lead to portal-to-portal compensation....”¹⁵

“For traveling employees, injuries suffered during travel arise out of the employment because the employment creates the risk of injury, by increasing the extent to which employees must travel and thus increasing their exposure to the associated hazards.”

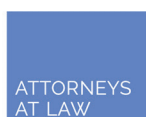
The *Pelmac* Court also held that the employee’s injuries arose in the course of his employment. The Court noted that “when the job involves extensive travel, the time and space criteria cannot be applied in a conventional manner.”¹¹ The “travel to and from Berlin was necessitated by, and integral to, the nature of the [employee’s] employment with Pelmac, such that his...injury occurred within the boundaries of time and space created by the terms of employment,” the Court reasoned.¹² The Court further found that the employee’s travel home from Berlin “was related to his employment or an activity of mutual benefit to the employer and employee.”¹³

Eight months after *Pelmac*, the New Hampshire Supreme Court handed down the June 3, 2022 decision of *Appeal of Hawes*,¹⁴ awarding workers’ compensation benefits to a ground man for Asplundh Tree Expert, LLC, who suffered injuries as he traveled home at the employer’s direction in the middle of his usual workday because the employer instructed employees to go home and rest so they could return later that day to work through the night due to a forecasted storm. Curiously, *Hawes* completely ignores *Pelmac*—containing not a single citation to the seemingly landmark case on the “going and coming” rule

Despite omitting to cite *Pelmac*, the *Hawes* Court nonetheless followed the *Pelmac* test to hold the employee’s injuries compensable. The employee’s injuries arose out of employment because they resulted from a risk created by the employment, the Court held, explaining that “[b]ecause the claimant’s travel home in the middle of the workday was occasioned by his employment, the risk that he would be injured by a hazard commonly associated with such travel was an employment-created risk.”¹⁶

Furthermore, the Court used a traditional *Cook*-type analysis to determine that the employee’s injuries arose in the course of employment—satisfying the second and third elements of the *Pelmac* test. The Court held that—the going and coming rule notwithstanding—the employee’s injuries were compensable because they fell within the “special errand” exception.¹⁷ The Court found that the employee’s travel home at his employer’s direction constituted a special errand because he would not have traveled home in the middle of the work day absent the employer’s instruction, that his work day was not done when he made the journey, and that the purpose of the journey was to enable the employee to prepare to work

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Suicide and the Chain of Causation: How a Claimant's Suicide May be Held Compensable Under *Pelmac*

By Jared O'Connor

One of the (thankfully) lesser-seen aspects of workers' compensation law is the provision of benefits in RSA 281-A:26 for dependents of an injured worker who dies from a work-related injury. When there is an obvious and uncontested connection between the employment risk and the resulting death (e.g., a construction worker is killed falling from a great height, a traveling employee is involved in a deadly automobile accident, or a coal miner perishes from black lung disease), the benefits paid are straightforwardly. Up to \$10,000 is payable by the workers' compensation carrier for burial expenses and if the deceased worker was married, the decedent's spouse receives a weekly death benefit that is equivalent to the weekly indemnity benefit the worker received (or would have received) while totally disabled.

In the case of a widow or widower, dependency is presumed and the weekly death benefit is payable for the remainder of that person's life or until remarriage. If the worker was unmarried, other persons claiming dependency may receive weekly benefits in



proportion to their actual dependency on the worker's earnings until such time as they become self-sufficient.

But what if the pain or disabling effects of a work injury become so acute that a claimant tragically takes their own life? Are their dependents or spouse entitled to anything? The question of whether a claimant's suicide served to disqualify dependents from receiving death benefits was a doubtful question under New Hampshire law until the court decided *Appeal of Pelmac*, 174 N.H. 528 (2021).

Pelmac involved a claimant who was involved in a rollover auto accident while driving a company van, resulting in serious injuries, which included a fractured neck, torn rotator cuff, and concussion. Delays in his treatment, intense fear about his future ability to function, and the resulting depression became intolerable; he committed suicide less than three months after the accident.

The nature of a compensable "injury" is limited by definition: "No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself[.]" RSA 281-A:2, XI. The carrier in *Pelmac* therefore argued that the claimant's death was not an "injury" cognizable by New Hampshire law, as the act of suicide was a willful, intervening act, which cut off liability.

The court disagreed, or at least rejected a per se rule that would have held suicide never compensable. Instead, to determine whether

dependency benefits can follow an employee's death by suicide – if the "death results from an injury" within the meaning of RSA 281-A:26, the court followed the majority of jurisdictions in adopting a "chain of causation" test. In particular, the court agreed with the leading case to espouse the test, the 1949 Florida case of *Whitehead v. Keene Roofing*, 43 So.2d 464 (Fla. 1949). The Whitehead court reasoned that "in those cases where the injuries suffered by the deceased result in his becoming devoid of normal judgment and dominated by a disturbance of mind directly caused by his injury and its consequences, his suicide cannot be considered 'willful' within the meaning and intent of the Act."

The question of compensability of a claimant's suicide does not turn on subjective intention, or the claimant's knowledge of the consequences of the act. The court reasoned (as have other courts in adopting the chain of causation test) that focusing too narrowly in this regard "wrongly ignores the role that severe or extreme pain, anxiety, despair, or depression may play in the deterioration of a person's rational mental process." In other words, suicide itself – the determination to willfully end one's life – is deemed to be an irrational act. The question is rather whether the events which led the claimant to that point of irrational desperation followed in an unbroken causal chain from the work injury.

In describing how the "chain of causation" test is applied, the *Pelmac* court re-

peatedly cited its own decision in *Appeal of Bergeron* for the proposition, well-familiar to NH workers' compensation practitioners, that "an employer remains liable for subsequent injuries that are the "direct and natural result" of a prior, work-related injury. For example, if knee osteoarthritis has been accepted or deemed work-related, the total knee replacement that follows a decade later remains the responsibility of the carrier in the absence of an independent, intervening cause.

Crucially, *Pelmac* observed that, "As in other subsequent-injury situations, the prior work-related injury need not be the sole cause of the subsequent death by suicide, but the death by suicide must be the direct and natural result of the prior work-related injury – a determination now established by satisfying the chain-of-causation test."

In extending to suicide the same chain of causation test long accepted for assessing liability for subsequent physical injuries, the analogy in *Appeal of Bergeron* provides useful guidance:

"[O]nce the work-connected character of any injury ... has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause. This may sound self-evident, but in close cases it is sometimes easy to overlook this essentially simple prin-

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Workers' Compensation Practice Can Be More Like "Good Will Hunting" Than "A Few Good Men"

By Dana Smith

In law school, they don't tell you how much time you'll spend doing math. We've all been there at some point; a client asks what certain figures mean, and we're struggling to recollect the exact formula our high school math teacher scribbled on the dusty chalkboard decades ago. With a workers' compensation practice, it's even more prevalent. It seems every benefit is based on some statute that applies certain formulas based on an infinite number of conditions. The practice regularly feels more like "Good Will Hunting" than "A Few Good Men."

The thing is, if you take the time to learn how the numbers work, it frequently leads to a benefit for your client. In my opinion, the best place to start is knowing how to correctly calculate your client's average weekly wage (AWW).

Like it sounds, AWW in workers' compensation is the injured worker's weekly average gross (pre-tax) earnings from the employer. The highest weekly average from the statutory formulas is used to determine nearly all monetary benefits for injured workers (i.e., if work



"...if you take the time to learn how the numbers work, it frequently leads to a benefit for your client. In my opinion, the best place to start is knowing how to correctly calculate your client's average weekly wage."

time is paid at 60% of the AWW) and the carrier/employer generally submits their calculation (with wage information) to the Department of Labor. While the statute is clear that the submitted AWW should be the most favorable average for the claimant, the burden is ultimately on the claimant to demonstrate if a different calculation would lead to a higher average.

With that being said, be sure to always get your client's wage information. If the injury is work-related, both the Department of Labor and the carrier/employer should have it. It is impossible to demonstrate a higher calculation if you don't have the numbers to do it. AWW is generally calculated one of two ways: (1) dividing total gross earnings by the number of weeks worked during the preceding 26 weeks; or (2) dividing the total gross earnings by the appropriate number of weeks exceeding 26 weeks, but not exceeding 52.

In almost all cases, the employer/carrier will calculate the AWW at both 26 and 52 weeks (if applicable) and file the higher result with the Department of Labor. From

there, it's entirely on you to run the numbers and see if you can get your client some additional income. In most cases, it's a relatively negligible amount, but to an injured worker, every dollar helps. And there are a lot of cases where the AWW is substantially different depending on the calculation.

The first thing you should do is take a minute to make sure the employer/carrier's math is correct. What are the total gross wages and how many weeks are they being divided by? If your calculation doesn't match the employer/carrier's calculation, there's a number wrong somewhere. Mistakes frequently happen. Numbers get transposed, extra zeros get added in, decimal points get put in the wrong spot—you will find mistakes. When you do, reach out to the adjuster or attorney, show your math, and state your case. In almost all instances, it's a simple scrivener's error and easily fixed. For example, a carrier recently filed wage documents in a case, and my client had \$9,366.00 in gross wages over 14 weeks. For whatever reason, the AWW was listed as \$624.00, but it should have been \$669.00. The adjuster divided by 15 weeks instead of 14. Easily addressed, but never discovered if you're not reviewing the math.

Additionally, make sure you review the week-of-hire wages and the week-of-injury wages. Lab Rule 506.02(c)(2) notes that "weeks with reduced earnings which occurred during the week of injury or the week of hire shall be eliminated." Look at what your client normally earns. Are the first week, last weeks, or both much less than what she normally earns? Then, eliminate them from the equation.

Think about it this way. Your client gets hired full-time, Monday to Friday, at \$20.00 per hour (\$800.00 per week). She starts on a Wednesday and then gets injured on Monday of the sixth week. Assuming the employer pays the full date of injury, by not eliminating the week of hire and week of injury, the AWW is reduced by \$160.00 and the weekly check by \$96.00.

Also, always look for whether another week between the 27th and 51st week would lead to a higher average. Remember, RSA 281-A:15(I)(b) states the most favorable calculation for the claimant "during a period exceeding 26 weeks but not exceeding 52 weeks." The carrier/employer is generally only calculating weeks 26 and 52. There are 25 other weeks where the average could be higher.

A recent new client of mine suffered a substantial injury that kept her out of work for more than a year. Prior to the injury, she worked the same number of hours every week and received the same \$750.00 gross wages for 51 weeks of the year. However, once a year, she received a \$5,000.00 bonus (28th week from the injury). The 26-week average (\$750.00) was clearly lower than 52-week average (\$846.15) due to the bonus. As a result, the 52-week average was submitted by the carrier/employer. The increase at 52-weeks was appropriate, a substantial amount of money was left on the table at that average.

If you have a client who gets bonuses, receives tips or commissions, works overtime, has a variable schedule, or for any reason has fluctuations in income, you need to run the AWW for every week. Had AWW been calculated at the 28th week (the week of her bonus), her AWW comes out to \$928.57. Three separate calculations led to substantially different results (26 weeks - \$750.00 / 28 weeks - \$928.57 / 52 weeks - \$846.15). Even at the 52-week calculation, she was missing \$50.00 per week from her out-of-work check.

My last piece of advice is to use Microsoft Excel. It feels almost unconscionable to expect attorneys and their staff to sit and recalculate AWW for all 52 weeks. Our time is already extremely limited. Don't burn yourself out. Design a spreadsheet where all you need to do is input the weekly gross wages and Excel does the work for you. Then, save one in every digital file and take the time to make sure the numbers work. Learn the numbers, use the tools you have, and help the clients when they need it the most.

Dana K. Smith is the Senior Associate Attorney at Ward Law Group, PLLC in Manchester, NH. His practice primarily focuses on the representation of injured workers in the area of New Hampshire Workers' Compensation law.

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Forced Third-Party Releases: A Debate on How Mass Tort Claims are Handled

By Scott Harris

Can the bankruptcy court force non-consensual third-party releases? The United States Bankruptcy Court and the United States District Court, both for the Southern District of New York, come to opposite conclusions. The Bankruptcy Court says “yes,” while the District Court says “no.” *Cf. In re: Purdue Pharma L.P.*, 633 B.R. 53 (2021); *In re: Purdue Pharma L.P.*, 635 B.R. 26 (2021). The debate raises some interesting questions about how we handle mass tort claims.

The forced third-party releases in the *Purdue* case involve the release of claims against the Sackler family who always controlled Purdue.

Both courts acknowledged that Purdue played a significant role in the explosion of opiate addiction in the United States over the past two decades that is causally related to the over-prescription of highly addictive medications, especially OxyContin.

Purdue initially introduced a morphine-based controlled-release product in the 1980s, labeled MS Contin. The controlled-release aspect of MS Contin was an improvement on prior opiate-based



medications that controlled pain for a relatively short period of time. However, as an opiate-based product, physicians and patients alike remained wary of its use, and so MS Contin was not a problem.

In 1995, Purdue succeeded in gaining FDA approval for a non-morphine drug, the controlled-release, semisynthetic opioid analgesic, OxyContin. Purdue marketed OxyContin as a drug that posed virtually no threat of either abuse or addiction. Emphasizing its supposed non-addictive nature, Purdue encouraged doctors to prescribe OxyContin for an array of pain, including arthritis and osteoarthritis. Purdue’s website urged patients to “overcome” their “concerns about addiction” and to utilize OxyContin for a range of non-cancer and other nonmalignant pain. (Of course, when opiates are used in the treatment of pain likely to be terminal, addiction is less of a concern.)

The FDA caught on to the dangers of OxyContin and the falsity of Purdue’s claims of its non-addictive qualities and, in 2001, required Purdue to remove claims that OxyContin presented a very low risk of addiction from its drug label and ordered it to instead provide the highest level of safety warning that the FDA can require for an approved drug.

Plaintiffs began to file individual class action suits against Purdue in 2001. Those lawsuits sought to hold Purdue liable on several product liability theories, in addition to claims for violation of the state consumer protection statutes, con-

spiracy, and fraud. Many of those early cases sought certification as class actions, but they were denied largely due to the contention that drug addiction is an individualized question of fact not suited to a class action.

State and federal investigations followed the civil litigation seeking to determine Purdue’s role in what was then an ongoing opioid crisis. In 2007, Purdue entered into a settlement with 26 states, agreeing to pay \$19.5 million and abide by a program that would last at least 10 years, designed to identify and prevent potential abuse and diversion of OxyContin. In exchange, the settling states released their claims against Purdue and about 77 members of the Sackler family. Excluded from any release were, among others, consumers and their private rights of action.

While Purdue was settling with the states, it pled guilty to feloniously misbranding OxyContin and agreed to pay \$600 million to the federal government and to each state that elected to participate in the settlement. The settlement did not compromise individuals’ claims.

The 2007 settlements apparently did not quell Purdue’s effort to hype OxyContin. Moreover, and critically here, various members of the Sackler family, according to the courts’ opinions, aggressively continued to push OxyContin, turning a blind eye to its evident abuse. All the while, the opioid crisis got worse.

At the same time Purdue continued to push OxyContin in the face of the 2007

settlements, it began to vastly enhance its payouts to the Sackler family. For instance, Purdue went from distributing less than 15 percent of its revenue to distributing as much as 70 percent. The distributions, most of which went to the Sacklers, totaled \$10.4 billion between 2008 and 2016, with approximately \$4.6 billion used to pay the owners’ pass-through taxes. The District Court noted that one of the Sacklers had referred to this bailout of profits as a “milking” program.

By 2018, Purdue confronted significant litigation across the country. Those claims in the aggregate totaled into the trillions of dollars. After Purdue declared bankruptcy in September 2019, one of its first orders of business was to seek an injunction halting all actions against Purdue and its “current and former owners,” *i.e.*, the Sacklers.

After the Court granted the injunction, Purdue and the Sacklers pursued a settlement. Settlement was accomplished with world-renowned mediators and became part of the plan confirmed by the Bankruptcy Court.

One of the critical terms of the settlement was that in exchange for the release of third-party claims against over 1,000 individuals and entities related to the Sackler family, the Sackler family would pay \$4.275 billion to the Purdue estate.

The interest groups entitled to vote on the bankruptcy plan incorporating the

CLAIMS continued on page 30



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Childhood Sexual Assault Disclosure and the Retrospective Application of NH RSA 508:4-g

By Michaila Oliveira and Anna Zimmerman



Often, those who have survived a childhood sexual assault don't disclose what happened to them for many years. Child USA, which describes itself as a "National Thinktank for Child Protection," has extensively compiled data regarding disclosure. It found that as much as "86 percent of child sexual abuse goes unreported altogether." <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf> (page 2). Moreover, "[i]n a study of over 1,000 survivors, the average age at the time of reporting child sex abuse was about 52 years." *Id.* (page 2). Unfortunately, in many instances across the country, individuals who finally disclose their childhood abuse and speak to an attorney find that the statute of limitations on their claims has long passed, barring any civil remedy.

In New Hampshire, the legislature has acted over the years to extend the statute of

"Unfortunately, in many instances across the country, individuals who finally disclose their childhood abuse and speak to an attorney find that the statute of limitations on their claims has long passed, barring any civil remedy."

limitations for childhood survivors of sexual abuse. Prior to 2005, the general statute of limitations for personal actions (RSA 508:4) applied for civil tort actions based upon sexual assaults. Thus, a suit generally had to be filed within three years of the date of the conduct. RSA 508:4 did provide for this deadline to be extended based on the discovery rule – that a plaintiff has three years from when they discovered, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of. This discovery rule has been relied on in many institutional cases where it was not until years after the sexual abuse occurred that the survivors learned that the involved institution was potentially culpable for the sexual abuse – including covering up the sexual abuse, allowing known abusers to continue to act within the institution, etc.

In 2005, the state legislature passed SB 75, which amended RSA 508 to add RSA 508:4-g, which increased the statute of limitations for claims involving sexual assault of persons who were under 18 years of age to seven years after the person's 18th birthday or "[t]hree years of the time the

plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of." This both increased the time minors had to file suit and specifically codified the application of the 'discovery rule' to sexual assault claims. This amendment was further extended by SB 311 in 2008 to twelve years after the person's 18th birthday.

The 2020 legislative session saw renewed interest in further protecting the rights of those who were victims of sexual assault, passing HB 708, which amended RSA 508:4-g to remove all statutes of limitation for any offense under RSA 632-A (Sexual Assault and Related Offenses) or under RSA 639:2 (Incest), stating that any such plaintiff "may commence a personal action at any time." It is important to note that RSA 508:4-g applies to all plaintiffs, regardless of age. This law went into effect on September 18, 2020.

While the law clearly removes the civil statute of limitations for anyone sexually assaulted on or after September 18, 2020, what does this mean for those survivors who were sexually assaulted before this date? What advice do you give a potential client regarding when their suit must be filed? What deadlines do you calendar in your own office? If a case comes through your door where the statute of limitations in effect at the time of the assault has not yet passed, then the safest move would be to calendar and follow that date. However, many survivors saw the headlines in 2020 that there was no longer a statute of limitations for sexual assaults and have begun contacting attorneys for assaults occurring prior to 2020. Because of this, you may get calls from survivors who are now past the deadline to file if the new law does not apply to their case. These cases can be broken down into two categories: (1) those cases where the statute of limitations had not yet run when the law changed on September 18, 2020, and (2) those cases where the statute of limitations had already expired by September 18, 2020.

Article 23 of the New Hampshire Constitution entitled "Retrospective Laws Prohibited" reads: "Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses." Although statutes are generally applied prospectively, the New Hampshire Supreme Court has held that statutes of limitation are remedial, not substantive – the result being that the retrospective application of laws which expand the statute of limitations in cases where the original statute of limitations has not yet run are not unconstitutional.

For example, in *State v. Preston*, the question was "whether the enlargement of the period within which paternity actions may be begun ... from one year from the birth of the child to two years, applies retrospectively to cases where the one-year period had not expired on the effective date of the enlargement." *State v. Preston*, 119 N.H. 877, 878 (1979). The *Preston* Court held that the newly expanded time limita-

tion did apply. *Id.*

As the *Preston* court explained, "[b]ecause the limitation applies to the remedy only, there is no constitutional bar to applying it retrospectively. This has been the settled law in this State from early times." *Id.* at 880 (internal citations omitted). The court went on to quote *Clark v. Clark*, 10 N.H. 380 (1839), for the principle that:

(t)he statute of limitations may be changed by an extension of the time, or by an entire repeal, and affect existing causes of action, which by the existing law would soon be barred.

Id. The court further found that, "unlike statutes affecting substantive rights, those affecting the remedy 'are usually deemed to apply retroactively to those pending cases which on the effective date of the statute have not yet gone beyond the procedural stage to which the statute pertains.'" *Id.* (emphasis added; internal citations omitted).

Applying the above case law, those survivors whose cases had not yet been barred by the statute of limitations when the law changed in 2020 should be able to avail themselves of the abolished statute of limitations.

But what about those survivors for whom the statute of limitations had already run when the law changed? Although other states have passed statutes which revive expired claims for survivors, Article 23 appears to be a bar to this remedy in New Hampshire. From as far back as the mid-1800s, New Hampshire has recognized that an expired statute of limitations is a vested right. *See Willard v. Harvey*, 24 N.H. 344 (1852) ("It may be deemed settled, that a bar, under the statute of limitations, once established, is a vested right, of which a party cannot be deprived by legislation."). More recently, the court confirmed:


Our constitution prohibits retrospective laws. A law is retrospective if it impairs a vested legal right.... A right to assert the statute of limitations as a defense vests once the limitations has run.... Since the limitations period had run against the plaintiff prior to the enactment of the amendment, application of the amendment would impair the defendants' vested right to assert the limitations defense and would thus operate as an unconstitutional retrospective law.

Gould v. Concord Hosp., 126 N.H. 405, 408-409 (1985) (internal quotations omitted). Thus, these cases stand for the proposition that survivors whose statute of limitations expired before September 18, 2020 may not avail themselves of the new law, leaving them without civil remedy except in cases where the discovery rule applies.

Endnote


1. For minors, RSA 508:8 extended the three-year deadline until two years after the minor turned 18.

Anna Goulet Zimmerman and Michaila Oliveira practice together in Manchester at the Law Office of Manning, Zimmerman & Oliveira. Anna and Michaila represent injured persons in all areas of personal injury law, including sexual assault, as well as in workers' compensation matters.



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The Law of Enhanced Damages in New Hampshire

By Peter Hutchins

I. Origins and Purpose of Enhanced Damages in New Hampshire

Punitive or exemplary damages, allowed in many states, are intended to punish a defendant for particularly egregious conduct and/or deter similar conduct in the future. In awarding such damages, juries are entitled to consider the net worth of an individual or earnings/revenues of a corporate defendant. Punitive damages, however, have long been rejected in this state. *Fay v. Parker*, 53 N.H. 342, 382 (1872). "No damages are to be awarded as a punishment to the defendant or as a warning and example to deter him and others from committing the like offenses in the future." *Vratsenes v. N.H. Auto, Inc.* 112 N.H. 71, 73 (1972). In *Murray v. Developmental Services of Sullivan County, Inc.*, 149 N.H. 246 (2003), the Court found that the trial court should have given an immediate curative instruction when counsel, in closing argument, told the jury they should "send a message" with their verdict.

Although punitive or exemplary damages are not allowed under New Hampshire law, "when the act involved is wanton, malicious, or oppressive, the compensatory damages awarded may reflect the aggravating circumstances." *Panas v. Harakis*, 129 N.H. 591, 608 (1987), quoting *Vratsenes, supra*, 112 N.H. at 73. In short, enhanced damages are intended to literally enhance a verdict for compensatory damages when the nature of the defendant's conduct justifies such an award. It is intended to compensate a plaintiff, not to punish or deter a defendant.

II. Formulation of the Doctrine

New Hampshire's standard Civil Jury Instruction 9.14 contains the following:

"The purpose of an award of damages is to compensate the plaintiff for his or her loss, not to punish the defendant. You are not permitted to award money damages for the purpose of punishing the defendant or of making an example of his/her for the public good or of preventing him/her and others from similar conduct.

If you find that plaintiff suffered actual damages that were caused or substantially caused by the conduct of the defendant, there are certain circumstances under which the law permits you, but does not require you, to consider an award of additional damages to reflect aggravating circumstances. These damages are called 'enhanced damages' or 'liberal compensatory damages.' You may award those damages only if you find that the defendant's conduct was more probably than not wanton, malicious or oppressive. 'Wanton' means reckless indifference or disregard of consequences. 'Malicious' means ill-will, hatred, hostility, or bad motive. 'Oppressive' means abuse of power.'" *N.H. Civil Jury Instructions*, 2013 edition, Daniel Pope Editor, Lex-

is Nexis.

III. Awarding Enhanced Damages in Auto Accident Negligence Cases with Drunk Drivers

It appears an instruction of enhanced compensatory damages can now likely be given to a jury in cases where the defendant in an auto case is intoxicated, although that has not always been the case.

A) Earlier Law

The first Supreme Court case to address this question was *Johnsen v. Fernald*, 120 N.H. 440, 441 (1980). In *Johnsen*, the Court ruled that drunk driving alone does not rise to the level of wanton or malicious conduct. It held that the issue of awarding enhanced compensatory damages was one for the legislature to decide. "In the context of measuring damages... we do not equate the act of driving while under the influence with the term 'malice.'" *Id.*

However, there was no discussion of whether the defendant's conduct in that case was "wanton." This holding was seemingly extended in *Gelinas v. Mackey*, 123 N.H. 690, 693 (1983), by mischaracterizing the *Johnsen* court as having considered whether the defendant's conduct in that case constituted "reckless indifference or disregard of consequences" (where the other court had not done so).

B) Recent Superior Court Trends

In 2018, Superior Court Justice Gillian Abramson considered a Motion to Dismiss claims of enhanced compensatory damages by the defendant in the case of *Diane Walker v. Mark Bennett and Masa Group Inc. d/b/a Masa Japanese Steak House*, 216-2017-CV-00151 (April 23, 2018) (Hillsborough County Superior Court – Northern District). In *Walker*, the plaintiff was a passenger in a courtesy shuttle that was stopped at an intersection. The vehicle was struck from behind by the defendant, causing permanent injury to the plaintiff. The defendant had consumed a number of alcoholic beverages at the Masa Japanese Steak House and failed sobriety tests administered at the scene. Three hours after the accident, the defendant's BAC was .16 and .17.

Judge Abramson discussed and observed that the *Johnsen* court did not consider whether drunk driving was "wanton" as opposed to "malicious," that the discussion in *Gelinas* was *dicta*, and that the number of jurisdictions allowing enhanced

or punitive damages in cases of drunk driving had doubled in the 40 years since *Johnsen* was decided. She held: "Drunk driving is a scourge on society that results in tens of thousands of avoidable deaths and injuries each year. Moreover, the dangers posed by drunk driving are not subtle or latent; one who makes the conscious choice to drive a vehicle while under the influence of alcohol does so with full knowledge of the risks he poses to himself and everyone else on the road." *Id.*

In December 2018, Superior Court Justice Mark Howard had the opportunity to similarly rule on a Motion to Dismiss filed by the defense in a rear-end auto accident case involving a drunk driver. In *Bogonko v. Scott*, 219-2018-CV-00319 (Strafford County Superior Court), the defendant drove into the rear of the plaintiff's moving vehicle and then careened into a ditch. Judge Howard noted several circumstances surrounding the defendant's behavior at the scene, prior observed erratic operation, operating in the wrong lane of travel, speeding up and slowing down, and stopping for no reason in traffic. Judge Howard quoted at length from Judge Abramson's opinion in *Walker* and agreed that *Johnsen* and *Gelinas* did not employ the "wanton" standard to the defendant drunk driver's conduct.

IV. Enhanced Damages Allowed in Various Intentional Torts Cases

While negligence claims such as auto accidents may not often involve application of the "wanton" or reckless disregard prong

of enhanced damages, the possibilities for successfully seeking enhanced damages are likely more prevalent in intentional tort cases. This is true because the malice and oppressive prongs may come into play in cases involving intentional conduct causing harm, and not simple negligence.

In *Aubert v. Aubert*, 129 N.H. 422 (1987), the Court found an award of enhanced damages appropriate in a case involving an intentional shooting. *See also Steward v. Bader*, 154 N.H. 75 (2006) (damages allowed under the "malice" standard in first-degree murder).

In *Schneider v. Plymouth State College*, 144 N.H. 458 (1999), the Court allowed an award of enhanced compensatory damages in a case where a college student sued the college for sexual abuse by a professor under a theory of breach of fiduciary duty.

In *McDonald v. Jacobs*, 171 N.H. 668 (2019), the Court allowed a jury to award enhanced damages in a defamation case.

V. Pleading Enhanced Damages

Enhanced damages can be pled in a Complaint in two different ways. One is to simply add enhanced compensatory damages to the paragraphs of the Complaint where the types of damages claimed are being identified and listed (*i.e.*, economic losses, pain and suffering, loss of enjoyment of life, permanency, etc.). The second is to include an entire separate count

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for Enhanced Compensatory Damages. In either case, it is advisable to identify as many specific facts as possible that constitute “wanton” or reckless conduct on the part of the defendant. This will help defeat or avoid a Motion to Dismiss on the basis that insufficient facts were alleged.

Finally, it is important to specifically use the legal language intended to support the trial court giving the jury an enhanced damages instruction. If the case is one with insurance coverage, be careful not to include any legal standard or facts that can reasonably be interpreted as allegations of “intentional” conduct, since this can lead to the liability insurer denying coverage. That is why it is best to allege only the “wanton” prong of the tests: *i.e.*, reckless indifference of the consequences.” Additionally, the reckless standard essentially describes a type of “negligent” conduct, which makes the request for enhanced damages more consistent with a negligence case. See the *Walker* and *Bogonko* opinions.

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Suicide from page 25

ciple. In a Utah case, claimant had suffered a compensable accident in 1966, injuring his back. Several years later, this condition was triggered by a sneeze into a disc herniation, for which claimant required surgery. ... The presence of the sneezing incident should not obscure the true nature of the case, which is nothing more than that of a further medical complication flowing from a compensable injury.” *Hudson v. Wynott*, 128 N.H. 478, 481-82 (1986)

Importantly, the companion case of *Appeal of Estate of Dodier*, 174 N.H. 548 (2021), decided immediately following *Appeal of Pelmac*, directed that the same test applies to a purely mental injury involving the same tragic result.

Thus, regardless of whether the precipitating work injury is PTSD or a cervical fracture, a claimant's subsequent suicide may be held compensable and death benefits paid to dependents under New Hampshire law if the after-effects of injury can be shown to lead directly to the claimant's irrational act of suicide. The irrational act itself is viewed as an extreme and terrible manifestation of the same work-related accident, not a new and independent act.

Jared P. O'Connor is a shareholder at Shaheen & Gordon, P.A. in Nashua. For nearly 20 years, he has exclusively represented injured workers at the NH Department of Labor and is the NHAJ representative on both the Workers' Compensation Appeals Advisory Board and the Governor's Commission to Study the Incidence of PTSD in First Responders.

Claims from page 27

third-party releases voted overwhelmingly in favor—most approving by 85 percent of the vote. Given this claimant support, along with its conclusion that the settlement was a good one, and because the Purdue plan would fail if the settlement were rejected, the Bankruptcy Court approved the plan.

The Bankruptcy Court, in its opinion addressing its plan confirmation, noted testimony addressing the fact that litigants would be unlikely to be able to reach much of the Sackler wealth, even if they prevailed in securing a judgment, in part because the Sacklers had disposed of significant portions of their assets by placing them in trusts in the Isle of Jersey—trusts that were reputed to be virtually unreachable by creditors.

The District Court did not necessarily disagree with any of the Bankruptcy Court's reasoning relative to the merits of the settlement, but nonetheless found that it had no statutory or other authority to force nonconsensual third-party releases. (The legal analysis of both courts is fascinating, but beyond the scope of this article.)

The *Purdue* case presents at least a couple of interesting questions. The first is whether there should ever be an instance where a court can force a litigant to essentially forego litigation and take a settlement that the court and other similarly situated individuals believes is the best possible result. In other words, don't we all have the right to be wrong? The second is whether the legislature should revisit the restrictions placed around class action litigation. There must be a better way to address mass claims such as engendered against Purdue that would allow all parties who want it to have their day in court. It will be interesting to see how the Second Circuit, and perhaps the Supreme Court think about this important issue.

Scott Harris is a director in McLane Middleton's Litigation Department. He has tried cases in the state and federal courts in New Hampshire, Massachusetts and elsewhere for over 15 years. His practice involves representing companies and executives in litigation and at trial in a range of commercial disputes including tax matters, trade secret and restrictive employment covenant litigation, contract claims, shareholder rights, land use, and other business disputes.

Rule from page 24

through the night for the employer.

While the *Hawes* Court noted that the “going and coming” rule remains a principle of New Hampshire law, the Court took pains to reiterate its 1957 observation that the rule has “doubtful utility.” *Pelmac* and *Hawes* have only lessened whatever utility the rule may once have had. An employee injured in travel between home and work is entitled to workers' compensation benefits if the employee satisfies the elements of the *Pelmac* test, regardless of the “going and coming” rule.

Endnotes

1. *Brousseau v. Blackstone Mills, Inc.*, 100 N.H. 493, 494 (1957).
2. *Cook v. Wickson Trucking Co., Inc.*, 135 N.H. 150, 154 (1991).
3. *Id.*
4. *Appeal of Pelmac Industries, Inc.*, 174 N.H. 528, 536 (2021).
5. *Cook*, 135 N.H. at 154-157 (holding that the “going and coming” rule precluded the employee from recovering workers' compensation benefits where neither the “special errand” nor the “personal activities exception” applied); *Heinz v. Concord Union Sch. Dist.*, 117 N.H. 214 (1977) (recognizing the “going and coming” rule but finding injuries compensable under the “special errand” exception).
6. *Murphy v. Town of Atkinson*, 128 N.H. 641, 645 (1986).
7. *Pelmac*, 174 N.H. at 536-37.
8. *Appeal of Hawes*, 2022 WL 1815775 at *1 (N.H. June 3, 2022).
9. *Pelmac* at 537 (quoting *Boyce v. Potter*, 642 A.2d 1342, 1343 (Me. 1994)).
10. *Id.* (quotations omitted).
11. *Id.* at 538 (quotations omitted).
12. *Id.* at 539-40.
13. *Id.* at 540.
14. *Hawes*, 2022 WL 1815775.
15. *Id.* at *2.
16. *Id.* at *4.
17. *Id.* at **2-4.

Benjamin T. King is a partner with Douglas, Leonard & Garvey, P.C. and has represented employees in workers' compensation cases as part of his employee rights practice since 1997. Best Lawyers in America has recognized Attorney King for his work representing workers' compensation claimants since 2017. Attorney King represented the claimant in Appeal of Hawes.



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Associate Justice and Attorney Help Students Break Through and Rise Up

On a July morning of summer vacation, when many middle and high school kids are cooling off, students at the Breakthrough Manchester program at The Derryfield School are eager and ready for school to begin. For them, the day is just heating up.

During the course of the summer and the school year ahead, Breakthrough Manchester participants will gain significant insight from the students-teaching-students model that sets this program apart. In the 30 years of the Breakthrough program, high-achieving but traditionally under-served students from Manchester's public schools have broadened their view of what education can offer. After completing the program in middle school, many find themselves continuing with the college-bound program. If they succeed, they will join the many Breakthrough Manchester students

who become college graduates; 80 percent of whom are the first in their families.

Executive Director Deb McLoud explains, "As our 2022 summer theme implies, Breakthrough Manchester is all about overcoming barriers to 'Reach for the Stars.' Throughout the summer, we provide opportunities for our students to consider various careers and tour college campuses. This visit was a great window into the world of law and a chance for our students to envision themselves sharing their skills and representation."

On this Wednesday, as approximately 90 students file into the auditorium at Derryfield, they steal glances at the distinguished guests sitting down on the stage. They've heard of attorneys and judges from television shows and movies. But none of them have met a sitting Supreme Court justice before, and few have

met an attorney, let alone one as accomplished as the young woman sitting next to him. Senior Associate Justice Gary Hicks and Attorney Talesha Saint-Marc are here to provide the Breakthrough students a friendly guide into another world, and hopefully spark an interest in the legal profession.

Justice Hicks recounts his background growing up in rural Colebrook, and the steps he's taken along the way to the Supreme Court, including more than 30 years of being an attorney.

"In my career as a trial and appellate judge in New Hampshire, I've seen how the state has changed," says Justice Hicks. "More and more, we are serving people who come from various and diverse backgrounds. But the legal profession is lacking in people who have first-hand experience of these cultures. It doesn't have to be that way."

Attorney Saint-Marc joins in, "We're here to encourage you to learn more about what attorneys do. And if you like it, to consider a career in the law."

She tells the students about her career as a shareholder at Bernstein-Shur in Manchester. She grew up and went to college in New Hampshire, graduating with her law degree from Northeastern University School of Law in Boston. Saint-Marc now provides counsel to employers on employment law and conducts workplace and campus investigations.

The students lean in and listen intently as Justice Hicks and Attorney Saint-Marc describe a profession as alien as a space station astronaut or deep-sea diver. They ask pointed questions and laugh at the candid answers. Step by step, the veil is drawn back, and they enter this unknown world. Before they know it, they realize their guests—despite their professional titles—are real people too.



NH Supreme Court Senior Associate Justice Gary Hicks and Attorney Talesha Saint-Marc talked with students at The Derryfield School's Breakthrough Manchester program on July 6. Photo by Brian Eddy

Supreme Court At-a-Glance

July 2022

Constitutional Law

Richard v. Speaker of the House of Representatives, No. 2021-0325
July 6, 2022
Affirmed.

- Whether a citizen's remonstrations to the New Hampshire legislature must be heard according to the due process provisions of the State Constitution under Part I, Articles 31 and 32.
- Whether the legislature's refusal to assemble legislators, appoint a committee and consider remonstrations from members of the public presented a justiciable question appropriate for judicial review.

Petitioner sent multiple remonstrations to the State Legislature complaining that RSA chapter 654 diluted his vote because it granted the right of suffrage to unqualified resident aliens. Petitioner sought publication of his remonstrations, the assemblage of the legislature, the assignment of a committee, and for his grievance to be redressed. The Court affirmed the trial court's findings that there is no right to orally address the legislature found in New Hampshire's Constitution. Applying *de novo* review over construction of the State Constitution, the Court concluded that while there was a justiciable question as to whether the legislature followed its constitutional mandates, the question as to whether it followed its own rules was not appropriate for judicial review.

Even While the State Constitution under Part I, Articles 31 and 32 grants citizens an unfettered right to request redress, it does not however, provide any right to be heard by the legislature. assuming Petitioner's claims in his remonstrations to be true, due process under N.H. CONST. pt. I, arts. 12, 14, and 31 does not give members of the public a right to participate in legislative debate or deliberations. Rather Part II, Article 2 vests the legislature with all legislative powers. The Court quoted its prior holding that, "The legislature, alone, has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure." *Hughes v. Speaker* (2005).

Analogously, the US Supreme Court treats the 1st Amendment as guaranteeing the right to petition the government for redress of grievances but does not encompass the right to be heard, much less provide any guarantee that the grievance be resolved. The Supreme Court has held previously that individuals,

At-a-Glance Contributor



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"have no constitutional right as members of the public to a government audience for their policy views." *Minnesota Board for Community Colleges v. Knight*, 465 U.S. 271, 286 (1984).

The Court reviewed several other state courts' considerations of their own constitutions addressing the right to petition for redress of grievances. The Supreme Courts for the states of Maryland, Alabama, Delaware all found that separation of powers prevented judicial review of the exercise of the legislatures' powers to determine when, where and whether to conduct hearings. Harmoniously, the Court affirmed that New Hampshire's legislature's refusal to assemble at Petitioner's request was "a nonjusticiable political question" and therefore not subject to judicial review.

Daniel Richard, self-represented party, on the brief and orally. James S. Cianci, house legal counsel, on the brief and orally, for the Speaker of the New Hampshire House of Representatives. Lehmann Major List, PLLC, of Concord (Richard J. Lehmann on the memorandum of law and orally), for the New Hampshire Senate President.

Contract Law

Gaucher v. Waterhouse & a., No. 2021-0338
July 20, 2022

Affirmed in part; reversed in part; and remanded.

- Whether a party's failure to pay by a date specified in a contract constituted a material breach where the contract did not specify that time was of the essence.
- Whether a material breach by one party permits the other party to claw back past performance under a contract.

The parties entered into a Lease Termination Agreement (LTA) where the Defendants

AT-A-GLANCE continued on page 32

Superior Court Judicial Evaluation Notice

The Chief Justice of the Superior Court is currently in the process of conducting judicial evaluations in accordance with Supreme Court Rule 56 and RSA 490:32 and invites you to participate in this process. The following Justices are presently being evaluated:

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Hon. David W. Ruoff	Rockingham and Cheshire County Superior Courts
Hon. Daniel E. Will	Strafford County Superior Court

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If you do not have access to the Internet or would prefer to have a hard copy of the evaluation mailed to you, please call the Superior Court Center at (603) 271-2030 and request that one be mailed to you. As stated above, while responses will be shared with the Justices being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do not sign the completed evaluation.

Your help with this evaluation process is invaluable and we greatly appreciate your taking the time to help us with this endeavor.

would pay Plaintiff \$20,000 to relinquish his rights under a commercial lease prior to the conclusion of its term. Plaintiff voluntarily terminated his tenancy and vacated the premises per his obligation under the LTA, but Defendants were unable to timely pay him the agreed upon termination fee. Upon Defendants' failure to pay, Plaintiff returned to re-occupy the premises. Defendants brought a successful eviction action in the Circuit Court to remove Plaintiff from the premises again.

Plaintiff did not appeal the eviction order, and instead filed a civil action in Superior Court asserting he was entitled to the \$20,000 lease termination fee stipulated in the LTA from Defendants as well as the return of his security deposit according to the original lease. The undisputed factual record reflected that the payment date was specified in the contract, and that Plaintiff was not paid his LTA fee on time after performing his obligations under the LTA. However, the Superior Court found that unless the contract specifically required otherwise, "Time is generally not of the essence in a contract, even if a particular time schedule is specified." *Fitz v. Coutinho* (1993).

The Court affirmed the trial court's finding that Defendants' failure to pay by the date specified by the LTA did not constitute a material breach. The Court also agreed with the Superior Court's analysis that, even if the breach were material, "A material breach excuses the non-breaching party from future performance . . . does not entitle the non-breaching party to unilaterally claw back past performance." (Emphasis added.) The Court affirmed that the Plaintiff, not Defendants, committed material breach by re-occupying the premises unilaterally upon Defendants' failure to timely pay.

Based upon finding Plaintiff's re-occupancy a material breach, the Superior Court found Defendants were entitled to damages according to the LTA's indemnification provisions. The trial court awarded Defendants the costs associated with Plaintiff's eviction proceedings before the Circuit Court and offset those costs by the amount of Plaintiff's security deposit, rejecting Defendants' argument the LTS extinguished Plaintiff's right to the return of his security deposit sub silentio.

On appeal, the Court found the trial court erred in its award of costs to Defendants as they had previously assigned their rights of recovery under the LTA to a third party. Because the trial court's findings as to the security deposit were not challenged on appeal, the Court remanded the matter to address Defendants' liability for the security deposit consistent with its opinion.

Seufert Law Office (Christopher J. Seufert on the brief, and Christopher C. Snook orally), for the plaintiff. Law Offices of Steven G. Shadallah on the memorandum of law and orally, for the defendants.

Criminal Law

***State of New Hampshire v. Newton*, Nos. 2018-0606, 2020-0338**

July 8, 2022

Affirmed.

- Whether ineffective assistance of counsel can be found where defendant overrides his counsel's advice regarding calling his wife as a witness whose testimony then provides unfavorable evidence before the jury.
- Whether harmless error by the trial court in excluding witness testimony may require a new trial where there is other overwhelming evidence of guilt.

Defendant was convicted on three counts of exploiting his elderly parents in violation of RSA 631 (2016) while serving as trustee for their trust. Evidence introduced at trial showed that Defendant had depleted three accounts within his parents' trust of more than

\$300,000 and that the money went to pay off Defendant's debts and fill his own personal accounts.

At trial, defense called Defendant's wife who testified favorably, but then on cross-examination the State introduced her unfavorable text messages with Defendant including, "I did the math in my head and we could spend \$180,000 appropriately 'for them' in a short time." Defense also elicited opinion testimony from the State's expert witness as to Defendant's credibility, which was unfavorable. Defendant moved for a new trial arguing ineffective assistance of counsel. The trial court denied the motion but ordered a hearing as to whether the wife's testimony about her text messages affected the sentence.

Both State and Federal Constitutions guarantee criminal defendants reasonably competent assistance of counsel. See N.H. CONST. pt. I, art. 15; U.S. CONST. amends. VI, XIV. Constitutionally deficient representation must actually prejudice Defendant in order to support holding a new trial. The record reflected that the Defendant explicitly directed his counsel to call his wife as a witness over his counsel's advice and explanation that doing so would be damaging to his defense. Counsel is always "only an assistant to the defendant and not the master of the defense," and here Defendant had directed his counsel as to the strategic choice despite counsel's advice.

Trial counsel did, however, also elicit an adverse expert to offer an opinion as to Defendant's credibility. Although objectively deficient, the advice of counsel was found to be harmless considering the totality of evidence. On appeal, the Court affirmed the trial court's finding that the wealth of other evidence supported the jury's guilty convictions. The State provided overwhelming evidence of the movement of money from the Trust to Defendant's accounts and elicited Defendant's own testimony that he used such moneys for his own benefit.

The Court also affirmed the trial court's determination that its exclusion of out-of-court statements from the Defendant's parents and financial planner was harmless. Even though the trial court erred by improperly excluding the testimony, Defendant had been permitted to argue in closing as to the substance of the excluded testimony, rendering its exclusion cumulative and inconsequential, thus harmless error.

The State's cross-appeal against the trial court's order for a review hearing was rejected where trial counsel, not his client, chose to disclose texts between Defendant and his wife to the State. The Court disagreed with State's arguments that such disclosure was required. While New Hampshire Rule of Professional Conduct 3.3 prohibits lawyers from knowingly offering evidence known to be false, it did not require providing the unfavorable text messages. Also, while New Hampshire Rule of Criminal Procedure 12(b)(4) requires reciprocal discovery, it would not apply to messages exchanged between husband and wife prior to the criminal investigation. The Court found that the trial court did not err in concluding that defense counsel's disclosure of the text messages fell below an objective standard of reasonableness. In such context, the trial court's ordering of a review hearing was affirmed.

Office of the Attorney General (Bryan J. Townsend, II, assistant attorney general, on the brief and orally), for the State. Lothstein Guerriero (Theodore M. Lothstein and Kaylee C. Doty on the brief, and Theodore M. Lothstein orally), for the defendant.

Family Law

***In re Borelli*, No. 2021-0302**

July 6, 2022

Affirmed.

- Whether individual child support terminated automatically upon each child reaching the age of majority where the USO did not

specify such a reduction and ordered support in a total amount that covered multiple children.

- Whether parents can agree to modify the child support ordered in a USO without review and approval of the court.
- Whether trial courts have equitable discretion to retroactively modify an arrearage based upon the child support ordered in a USO.

Husband appealed the trial court's sua sponte determination that he owed Wife a child support arrearage and the court's determination that it lacked authority to modify the arrearage retroactively. The Court affirmed.

The parent-parties' Uniform Support Order (USO) issued during their 2014 divorce ordered Husband to pay \$2,400 per month in support of their four children. Husband filed to modify support in 2020, after the two eldest children had moved out of Wife's home upon reaching eighteen years of age and the younger two children were spending more time with Husband than contemplated by the 2014 USO. Between the divorce in 2014 and Husband's 2020 petition to modify, Husband reduced his support payments to Wife by \$600 each month after each of the two eldest children "aged out." The record reflected that Wife did not object to such reductions by Husband when they happened.

In reviewing Husband's motion to modify support for the two youngest children remaining in Wife's home, the trial court on its own initiative determined that Husband's prior reductions in support payments for the two "aged out" children violated the parties' 2014 USO. RSA 461-A:14, IV-a requires USOs that provide for support covering multiple children to specify any reduction when each "ages out". Absent such specification, the full amount continues until a successful petition to modify. In contrast, where such changes are specified in the USO, they take effect automatically, without further legal action or court involvement.

The trial court also determined that Wife's acceptance of Husband's reductions prior to his petition was without legal effect. RSA 458-C:4, IV, "explicitly requires judicial approval of any agreement that departs from the child support guidelines." In the Matter of Laura & Scott (2010). On appeal, the Court affirmed the trial court's finding the parties', "agreement was unenforceable because it was never approved by the court," and that the 2014 USO constituted a standing order which remained effective.

The Court also held that the trial court correctly acknowledged that it lacked authority to retroactively modify the arrearage accumulated this way, at least up through the date of Husband's filing. Under RSA 461-A:14, VIII, "[n]o modification of a support order shall alter any arrearages due prior to the date of filing the motion for modification." While empowered to act equitably, the trial court lacked equitable authority to depart from the statutory requirements in the absence of exceptions existing beyond the parties' control, such as fraud, accident or mistake.

Husband argued on appeal that because the Court's prior precedent on the issue was decided after the time Father began reducing child support, it was not binding in this case. However, the general rule is that opinions of the Court apply both retroactively and prospectively unless the opinion of the Court specifically provides otherwise. Further, the Court observed that their de novo interpretations of statutes are considered part of the laws since their enactment. Application of judicial rulings interpreting the laws extends back to the statute's enactment rather than the issuance of the opinion.

Diana G. Bolander, on the brief, for the petitioner. Catherine Borelli, self-represented party, on the brief.

***In re N.T.*, No. 2021-043**

July 20, 2022

Affirmed.

- Whether the trial court lacked jurisdiction, requiring dismissal, over abuse proceedings where it failed to render findings within the 60-day period prescribed by RSA 169-C:15, III(d).

Mother appealed the trial court's finding of abuse and neglect of her child, N.T., after the court failed to issue adjudicatory findings within sixty days of the filing of petitions by New Hampshire's Division for Children, Youth and Families (DCYF) as required by RSA 169-C:15, III(d) (2014). Mother argued that the failure to meet the prescribed time limit divested the trial court of jurisdiction over the matter and that the delay in resolution prejudiced her. That the time limit had lapsed was not disputed on the record.

The Court affirmed the trial court's findings of neglect and abuse after interpreting the statute *de novo*. Although the statute's time requirements were construed as mandatory due to the plain and ordinary meaning of "shall," the Court declined to find the failure to meet the time limit in this case as divesting jurisdiction from the trial court. Called the "Child Protection Act", RSA chapter 169-C has multiple purposes, but "the primary purpose of this chapter . . . [is] to provide protection to children whose life, health or welfare is endangered."

Considering the statute as a whole and the legislative intent guiding Chapter 169-C, the Court found that dismissing a child abuse case based upon a technicality that did not address the merits would undermine the interests of all parties, including the child, parents, and the State. A dismissal without prejudice would significantly delay resolution where the purpose of the time prescription was to speed the process to its conclusion. A dismissal with prejudice may leave an abused child unprotected. The Court distinguished this case from the Court's prior rulings that time requirements protect due process rights of both children and parents going through juvenile delinquency proceedings because the child here is a victim rather than the perpetrator. *In re Russell C.* (1980).

The Court ruled that the trial court's findings of abuse were amply supported by the evidence on record. DCYF provided a preponderance of evidence showing that Mother repeatedly struck N.T. with cooking utensils, digitally penetrated her, and doused her with lighter fluid, threatening to light her on fire. Mother argued N.T.'s physical injuries caused her conduct may be minor, but the record showed the conduct harmed N.T.'s emotional welfare as well, including evidence that N.T. later engaged in self-harm and suicidal ideations.

Parents may sometimes assert a defense of their acts to reprimand children when they, "reasonably believe it necessary to prevent or punish such minor's misconduct." RSA 627:6, I. The objective standard required for the defense prevents its application where the parent's belief is unreasonable. Here, after the abuse, the record reflected Mother took steps to conceal her conduct and otherwise demonstrated that she was aware the force she used against N.T. was greater than reasonably necessary.

Mother argued the delay prejudiced her interests, suffering prolonged emotional distress from being prohibited from contact with N.T. during the proceedings. The record showed, however, that Mother was criminally charged for her abuse as well, which prohibited her contact with N.T. The Court noted that a showing of true prejudice may have prompted some other appropriate enforcement mechanism, including the Court exercising its supervisory powers over the handling of the matter pursuant to RSA 490:4 (2010).

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Laura E.

B. Lombardi, senior assistant attorney general, on the brief and orally), for the New Hampshire Division for Children, Youth and Families. Belknap Legal Services (Peter R. Brunette on the brief and orally), for Mother.

Labor & Employment Law

***Doe v. Attorney General*, No. 2020-0447
July 21, 2022**

Affirmed in part; vacated in part; and remanded.

- Whether RSA 105:13-B provides authority for trial courts in a civil cause of action to review the Exculpatory Evidence Schedule maintained by New Hampshire Police Departments in camera in order to assess a police officer's challenge to his inclusion.

Petitioner, employed as a town police officer, appealed the Superior Court's dismissal of his petition for declaratory and injunctive relief which had sought review of his personnel file in order to challenge his inclusion on the Exculpatory Evidence Schedule (EES). Formerly known as the "Laurie List," the EES is maintained by New Hampshire Police Departments according to RSA 105:13-B for the purpose of complying with requirements for disclosure of exculpatory evidence to defendants when police officers provide witness testimony or prosecute criminal cases. Petitioner argued his prior inclusion on the EES was in error, violating his due process rights under the Federal Constitution, and requested that the trial court exercise its equitable powers to correct the error.

Interpreting RSA 105:13-B de novo, the Court ruled that the statute neither provided an independent cause of action for officers nor any framework within which courts could review whether information about officers included on the EES was exculpatory outside of particular criminal cases. RSA 105:13-B addresses scenarios for courts handling criminal cases to review EES information and determine whether it is exculpatory for the defense thus requiring disclosure; non-exculpatory, thus remaining confidential; or relevant to the criminal matter regardless of whether it is exculpatory. The Court affirmed the trial court's analysis that it lacked authority to conduct the in camera review sought by Petitioner because none of the inquiries authorized by the statute are to be conducted outside the scope of a particular criminal case.

The Court ruled that Petitioner's invocation of the trial court's equitable jurisdiction over his due process claims was insufficiently developed for its review. The Court observed that while Petitioner's appeal was pending New Hampshire's legislature amended RSA chapter 105, including adding a new section, RSA 105:13-d, which directly addressed the issue of placement of officers on the EES. Because the interpretation of the new section of RSA 105 had neither been fully brief nor argued before the Court, it declined deciding the constitutional due process questions raised by Petitioner. Consequently, the Court vacated the trial court's ruling on due process and remanded the matter without prejudice for further proceedings addressing the statutory changes presented by the newly enacted RSA 105:13-d.

Milner & Krupski (Marc G. Beaudoin and John S. Krupski on the brief, and John S. Krupski orally), for the petitioner. John M. Formella, attorney general (Anthony J. Galdieri, senior assistant attorney general, and Samuel R.V. Garland, assistant attorney general, on the brief, and Anthony J. Galdieri orally), for the respondent. American Civil Liberties Union of New Hampshire Foundation (Gilles R. Bissonnette and Henry R. Klementowicz on the joint brief), and Wadleigh, Starr & Peters (Robin D. Melone on the joint brief), for New Hampshire Association of Criminal Defense Lawyers, as amici curiae.

Public Employee Labor Relations Board

***Appeal of State of New Hampshire Public Employee Labor Relations Board*, No. 2021-0248**

July 21, 2022

Reversed and remanded. Two justices dissented.

- Whether the Governor e-mailing state employees concerning collective bargaining negotiations constitutes direct dealing or interference as an unfair trade practice prescribed by RSA 273-A:5, I when the communication is disruptive or misleading but does not threaten or coerce employees.
- Whether RSA 273-A:12 requires the Governor to send a neutral fact finder's report issued to resolve a labor negotiation impasse between state employers and employee Unions for consideration and vote by the Executive Council despite the Governor's rejection of the report.

On an appeal by the State, the Court's majority reversed and remanded a New Hampshire Public Employee Labor Relations Board (PELRB) ruling that found the Governor had engaged in unfair trade practices against a collection of state employee Unions by: 1) directly e-mailing state employees regarding negotiations over a multi-year collective bargaining agreement; and, 2) refusing to provide his Executive Council with a neutral fact finder's report with recommendations for overcoming an impasse in negotiations between the State as employer and the Unions' employees.

In December 2018, the State entered into negotiations with several Unions representing state employee bargaining units. When negotiations reached an impasse, the parties engaged a neutral fact finder to assist resolving their disagreements in according to procedures set forth in RSA 273-A:12, II (Supp. 2021). The New England Police Benevolent Association (NEPBA) accepted the neutral's recommendations, while the State Employees' Association (SEA) announced it would hold a member vote regarding the neutral's report. The State, however, rejected the neutral's report and proposed alternatives to it. Prior to the SEA vote, the Governor sent an email to all state employees explaining the State's rejection of the neutral's recommendations and announced that he would not send the fact-finder's report to the Executive Council.

The Unions filed complaints with the PELRB claiming the Governor's e-mail was intentionally misleading and that his refusal to submit the neutral's findings to the Executive Council constituted unfair labor practices. The PELRB ruled that the Governor's e-mail constituted prescribed direct dealing and that it interfered with Union members' rights and the administration of union business, violating RSA 273-A:5. The PELRB also ruled that the Governor's refusal to provide the neutral's report to his Executive Council constituted an unfair labor practice in violation of RSA 273-A:12.

The Court's majority reversed both PELRB's holdings. The Court noted that mere communications between employers and Union members are not per se an unfair labor practice. Citing its prior ruling in *Appeal of City of Portsmouth* (1995), the Court's majority distinguished between merely "disruptive" communications from public employers and the level of "interference" prohibited by RSA 273-A:5, I. The record reflected that the Governor was not avoiding negotiation with the Unions. Nor did the Governor's e-mail contain threats of job loss or retaliation if employees voted in favor of the neutral's recommendations. Even assuming as true the Union's allegation that the Governor's e-mail was misleading, the Court observed that the SEA had an opportunity to respond during an informational meeting with its members prior to their voting, and that a majority of SEA members

ultimately did vote to accept the neutral's report despite the Governor's e-mail.

The Court also found that the Governor's rejection of the neutral's report rendered his refusal to transmit it to his Executive Council consistent with RSA 273-A:12's requirements. In reversing the PELRB's ruling, the Court's majority interpreted RSA 273-A:12, II's mandatory language ("shall") *de novo* in the context of the respective roles played by the state's chief executive and his advisory council. Observing that the Council's vote cannot override the Governor's rejection of the neutral's report, the Court held that any different interpretation of the statute's mandate would undermine the Governor's, "sole authority to direct the negotiation process." *Appeal of House Legislative Facilities Subcom.* (1996).

The Court's minority dissent opined that the majority's ruling was contrary to the clear meaning of the plain language of RSA 273-A:12, II, which requires that the neutral's report "shall be submitted" to the Executive Council which "shall vote to accept or reject so much of his recommendations as is otherwise permitted by law." By rendering the mandatory language regarding the role of the Executive Council superfluous, the dissent found the majority's interpretation contrary to the Court's standards of statutory construction.

Looking toward the legislative history of RSA 273-A:12, II, the dissenters observed that the statute's intended purpose was to pressure parties by broadening participation and heightening public scrutiny. Unlike the other exercise of other Governor powers where the Governor's rejection is final, i.e. appointment powers, his rejection of the neutral's report does not conclude the matter of labor negotiations. Rather, the parties here will continue needing resolution to their bargaining impasse. Even a non-binding vote of the Executive Council still serves to raise public awareness, increasing publicity and pressure on all parties to arrive at a resolution.

Gary Snyder on the brief and orally, for the State Employees' Association of NH, Inc., SEIU Local 1984. Nolan Perroni (Peter J. Perroni on the memorandum of law and orally), for the New England Police Benevolent Association Locals 40 and 45. John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Laura E. B. Lombardi, senior assistant attorney general, on the brief and orally), for the State.

Zoning Law

***Stergiou et. al. v. City of Dover*, No. 2021-0139**

July 21, 2022

Affirmed in part; reversed in part; and remanded. Special concurrence.

- Whether a planning board's decision constituted an appealable, final approval pursuant to RSA 677:15, I despite unmet conditions subsequent where the approval did not explicitly require any conditions precedent.

The developer filed for the City of Dover planning board's (Board) approval for a project which issued after a hearing in 2019. The 2019 approval included a condition to submit additional plans within 90 days, which deadline was not met by the developer. In 2020, the developer sought "re-approval" of his application from the Board, which conditionally re-approved the project again with only minor changes to the conditions from 2019. Abutters challenged the Board's 2020 approval in Superior Court as unlawful and unreasonable pursuant to RSA 677:15, I (2016).

The developer intervened to dismiss the abutters' petition as untimely, arguing the 30-day period to appeal began to run from the date the 2019 approval issued. The Superior Court denied developer's motion to dismiss ruling that both Board approvals contained

"conditions precedent" that required completion prior to either approval constituting its final decision. Without finality, the Superior Court found the Board's approvals were not ripe for appeal and stayed the proceedings until such time as the developer met the conditions and final approval issued by the Board.

The Court affirmed the dismissal in part; reversed in part; and remanded. The Court found the trial court erred in ruling the conditions on the Board's approvals were "conditions precedent" rather than "subsequent" to approval. The distinction turns on whether satisfactory compliance is required for the approval. The Board's 2019 meeting minutes reflected that the decision was their last action taken on the matter; it did not schedule additional meetings nor continue the matter for further consideration. Consequently, the Court found the Board's 2019 approval was final upon its issuance, hence an appealable decision.

In reviewing whether developer's failure to submit additional plans within 90 days as required by the "condition subsequent" rendered the approval invalid, the Court observed that the City's regulations require that approvals "shall" be valid for five years. *See Dover, N.H. Site Review Regulations*, ch. 153, art. II, § 153-9(A). In order to avoid conflict with the City's regulations, the Court found that rendering the approval invalid would not be an appropriate remedy for the developer's failure to meet the condition's time requirement.

However, the Court declined developer's argument to consider the Board's "re-approval" process in 2020 as extending the time period in which he could satisfy the conditions subsequent. The Court observed that there was no legal authority behind a "re-approval" process, making it a legal nullity and having no effect. The Court remanded the matter, directing the trial court to enter a dismissal with prejudice of the abutters' appeal as untimely.

A special concurrence with the Court's decision aimed to further clarify what constitutes an appealable decision of a planning board so that land use applicants, interested parties, planning boards, and municipal staff would have certainty as to when the 30-day period for filing an appeal of final Board decisions begins to run. Specifically, the concurrence elaborated as to the applicability of RSA 676:4, I(i) in distinguishing between "subsequent" and "precedent" conditions.

RSA 676:4, I(i) requires that any approvals with "conditions precedent" which are minor, administrative or related to issuance of other permits or approvals be considered satisfied by the applicant's production of adequate evidence of the condition being fulfilled. Where such proof is provided no further hearing by the Board is required, freeing up time and resources of all participants. Further, because RSA 676:3, I requires a Board's final decisions to be written and "shall" include all conditions necessary to obtain final approval, unless an approval explicitly imposes a "condition precedent" required for finalizing its approval, conditions should be interpreted as subsequent. Approvals with only "conditions subsequent" are already final and outside the application of RSA 676:4, I(i).

A second special concurrence would not join the first concurrence insofar as it unnecessarily construed RSA 676:4, I(i) where the Court's decision was entirely based upon other grounds. Also, interpretation of RSA 676:4 had not been fully briefed by the parties, increasing the potential for the Court to err in its construction. Noting that the first special concurrence lacked binding precedent, the second concurrence nevertheless emphasized that the legislature may want to revisit or clarify this area of law in light of these analyses.

Scott E. Hogan for the petitioners, filed no brief. Joshua M. Wyatt, city attorney of Dover, on the memorandum of law and orally, for the respondent. Donahue, Tucker & Ciandella (Justin L. Pasay and William K. Warren on the brief, and William K. Warren orally), for the intervenors.

Supreme Court Orders

LD-2022-0004, *In the Matter of Stephan P. Parks, Esquire*

On June 21, 2022, the Professional Conduct Committee (PCC) filed a recommendation that Attorney Stephan P. Parks be suspended from the practice of law for a period of one year, with the suspension stayed for two years on the condition that Attorney Parks comply with certain requirements. The PCC also recommended that Attorney Parks be ordered to pay the costs associated with the investigation and enforcement of the disciplinary matter. The PCC's recommendation approved a stipulation signed by Attorney Parks and the Attorney Discipline Office's disciplinary counsel in which Attorney Parks agreed that he had violated the Rules of Professional Conduct and further agreed that the appropriate sanction for these violations was a one-year suspension, with the suspension conditionally stayed for two years. Attorney Parks expressly waived his right to a hearing. In accordance with Rule 37(16)(c), because this matter was resolved by a dispositive stipulation, the court may consider this matter without further notice and hearing.

Based on the parties' stipulation, the PCC found that Attorney Parks violated the following Rules of Professional Conduct:

1. Rule 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and
2. Rule 8.4(a), which states that it is professional misconduct for a lawyer to violate the Rules of Professional Conduct.

The court has reviewed the PCC's findings and rulings and concludes that they are supported by the record. The court accepts the PCC's recommendation for the appropriate sanction for this misconduct, and concludes that a one-year suspension from the practice of law, with the suspension conditionally stayed for two years, is warranted. The court approves the conditions of the stay, which are set forth in the stipulation. The stipulation also sets forth a procedure to be followed if it is alleged that Attorney Parks has not complied with a condition or conditions.

Accordingly, having approved the PCC's findings, rulings and recommended sanction, the court orders as follows:

(1) Attorney Stephan P. Parks is suspended from the practice of law in New Hampshire for a period of one year, with the suspension stayed for two years on the condition that Attorney Parks comply with the requirements set forth in the stipulation; and

(2) Attorney Parks is ordered to reimburse the Professional Conduct Committee for all costs and expenses incurred by the attorney discipline system in the investigation and enforcement of this matter.

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

DATE: July 14, 2022

ATTEST: Timothy A. Gudas, Clerk

LD-2021-0009, *In the Matter of Daniel W. McKenna, Esquire*

On October 7, 2021, in response to a petition filed by the Attorney Discipline Office (ADO) for the immediate interim suspension of the respondent, Attorney Daniel W. McKenna, this court suspended the respondent from the practice of law in New Hampshire pending further order of the court. On November 2, 2021, the

respondent, through counsel, withdrew his request for a hearing on the interim suspension and stipulated that the suspension should remain in effect pending further order of the court. The respondent has remained suspended since October 7, 2021.

On June 29, 2022, the ADO notified the court in writing that the respondent had pleaded guilty in Rockingham County Superior Court to one felony count of violating RSA 638:4, IV(A)(1) (issuing bad checks in an amount greater than \$1,501). He was sentenced on June 22, 2022. The ADO's written notification, which included a copy of the applicable indictment and sentencing decision, recommends that the court disbar the respondent pursuant to Supreme Court Rule 37(9)(d). According to the ADO's written notification, the respondent's counsel in this lawyer discipline case "has confirmed that Mr. McKenna does not object to the disposition proposed by the Attorney Discipline Office and waives the formal disciplinary process contemplated by Rule 37(9)(d)."

The respondent's felony conviction for issuing bad checks constitutes a "serious crime," as that term is defined in Supreme Court Rule 37(9)(b) ("The term 'serious crime' shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a 'serious crime.'"). In light of the seriousness of the respondent's misconduct, and the respondent's waiver of the formal disciplinary process contemplated by Rule 37(9)(d), the court concludes that the respondent should be disbarred.

THEREFORE, the court orders that Daniel W. McKenna be disbarred from the practice of law in New Hampshire. He is hereby assessed all expenses incurred by the Attorney Discipline System in the investigation and prosecution of this matter.

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

DATE: July 28, 2022

ATTEST: Timothy A. Gudas, Clerk

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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 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.

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).

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.

PROSECUTING ATTORNEY – The Hudson New Hampshire Police Department is seeking a Prosecuting Attorney. For information go to: **Job Announcement for Police Prosecuting Attorney | Hudson New Hampshire** (hudsonnh.gov)

REAL ESTATE PARALEGAL – Unique opportunity to join a boutique full-service commercial real estate company performing title, closing, and property tax abatement services. Ideal candidate will have 3+ years of experience in all aspects of New Hampshire commercial real estate closings – working with General Counsel in placing title insurance, ensuring clean title, conducting closings and other related matters. Candidate must have an ability to work both independently without supervision and collaboratively with a team of professionals. Salary and bonus structure is competitive level compensation at top-tier NH law firms. Benefits package includes health insurance, 401K, and paid time off. In-office with some Remote, or hybrid work arrangements available. Please direct resume to jim@csuite-exec.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.

ADMINISTRATIVE ASSISTANT – Manchester, NH Law Firm seeks a full-time administrative assistant for busy estate planning, estate administration and litigation attorney. Candidate should have experience in estate planning and estate administration matters, probate court filings and litigation procedures. Must have excellent organizational and communication skills, ability to work independently and be detail oriented. We offer a flexible working environment. Pay based on experience. Submit cover letter and resume to skaufold@russmanlaw.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.

REFERRALS

LAWYER REFERRAL SERVICE – MODEST MEANS PROGRAM – Narrow the justice gap and still earn fees. The NHBA Lawyer Referral Service Modest Means Program provides access to justice for people who are too "rich" for pro bono programs but can't afford standard attorney fees. It is free to sign up, and there is no obligation to accept any referral. To learn more or sign up visit <https://www.nhbar.org/join-lawyer-referral-service/> or contact LRS at (603) 715-3235 or email lrsreferral@nhbar.org.

LAWYER REFERRAL SERVICE – FULL FEE PROGRAM – Even when your practice is thriving, you need a steady stream of leads to keep it that way. Join NHBA Lawyer Referral Service to receive prescreened referrals for the types of cases you select. In 2021 LRS referred more than 6000 cases to our panelist attorneys. Set the type and quantity of cases you want to receive with no obligation to accept any referral. Pay LRS only 10% of collected fees earned on referrals. To learn more or sign up visit <https://www.nhbar.org/join-lawyer-referral-service/> or contact LRS at (603) 715-3235 or email lrsreferral@nhbar.org.

SERVICES

RESEARCH, DRAFTING – Overwhelmed? Need back-up on short-term basis? Attorney with 45 years exp. Admitted in NH, NY, CA, DC, WI and HI. Excellent credentials. Draft briefs and memos. Research and incorporate relevant legal precedents. Roger Wiegley. rwiegley@wiegleylaw.com.

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.



Schwartzberg Law

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

Our attorneys are generously compensated 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.

LITIGATION ASSOCIATE

Kajko, Weisman & Colasanti, LLP, a dynamic, mid-sized general practice Firm with offices in New Hampshire and Massachusetts seeks a qualified, energetic candidate for a litigation associate position in their Nashua, New Hampshire office.

An ideal candidate will have 1-6 years of litigation experience in the areas of general civil litigation, criminal law and/or family law, including motion and discovery practice, taking and defending depositions, and general courtroom presentment.

KWC offers a competitive compensation and benefits package in a collegial, supportive and dynamic environment.

Please forward your cover letter and resume to Nicole J. Schultz-Price, Esq., of KWC's Management Committee at nschultzprice@massfirm.com.

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.

LEGAL ASSISTANT



Cooper Cargill Chant is seeking a full-time Legal Assistant to join our expanding Estate and Trust Administration practice. The Firm is looking for a friendly, proactive, detail-oriented professional with strong interpersonal and communication skills who will enjoy working collaboratively with lead attorney to deliver quality legal services to our clients. Primary responsibilities include serving as the point of contact for clients, assisting attorneys with preparation and filing of Court documentation, drafting correspondence, and performing a wide variety of administrative functions.

TO APPLY, PLEASE FORWARD RESUME TO
Attorney Tracy Grisez at tgrisez@coopercargillchant.com

2935 White Mountain Highway, North Conway, NH 03860

GOOD PEOPLE. GREAT LAWYERS.

OFFICE ADMINISTRATOR



Cooper Cargill Chant, northern New Hampshire's largest law firm, seeks an Office Administrator to join our active, enjoyable firm. The Office Administrator has responsibility for all daily operations of our 9-lawyer firm and manages fifteen staff members. Qualifications include excellent interpersonal, communication, and organization skills; experience in strategic planning and realization of goals; supervision of staff; financial management; and familiarity with information technology, marketing, and facility operations. The Office Administrator works closely with the partners to ensure that our firm runs smoothly. Our firm is truly committed to our "Good People, Great Lawyers" tagline. We believe in and live a real work/life balance. We are proud of our firm's commitment to area communities and non-profit boards. We are proud of the Cooper Cargill Chant families. We offer a very competitive wages and benefits package.

IF THIS SOUNDS LIKE A PLACE YOU WOULD THRIVE,
please contact Leslie Leonard, Hiring Partner, at
lleonard@coopercargillchant.com

2935 White Mountain Highway, North Conway, NH 03860

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.

Compliance, Risk and Control Officer



HealthTrust, a quasi-governmental, self-insured, non-profit risk pool that provides health, dental, disability and other employee benefit coverage/services to its member political subdivisions seeks an experienced, detail oriented and enthusiastic Compliance, Risk and Control Officer who will report to the General Counsel and promote HealthTrust's compliance with rules, regulations, laws, policies, procedures, guidelines and principles. This position:

- Identifies potential areas of compliance vulnerability and risk, develops and recommends corrective action plans for problem resolution including policy development, guidance and training to detect and mitigate non-compliance issues.
- Serves as the organization's HIPAA Privacy and Security Officer.
- Develops an annual risk assessment and the resulting annual audit plan, performing internal audits and evaluations, and providing high level reports to the Board of Directors.
- Consults with management to enhance internal controls, manages and performs audits of the third-party adminis-

trators, and provides support to external auditors to meet audit goals and objectives.

- Works with human resources, infrastructure & security team, reporting & data department, and management, designs and executes education and training programs relating to the HealthTrust's personnel and standards of conduct policies, HIPAA and IT policies in order to heighten awareness of the standards, and increase the understanding of new and existing compliance issues, related policies and procedures.

Requirements:

- Bachelor's degree, preferably in Business Administration, Finance, Accounting, Data Analytics and/or JD or equivalent combination of education and experience
- Prior work experience of at least five years in a responsible position involving compliance, internal auditing and risk management.
- CHPC, CIA, and/or CRMA certification desirable.

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

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.

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



**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 ljuszczak@wardlawnh.com.



Ward Law Group, PLLC

WardLawNH.com

**ASSOCIATE ATTORNEY POSITION
MANCHESTER, NH**

Ward Law Group is seeking an associate attorney for our Manchester office. The ideal candidate will have at least 1 year of experience in one or more of the following practice areas: Personal Injury, Civil Law, Family Law, and Estate Planning.

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



Ward Law Group, PLLC

WardLawNH.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

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.



COMMERCIAL AND BUSINESS LAW ATTORNEY (BURLINGTON, VT)

Downs Rachlin Martin PLLC - one of Northern New England's largest law firms - has an opportunity for a junior corporate/commercial attorney to practice within its dynamic business law group in Burlington, Vermont. The ideal candidate will have over two years of relevant experience involving corporate and entity formation, mergers and acquisitions (asset and stock purchases, mergers, due diligence) and debt and equity financings (mortgages, Uniform Commercial Code, promissory notes and loan agreements). Experience with captive insurance matters a plus, but not required. The firm's business law group is engaged in wide a variety of transactions locally, nationally, and internationally. This is an opportunity to become part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

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)

Downs Rachlin Martin PLLC - one of Northern New England's largest law firms - seeks an experienced corporate/commercial attorney to join its Lebanon office.

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

TAX ATTORNEY (BURLINGTON, VT)

Downs Rachlin Martin PLLC - one of Northern New England's largest law firms - 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 PLLC - 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)

Downs Rachlin Martin PLLC - one of 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&ssbgc=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2

DCYF – Attorney II

NH Department of Health & Human Services
Concord, Rochester, Laconia and Littleton District Offices

Starting Salary Range: \$59,319.00 to \$84,844.50

The N.H. Department of Health and Human Services, under the supervision of the N.H. Department of Justice, currently has three full time attorney positions and one part time attorney position available representing the Division for Children Youth and Families. The positions available are:

#40098 – Full time in the Rochester District Office.

#44560 – Full time in the Concord District Office.

#11677 – Full time in the Laconia District Office.

Position #TMPPT5726 – Part time telework in the Littleton District Office.

Duties include: Representation of the Division for Children, Youth and Families in litigation involving the Division's child protection program. Litigation activities include drafting pleadings and motions, conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.

Requirements: J.D. from a recognized law school, N.H. Bar membership, a driver's license and/or access to transportation for statewide travel and four years' experience in the practice of law, preferably in the area of abuse and neglect or family law.

How to a APPLY: Please go to the following website to submit your application electronically through NH 1st: <http://das.nh.gov/jobsearch/employment.aspx>. Please reference the position number that you are applying for. Position will remain open until a qualified candidate is found. EOE.

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

ASSISTANT COUNTY ATTORNEY (COUNTY ATTORNEY'S OFFICE)



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

COME JOIN OUR TEAM!

Salary range \$68,993-\$96,574

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

Please send resume and cover letter to:

Grafton County Human Resources

3855 Dartmouth College Hwy., Box 3 North Haverhill, NH 03774

(Apply online, visit: www.co.grafton.nh.us/employment-opportunities)

E-mail: hr@graftoncountynh.gov

E.O.E.



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.

Status: Full Time/Exempt

Submission Requirements:

Employment application and resume required.

Apply Online:

<https://www.governmentjobs.com/careers/rockinghamnh>

Equal Employment Opportunity

Mandatory post offer physical, drug and alcohol testing for new hire. Criminal records check required.



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.



OFFICE OF THE ATTORNEY GENERAL FULL-TIME ATTORNEY VACANCIES

* * *

CIVIL LITIGATION UNIT DIVISION OF LEGAL COUNSEL

The New Hampshire Department of Justice is seeking applications for a full-time litigation position in the Civil Bureau. The Civil Bureau represents the State, its agencies, and its employees before state and federal trial and appellate courts and in administrative proceedings. Civil Bureau attorneys work on a wide array of cases, including cases presenting complex and novel questions of state and federal law. Experienced attorneys looking for fast-paced, diverse, and rewarding work as part of a talented team are strongly encouraged to apply.

The ideal candidate will have experience litigating both routine and complex civil disputes in state or federal court or before administrative tribunals. Excellent analytical and writing skills are a must. Attorneys with state or federal clerkship experience are encouraged to apply. The salary is competitive and commensurate with experience. A superior benefit package, including health, dental, and life insurance, is available.

CHIEF, COLD CASE PROSECUTION UNIT CRIMINAL JUSTICE BUREAU

The NH Department of Justice (DOJ) seeks a highly motivated and experienced homicide prosecutor to lead the Cold Case Unit. The Unit, jointly staffed by DOJ and State Police, was established in 2009 to focus attention on the state's approximately 130 unsolved homicides. DOJ contributes two full-time prosecutors, a part-time investigator, and victim/witness advocate support to the unit; State Police dedicate a Sergeant and Detective and part-time investigator, intelligence analyst, and paralegal. A brief synopsis of current cold cases can be viewed at <https://www.doj.nh.gov/criminal/cold-case/victim-list/index.htm>.

The Cold Case Unit Chief directs, supervises and advises investigations, prepares legal processes, conducts Grand Jury investigations, assesses cases for prosecution, supervises DOJ team members, and leads case prosecutions. The ideal candidate has at least three years' experience prosecuting complex criminal cases, an understanding of current forensic testing techniques, a Juris Doctor degree, and membership with good standing in the NH Bar. Salary is competitive and commensurate with experience. An excellent benefit package is also included.

CLIENT COUNSELING UNIT DIVISION OF LEGAL COUNSEL

The Civil Bureau's Client Counseling Unit provides legal counsel to the Governor, Executive Council, and all executive branch agencies, boards, and commissions. Areas of legal counsel involve all aspects of agency operations, including regulatory actions, administrative procedures, Right to Know, employment, constitutional and statutory law, government operations, public finance, conflicts of interest and ethics, procurement, and contract drafting and negotiations. In addition, counselors represent agencies in administrative hearings and appellate proceedings.

If you are an experienced attorney looking for challenging, meaningful, and rewarding work and desire to be part of a talented team that furthers New Hampshire's important public interests every day, then we strongly encourage you to apply. The ideal candidate will have experience advising clients on legal matters, assessing litigation risk, and resolving disputes. Excellent analytical, negotiation, and writing skills a must. Experience in a regulatory environment a plus.

CRIMINAL APPEALS UNIT SOLICITOR GENERAL'S OFFICE

The Department of Justice is seeking an experienced attorney to join the Solicitor General's office as a criminal appeals attorney. The ideal candidate will have a combination of judicial clerkship and criminal trial experience, in state or federal court. All candidates must be self-motivated, collaborative, have excellent academic credentials, and possess high quality writing, research, and oral advocacy skills. Criminal appeals attorneys appear frequently before the New Hampshire Supreme Court and should be prepared to draft numerous appellate briefs and argue them regularly. Criminal appeals attorneys also provide assistance in certain state and federal habeas corpus matters and argue periodically before the United States Court of Appeals for the First Circuit. This position is one of the Department's most sought-after. The salary is competitive and commensurate with experience. The work environment is collegial, supportive, and team-oriented.

If you are interested in any of these positions, send a cover letter, CV, and writing sample to: New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, c/o Sean Gill, Chief of Staff, or email: employment@doj.nh.gov.

The Office of the Attorney General is an Equal Employment Opportunity employer and does not discriminate on the basis of race, color, national origin, gender, age, sexual orientation, handicapping condition, and/or disability.

For more information about the New Hampshire Department of Justice, please visit our website: www.doj.nh.gov

CITY OF MANCHESTER Attorney II - City Solicitor



Department: City Solicitor

Job Status: Full-Time

Shift: 8:00 AM - 5:00 PM

Hour Per Week: 40

Rate of Pay: \$79,419.23 to \$113,232.82 –
plus comprehensive benefits package

Job Description: Grade 25 – Provides professional legal representation for the City of Manchester; performs directly related work as required.

General Statement of Duties: Provides professional legal representation for the City of Manchester; Performs directly related work as required.

Acceptable Experience and Training: Graduation from an accredited college or university with a Juris Doctorate degree; and Considerable experience in municipal and civil law.

Required Special Qualifications: Admission to the New Hampshire Bar; Possession of a NH driver's license or access to transportation.

To apply please visit: www.manchesternh.gov/Departments/Human-Resources/Employment

The City of Manchester is an
Equal Employment Opportunity Employer



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(603) 226 -1188

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Effective
and strategic
advocacy in
New Hampshire
and
Federal appellate
courts.

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