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Continuing to Mitigate the Justice Gap: NHSC Says Voluntary Pro Bono Reporting Is in the Early Stages of Implementation

By Tom Jarvis
NHBA Staff

As part of a broader initiative to identify and remove barriers to pro bono service that the New Hampshire Supreme Court has embarked upon, voluntary reporting of pro bono hours for NH attorneys is in the early stages of implementation. This project is being undertaken in conjunction with the Access to Justice Commission and with the support of 603 Legal Aid and its existing programs.

"This will give the lawyers in the state an opportunity to record their pro bono hours so that we can individually and collectively measure and acknowledge the tremendous efforts made by lawyers to provide representation to people with limited means," NH Supreme Court Justice and co-chair of the Access to Justice Commission James Bassett says. "We have an aspirational goal set forth in the Rules of Professional Conduct, but we have had no occasion to measure the performance of attorneys in the state or acknowledge it, so this gives us an opportunity to get a better handle on exactly what kind of pro bono representation the lawyers are currently engaged in. Heretofore, though we have encouraged pro bono, the Court hasn't acknowledged those who have made exceptional efforts – and we want to be in a position to do that."

The reporting would be through coordination with 603 Legal Aid and using the platform of the New Hampshire Bar Association's dashboard. The Court hopes to implement reporting by the end of the 2023-24 reporting year.

"We are long way from the finish line," Justice Bassett says. "We recognize that there will need to be a number of rules changes, the Bar Association would have to modify the dashboard to accommodate the reporting, and there will be a public commentary process."

In early 2021, then co-chair of the Access to Justice Commission, US District Court Judge Joseph Laplante, and current co-chair, attorney Mark Rouvalis, created a pro bono task force to identify and recommend ways to increase pro bono service in the Granite State.

In October of the same year, the pro bono task force created a report to the Commission with their findings and recommendations. The report identified the top three barriers to undertaking pro bono representation as lack of time, commitment to family or other personal obligations, and lack of skills or experience in the practice areas needed by pro bono clients. They then focused on identifying what specific measures might be implemented to address or ease the barriers and thereby increase pro bono representation. Voluntary pro bono reporting was one of the numerous recommendations by the task force.

A separate report to the Access to Justice Commission, prepared by Access and Community Engagement Coordinator of the NH Judicial Branch Jackie Waters and former legal counsel to the ABA Standing Committee on Pro Bono and Public Service Steve Scudder, provided a snapshot of the voluntary pro bono reporting processes from five different states. This report will be helpful to

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NHBA's 150th Anniversary Year Promises a Wide Variety of Activities and Opportunities

By Lynne G. Sabeau and Misty W.Griffith
NHBA Staff

The New Hampshire Bar Association was founded on July 2, 1873, making 2023 our 150th anniversary year. We think this landmark deserves more than simply refreshing our masthead and adding a special logo to the website.

We also reached out to other Bar Associations to see how they are observing their key anniversaries. This helped us develop a quadrant framework that we're using throughout the year – with the assistance of a special 150-Year Board of Governors subcommittee – to ensure a commemoration of sesquicentennial proportions. These quadrants encompass:

- Activities and events
- CLEs, workshops, and public education

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PRACTITIONER PROFILE

Lauren Noether: A Stalwart New Hampshire Advocate

By Kathie Ragsdale

In 1982, Lauren Noether was a new law school graduate who was painting houses while awaiting an opportunity to practice law.

She was the first practitioner to be profiled in a publication of the New Hampshire Bar, and both have changed dramatically in the intervening 42 years.

Noether went on to become one of the first female county attorneys in the state, as well as a senior assistant attorney general. The Bar has become more inclusive and more accessible as it begins its 150th year, with a variety of programs and events planned.

Noether was born in New York, to European immigrants who

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Photo by Alan Macrae

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Learn more and register
at nhbar.org

NHBA Celebrates Its 150th Anniversary Throughout 2023

Anniversaries provide the opportunity to reflect on the milestones we've reached and to consider the history and progress we have made together over the years. For those happy events, anniversaries can be cause for celebration. At the same time, though, anniversaries are an opportunity to start charting a path ahead, based on past achievement.

Our New Hampshire Bar Association, which was founded on July 2, 1873, celebrates its 150th anniversary this year. Following its founding, nearly 100 years later, on December 31, 1968, the New Hampshire Supreme Court established the unified Bar that we know today. Approximately three and a half years after that, the Court recognized that the NHBA "prospered and gr[ew] in stature" under the temporary unification order, and it ordered the Bar Association to continue "as a unified bar without limitation of time, under the court's continuing jurisdiction." On subsequent occasions, in both 1986 and 1993, the New Hampshire Supreme Court recognized that "the history of the unified bar since its creation is one of impressive accomplishment and service to the public and lawyers of our State." The Bar Association continues to serve both its member lawyers and the state at large today.

The Association has come a long way since its humble beginnings in 1873. Developments in the law, technological advancements, and progress in better supporting all New Hampshire attorneys have been constants throughout the Association's history. As was true over the Bar's first 150 years, progress and development will continue in the years to come. Over the course of this celebratory year, in assorted ways and on an ongoing basis throughout the year, the Association will reflect on what it has been, what it means to its members today, and what we, as its members, can help it become.

As members of the Bar, we have a great deal to be proud of. Governor Christopher Sununu recently signed a commendation celebrating the Bar on its 150th anniversary, wherein he recognized the many and significant ways that the Association serves its member attorneys "by providing resources and tools that assist

President's Perspective



By Jonathan M. Eck

Orr & Reno
Concord, NH

"In 2023, the Association's leadership will regularly assess and ensure it is fully committing itself to this mission and purpose."

attorneys in their work." Beyond that, the Governor's commendation recognizes the Association "serves the general public by providing legal referrals . . . , creating and providing a variety of Law Related Education resources to grades K-12, designing and implementing programs and events to help the public understand, trust, and access the justice system, and encouraging attorneys to donate their time and services to pro bono activities and legal aid providers." The Governor also acknowledged the service the Association provides to the New Hampshire court system, under the direction of the judicial branch, through the assorted vital attorney regulatory functions that the Bar administers or assists with.

In this 150th anniversary year of our Bar Association, the Bar is embarking on a multi-faceted year of celebration that will include events, articles, service opportunities, and special programs. The programs and offerings will include a "Speakers Bureau" and a "150 Minutes of Giving" initiative. Through the Speakers Bureau, members of the Association will be identified as potential speakers for a wide range of speaking opportunities at schools, civics organizations, nonprofits, and other groups, on a broad range of topics relating to the law.

The "150 Minutes of Giving" is exactly what it is titled. The Association asks its members to use a mere two and a half hours of their time over the course of 2023 to volunteer and make a positive difference and then self-report on the volunteer projects. The Association has compiled a helpful list of simple and easily pursued ideas, which range from writing an article for the

Bar News, to volunteering for Free Legal Answers, to participating in of the NHBA's Law Related Educations events, such as the "Lawyer and Judge in Every School" program or the "We the People" competition. Additional non-law related volunteer opportunities and ideas are listed at volunteernh.galaxydigital.com/need/index.

For those who cannot donate their time, there is also the opportunity to make monetary contributions. One easy method of doing so is through the New Hampshire Bar Foundation, which is the charitable arm of the Association. The Foundation has established a special "150th Fund" to improve access to justice. Donations can be made at (URL).

The Association's Constitution states that our purpose, as a bar association, is as follows:

to improve the administration of justice; to foster and maintain high standards of conduct, integrity, competence and public service on the part of those engaged in the practice of law; to safeguard the proper professional interests of the members of the Bar; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relations of the Bar to the public; to carry on a continuing program of legal research and education; and to encourage cordial relations among members of the Bar

In 2023, the Association's leadership will regularly assess and ensure it is fully committing itself to this mission and purpose.

The Association and its Board of Governors invite and encourage you to commemorate NHBA's 150th anniversary year by actively participating in the coming months in this extended celebration. The Association's 2023 celebration initiatives provide multiple opportunities for you to increase your involvement with the Association and, with the NHBA's support, make a positive difference in your local community or more broadly in our great state. Please take advantage of the opportunities that the Association is promoting this year as we celebrate the progress we have made and continue our work toward the future we envision for the practice of law and the administration of justice in New Hampshire. ■

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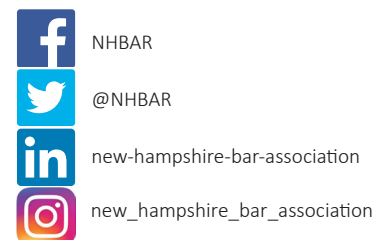
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- NHBA history, and
- Service projects

This article focuses on two of these quadrants.

NHBA History: Remember the Past, Preparing for the Future

Because understanding NHBA's history means understanding the circumstances that made early Granite State attorneys recognize the need to form an Association, we traced the history of New Hampshire law all the way back to the state's founding as one of the original colonies. We also combed through the archives of *Bar News* and a publication that our more experienced practitioners might remember, the *New Hampshire Law Weekly*. It was a privilege to watch Bar history unfold much faster than in real time. We observed NHBA develop committees, sections, mentoring and leadership programs, robust CLEs, and civil legal aid programs. We saw NH lead efforts to save pro bono programs at a time of vast defunding. We noted attorneys capturing the experiences of their elders in a series of recordings and videos.

NHBA grew with, and in response to, changing times. We read about NHBA's response to the Spanish Flu, the AIDS epidemic, the COVID pandemic, and more. We watched NHBA itself computerize and also advise our member firms how to do the same. We observed how the Bar Association recognized and responded to DEI and gender equality issues. And sadly, we realized how many of our members had little idea of the magnitude of our accomplishments or the degree to which New Hampshire attorneys chose, over and over again, to be a unified whole.

This ongoing research inspired us to write a series of articles that will appear in these pages throughout 2023. It kicks off

this month with a front-page practitioner profile of Lauren Noether, who was first interviewed by *New Hampshire Bar Weekly*. We caught up with her nearly 40 years later, to see how her practice unfolded and how her ideas about law and justice have evolved over the decades.

Service Projects

Our members are known not only for their congeniality, but also their generosity. No 150th Anniversary Year commemoration would be complete without multiple opportunities for attorneys to participate meaningfully and give back to the community. You'll be reading more about the following programs over the next several months in *Bar News*, via our social media, in *E-Bulletin*, and at nhbar.org. NHBA thanks you in advance for your participation in one or both of these initiatives.

NHBA Speakers Bureau

As part of our 150th anniversary year commemoration, the NHBA is planning to develop a speakers bureau comprised of volunteer attorneys who are willing to speak to schools, civic organizations, non-profits, and other groups. Members who volunteer to be part of the speakers bureau will identify the topics they are willing to present and the counties where they are available for a speaking engagement. This would work in tandem with a speakers list of judges that the court is developing.

NHBA is rebuilding a list of attorneys who are willing to go out and speak to the public. This will be a free public service with no honorarium for the speakers. Topics offered include civics, civil rights, overview of the justice system in New Hampshire, free/low-cost legal resources, alternative dispute resolution, etc.

A speakers bureau is squarely in line with our mission to support our members, the courts, and the public. It benefits members by helping them build stronger community connections and develop name/firm

The State of New Hampshire By His Excellency Christopher T. Sununu, Governor

A Commendation

In the year of our Lord Two Thousand and Twenty-Two

NEW HAMPSHIRE BAR ASSOCIATION 150th ANNIVERSARY

WHEREAS, the organization currently known as New Hampshire Bar Association (NHBA) was founded on July 2, 1873, and on December 31, 1968 and in a temporary order, the New Hampshire Supreme Court established a unified Bar; and

WHEREAS, on June 8, 1972, the New Hampshire Supreme Court found that the NHBA had "prospered and grown in stature" under the temporary unification order and ordered the Bar Association to continue "as a unified bar without limitation of time, under the court's continuing jurisdiction"; and

WHEREAS, in 1986 and 1993, the Supreme Court noted that "the history of the unified bar since its creation is one of impressive accomplishment and service to the public and lawyers of our State"; and

WHEREAS, the New Hampshire Bar Association serves its member attorneys by providing resources and tools that assist attorneys in their work, fosters communication and idea exchange through NH Bar News and other communications, provides attorneys with a number of volunteer service opportunities through programs such as the NHBA Lawyer Referral Service, Lawline, NH Free Legal Answers, and NHBA Board, and helps attorneys stay educated and connected through Continuing Legal Education (CLE) offerings, the NHBA Leadership Academy, and many membership and networking opportunities; and

WHEREAS, the New Hampshire Bar Association serves the New Hampshire court system by providing vital attorney regulatory functions under the direction of the judicial branch, assuring that the courts can maintain fair and impartial review authority as the final arbiter in such matters; and

WHEREAS, the New Hampshire Bar Association serves the general public by providing legal referrals through the NHBA Lawyer Referral Service and the NH Free Legal Answers programs, creating and providing a variety of Law Related Education resources to grades K-12, designing and implementing programs and events to help the public understand, trust, and access the justice system, and encouraging attorneys to donate their time and services to pro bono activities and legal aid providers;

NOW, THEREFORE, I, CHRISTOPHER T. SUNUNU, GOVERNOR of the State of New Hampshire, do hereby commend the **NEW HAMPSHIRE BAR ASSOCIATION** on celebrating your **150th ANNIVERSARY** in 2023, and thank it for its accomplishments and ongoing service to the public, courts, and lawyers of our state.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the State of New Hampshire to be affixed this 19th day of December, 2022.

Christopher T. Sununu
Christopher T. Sununu
Governor

One of the first steps NHBA took in planning its 150th Anniversary Year was to request a proclamation from Governor Christopher T. Sununu. This document can be accessed and viewed at full size at: <https://nhba.s3.amazonaws.com/wp-content/uploads/2023/01/04100045/150th-Anniversary-NH-Bar-Association-Commendation-2022.pdf>

EVENTS & ACTIVITIES

CLEs, WORKSHOPS, & PUBLIC EDUCATION

NHBA HISTORY

SERVICE PROJECTS



Celebrating 150 Year.

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In 2022, the Cincinnati Bar Association conducted a successful, award-winning, year-long anniversary program. NHBA spoke with their staff and adapted their rubric for our own use. NHBA staff are using the resultant quadrant framework to help us develop a robust mix of offerings for 2023 and beyond.

recognition. The bureau benefits the courts by creating and raising public awareness of the legal resources available and creating a positive image of the NH justice system. Finally, it benefits the public by educating them on important law-related topics.

While the success of this program depends upon prudent administration and community outreach, it ultimately cannot be viable without a robust list of participating attorneys. To learn more or volunteer, contact memberservices@nhbar.org.

"150 Minutes of Giving Back"

We are also encouraging members to give an additional two and a half hours (150 minutes) of service at any time in the 2023 calendar year. While pro bono legal service is strongly encouraged, any community service counts. To further this aim, we have produced a list of ideas and suggestions, which can be found at nhba.s3.amazonaws.com/wp-content/uploads/2023/01/04095829/2023-01-04-150th-Anniversary-Volunteer-Ideas.pdf.

Those unable to donate their time, for whatever reason, are encouraged to make a financial contribution to a special NHBA 150th Anniversary Fund as follows:

- Donor: \$150 / attorney (individual gift)
- Benefactor: \$1500+ / attorney (individual gift)
- Benefactor Firm: \$150 / attorney (for each attorney in firm; firm gift)

This fund also accepts stand-alone donations from the legal community and outside organizations. Like other Bar Foundation Grants, the 150th Anniversary Year fund will be used for improving access to justice at both the attorney and court levels as well as law-related education projects.

To learn more about the 150th Anniversary Fund or to make a donation, please email mshappy@nhbar.org. A special online form is being created to report your service hours; watch nhbar.org and our publications for details.

Ultimately, our sesquicentennial is not just about celebrating our past; it also sets the stage for our next 150 years. We welcome your suggestions on the activities, events, and milestones that are important to you.

We have also created a special page on the NHBA website that will be updated throughout the year, which can be found at nhbar.org/150th-anniversary-year. ■

Members of the Bench Come Together to Celebrate Increasing Diversity at the Second “Annual” Women Judges Dinner

By Tom Jarvis
NHBA Staff

On September 1, 2022, thirty judges got together for an informal dinner at the Red Blazer in Concord to celebrate women on the bench. Current and retired judges, marital masters, and referees alike were in attendance. The dinner was organized by Circuit Court Judge Susan Carbon and Chief Justice of the Superior Court Tina Nadeau.

“Our goal was to simply celebrate the increasing diversity of the bench by having us all together,” Judge Carbon says. “And then, of course, to have fun getting to know each other better since we have few opportunities to do so.”

While the dinner was mainly to honor the growing number of women in the judiciary, men were still invited.

“I’m glad we had our three guys join us,” Supreme Court Justice Anna Barbara Hantz Marconi says. “We are not an exclusive club. The whole evening was an opportunity to put names with faces and get our growing ranks together.”

Chief Justice Tina Nadeau says she was happy to help organize the gathering and ensure that Superior Court judges attended.

“It seemed to me that everyone enjoyed the comraderie that the event offered,” Justice Nadeau says. “I was happy for a chance to get together after a long

period of isolation.”

Although there was no formal program for the festivities, the guests participated in some judicial trivia. One of the questions was about the first female judge in NH, Idella Jenness, who was appointed by Governor Styles Bridges, at a time when many judges were not law-trained, and served for 16 years.

“With new judges coming on board, it’s also a great chance to introduce them to a broad group of colleagues and provide mentorship,” Judge Carbon says. “But mostly it’s just a great chance to have a no-agenda, fun evening with friends who happen to also be judges.”

Retired NH Supreme Court Justice Carol Ann Conboy, who also attended the dinner, says it was a wonderful opportunity for the women judges to get together and talk about what is happening in their lives.

“Judges are very busy; it’s a lonely occupation. You’re on the bench making significant decisions all by yourself and that can take a toll,” Justice Conboy says. “Having a chance to talk with your peers about how you are doing in your personal life and sharing our experiences of being a woman judge really helps us navigate this career.”

The first women judges dinner took place in mid-2019 and had about 45 attendees from all the courts, state and federal, including a handful of men. They had



The September 1, 2022, women judges dinner at the Red Blazer in Concord included current and retired judges, marital masters, and referees. Front row (L-R): Judge Susan Carbon, Judge Ellen Joseph, retired Justice Carol Ann Conboy, Marital Master Alice Love, Justice Bobbi Hantz Marconi, Superior Court Chief Justice Tina Nadeau, and retired Judge Kathleen McGuire. Second row (L-R): Retired Marital Master Nancy Geiger, US District Court Justice Samantha Elliott, Judge Kimberly Chabot, Judge Kristin Spath, Judge Melissa Countway, Judge Suzanne Gorman, Judge Sandra Cabrera, Just Margaret Ann Moran, Judge Beth Leonard, and Judge Barbara Ann Maloney. Third row (L-R): Judges Todd Prevett, Charles Greenhalgh, John Curran, Lisa English, Pat Quigley, and Erin McIntyre. Fourth row (L-R): Judges Polly Hall, Jacalyn Coburn, Amy Messer, and Jennifer Lemire. Back row (L-R): Referee Dianne Ricardo and Judge Ellen Christo. Courtesy photo

intended to do it again the following year, but the COVID-19 pandemic overturned those plans. Judge Carbon hopes this will be an ongoing event.

“Hopefully we’ll have a third and

continue with annual events,” Judge Carbon says. “As more and more women join the bench, it’s nice to see the progression.” ■

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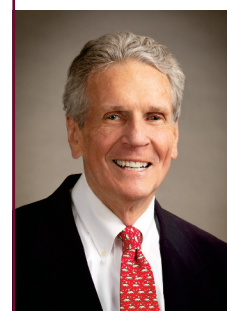
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Introducing Smokeball: NHBA's Newest Member Benefit

By Misty Griffith
NHBA Staff

One way to increase efficiency, thereby saving time and increasing productivity, is to embrace law practice management (LPM) technology. Our new member benefit partner, Smokeball, is an outstanding LPM provider.



Smokeball's LPM software helps organize client information, documents, and case files; streamlines calendaring and time tracking; and provides for more efficient billing. Designed to meet the needs of small firms, Smokeball can help you modernize your practice and streamline your workflow.

The company differentiates itself from other LPM competitors by providing streamlined workflows for your specific practice area, automatic time and activity tracking, and hybrid cloud technology so attorneys can work anywhere, with or without internet connection. Their Microsoft Office integration ensures that attorneys can continue to work in the tools they use most – Microsoft Outlook and Word – confident that all emails, attachments, documents, and edits will be seamlessly saved back to the matter file.



Smokeball helps improve every aspect of firm operations.

Smokeball provides customization that comes standard with the software. It is tailored to individual practice areas with comprehensive libraries of automated forms. More than 20,000 forms are available. The form library is unique to Smokeball, and according to legal technology consultant, Adriana Linares, of LawTech Partners, the form library is especially useful for newer attorneys and those who are seeking to add a new practice area.

Smokeball's billing features turn tracked time into professional invoices. Moreover, their software seamlessly integrates with LawPay for easy credit card processing. Additionally, integration with QuickBooks means that a firm's accounting needs may be handled in the same billing system.

Another great feature is Smokeball's robust Mobile App, which lets you manage your practice on the go. Access to your calendar, documents, and files can be in your pocket everywhere you need to be. The app even allows you to make billing entries which automatically sync with

your billing software.

This provider has a highly regarded onboarding process which provides new users a dedicated onboarding consultant who will configure the software to the firm's needs, prescribe and coordinate training, and coordinate support and additional configuration with document automation. This results in greater usability for attorneys, who are usually not equipped with the knowledge, time, or internal technical resources to set up and customize the software themselves.

Smokeball is a very highly rated LPM provider. G2 software reviews named Smokeball the "Best Usability Winner 2023" for legal case management software. Smokeball received a score of 100% based on 203 reviews. Additionally, Capterra software reviews named Smokeball a "2022 Top Performer" and a "2022 Emerging Favorite" for LPM technology, placing Smokeball on their top five shortlist out of 361 LPM software providers.

Smokeball offers several different plans to fit the different needs of individual firms. With the 10 percent NHBA member discount, it is a good value. Members can claim the discount and request a free

demo by visiting go.smokeball.com/nhbar.

In addition, members can take advantage of this member benefit by visiting our website, nhbar.org/resources/member-services-benefits. To learn more about Smokeball, or other great NHBA member benefits visit nhbar.org or contact NHBA Member Services Coordinator Misty Griffith for more details at mgriffith@nhbar.org or (603) 715-3227. ■

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Lawyer Referral Service Creates Unique Training and Education Program to Raise the Bar on Call Center Service

By Jennifer Greenwald
NHBA Staff

Who does the public call when they need an attorney? Often, it's the New Hampshire Bar Association's Lawyer Referral Service (LRS). LRS is both a member service and a public service and is comprised of a coordinator and two full-time Intake and Referral Specialists. On average, LRS provides 130 referrals to NH attorneys per week. This does not include the hundreds of calls fielded from people who do not require the assistance of an attorney and are referred to another agency.

While our intake specialists typically have a phone or call center background, they may have little-to-no legal experience. This can result in a steep learning curve and an extended training period. We've found that it takes approximately two months to train a new hire to comfortably and competently field and forward calls. It can be stressful for our intake specialists to spend hours each day on the phone with callers and burnout is a real possibility. To ensure employee retention and optimal service to the public, LRS recently began a combined wellness and education initiative for our staff.

It is hard for call center staff to properly refer a prospective client to an appropriate when they may not understand the issue at hand, the language used, or the procedure being discussed. LRS, with the support of its LRS Committee, recently undertook an educational series of "classrooms" for its Intake and Referral Specialists. These workshops provide LRS staff with a broader understanding of many issues frequently encountered during calls.

"Having a panelist speak with us regarding different case types is very helpful to get a more in-depth understanding of the particular types of law they practice, as well as differentiating between case types, helping me perform my job more efficiently," LRS Intake and Referral Specialist Kristine LaCharite remarks. Kristine began her tenure at NHBA as the receptionist before moving to LRS last January and swiftly

became an essential member of the team.

In November 2022, Elizabeth Fenner-Lukaitis, the Acute Care Services Coordinator of the Bureau of Mental Health Services/DHHS, met with LRS and other public-facing Bar staff to discuss suicidal callers. The workshop included best practices for identifying suicidal statements, addressing comments with the caller where appropriate, and contacting the authorities where necessary. An open discussion period allowed attendees to share experiences and advice.

In December 2022, attorney Peter Wright sat down with LRS for a face-to-face tutorial on the life of a case. In broad strokes, he discussed the different types of courts and when each should be used. Wright shared his experience in small claims matters and consumer law, as well as the factors to be considered when accepting a medical malpractice case. He also explained how the courts typically handle *pro se* litigants vs. represented parties. Much of the "law fundamentals" information Wright shared was strikingly similar to the introductory course content he taught to 1Ls at Pierce Law Center and UNH Law.

On January 5, 2023, attorney Rory Parnell and LRS discussed issues surrounding landlord-tenant matters. Parnell provided LRS with an overview of the different types of tenancy, the difference between a rental property versus a shared facility, and what differentiates condominiums and duplexes. He reviewed the eviction process, describing various requirements, and explained what landlords can and cannot do, including violations of a lease, terminating utilities, health code violations, and more.

Several upcoming training sessions are also planned for early 2023 and beyond.

"Being new to the legal world, I feel lucky to be able to get an insight into how our justice system works," LRS Intake and Referral Specialist Anna Winiarz says. "Whether it's learning about a new type of law, how attorneys view cases, or how the court system operates, it is knowledge that gives me a better understanding of law and each new training allows me to do my job better." Prior to her position at



NHBA Lawyer Referral Service staff (from left to right), Intake and Referral Specialist Anna Winiarz, LRS Coordinator Jennifer Greenwald, and Intake and Referral Specialist Kristine LaCharite, provide an average of 130 referrals to NH attorneys per week. Photo by Tom Jarvis

the NHBA, Anna had a strong call center background, but no legal background. Through education and experience, she is now an integral part of LRS.

To combat call fatigue and call stressors, LRS strives to ensure that our Intake and Referral Specialists stay healthy both physically and mentally. We regularly hold team meetings, in which the staff discusses their best and worst calls of the week, various methods of stress relief, as well as burnout. Each staff member spends no more than two hours at a time as the primary "phone person," allowing both specialists to take frequent breaks and decompress.

Attorneys already understand the importance of a healthy work-life balance. It's also vitally important for lawyers to take care of their "frontline workers" who also assist clients and prospective clients. LRS feels that its training and education model can translate well to a firm setting and welcomes Bar members to contact it with your comments and questions. ■



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NICK ABRAMSON

Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs

EVA H. BLEICH

Medical Malpractice Law - Plaintiffs

KEVIN F. DUGAN

Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs

JARED R. GREEN

Personal Injury Litigation – Plaintiffs and Product Liability Litigation – Plaintiffs

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NEW HAMPSHIRE BAR ASSOCIATION
2023 Midyear Business Meeting

Friday, February 17, 2023
11:45 a.m.
Doubletree by Hilton Downtown Manchester, NH
President Jonathan Eck, Presiding

AGENDA

Call to Order
Approval of the Minutes of the Annual Business Meeting – Friday, June 17, 2022

Old Business

New Business

Vote on Proposed changes to Bylaws – Article IV, Section 4

Adjournment

Proposed Revisions – Bylaws Article IV, Section 4

This revision changes the time limit for accepting petitions and holding the special election from 45 days to 30 days for both. This change was approved by the NHBA Board of Governors at the November 17, 2022 meeting.

Section 4. If the President, President-Elect or Vice President is unable to serve their term due to any reason during the first 9 months of their term, each remaining Officer will accede to the next higher office, to the extent applicable, such that the vacancy shall be at the Vice-Presidential position. The Association will immediately post a notice in the NH Bar News and provide 45 30 days for any potential candidate to apply for the open position. Thereafter, within no more than 45 30 days, the Association will conduct a special election to fill the vacancy under the same terms and conditions as a regular election. The Officer so elected will fulfil the term of Vice President as set forth in Article IV, Section 2, and will accede to the position of President-Elect at the time of the next regularly scheduled election. If the Presidency becomes vacant 90 days or less from the end of their elected term, the President-Elect shall assume the duties of President, and the office of the President will remain vacant until the end of their elected term.

NEW HAMPSHIRE
BAR ASSOCIATION
Equal Justice Under Law • Celebrating 150 Years



2022 Annual Business Meeting
Garden Room
Mountain View Grand Resort, Whitefield NH

June 17th – 1:00 PM
DRAFT MINUTES

President Richard Guerriero presiding

Call to Order
President Guerriero called the meeting to order at 2:05 PM

Secretary's Report – Draft Minutes of the 2022 Midyear Membership Business Meeting for approval

ACTION

On Motion to approve the minutes. Passed.

Old Business

None

New Business

None

Adjournment

The meeting was adjourned at 2:06 PM.



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Lawyers and Burnout

By Terri Harrington and Jill O'Neill



Harrington



O'Neill

Lawyers are prone to burnout because the practice of law is practically a working definition of risk factors attributable to burnout: strong identification with work as one's primary identification; high workload requiring consistent overtime; little or no control over work demands; and high expectations for performance in a helping profession. Sound familiar?

Burnout is a special type of work-related stress. It is a state of physical or emotional exhaustion that also involves a sense of reduced accomplishment and loss of personal identity. Burnout is not something that happens overnight. It is more like the boiled frog, the frog that hops into cool waters and doesn't notice that the water temperature slowly and steadily rises until the frog is literally dying in boiling water. The practice of law can certainly feel like that. In the beginning, the cases start coming in, the



work is challenging, but also manageable and fulfilling. Then the cases come in faster, the workload becomes unmanageable, and there is little opportunity to pay as much attention to each detail as one would like. Eventually, you are sitting at your desk wondering how you got to the point that you dread coming to work, and when exactly it was that you lost all love of practicing law.

Symptoms of Burnout:

Fatigue – Lack of energy to be consistently productive.

Cynicism – Feeling that nothing you do really matters or is having any impact.

Sense of Inefficacy – Exertion of significant effort with a feeling of no real progress or recognition.

Lack of Attention – Trouble getting started

and trouble staying focused on work.

Do you feel like you must drag yourself to work? Are you irritable or impatient with clients, coworkers, or support staff? Are you using food, drugs, or alcohol to feel better, or to simply not feel? Are you having difficulty sleeping?

Although the emotional toll of burnout is what most know something about, the physical toll of burnout can be very serious. Medical studies have linked burnout to coronary heart disease (CHD). One such study found that those identified as being in the top 20 percent of the burnout scale had a 79 percent increased risk of CHD. Dr. Sharon Toler of Tel Aviv University, the leading researcher for this study, finds these results "alarming" and "more extreme than predicted." Thus,

burnout is a stronger indicator of CHD than classical risk factors such as smoking, blood lipid levels, and lack of physical activity. This is likely due to the lower cortisol levels associated with burnout.

Cortisol helps restrain the activation of the immune system and stress response. With chronic stress, the immune system is compromised, leading to hyperactivity and inflammatory immune responses. This translates to a variety of chronic diseases including cardiovascular disease, diabetes, and cancer as well as CHD. Research also indicates that the emotional response to burnout feeds the physical response, fueling the downward health spiral associated with burnout.

Burnout is not a state you can just snap out of. There needs to be a multidisciplinary approach to addressing burnout. It is not simply a matter of creating healthier coping skills in response to workplace stress. A successful response to burnout must also address the physical aspects of chronic inflammation, sleep disturbance, diabetes treatment, and cardiovascular health.

Strategies and Tips for Recovery

Nurture your nervous system. "Burnout is the result of chronic stress that has changed the autonomic nervous system," the Mayo Clinic reports. "Stress initially causes the brain to send signals to the adrenal glands, heart, and sympathetic (fight/flight) autonomic nervous system to activate or raise blood pressure and heart

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The NH Supreme Court How Recent Trends Can Inform Future Litigation Strategies

Monday February 6, 2023

90 minute CLE (4:30-6:00 PM) with reception to immediately follow
UNH Franklin Pierce School of Law Room 282

Moderated by Retired Supreme Court Justice Carol Ann Conboy

Panelists will discuss how recent trends in NH Supreme Court civil and criminal jurisprudence can be used in creative and courageous ways to craft future litigation

PANELISTS:

ELIZABETH WOODCOCK

Assistant Attorney General, Criminal
Bureau

CHRISTOPHER JOHNSON

Chief Appellate Defender, NH Public
Defender

GILLES BISSONNETTE

Legal Director, ACLU of NH

JIM KENNEDY

City Solicitor, City of Concord

For registration and payment options
go to

www.nhsupremecourtsociety.org/clereg;
or contact Gilles Bissonnette, Esq.
603-227-6678, Gilles@aclu-nh.org.

Reporting from page 1

the Commission when figuring out the details of execution.

"One thing the Court wants to emphasize is that these new initiatives are not in any way meant to supplant the awards and recognition events that are currently done by 603 Legal Aid," Justice Bassett says. "This would be something to supplement those recognitions. 603 Legal Aid are important partners in this, and we are doing this in consultation with them and with their help."

Justice Bassett continues, "Various Supreme Courts around the country have programs where they acknowledge individual lawyers, where they give some sort of certification to law firms that have made a major pro bono commitment, and we think firms that do that should be recognized and should be able to speak to clients, law students they wish to hire, and other firms in terms of their commitment."

When asked if voluntary pro bono reporting was the beginning of a slippery slope toward mandatory pro bono reporting or even mandatory pro bono in New Hampshire, Justice Bassett says the Court does not view this as a slope at all.

"There will be a public commentary process for this, but we view it as a very discrete step and a very positive step. We hope that people won't be distracted by those other possibilities that we don't think are

appropriate for the NH Bar at this time."

Among the pro bono task force's other recommendations to the Access to Justice Commission was the already-implemented limited active status order, which waives the mandatory CLE requirements and the filing of a Trust Account Compliance form for limited active status attorneys who volunteer for pro bono cases through 603 Legal Aid, NH Legal Assistance, and Disability Rights Center-NH.

Another recommendation is offering CLE credit for pro bono services. According to the pro bono task force's report, attorneys surveyed by the ABA stated that "CLE credit for doing pro bono" was the third most motivating factor when asked what actions may motivate lawyers to accept pro bono cases.

"While we cannot provide attorneys with more time," the task force writes in the report. "We can help to alleviate some of the burden placed upon their time by providing CLE credit for pro bono service."

This option is still being considered by the Access to Justice Commission and the NH Supreme Court.

"There is a lot of work to be done," Justice Bassett says of the eventual implementation of voluntary pro bono reporting. "The devil is in the details, but the Court is solidly committed to encouraging pro bono participation and we are doing a lot of things that will promote that. Voluntary reporting is just one aspect of a bigger, more comprehensive project to enhance pro bono participation throughout the state." ■

"603 Legal Aid are important partners in this, and we are doing this in consultation with them and with their help." – Justice James Bassett

rate to deal with the stress and demands in a hyperactive manner. During stressful moments, conscious breathing allows you to shift and release negative energy instead of storing it in your body.” This is important because stored-up energy often manifests as muscle tension and other physical ailments.

Use mindful breathing. The simple act of inhaling and exhaling slowly blocks stress hormones and produces a calming physiological effect. There are several breathwork approaches, such as box breathing. You may want to try out a few different techniques over time to see which type most resonates with you and brings about the best results.

Use mindful concentration. By becoming aware of the present, we are less likely to ruminate on the past or the future. We can appreciate what we can actually control. Try this exercise: within your environment, what are five things you can see, four things you can touch, three things you can hear, two things you can smell, and one thing you can taste? Engage all your senses and repeat as often as you need.

Practice Visualization and positive self-talk. Techniques such as visualization and positive self-talk can allow you to turn negative energy into focus and confidence. It has beneficial effects on attention and emotion regulation, and it is widely used for performance enhancement in sports. Athletes who engage in self-talk during training and in competition say things like, “keep going” and “focus on form,” or repeat mantras like “I’m feeling strong.”

Pay close attention to the stressors in your life (and reduce unnecessary ones). Busyness does not mean we are always

using our time for meaningful work and seeing real progress. When you feel yourself being pulled into that sense of busyness, take a step back and try to identify the root causes. Pay close attention to the ones impacting your emotional state. If you are feeling stuck, journaling can help you find clarity and challenge irrational thoughts causing your distress. In striving for a healthy work/life integration, it’s important to identify your priorities that you “must” do rather than “should” or “could” do. The best way to establish priorities for the day, week, month, or year is to write them down.

Protect your time. Bring more structure into your day. There’s no bigger contributor to unhappiness than the sense that you’ve lost control and your career is consuming your life. A structured daily schedule gets rid of decision fatigue, feeling guilty for not being productive enough, and feeling overwhelmed. If you do it properly, that is. Here are a couple ways to do this:

Set aside uninterrupted time for your most important work every single day (must do’s). Even just one to two hours of clearly focused time will ensure you make progress. To schedule your day effectively, you need a handle on not just available time, but also on the optimal time to tackle different tasks. Most people find that morning is the best time to get deep work done. It’s when your mind and body are fresh, and your creative juices are flowing.

Use Time-blocked scheduling. Time-blocking involves dedicating chunks of time in your day to very specific tasks then intentionally setting the time and duration to work on a specific task. These include not only court hearings, meetings,

and appointments, but also include non-billable activities such as travel time, administrative tasks, and continuing education/professional development activities. Time-blocked scheduling is also useful for scheduling periods of time when you know you will not be available. Events like vacations, anniversary dinners, or your child’s soccer game can all be time blocked on your calendar to prevent double-booking. These techniques, however, can serve as good building blocks for squeezing more effectiveness and efficiency out of your day. The most important takeaway: No one is going to give you your time back — you need to take it back

Finally, there must be honest organizational assessment and implementation of corrective measures in the workplace to create a healthy atmosphere. EMPLOYEE BURNOUT IS A PROBLEM WITH THE EMPLOYER, NOT THE EMPLOYEE. One way to address burnout is to survey employees to see what is causing undue stress. Use the findings to identify problems and realistic solutions. Verify that workloads are in line with capabilities

and resources. Causes of burnout include lack of control, unclear expectations, unhealthy workplace dynamics, lack of social support, and work-life imbalance.

The consequences of burnout costs US employers \$190 billion annually in medical costs, workers compensation claims, and lost productivity. It is much higher when factoring in turnover and absenteeism.

There are solutions available to address burnout. It does not have to be an inevitable consequence of a busy, practicing lawyer. There is help. Don’t wait until a problem becomes a crisis.

The New Hampshire Lawyers Assistance Program (NHLAP) can help. It is a free, confidential resource to personal and professional issues in the legal profession. Contact NHLAP via telephone at (603) 491-0282, by emailing jill@lapnh.org, or by visiting lapnh.org. ■

Terri Harrington is the Assistant County Attorney in Merrimack County and Jill O’Neill is the Executive Director of the New Hampshire Lawyers Assistance Program.

NHBA Seeks Lawyer-to-Lawyer Wellness Advice

No one understands the unique challenges faced by attorneys better than another practicing attorney. The February issue of *Bar News* will include a wellness advice article with advice from attorneys for attorneys. Members are invited to share their words of wisdom in response to the following question:
How do you create work/life balance?
Please email your response to NHBA Member Services Coordinator Misty Griffith at mgriffith@nhbar.org by January 23.

#1 in Verdicts and Settlements



Boston magazine’s “Top Lawyers” (l to r): Krysia J. Syska, Adam R. Satin, Robert M. Higgins, Nicholas D. Cappiello, Andrew C. Meyer Jr., William J. Thompson and Julie A. Davis (inset).

LUBIN & MEYER again dominates *Boston* magazine’s “Top Lawyers” list as the firm with the most attorneys recognized in areas of personal injury and plaintiffs medical malpractice law.

THE FIRM’S STRENGTH lies in its demonstrated record of consistently obtaining more multi-million-dollar verdicts and settlements in the areas of

medical malpractice and **catastrophic personal injury law** than any other law firm in the region.

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Recent Cases	
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Laboratory error settlement	\$14,000,000.00
Maternal death settlement	\$12,000,000.00
Radiology error verdict	\$11,500,000.00
Post-surgical infection verdict	\$10,700,000.00
Product liability settlement	\$8,900,000.00
Birth injury settlement	\$7,500,000.00
Construction accident settlement	\$7,000,000.00
Surgical error settlement	\$5,100,000.00
Prostate cancer settlement	\$4,500,000.00

* Verdict settled on appeal





NEW HAMPSHIRE

BAR FOUNDATION NEWS

IOLTA Grants Support NH's Central Call Center for Civil Legal Aid

By 603 Legal Aid Staff

603 Legal Aid (603LA; 603legalaid.org) is the new home of the former NHBA Pro Bono Program. This Concord-based organization, which debuted in June 2021, serves as the statewide centralized intake for low-income litigants seeking free legal assistance for civil legal issues. Its team depends on partnerships with volunteer attorneys, legal service organizations, and other community partners such as the New Hampshire Bar Foundation to provide the highest level of service possible to New Hampshire residents.

603LA was able to help Silvia, whose story is one seen far too often in NH. The father of her children struggled with substance abuse and became more erratic as time went on. After assaulting her, he was arrested, and she was referred to a local crisis center that helped her file a protective order. Though conversational in English, Silvia is a native Spanish speaker and was afraid that she wouldn't understand the legal jargon in the courtroom. Her crisis center advocate suggested she apply for help through 603LA's DOVE Project, which aided her in obtaining a final protective order and helped her receive custody of her children.



Stephan is a 71-year-old veteran who purchased a house with his partner as tenants in common. Sadly, his partner passed away a few years later and his partner's child contacted him through an attorney wanting a half-share of the home. With a limited income of Veterans Benefits and Social Security, Stephan was unable to afford attorney fees, let alone buy out the half-share of the home. He had nowhere to go. 603LA referred Stephan to a volunteer attorney who helped him secure stipulations allowing him to remain in the home until his death or until he chooses to sell it.

Jill, an elderly woman on a fixed income, was evicted from an apartment she had rented for 12 years. She was forced to leave the bulk of her personal property behind, including irreplaceable family heirlooms. Her landlord told her she was only allowed two hours to retrieve her belongings – which would be impossible – and a judge denied her subsequent petition for

more time. 603LA helped her write a motion that informed the judge of a law obligating the landlord to provide her reasonable access to her belongings, even after eviction. The motion was granted and Jill was given an entire weekend to recover her belongings.

Another discrete and important area of civil legal need is Criminal Record Annulments (CRA). A person's criminal record can pose barriers to employment, housing, and education opportunities. In 2022, 603LA collaborated with community partners in Concord, Manchester, and Nashua to host three CRA clinics serving nearly 20 individuals. Another 28

individuals were placed with volunteer attorneys to assist them in annulling their record.

Without the help of IOLTA grants and other assistance from the Bar Foundation, 603LA may not have been able to help clients like Silvia, Stephan, and Jill, or the close to 50 people who received help in annulling their records.

Close to 180 different attorneys volunteered their time to 603 Legal Aid to serve more than 300 clients in 2022. This is the greatest number of clients served – and the most number of attorneys involved in pro bono – since before the pandemic. While this is a feat of which to be proud, much more work needs to be done. Among 603LA's goals for 2023 are to shorten the period of

time applicants must wait before their case is placed with a volunteer. In 2022, it took an average of 71 days to place a non-DOVE case with a volunteer (20 days longer than it took to place a case in 2019.) 603LA believes that the only way to shorten this time period, and to truly close the access to justice gap, is to expand its panel of robust and engaged volunteers. If you are interested in becoming a pro bono volunteer, please contact Emma M. Sisti at 603 Legal Aid at esisti@603legalaid.org.

To learn more about the New Hampshire Bar Foundation or to make a donation to it, please visit nhbarfoundation.org. ■

"603 Legal Aid provides free legal advice, referrals to volunteer pro bono attorneys, & direct representation for low-income members of the public."

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Coming and Going

Pierce Atwood LLP Names Seven New Partners

Pierce Atwood is pleased to announce that these seven attorneys have been named partners in the firm:

Christopher A. Baxter, based in Portsmouth, NH, is a registered patent attorney who focuses his practice on advising clients on a wide range of patent issues.

Christina M. Berkow, based in Portland, ME, advises clients on a range of corporate and transactional matters, with a focus on mergers and acquisitions, equity investments, and private offerings. Her practice also includes drafting and negotiating commercial contracts.

Karishma Jiva Cartwright, based in Boston, focuses her practice on drafting and prosecuting software-based patent applications, including machine-learning algorithms and Artificial Intelligence (AI) systems, for large and small corporations, startups, and universities.

Peter P. Gelzinis, based in Boston, MA, has extensive experience advising and counseling clients on all aspects of commercial real estate transactions, including acquisition, disposition, financing, joint venture, leasing, and development of different types of commercial properties, including office, industrial, mixed use, multifamily, hotel, and retail properties.

Olga J. Goldberg, based in Portland, ME, advises clients in complex state and local tax matters, representing clients on tax controversies from the administrative level through litigation and appeal or settlement.

Kyle M. Noonan, based in Portland, ME, is a trial lawyer representing clients – from national companies to family-owned businesses – in complex commercial litigation and regulatory investigations in state and federal courts in Maine, Massachusetts, and other jurisdictions.

Beth H. Roberto, based in Boston, represents lending institutions in structuring and documenting commercial real estate loan financings in the multifamily residential, retail, hospitality, commercial, and industrial sectors.

McLane Middleton Elects Jesse Angeley, Alexandra Cote, Andrew Hamilton, and Ramey Sylvester as Directors

The law firm of McLane Middleton, Professional Association is pleased to announce that attorneys **Jesse S. Angeley**, **Alexandra S. Cote**, **Andrew R. Hamilton**, and **Ramey D. Sylvester** have been elected as directors of the firm.

Jesse is a member of the firm's Corporate Department where he represents and advises business clients on a wide array of matters, with a focus on middle market mergers and acquisitions, business succession planning, securities and corporate governance, and debt and equity financings.

Lexi is a member of the firm's Litigation Department. She assists clients with various civil litigation matters, primarily focusing on probate litigation, as well as land use, real estate, and environmental litigation. A large portion of Lexi's practice is representing clients in partition actions, complex will and trust contests, capacity challenges, guardianship and conservatorship disputes, accounting actions, and other actions by and against fiduciaries.

Andrew is a member of the firm's Litigation Department, where he assists clients in a wide variety of civil matters in both New Hampshire and Massachusetts. His primary focus is on complex commercial and land use/real estate litigation, where he has represented both plaintiffs and defendants in multi-million-dollar disputes.

Ramey is a member of the firm's Corporate Department. Ramey's practice focuses on business and transactional matters for a wide range of clients, with a particular concentration on mergers & acquisitions, private equity transactions, private offerings including Seed round and Venture Capital financings, and corporate governance.

McLane Middleton Adds Attorneys Amy Cann and Vineesha Sow

The law firm of McLane Middleton is pleased to announce the hiring of attorneys **Amy M. Cann** and **Vineesha Sow**.

Amy is a member of the Litigation Department and the Employment Law and Cybersecurity Practice Groups. She has an extensive business background with over 20 years of experience as a Human Resources and Safety professional and as a business owner before becoming an attorney.

Vineesha is a member of the Litigation Department and focuses her practice on employment and education matters. She has extensive experience advising higher education institutions, public school districts, and independent schools in a full-spectrum of areas, including but not limited to student- and parent-related issues, disciplinary matters, special education and civil rights

In Memoriam

Robert Taft

The Honorable Robert Taft, 92 of Peterborough, passed away peacefully and surrounded by love, on December 26, 2022, at his home at RiverMead. He was born in Fitchburg, MA, on May 19, 1930, the son of James and Mary (McKaig) Taft and lived in the family home in Greenville, NH, for 76 years. Although he moved to Peterborough in 2006 and finally to RiverMead in 2013, he was very proud of his Greenville roots and considered it his hometown.



After graduating from Tufts University, Bob joined the Army in 1952 and served for three years before attending Boston University Law School. He practiced law with Fernald, Taft, Falby & Little in Peterborough for his entire career, retiring in 2010. Bob served the State of NH as a judge, retiring from the bench in 2000. He was the longest-serving sitting judge in NH's municipal court system. He was known as being a fair and compassionate judge and helped many people to get back on track.

Bob cared deeply about his family and his community. He was very proud of his children and grandchildren keeping their pictures close in his office and home. He gave back in many ways and participated in countless civic organizations including Rotary International (Grand Monadnock Rotary Club), Bethel-Souhegan Masonic Lodge, the Amoskeag Veterans, and the American Le-

gion. Bob always showed up, whether to flip pancakes at the Easter Breakfast, or pick up trash at the Roadside Clean-up. Bob was patriotic and wore his military uniform proudly when he marched in local parades. He stayed active into his retirement years, working out at the Bond Wellness Center and playing golf and tennis as frequently as possible.

Most of all, Bob treasured his relationships with people and could often be found surrounded in a lively group sharing stories or the latest news. He loved life and squeezed as much into a day as humanly possible, often causing him to be fashionably late to meetings and functions.

Bob is survived by son James Taft of Schenectady NY; son Peter Taft and his wife Jennifer, grandchildren Charles and Margaret from Lacey, Washington; daughter Martha Plante from Waterville Valley; and granddaughter Caroline P. Chlanda of Englewood CO.

Preceded in death by his eldest son Thomas, his beloved brother and sister-in-law Zandy and Eileen Taft, and his long-time companion Susanne Culbertson.

The Taft Family thanks the staff and friends at RiverMead who cared for him during his final years. A Celebration of Bob's life is planned for the spring and will be announced at a later date. In lieu of flowers, memorial donations may be made in Bob's name to: Monadnock Community Hospital, Department of Philanthropy, 452 Old Street Rd, Peterborough, NH 03458, or Greenville Community Christian Church, PO Box 304, Greenville, NH 03048.

To share a memory, or to leave a message of condolence for the family, please visit jellisonfuneralhome.com.



McDowell & Morrisette *is pleased to welcome* *our new associate,* **Brian J. Stankiewicz**



Brian joins the firm after graduating from the University of New Hampshire Franklin Pierce School of Law. During his first summer as a law student, Brian gained valuable experience interning with the Saint Anselm College Athletic Department Compliance office. After that, he joined McDowell & Morrisette as a law clerk, working on a wide range of matters, from medical malpractice to workers compensation claims and personal injury claims. While at UNH, he worked with the Criminal Practice Clinic, representing indigent defendants.

Brian received his Juris Doctor with a Sports Law certificate from University of New Hampshire Franklin Pierce School of Law and a B.A., cum laude, in Accounting from St. Anselm College.

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Rates & Sizes

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is pleased to announce:

Abby Tucker
as Member of the Firm

Abby joined the firm in 2016 and her practice focuses on Labor and Employment law and Medical Malpractice. Prior to joining the firm, Abby interned with U.S. Magistrate Judge Andrea Johnstone at the United States District Court, District of New Hampshire, Legal Advice and Referral Center and was a summer intern at Wadleigh.



Allison M. Tamposi
as Member of the Firm

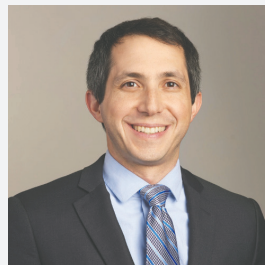
Allison joined the firm in 2016 and her practice focuses primarily on Education law and the representation of school districts throughout New Hampshire. Prior to joining the firm, Allison interned at the New Hampshire Circuit Court for the Ninth Circuit-Family Division, the Hillsborough County Attorney's Office, and the Concord City Prosecutor's Office.



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Congratulations

Sheehan Phinney is pleased to announce that Aaron D. Rosenberg has been elected as a firm shareholder.



Aaron D. Rosenberg

Shareholder

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Business Litigation

Aaron is a member of the firm's Business Litigation Department where he handles complex business and commercial litigation matters. He has represented clients in disputes involving real estate, intellectual property, trade secrets, employment, business divorces, and other topics.

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Hinckley Allen Proudly Welcomes John P. Kacavas

The Firm continues expansion in southern New Hampshire welcoming the former United States Attorney for the District of New Hampshire and most recently the Chief Legal Officer and General Counsel of Dartmouth Health.

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John P. Kacavas

603-225-4334

jkacavas@hinckleyallen.com



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Ransmeier & Spellman P.C.

We are pleased to welcome Daniel C. Federico and Griffin M. Kmon to our firm. With over twenty years of experience, Dan assists clients in the areas of family law, nursing home litigation, personal injury, and employment law. Griffin, a recent graduate of the University of New Hampshire Franklin Pierce School of Law, assists clients in a wide range of matters, including business transactions, litigation, and trust and estate administration.



Daniel C. Federico
Director



Griffin M. Kmon
Associate

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Theodore H. Parent, Esq.

is pleased to announce that
as of January 1, 2023

Sofia C. Cunha-Vasconcelos, Esq.

will join the practice as a partner.
She has been his associate since passing the bar in 2021.



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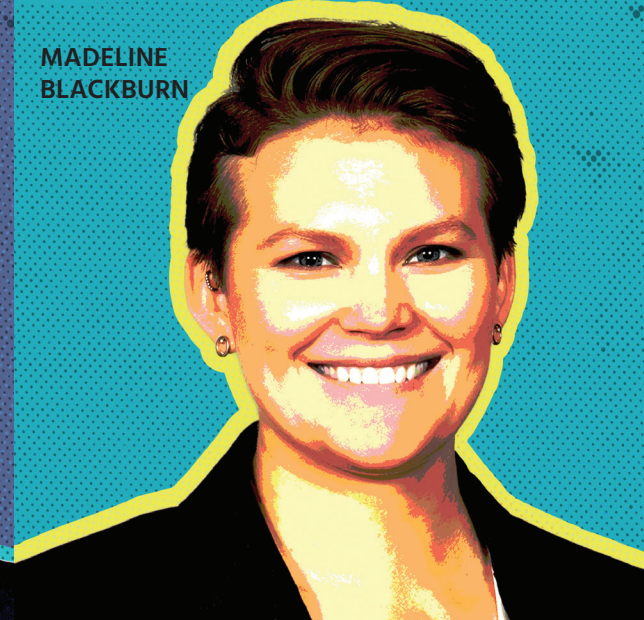


Attorney Simone Washington

Attorney Washington works with clients on a range of legal issues, including criminal defense and civil rights litigation. Prior to joining Shaheen & Gordon, Simone gained valuable experience representing indigent defendants through the Criminal Justice Clinic at Washington and Less University. She has also held multiple legal positions at private law firms as well as a federal public defender's office.

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Attorney Madeline Blackburn

Attorney Blackburn assists individual and business clients with legal matters ranging from criminal defense to personal injury, and more. Madeline's previous experience includes work with the Virginia Public Defender's Office and a federal public defender's office, the U.S. Patent and Trademark Office, and an international cargo shipping firm. Madeline is also a veteran of the U.S. Coast Guard.

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Annual Attorney License Renewal Is Just Months Away: Get Ready Now

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

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

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

- accurately file their NHMCLE Affidavit.

They do so by educating members about their annual obligations, answering questions, or referring members regarding NHSC R. 42A, 50, 53, 55, and 58 and following up with members by phone and e-mail multiple times over the license renewal season.

Rules and deadlines can change, so avoid the trap of just “doing what you’ve always done.” Being prepared for June 1 renewal and understanding the compliance requirements, will help you avoid suspension of your license to practice law in New Hampshire. Get your NHMCLE credit minutes (720 minutes, of which 120 minutes must be in ethics) prior to the start of renewal season on June 1. Stay on top of the renewal deadlines and requirements by updating your membership status and contact information (especially e-mail address). Also, visit the NHBA Attorney License Renewal Team booth at the 2023 Midyear Meeting. Additional information can also be found at nhbar.org/resources/stay-in-compliance or you may contact the Renewal Team at billing@nhbar.org. ■

Family Law Books Updated

By Chuck Douglas

Family Law volumes in the New Hampshire Practice series have been updated with the publication of the 2022 supplement and pocket parts. Lexis Nexis sells both the books and the annual supplements.

Prenuptial agreements and the need for independent counsel, statutory recognition of the role of stepparents in abuse and neglect cases, a rebuttable presumption of harm due to substance abuse by a parent or guardian, and a new standard called psychological maltreatment of a child are discussed.

In statutory changes to the surrogate parent law the terms of a contract known as a “gestational carrier agreement” are set forth. Other changes update that law for science advances since 1990, and cover a rewrite of a score of sections in RSA 168-B.

Changes to the adoption laws expand upon who may adopt and clarify rights to inherit are included, as well as custodial rights of stepparents.

The *Blanchflower* decision from 2003, as to the definition of lesbian homosexual sex, was overruled by *In*

the Matter of Blaisdell, that adopted a broader definition for the fault ground of adultery is discussed.

A relocation of a parent and the effect on a child’s schooling is covered in the custody chapter as well as modification of changes to a parenting plan.

In the chapter on child support new decisions concerning variation from the child support guidelines, disability pensions and support escalation clauses are covered. Also, the *Borelli* case reminds lawyers of the steps to take to modify child support orders.

The federal income tax effect on the non-deductibility of alimony required a change by the legislature from the 30 percent income differential in the 2019 law revisions, down to 23 percent for current orders. This and other changes in the alimony law are covered in chapter 18. Details concerning the effect of cohabitation and what constitutes it are set forth, as well as post-2019 rules for modification requests and renewal of alimony payments.

Finally, several cases dealing with division of property such as trusts, a family business, spendthrift provisions, gifts, and dissipation of assets are discussed. ■

Membership Status Changes

Presented to the Board of Governors December 15, 2022

Inactive to INACTIVE RETIRED:
Moccia, Anthony, Orvieto, Italy (Nov. 1)

Active to INACTIVE:

French, Timothy, Wilmington, MA (Nov. 1)
Smethurst, Kaitlyn, Cambridge, MA (Nov. 6)

Eckman, Amy, New York, NY (Nov. 9)
Smith, Kaitlin, Mansfield, MA (Nov. 7)
Walstad, Eleanor, Exeter, NH (Nov. 14)
Edmonds, Brian, Groton, MA (Nov. 14)
Langford, III, Arthur, Hampstead, NH (Sept. 14)
LaRochelle, Lauren, Cumberland, ME (Nov. 28)
Albrecht, IV, William, Conway, NH (Nov. 30)
Cline, David, Dover, NH (Nov. 30)
Wessler, John, Andover, MA (Nov. 30)
Berman, Pamela, Boston, MA (Nov. 14)
Duffy, Jr., Robert, Waltham, MA (Nov. 22)
Cummings, Angela, Charlotte, NC (Nov. 18)
Holber, Stuart, Andover, MA (Nov. 28)
Butterworth, Kenneth, Haverhill, MA (Nov. 30)
Kennedy, J. Patrick, Rockland, MA (Nov. 30)

Active to INACTIVE RETIRED:

Martin, Glenn, Mt. Pleasant, SC (Nov. 18)
Smith, Maureen, Hopkinton, NH (Nov. 30)
Barry, Thomas, Concord, NH (Nov. 30)
Brennan, William, Bedford, NH (Nov. 11)
Macoul, John, Salem, NH (Nov. 22)
Tsirimokos, Thomas, Manchester, NH (Nov. 30)

Active to JUDICIAL:

English, Lisa, Weare, NH (Sept. 12)

Active to SUSPENDED:

Sheridan, William, Andover, MA (Nov. 17)

Active to RESIGNED:

Schowalter, Jr., Michael, Saint Paul, MN (Nov. 2)
Saul, Jerel, Hackensack, NJ (Nov. 21)

Inactive to ACTIVE:

Dodd, Lindsey, Halfmoon, NY (Nov. 21)
Richardson, Barbara, Reno, NV (Dec. 2)

Inactive to RESIGNED:

Sullivan, James, T., Chatham, MA (Nov. 1)
Hrbek, Shawn, Bedford, NH (Nov. 8)
Vautour, Alice, South Windsor, CT (Nov. 29)
Fleming, Dana, Arlington, MA (Nov. 30)
Dufour, James, Old Town, ME (Nov. 1)

Inactive to DECEASED:

Giovanis, George, Portsmouth, NH (July 25)

Inactive Retired to DECEASED:

Dufault, Mary, New London, NH (Oct. 16)

Honorary Active to HONORARY INACTIVE:

Cotton, Robert, Hopkinton, MA (Nov. 7)
Walker, George, Wolfeboro, NH (Nov. 30)
996 Green, Douglas, Keene, NH (Nov. 28)

Honorary Inactive to DECEASED:

Pendleton, John, York, ME (Sept. 26)

Part-Time Judicial to INACTIVE RETIRED:

LeFrancois, David, Manchester, NH {Nov. 19}

Pro Bono Active to INACTIVE RETIRED:

Walton, Kenneth, Spofford, NH (Nov. 17)

Military Active to ACTIVE:

Blankenbeker, Lynne, Concord, NH (Nov. 15)

Resigned to DECEASED:

Soldati, Lincoln, Portsmouth, NH (Nov. 6)

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For additional information, contact Misty Griffith, NHBA Member Services Coordinator at (603)715-3227 or mgriffith@nhbar.org



Milford High School Named State Champions of the “We the People” Civics Education Program for Second Year Straight

By Tom Jarvis
NHBA Staff

On Friday, January 6, 2023, at the Citywide Community Center in Concord, Milford High School took first place for the second year in a row at the *We the People: The Citizen and the Constitution* (WTP) civics education program’s culminating event. The NHBA’s Law Related Education program organized the occasion with dozens of volunteer attorneys, judges, and others.

The innovative program’s culminating activities, which follow a semester of classroom teachings about the constitution and US government, are simulated congressional hearings where students evaluate, take, and defend positions on six units of constitutional law principles before a panel of judges made up of NHBA members and other civic leaders in the community. District hearings occur in December of each year and the State Finals take place

in January. The State Champions, Milford High School, will represent New Hampshire in the National Finals in Washington, DC, which will be held April 22-24 at the National Conference Center.

Three high schools, Milford, John Stark, and Hollis-Brookline, participated in the hearings, presenting their arguments to judges across the six units. At the end of the day, two of the WTP judges, former NHBA president Ed Philpott and Superior Court Judge Martin Honigberg, announced the winners and handed out trophies.

“I am very proud of my *We the People* students’ performance on January 6th,” Milford High School teacher Thomas Lundstedt says. “All of them put in a tremendous amount of work to get ready for the competition, and the team is very excited to represent New Hampshire at the National Finals.”

Nikol Zyzen, a Milford senior who participated in the day’s events, says she knew nothing about the US government

when she moved to NH from Ukraine earlier this year. Through the WTP program and the teachings of Lundstedt, she has a fluent understanding and is now part of the winning class of the civics education program.

“I was very excited when they announced Milford as the winners,” Zyzen says. “The best part is that I have an opportunity to go to Washington, DC, and to spend more time with my amazing class to prepare for representing New Hampshire in the National Finals.”

Attorney Jennifer Perez, a first-time volunteer WTP judge for hearings, finds the effects of the program and the students’ resulting understanding of constitutional principles remarkable.

“Seeing high school juniors and seniors have really complex conversations about issues that lawyers with decades of experience are still debating is very impressive,” Perez says. “And seeing their growth from December [district hearings]

until now, and how they have quickly applied the constructive feedback from the judges is amazing.”

A 1989 alum-turned-judge of the WTP program, attorney Shawn Tanguay, finds the WTP program and its culminating events to be advantageous to students’ future success.

“It’s a fantastic program,” Tanguay says. “It really does help these students dive into the constitution and into the government process more deeply than any other educational program. It’s a phenomenal opportunity for them.”

The WTP program was created by the Center for Civic Education in 1987 and is brought to New Hampshire schools every year by the NHBA’s Law Related Education program. For more information, or to volunteer for future WTP events, contact NHBA Law Related Education Coordinator Robin E. Knippers at reknippers@nhbar.org. ■



2023 WTP State Champions, Milford HS, holding their first-place trophy. From left to right: Ziera Dodson, Morgan Peterson, Charles Cavasco, Madelyn Bergen, Archana Usman, Eden Leak, Nikol Zyzen, Troy Williams, Olivia Rolanti, Robert Anderson, and WTP teacher Thomas Lundstedt.



Some of the WTP judges filling out their score cards after the hearings. From left to right: Attorneys Talesha Saint-Marc, Anne Zinkin, Tierney Chadwick, Natalie Laflamme, Bailey Robbins, Stacey Marmorstein (2007 WTP alum), Shawn Tanguay (1989 WTP alum), Edward Philpott, Jr., and Jennifer Perez. Other WTP judges that participated were Judge Martin Honigberg, WTP teacher and mentor Peter Gunn, and attorneys Michael Crouse, Donna Daneke, Richard Siemens, Randy Gordon, Steven Solomon, and Ali Gennaro.



WTP teachers Dan Marcus (left), Trevor Duval (center), and Thomas Lundstedt were proud of their students’ performances.



Students of Hollis-Brookline HS presenting their arguments to WTP judges, Ed Philpott, Jr., Donna Daneke, and Hon. Martin Honigberg. NHBA HR Generalist Tricia Brannen (masked in center) was one of six NHBA staffers who volunteered as timekeepers.



Hollis-Brookline HS teacher Trevor Duval and his students posing with the second-place trophy.



John Stark HS teacher Dan Marcus and his students posing with the third-place trophy.

had fled the Holocaust. Her formative years were spent in the Republic of China, Taiwan, where her father had pursued a business opportunity with his brother.

“There are not many people who look like you,” Noether remembers of her life in the Asian nation. “You’re exposed to really different things, and you don’t realize they’re different. You just come to expect it as part of the flavor of the world, some of the flavors of the world.”

Her parents encouraged that taste for open-mindedness by taking the family on trips throughout the world and provided the young Noether with early lessons in both courage and tolerance.

Her father had fled Nazi Germany for the Netherlands, where he met Noether’s mother, who left food for him while he was in hiding and buried his German passport in her yard.

“She was really quite daring and went out after curfew and listened to Radio Free Europe in somebody’s cellar,” Noether says.

Her parents’ stories from that time left Noether with the understanding that “freedom isn’t free, and you don’t take it for granted, and justice is a really important aspiration,” she says.

She describes her father as a brilliant man who was given to bouts of deep depression, alternating with “hyperactivity that you wouldn’t believe.” Only years later did she come to understand he had undiagnosed bipolar disorder, leaving her with an abiding interest in helping those with mental illness.

The family eventually settled in Maine, where Noether enrolled at the University of Maine Orono and had an experience that

triggered her interest in law. She was co-captain of the women’s track team at a time when the head of the athletic department refused to allow women to use the Nautilus equipment in the weight room that the men used, relegating them to the inferior equipment in the women’s gym.

“I just couldn’t wrap my mind around why the university wouldn’t give their best to the best of their athletes,” she says.

Title IX had been enacted but not yet rolled out in Maine, so Noether protested to the school’s Title IX coordinator, started a letter campaign to the university’s trustees, and even wrote to tennis legend, Billie Jean King.

The university eventually made the equipment available to women – after Noether had graduated. But a prospective litigator had been born.

After graduation, Noether worked for Volunteers in Service to America (VISTA) on the Blackfeet Indian Reservation in Browning, Montana for four months, and briefly published a weekly community newspaper in Portland, Maine before going to law school.

While at Franklin Pierce Law Center, she spent summers painting houses and shingling roofs, and ran a mowing business on the side. When she graduated, Noether says, “I fell back on my house painting skills” until landing a job at a law firm.

She worked at the Rinden Law Office in Concord for nine months, then did a stint at the Somersworth firm of Charles Burkham. In 1985, she joined the Laconia Police Department as its prosecuting attorney and stayed in that post for six years.

After serving in the Merrimack County attorney’s office for 18 months, she was chosen by the Belknap County commissioners to fill a vacancy as Belknap County



Noether enjoying nature in Meredith, NH with her granddaughter. Courtesy photo

attorney, then was elected in her own right four more times over a 13-year period.

The Belknap County work, she says, was the highlight of her career.

“It was the hardest time and the most rewarding time,” Noether says. “I probably worked 60 hours a week.”

One memorable case involved a woman whose boyfriend had raped her. It came out in deposition that the two had engaged in unusual sex games in the past that included reenacting a rape scene. But during questioning, the woman “held her head high” and said rape was different from those jointly planned activities, Noether remembers. The case went all the way to the Supreme Court, setting a precedent for the tenet that the promiscuity of a victim cannot be used to disqualify her credibility.

Her most dramatic case involved a man from Massachusetts, Charles Carr, who picked up women on two separate occasions and drove them to his family camp in Alton, where he raped them all night. The second woman was able to escape when he stopped for gas in Concord, and she ran from the car and got help from police. But Carr subsequently disappeared, and when his vehicle was found in a river in Maine, police suspected he had staged his own death.

Eighteen years later, authorities in Texas located a man they believed was Charles Carr living under an assumed name and he was brought to New Hampshire for trial. One of the victims, 15 at the time of the rape, was now in her 30s and living in Buenos Aires. The other was still in the Boston area.

“We worked like dogs to assemble the case,” Noether says, retrieving evidence still at the Alton police department, working closely with Texas Rangers, Massachusetts State Police, local officers, and even flying in the witness from Buenos Aires.

Noether says she will never forget the courtroom scene when the younger victim was on the stand.

“There was a very dramatic moment where I asked her to point him out. She hadn’t seen him since she was 15 and she was now 32, and she said, ‘That’s him. I would know him anywhere.’”

Carr was convicted and sentenced to 26 to 57 years in state prison.

In 1997, Noether was named New Hampshire County Attorney of the Year. She has some 171 trials under her belt and has won the admiration of both colleagues and opposing counsel.

“She is one of the most tenacious advocates I’ve ever met,” says Concord attorney Robert Stein, who has known Noether for decades. “Personally, she is one of the most interesting persons, as well.”

From the Belknap post, Noether was

tapped by the state attorney general’s office to become chief of the Consumer Protection and Antitrust Bureau, a senior assistant attorney general, and later enforcement coordinator for the Department of Environmental Services. She retired in 2019 but maintains her license and still does occasional legal work.

She is a volunteer for the National Alliance on Mental Illness – New Hampshire (NAMI-NH) and has been offering free yoga classes via Zoom to fellow volunteers.

Noether is also a founding member of the Greater Lakes Child Advocacy Center, and a founder and incorporator of New Beginnings Crisis Center, a lakes region agency that combats domestic violence. She was the 2007 recipient of the William Paine Award, given annually to an individual who brings a multidisciplinary approach to reducing domestic violence.

She sees many changes in the Bar since her career began, particularly regarding the role of women. Noether remembers times when male attorneys were so dismissive of women on the bench that some declined to use the phrase “your honor.”

“I think it has changed a little because of the sheer volume of women judges,” says Noether. “It was a rarity in the ‘80s and ‘90s.”

It has also become more prosecutor-friendly, she says, where it was once “geared toward defense advocacy and not prosecutors.” She applauds the Bar’s move to have a public sector price for meetings with national speakers, to make them more affordable, and for involving more women in Bar governance.

Noether now has a part-time job working for Community Bridges, which helps individuals with disabilities and their families, and enjoys spending time with her five-year-old granddaughter and a new grandchild.

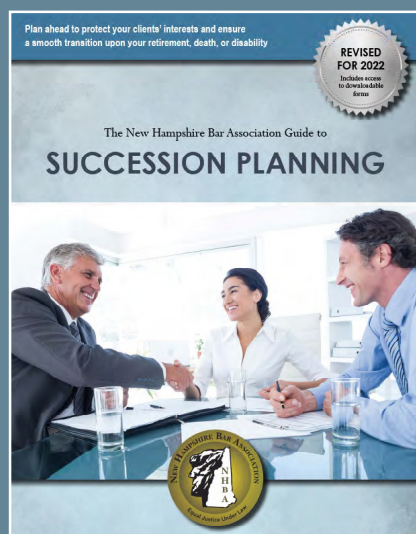
“I would not have had the career that I was privileged to have without the hard work and devotion to justice of my staff in all of my jobs, and also the judges and the various clerks of courts office personnel,” says Noether, who singles out Justices Larry Smukler and the late Harry Perkins with particular gratitude.

She adds that she is especially indebted to her husband, Ken Norton, for his constant support.

Elaine de Mello, director of suicide prevention services at NAMI-NH and a longtime friend, says Noether’s life “truly has been one of service to others, with particular care for people in need and people affected by domestic violence, or children who haven’t had the opportunities others may have had. She dedicates her life to others.” ■

Now Available on the Member Portal!

The New Hampshire Bar Association Guide to SUCCESSION PLANNING



This Guide is intended to provide general guidance to attorneys as to steps to take to protect your clients’ interest, as well as preserve the assets of your practice. While situations will be different, the concept of having a plan in place that everyone knows about and agrees with is vital. We’ve also included several customizable forms to facilitate the process.



Bar News Thanks Its 2022 Contributors

The NHBA, its Editorial Board, and staff would like to thank the 150 contributors who helped make the *Bar News* a success in 2022. We are eternally grateful to you for entrusting us with your excellent work and for your continued support of this publication. Your gift of time resulted in better and stronger issues throughout the year, and the overwhelming positive response from your peers on each issue of the *Bar News* is a testament to your efforts.

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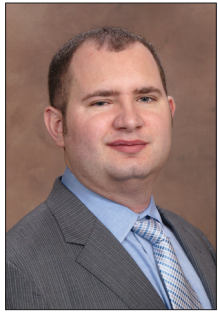
Open Secret: How Encrypting Emails Can Protect Your Clients' Confidentiality

By Jeffrey Schoenberger

Everyone sends emails. Some of us send a lot of them. And, why not? It's convenient, accessible everywhere (for good and ill), and universally readable – iPhone, Android, Mac, or PC; it doesn't matter. One of the reasons for this universality is email's age. Despite its inclusion on our most modern devices, an Apple Watch for example, email dates to the Internet's Stone Age. And, like many relatively ancient technologies, we've grafted many enhancements to the foundation without successfully addressing fundamental problems.

A key, unaddressed vulnerability for lawyers is the known but largely unacknowledged fact that email is not a private communication. Unless you take specific steps to "privatize" your emails, anyone with a little ingenuity can read them. Rather than traveling through the Internet like letters in sealed envelopes, emails (and their attachments) traverse the Internet like postcards through the mail; readable by anyone with the time, access, and desire to do so. The reasonable rejoinder to that argument is: "What are the odds?"

In 2021, the US Postal Service handled roughly 2.7 billion postcards and stamped cards. Statistics for emails estimate that



3.7 billion email *accounts* existed in 2017, which sent a staggering 269 billion emails *per day*. By 2019, the number of per-day emails rose to 293 billion. Given these numbers, you'd probably think your odds of having a private or client-confidential email intercepted are pretty low.

But two important facts distinguish emails from postcards. The first is that intercepting a postcard once it enters the postal system is time-consuming, requires physical access to the postcard, and necessitates interfering with a single unified organization (the Postal Service) that has decades of experience successfully receiving, moving, and distributing physical objects. Email lacks all of these protections. Your email could be intercepted while you work on a coffee shop Wi-Fi network without a VPN or SSL connection to your email provider. It could also be intercepted at any number of waypoints along its journey because, unlike a postcard, a copy of your email resides on every computer or server it bounces through on its journey from sender to recipient. However long that copy of the email resides on that third-party server is decided by the document retention policies of that server's owners; assuming they have such policies. Finally, since we know software has bugs, who is to guess which software on which server has what vulnerabilities.

Where attorney-client communications require attorney-client confidentiality, your best bet is to invest in email encryption. There are several packages available, from roll-your-own solutions like OpenPGP, to

Outlook plugins like Delivery Trust, to dead-simple tools included with existing subscriptions like Office 365. For purposes of this article, we're going to focus on the dead-simple tool.

For Office365 email encryption to work, you must have a Microsoft 365 Enterprise E5 plan, which start at \$57 a month per user.

1. Once you have this account, which includes all of the Office applications for Mac, PC, smartphones, and tablets, as well as Teams, and 1TB of storage per user, you enable the message encryption feature in the admin console.

2. After enabling encryption, email users can choose to encrypt emails on a per-email basis by choosing "Encrypt" from the Options ribbon > Permissions button in Outlook (2016/19/365 for PC; 2016/19/365 for Mac). Additionally, the Office 365 admin console lets you define "rules" (like those for sorting email) that will automatically encrypt the message if the rule's criteria are met; for example, sent to a particular client or the subject contains a particular keyword.

3. After making your "encrypt" selection from the ribbon (or using an established keyword), you click send as you normally would, and your work is completed.

4. Your recipient receives an email stating that you've sent him an encrypted message, as well as a time-limited link to your message (and any accompanying attachments). When the recipient clicks to read the message, he is directed to a Micro-

soft web portal where he can sign in with his Office 365 account, Google account, or a one-time expiring code. From the web, the recipient can interact with the message as though it were unencrypted – read, respond, download attachments, etc. If the recipient is an Office 365 user, he can also interact with the message through his own Outlook (2016/19/365 for PC; 2016/19/365 for Mac; and Outlook mobile on iOS and Android).

While you may need setup assistance from Microsoft (or whoever hosts your Office 365 installation), once configured, Office 365's email encryption is among the most usable for both senders and recipients, who are often asked to jump through an inordinate number of hoops to read the encrypted messages they receive.

While the ABA does not yet require encryption of attorney-client sensitive emails, I believe attorneys are better erring on the side of caution concerning privileged emails. Especially as the barriers to ease of use crumble, attorneys should do all that is reasonable to protect their clients and themselves. I think it's reasonable now and you should act. Speaking from practice, I've never sent an encrypted email that I later wished I'd sent unencrypted.

Jeffrey Schoenberger is Senior Consultant at Affinity Consulting. His unique role involves managing Affinity's Practice Management Advisory Program. He can be reached at jschoenberger@affinity-consulting.

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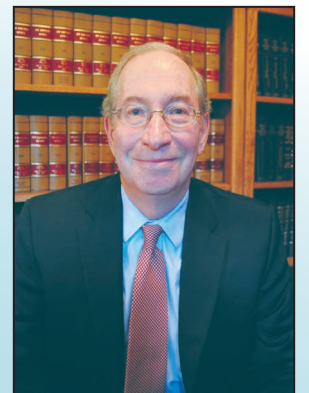


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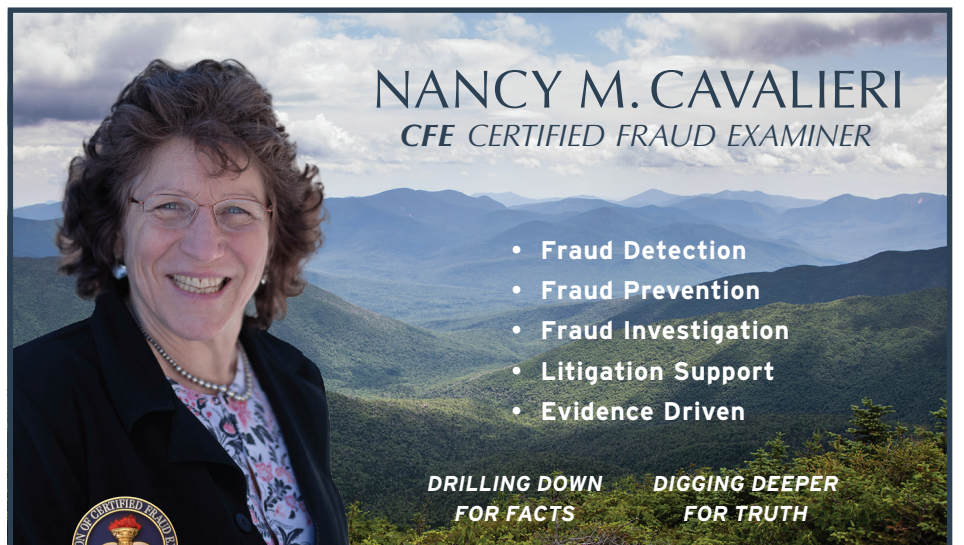
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Focus on Criminal Law

The Influence of Racial Bias in Our Criminal Justice System

By Donna Brown and Michael Eaton



Brown



Eaton

On December 8, 2022, the Judicial Branch's Steering Committee on Diversity and Inclusion met with the community to further a process that began earlier that year, when Chief Justice MacDonald established the Committee and a community-based, multi-disciplinary Advisory Board. As Judge Ruoff stated, "[t]he New Hampshire Constitution explicitly states, 'Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.' It is an honor for all of us to be part of this important effort to uncover and correct any barriers that interfere with the court system's ability to meet this fundamental obligation." See <https://www.courts.nh.gov/news-and-media/reaching-out-communities-we-serve>.

The biggest barrier to fulfilling this constitutional promise is that proving discrimination in a criminal case is virtually impossible under current law: "When an equal protection challenge alleges that a law is discriminatorily enforced, we have consistently held that proof of 'conscious intentional discrimination' is required to establish a violation of equal protection under the State Constitution." *State v. Addison*, 165 N.H. 381, 613 (2013). This burden is at odds with the New Hampshire tradition of putting the burden of proof on the State when there is a claimed constitutional violation. See, e.g., *State v. Chapman*, 135 N.H. 390, 394 (1992) (In New Hampshire, the State must establish beyond a reasonable doubt that it did not violate the defendant's constitutional rights under *Miranda* before the defendant's confession may be admitted as evidence); *State v. Ball*, 124 N.H. 226, 234 (1983) (The State has the burden of proving, by a preponderance of the evidence, that a warrant-

less search was constitutionally permissible).

The damage this barrier has done is no more apparent than in the context of racial bias, which remains notoriously difficult to address. As one court recently reflected: "[R]acial bias is uniquely difficult to identify. Due to social pressures, many who consciously hold racially biased views are unlikely to admit to doing so. Meanwhile, implicit racial bias exists at the unconscious level, where it can influence our decisions without our awareness." *State v. Berhe*, 444 P.3d 1172, 1178 (Wash. 2019). One of the problems with the current burden is that it does not account for implicit bias or the difficulty in proving racial bias.

At the December 8 event, Manchester NAACP President James McKim alluded to this issue. Referring to *State v. Perez*, 2019 WL 5680907 (N.H. Super. Ct. Oct. 4, 2019), Mr. McKim shared how Mr. Perez was stopped after a State Trooper found him "suspicious" for having his hands at "ten-and-two" on the steering wheel. The trooper was a member of the State Police's Mobile Enforcement Team (MET). The MET is tasked with drug interdiction—not motor vehicle law enforcement—yet its troopers are instructed "to make pretextual detentions, sometimes for very minor perceived driving infractions." They will follow a vehicle on a "hunch," sometimes for many miles, until the driver inevitably commits a driving infraction, at which point they will stop the vehicle and question the occupants about drugs. The reasons troopers give for finding drivers suspect include driving a rental car, having an air freshener, and not looking at the trooper when they pass by.

It should come as little surprise that the drivers deemed "suspicious" are disproportionately people of color, like Mr. Perez. See, e.g., *Perez*, 2019 WL 5680907, at n.4 (indicating that "it is important to keep track of any patterns that may develop" with respect to potential racial profiling). Tracking patterns remains challenging, however, where the MET (like many law enforcement agencies) collects spotty data on the race of those stopped. See <https://www.nhpr.org/nh-news/2022-05-17/pretextual-traffic-police-stops-racial-disparities-black-latino-drivers-nh>.

Mr. McKim spoke of *Perez* in a way that suggested it was obvious the stop was motivated by race. And it was. But the court

did not find the stop illegal because of racial bias (but rather because the trooper's "suspicions" were incredible). Nor could it have; the burden would not have been met. Yet we know an injustice when we see one. To preclude a remedy with an impossibly high burden on an already disadvantaged defendant is, at best, unreasonable.

Accordingly, as with other constitutional violations, it should be the State's burden to prove that a defendant was *not* discriminated against on the basis of race.

The Steering Committee is an ambitious undertaking. It is important to recognize and elevate efforts like this. Ultimately, though, for marginalized communities to truly have confidence in our justice system—an explicit goal of the Committee—it must prove to them that it is listening, learning, and taking action.

It will take difficult conversations and self-reflection on the part of all players in the justice system to take meaningful steps towards rooting out racial bias. The court system seems to be doing just that. We are grateful for it. But difficult conversations remain.

Indeed, many still mistakenly believe that racial bias is not a problem, especially in New Hampshire. This is not new. We need not look far to find examples like *Korematsu v. United States*, which condoned the sweeping imprisonment of Japanese Americans. Few called it like it was: "I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life." *Korematsu*, 323 US at 242 (Murphy, J., dissenting).

Here in New Hampshire, Winthrop Wadleigh, one of our firm's early partners, boldly fought against racial injustice. Aside from working in support of the petitioner in *Korematsu*, Wadleigh was involved with the 1960's civil rights movement, serving as the Manchester NAACP's president and as one of the ACLU of New Hampshire's founders. In the decades since, however, the view by many has been that racism no longer poses a material risk to justice. To be sure, we are seeing progress—like trainings on implicit bias, the LEACT Commission, and the State Police's Fair and Impartial Policing policy. But more is needed.

Another barrier to justice is that many attorneys are hesitant to allege discrimina-

tion. Some may fear that they will strain relationships with prosecutors, police, or judges who still feel that such claims are an attack on the system to which they have devoted their careers. That is not an unreasonable concern, but it is certainly an unsustainable dynamic. Courts are confined to the claims before them. We, as attorneys, must bring these issues forward.

Encouragingly, we are seeing more of that. Just this year, Attorney Mike Iacopino filed a lawsuit on behalf of a Latino man alleging ethnic discrimination after MET troopers believed he and his brother were drug smugglers. They were small businessmen transporting furniture for a customer. MET troopers stopped them for drifting over the fog line, detained them, used a drug-sniffing dog, searched the vehicle, seized it, then later searched the vehicle some more. No drugs were ever found. See <https://www.seacoastonline.com/story/news/2022/10/20/lawsuit-alleges-nh-state-trooper-profiled-latino-driver-2019-stop/10542568002/>.

And promisingly, the Judicial Branch is allowing these issues to be brought forward in a receptive setting.

Taking claims of racial bias seriously, however, only gets us halfway there. "The right of drivers to be free from racial profiling will remain illusory unless and until it is supported by a workable remedy." *Commonwealth v. Long*, 152 N.E.3d 725, 737 (Mass. 2020). If the Judicial Branch is going to make progress, it cannot have a prohibitively high burden that presumes discrimination is an anomaly. Citing data, the *Long* court made explicit what has now become clear: "police stop drivers of color disproportionately more often than Caucasian drivers for insignificant violations (or provide no reason at all)." While the data from the State Police is fragmented, there is reason to think these disparities exist in New Hampshire too. See <https://www.nhpr.org/nh-news/2022-05-17/pretextual-traffic-police-stops-racial-disparities-black-latino-drivers-nh>.

The *Long* court addressed the impossibly high burden by lessening it, requiring only that litigants establish a "reasonable inference" that a "stop was motivated (whether explicitly or implicitly) by race," and permitting the consideration of "any relevant facts," including indirect or statistical evidence. If

RACIAL BIAS continued on page 24

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Advocating For Criminal Defendants At Sentencing – A Conversation

By Ted Lothstein, Richard Guerriero, and Kaylee Doty



Lothstein



Guerriero



Doty

“What is going to happen to me?” That’s the first question asked by people facing criminal charges. Since most cases end in a conviction for some offense – usually as the result of a plea bargain – what the person really wants to know is, “What sentence will the court impose?” The client’s family, employer, concerned friends, the victim, and the media in some cases – they too, all want to know, “what’s going to happen?” As defense counsel, we try to manage expectations as we gather information and work toward what is best for our client. We recognize that there are key practices to follow when seeking the best possible sentence for the defense. We talk about all these issues in our office when we “brainstorm” cases. What follows is a synthesis of some key points from those conversations.

Where to start?

Richard: The first step is to determine

the range of possible sentences that might be imposed for the filed charges, as well as for the alternative charges clients might face in an eventual plea bargain. In state court, where there are no sentencing guidelines, the sentencing range is simply set by the maximum possible sentence and, in a limited number of cases, the mandatory minimum sentence. In federal court, the statutory range must be considered along with the advisory federal sentencing guidelines.

Determining the sentencing range for an offense is not always as easy as it sounds. The quantity of drugs involved in a drug case, the amount of money involved in a theft or fraud case, or whether a weapon was used in an assault case, are some common factors which may change the sentencing range. Likewise, the identity of the victim, as a child, or an intimate partner, or a police officer, or some other specially protected group, may affect the possible sentence. The defendant’s prior record, which is not always readily available, also often affects the range of possible sentences.

And then, there are the possible “collateral consequences.”

Ted: Collateral consequences are in-

direct negative impacts of a conviction or sentence. Common collateral consequences are the loss of the right to possess a firearm or the loss of the right to remain in the United States for a non-citizen. The laws creating collateral consequences are often far removed from NH Criminal Code.

The case law and lore of criminal defense are full of horror stories about unforeseen collateral consequences: a defendant whose conviction unexpectedly resulted in his deportation, the MA driver who pleaded guilty to DWI in NH and received a 90-day license suspension but then later received a lifetime suspension in MA even though he had not been warned of that consequence, and innumerable defendants who pleaded guilty to misdemeanor domestic violence charges not realizing they had their forfeited their Second Amendment rights for life.

From the first client meeting, we try to gather the information that might impact collateral consequences, including the status of professional licenses, immigration status, commercial driver or airline pilot licenses, etc. Then, we must research and sometimes consult experts to determine the collateral consequences resulting from different possible plea agreements.

So, there are potential convictions, sentences, and collateral consequences looming – how do judges decide what to do?

Richard: New Hampshire law regarding sentencing offers only the general guidance that judges should consider general and specific deterrence, punishment, and

rehabilitation. In federal court, the sentencing guidelines add more uncertainty than certainty. Moreover, as a practical matter, the negative (aggravating) and positive (mitigating) factors that might be relevant are limitless. Many aggravating factors are obvious and relate to the crime itself: a terrible injury or death, a sexual assault, a major breach of trust, a vulnerable victim, etc. The job of defense counsel is to recognize the aggravating factors and put them in the proper context so that they are not overstated, while creatively developing mitigating factors.

In the search for mitigating information, I get releases for all possible records, such as those from schools, counselors, doctors, employers, and the military. The great thing about any mitigating information from preexisting records is that they were prepared before the case arose and therefore are not subject to the concern that the information was created to favor the defendant in the pending case. We also look to friends, family, employers, teachers, and even jail personnel, for favorable information. We often ask these people to write letters to the court. Another source might be an expert, such as a psychologist, who has evaluated the defendant.

The kinds of mitigation we get from these sources vary greatly. However, a starter list of mitigating factors would include lack of prior record, youth, lesser role in the offense, mental health, indigence, ef-

CONVERSATION continued on page 25



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Racial Awareness in New Hampshire Criminal Law

By Tony Naro

Race is an uncomfortable topic. From slavery to Jim Crow, segregation to the Civil Rights movement, and most recently, Black Lives Matter, racial discrimination and the fight for racial equality has been ever-present in American society. Speaking from the perspective of a white male, confronting racial discrimination and inequality is difficult. Conversations can quickly become uncomfortable. An instinctive defensiveness becomes triggered when being forced to reflect upon, or even recognize, your own racial biases.

The purpose of this article to start an honest conversation about race, racism, and criminal law. Through this conversation, my hope is that defense attorneys, prosecutors, and judges will gain a better understanding of the role race plays in criminal cases, thereby enabling them to work towards more just results – namely, ending racial disparities in our justice system.

The first step in eliminating racial disparities in our criminal justice system is acknowledging that Black and Brown persons accused of crimes in New Hampshire are treated differently from their white counterparts. This is not a problem unique to New



Hampshire. Statistics show racial disparities in arrest rates and sentencing throughout the country. In February 2021, NHPR, the Concord Monitor, and other local news outlets reported that data maintained by the New Hampshire Department of Safety showed that police in our state disproportionately arrest people of color.

The data revealed that while approximately two percent of New Hampshire's population is Black, 5.4 percent of those arrested in 2019 were Black. Similarly, while New Hampshire's population is four percent Hispanic, 5.1 percent of those arrested in 2019 were Hispanic or Latino. If you are Black or Brown in this state, you are more likely to be arrested than your white counterparts.

While our state lacks data on racial disparities in sentencing, we know, at least anecdotally, that there are racial disparities in sentencing in this state. The most prominent example of racial disparities in sentencing occurred in 2021. In a case widely covered

in the media, the jail sentence of an 18-year-old Black defendant was vacated in Hillsborough County after the court discovered that a white co-defendant only received 50 hours of community service. The court questioned how any defendant could have confidence in the fairness of the criminal justice system when a co-defendant with the same charges was treated less harshly.

Recognizing these disparities exist, what can defense attorneys, prosecutors, and judges do?

Be Aware of Your Implicit Bias

Implicit bias is a form of bias that occurs automatically and unintentionally, but nevertheless affects our judgments, decisions, and behaviors. Implicit bias might cause a prosecutor to seek cash bail for a Black defendant, while in a similar case with a white defendant agree to personal recognizance. It may cause a defense attorney to negotiate a jail sentence for a Black client but view such a result as unjustly harsh for a similarly situ-

ated white client. Implicit bias may cause a judge to find a lengthy prison sentence more appropriate for a Black defendant, whereas they hand down a more lenient sentence for a white defendant. None of these disparate outcomes are intentional, or even conscious, but they create injustices within our system.

The good news is that the research shows that while there may not be a cure for implicit bias, there are proven strategies that reduce implicit bias. When attorneys and judges educate themselves through regular implicit bias training and employ the tools from these trainings in their practice, the likelihood that internal and unconscious biases infect their decision-making is lessened. Our Judicial Branch, led by Chief Justice Gordon J. MacDonald, has taken an important step in this process by spending the last year developing a Diversity and Inclusion Strategic Plan. The plan includes a requirement that all judges and staff will participate in training about biases and their impact. (You can read the full plan at courts.nh.gov/sites/g/files/ehbemt471/files/inline-documents/sonh/nhjb-d-i-strategic-plan.pdf.)

To get a sense of your own implicit biases, try taking the self-test at implicit.harvard.edu/implicit.

Educate Yourself About Racial Trauma

In addition to looking inward, it is also important to understand how racism impacts

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Donna J. Brown, Member

Admitted in New Hampshire and Massachusetts

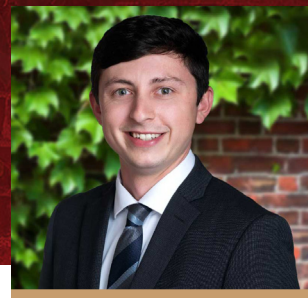
Donna's practice focuses on state and federal criminal law. Donna is a compassionate and creative lawyer with over 30 years experience in criminal defense. Prior to joining Wadleigh, Donna was a public defender for over 25 years. Donna does volunteer work with the Manchester NAACP and was recently recognized for her pro bono work with the Bruce Friedman Pro Bono Award. Donna was recently named as a 2023 "Lawyer of the Year" in Manchester, NH for White Collar criminal defense by Best Lawyers.



Robin D. Melone, Member

Admitted in New Hampshire and Massachusetts

Robin is an experienced and well-respected litigator and negotiator who has tried cases to NH, MA and federal juries for clients charged with all manner of offenses. Robin has represented reporting and responding parties in Title IX proceedings. She is now a trained civil rights investigator assisting schools and employers. Robin is the former president of the NH Association of Criminal Defense Lawyers, a Fellow of the American Bar Foundation, and a member of the Women's Bar Association, the ABA, NACDL, and Girls on the Run.



Michael G. Eaton, Associate

Admitted in New Hampshire

Michael Eaton graduated from the UNH Franklin Pierce School of Law in 2019. Before joining WSP, Mike interned at the VT Supreme Court, the NH Supreme Court, and the ACLU of New Hampshire. Mike already has more appellate experience than many seasoned attorneys. He has briefed and/or argued six appeals before the NH Supreme Court, has briefed an appeal in the First Circuit, and has assisted Donna with several other appeals. He also has experience in state and federal White Collar criminal defense and has assisted with trials, numerous postconviction matters, and dispositive motions in state and federal court. His pro bono work has focused on racial justice. He is a key part of the top-notch representation Donna and Robin provide every client and is now taking on his own criminal clients.

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Racial Bias from page 19

the prosecution cannot rebut this inference or “prove that the stop was not racially motivated,” any evidence derived therefrom would be suppressed.

While adopting the principle of *Long* would help, we have the opportunity to follow the New Hampshire tradition of requiring the State to prove that no constitutional rights were violated, in a context in which that tradition matters most. Addressing discrimination as we have proposed would not only allow the courts to meet the fundamental obligation to which Judge Ruoff referred but would also bolster the Judicial Branch’s new initiative to enhance the public’s trust and confidence, which is essential to preserving the integrity and function of the justice system. As Mr. McKim noted, 87 percent of Black adults say the criminal justice system is more unjust toward Black people. Sixty-one percent of white adults agree.

Systemic problems require systemic solutions. Our Supreme Court, guided by the lasting words of Chief Justice Charles Doe, has long focused on “what justice requires.” While we can all work to improve access to justice, and the steps already in progress will help move the ball, reorienting the burden will open the door to finally addressing the issues that have plagued our system for too long. Perhaps it will curtail the 5.2:1 Black/white imprisonment disparity. At the very least, it will materially advance the Judicial Branch’s most recent, and honorable, mission.

On January 4, 2023, the NH Supreme Court took a major step towards fulfilling the constitutional promise of equality and

rooting out racial bias in our court system. Writing for a unanimous Court in the case of *Mallard v. Warden*, NH State Prison, Chief Justice MacDonald made clear that the Court will not tolerate improper appeals to racial bias. The case involved alleged crimes of interracial domestic violence and the characterization of the defendant, in front of an all-white jury, as a “big, menacing Black guy.” Although the Court could not “determine the extent to which the jury may have been influenced by the ‘horrible racist trope’ when reaching its verdict,” it nonetheless undermined confidence in the verdict and the Court granted a new trial. “Simply, such an improper reference to race has no place in a courtroom.” This case is important for its recognition that racial and ethnic bias is not only harmful to its victim, but also that “any appeal to bias, whether indirect, implied, direct, or express, is an affront to the court.” The Court’s recognition that failing to adequately address racial bias is as important to the perception of the court system as it is to its victims is further support for a meaningful legal standard for addressing discrimination. ■

Donna is a partner at Wadleigh, Starr and Peters where she focuses on criminal defense. Donna’s work has included helping to create criminal annulment clinics and volunteering at the Manchester NAACP.

Michael Eaton is an Associate at Wadleigh, Starr & Peters. Prior to joining the firm, Michael interned with the New Hampshire Supreme Court, the Vermont Supreme Court, and the American Civil Liberties Union of New Hampshire.

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people of color. Racial trauma is the result of ongoing exposure to racial stressors such as racism, racist bias, discrimination, violence against people of color, and racist abuse in the media that creates an environment in which a person of color feels unsafe simply because the color of their skin. It is widespread among all marginalized or stigmatized racial or ethnic groups. (*Villines, 2020*).

Racial trauma manifests through symptoms akin to PTSD, such as anxiety, depression, low self-esteem, negative thoughts about self and others, and heightened sensitivity and reactivity. The effects of racially traumatic experiences, like all trauma, are cumulative and the impact accrues over a person’s lifetime. Developing research also suggests that trauma, racial or otherwise, is passed from one generation to the next.

No matter what your role in the criminal system is, understanding trauma and its aftereffects is critical to New Hampshire’s efforts to promote racial equality. Through understanding racial trauma and how it impacts people of color, we become better equipped to look beyond the incident(s) which may have brought a person before the court, identify the underlying issues which led to their transgressions, and, importantly, identify evidence-based methods of addressing those issues to achieve the real purpose of sentencing, which, as articulated by the Court in *State v. Wentworth*, 118 N.H. 832 (1978), is to reduce crime.

Know The Numbers

It is also important to understand the statistics around racial disparities in the criminal system. New Hampshire’s data on racial disparities in sentencing is currently lacking. The Vera Institute found that in 2015, Black people made up one percent of the population and they accounted for eight percent of the jail population. In 2017, Black people accounted for five percent of the prison population. In 2020, it was reported that the imprisonment rate for Blacks is nearly three-times greater than for whites in New Hampshire, representing 1.7 percent of the population but seven percent of the prison and jail population.

Do Not Shy Away from Discussing Race

New Hampshire is a predominantly white state. In a recent survey, the Bar found that of the 1,725 respondents, only six percent identified as being racially or ethnically diverse. Moreover, a report from the New Hampshire Women’s Foundation found that

only one person of color is serving as a judge at any level in our court system. As a result, it is common for attorneys, particularly defense attorneys, to shy away from raising race in their advocacy.

While the fear of raising race was once understandable, practitioners should now feel more comfortable doing so. In the last several years, New Hampshire’s legal community has made a very public and genuine commitment to fighting racial injustice. And while we have much work to do, the message is clear – the New Hampshire Bar and Judicial Branch care about racial disparities in our legal system.

Just think back to the Hillsborough County case I discussed where the court vacated the jail sentence of a young Black man based on racial disparities. Had an attorney not spoken up to the court about this injustice, an 18-year-old would have gone to jail simply because he was Black. By raising race, the attorney empowered the court to cure the injustice and vacate the jail sentence.

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In a road rage case, a court may order a person to undergo anger-management and safe-driving courses. In a domestic violence case, a court may order batterers’ intervention programming. In a drug possession case, there is substance use disorder treatment. However, if the defendant is suffering from trauma, these restorative measures may be either inappropriate or deficient on their own. If your client may be suffering from racial trauma, explore options for a trauma-informed treatment provider, and help them find such a provider. And don’t just wait for sentencing to begin this work. A helpful resource for finding such a provider can be found at inclusivetherapists.com.

Ridding our criminal system of racial disparities requires system and cultural changes. Through educating ourselves about bias, trauma, and the racial disparities in arrest rates and sentencing, we will do our part in the courtrooms to help dismantle the institutional racism that pervades our country’s criminal justice system. Together we can and must end racial inequality in New Hampshire criminal justice system. ■

Tony Naro is a criminal defense and domestic relations attorney in private practice at Bernazzani Law, PLLC in Nashua, NH. Prior to entering private practice, he was a public defender for over a decade, working as a trial attorney in Rockingham County, Hillsborough County, and as an Assistant Appellate Defender in Concord.

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forts at rehabilitation, good standing in the community or character, support from the victim, disadvantaged background, paid before sentencing, and acceptance of responsibility and remorse. Of course, this list is far from complete and not all of these are mitigating in every case.

What about parallel civil proceedings – how do they impact the process of sentencing advocacy?

Kaylee: Many clients charged with domestic violence crimes in the district or superior court also face a civil petition filed in the family court seeking a domestic violence protective order. It's normal for this parallel civil matter to proceed to a final hearing quickly, months before the scheduled trial in the criminal matter. These civil proceedings can provide a lot of information, good and bad, that might be used in plea negotiations or sentencing. All testimony in the civil matter is under oath, the petitions often cover a broader time frame than a single incident, and the rules of evidence don't apply, expanding the scope of the evidence.

Thus, these civil proceedings can often provide information that you would not otherwise get in discovery or would not be admissible at a criminal trial, such as prior custody or divorce proceedings, text message evidence not provided to police, or additional witness statements. This presents both opportunity and peril: It's important to keep in mind that anything that comes out of the civil proceeding, whether a statement by the defendant or the complainant,

or a finding by the judge, may be harmful or helpful to plea negotiations and sentencing. It's also quite common for complainants to withdraw their civil petition, wish to have contact with the client, and ask that the criminal charges be dropped. These developments, too, may impact negotiations with a prosecutor who bears the difficult responsibility of litigating not on behalf of the complainant, but on behalf of all of us.

When it comes to sentencing advocacy, what has worked for you?

Ted: Just as Richard said, sentencing advocacy begins with the first meeting with client and family. We provide detailed guidelines for character references to the client, to forward on to people who might want to write one. The guidelines stress that "detail is the soul of narrative" – one truthful and compelling story about a good thing that client did in the past is much more persuasive than letters from five different people that say little more than "she's a good person."

I put together all the mitigation I have and then work with the client to agree on a reasonable sentencing goal. Next, I send letters to the prosecuting attorney attaching and summarizing mitigation. I also often discuss a litigation issue with the prosecutor, and sometimes send draft motions, to make the point that the prosecution does have risks if the case is not settled. Face-to-face meetings and phone/video calls produce better results than email. We try to engage in principled negotiation at all times and appreciate the many prosecutors in this state who do the same, explaining in detail exactly why they take a particular position.

How do you approach the sentencing

hearing itself?

Richard: First, I try to "front load" as much of my advocacy as possible. In federal court, that means advocating for the defendant during the presentence investigation process, then filing a motion for a variance from the guidelines. Since presentence investigation reports are now virtually nonexistent in state court, it is important to file a defense sentencing memorandum in state court which summarizes the defendant's background, the offense, the mitigating and aggravating factors, and the justification for the sentence sought by the defense. Presenting these ideas for the first time at the hearing is seldom as effective as filing a memorandum before the hearing.

At the actual hearing, I focus more on "intangibles" and try to not repeat information already provided in my memorandum. I respond to arguments made by the prosecution. In some cases, I may ask a family member to speak or an expert to testify, even if they have already provided a letter or report, especially if I think the judge might have questions and if the witness will respond well.

More than anything else, I want the judge to see that my client is responding honestly and "owning" his conduct. Of course, this is not something that just happens. In many cases, the defendant's ability to express himself in court is limited. Still, every defendant has the right of allocution, and most should speak at sentencing. I work hard with clients to prepare for that. I typically have them write a statement in their own words, which we edit together and then the defendant practices before the hearing. I then ask them to make that

statement to the judge at sentencing. I let them have a written copy as a crutch but generally do not want them to simply read to the judge. Repeating memorized words is not persuasive. Speaking from the heart is. The important thing is to help the client find a way to authentically express remorse and acceptance of responsibility. Despite appearances and opinions to the contrary, most defendants do have such feelings.

Lastly, it is important for the judge to know at the sentencing hearing exactly what sentence the defense seeks. Here again, preparation is key. Except in the simplest cases, in state court the defense must submit its own proposed sentencing orders for the judge to use if the judge agrees with the defense. Of course, it is also important to warn the client that our proposal might be rejected and that a harsher sentence may be imposed. ■

Ted Lothstein has been practicing criminal law in trial and appellate courts for 28 years. He is a partner at Lothstein Guerriero, PLLC. He can be reached at ted@nhdefender.com.

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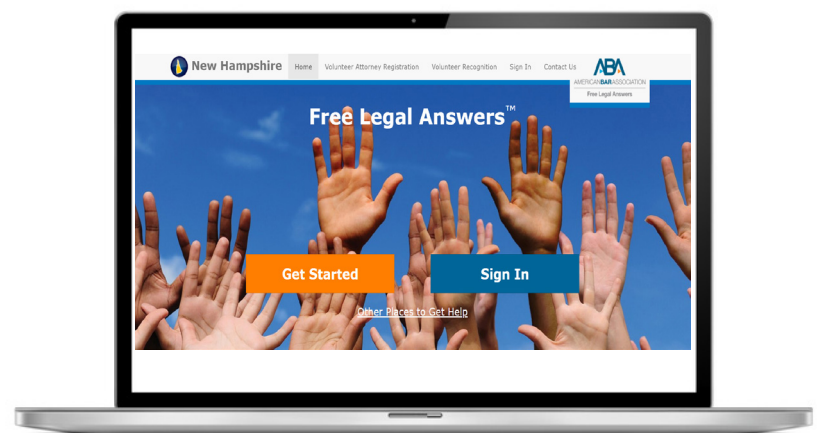
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Focus on Health Law

SCOTUS Rejects Nursing Home PREP Act Immunity Case

By Morgan C. Nighan, Kierstan E. Schultz, and Erin S. Bucksbaum



Nighan



Schultz



Bucksbaum

The Public Readiness and Emergency Preparedness (PREP) Act¹ is an important tool in the ongoing fight against the COVID-19 pandemic. Its primary feature is to substantially limit liability for those on the front lines responding to public health emergencies.

The PREP Act has been tested frequently since March 2020, when the Department of Health and Human Services (DHHS) Secretary issued a declaration that the purpose of the PREP act is “to provide liability immunity for activities related to medical countermeasures.” The extent and reliability of the PREP Act’s immunity protections remain uncertain as federal courts throughout the country consider whether the PREP Act preempts certain or all state-law claims.

On November 21, 2022, the US Supreme Court denied certiorari of the Ninth Circuit Court of Appeals opinion issued in *Saldana v. Glenhaven Healthcare LLC*,² which found no federal jurisdiction over state-law claims in which the defendant nursing home raised a PREP Act defense. As neither the New Hampshire Supreme Court nor the First Circuit has directly addressed the question of PREP Act preemption, developments in other jurisdictions provide useful insights.

Background

Ricardo Saldana was a resident of Glenhaven Healthcare nursing home until he allegedly succumbed to COVID-19. His relatives filed a complaint against Glenhaven in California state court, alleging several state-law causes of action, including willful misconduct.

Glenhaven removed the case to federal District Court. The Saldanas moved to remand. Glenhaven opposed remand by arguing complete federal preemption on the basis of its asserted defense under the PREP

Act. The District Court found there was no subject matter jurisdiction and remanded the case back to state court. Glenhaven appealed to the Ninth Circuit.

On February 22, 2022, the Ninth Circuit affirmed the lower court ruling. The United States Supreme Court denied Glenhaven’s petition for certiorari on November 21, 2022.

The Ninth Circuit’s decision

On appeal, Glenhaven cited multiple grounds for removal, including the doctrine of complete preemption and the embedded federal question doctrine. The Ninth Circuit found that the PREP Act was not intended to fully preempt all state-law claims and, therefore, its application as a federal defense did not support a basis for removal.

“[T]he PREP Act provides that ‘a covered person shall be immune from suit and liability under Federal and State Law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure.’” There is one exception to this statutory immunity: an exclusive Federal cause of action for death or serious physical injury proximately caused by willful misconduct.

Although the Saldanas’ complaint did not invoke a matter of federal law on its face, Glenhaven argued the embedded fed-

eral question doctrine applied because the determination of a federal issue, such as the application of the PREP Act, was integral to the resolution of the state-law claim. The court disagreed, noting that “a federal defense under the PREP Act is not a sufficient basis to find embedded federal question jurisdiction.”

Absent another basis for jurisdiction, a federal court may obtain jurisdiction over a claim under the complete preemption doctrine if federal law completely preempts state-law relief. The Ninth Circuit observed that complete preemption is rare and only confers exclusive federal jurisdiction “where Congress intended the scope of a federal law to be so broad as to replace *any* state-law claim.”

Glenhaven’s complete preemption argument centered on declarations issued by the Department of Health and Human Services (HHS), which concluded that the PREP Act is a complete preemption statute. Relying on *Dandino, Inc. v. U.S. Dep’t of Transp.*,³ the Ninth Circuit declined to extend *Chevron* deference to HHS’s opinions. Instead, it applied a two-part test found in *City of Oakland v. BP PLC*⁴ to support its conclusion that Congress did not intend the PREP Act to fully displace non-willful misconduct claims arising from a public health emer-

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For the Record: Legal Dangers Underlying the Not-So-Confidential Psychotherapy File

by Madeline Christie Hutchings

In the ever-evolving landscape of mental health care, clinicians may dramatically reduce their risk of liability for malpractice or professional sanctions by focusing on a crucial component of their day-to-day practice: the clinical note.



The endurance of the mental health profession is more tested than ever. New Hampshire experienced a critical shortage of healthcare providers even before the emergence of COVID-19. In the aftermath of the pandemic, record-breaking numbers of Americans identify a need for mental health care. And, with the advent of telehealth as the new normal, anyone with an internet connection is now in proximity to psychotherapeutic services.

At the same time, psychotherapy is increasingly the subject of scrutiny and of stringent measures of effectiveness. With mental health treatment frequently funded by third-party payers, the pressure for therapy to produce results increases. Fortunately, psychotherapeutic measures continue to be validated through research. However, this result creates a temptation to view validated therapeutic measures as foolproof, and to fault cli-



nicians when things go poorly, such as cases of self-injury, suicide, and harm to others. And the work of psychotherapists is progressively on display on account of institutional policies whereby clients automatically receive any updates to their clinical records, even when these updates contain disagreeable realities about their mental health challenges.

In fact, clinicians would be unwise to rely on the notion that a client's confidential medical record will remain confidential. There are numerous exceptions to a client's right to confidentiality (e.g., risk of certain harm to the client or others, or a valid court order). Additionally, the law

is clear that a medical record is the property of the client, not the clinician, and a clinician must furnish copies of a client's record within 30 days of the client's request.

Providers struggle to adjust to this growing need for services and evolving view of psychotherapy, and the result is often inadequate notetaking of client encounters, called "progress notes" or "clinical notes." Many practices still take a rough-and-ready approach to electronic medical recordkeeping, so that progress notes are meager, inconsistent, or untimely. In a world where third-party payers have considerable access to client

information, clinicians also may feel that vague records protect a client's privacy. And a litigious culture tempts many clinicians to engage in defensive recordkeeping—producing sparse records of client encounters, with the idea that sparser records mean a reduced risk of liability. But defensive record keeping can do more harm than good. True, the contents of progress notes can be subject to criticism in litigation or an ethics complaint; however, when brevity is the primary aim, ethical and clinical responsibilities to provide competent services may be overshadowed.

Appropriate clinical notetaking—notetaking that strikes the balance between thoroughness and concision—fulfills many important functions. In addition to evidencing a level of care commensurate with the standards of the profession, it provides a user-friendly client history to the clinician, supports high-quality service delivery, provides continuity of care in the event of transfer, complies with minimum record-keeping requirements specified by law, and may help in a defense against malpractice.

The legal adequacy of clinical records of New Hampshire psychologists and licensed mental health professionals is regulated at multiple levels: state laws and regulations, professional ethics codes, and federal law such as HIPAA. ("Licensed mental health professional"

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Pitfalls for Telehealth Practitioners

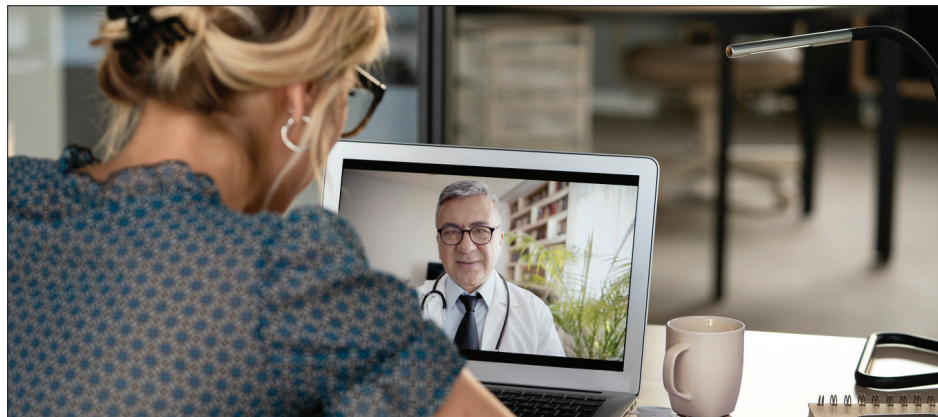
By: Andrew B. Eills and
Kaitlin P. Murphy



Eills



Murphy



Telehealth, also referred to as telemedicine, has a surprisingly long history. As early as 1924, science publications extolled the promise of a “radio doctor” linked to a patient by sound and live picture. In this century, however, the ubiquity of accessible technologies, and the comfort level of the general population in using them, have enhanced the utilization of telehealth as a diagnostic tool and treatment modality. Certainly, the COVID-19 pandemic turbo-charged its utilization. With these advances in technology and patients’ expectations regarding telehealth’s “always-on, always-available” use, it bears reminding that telehealth, and providers’ engagement with it, remain subject to state and federal laws.

New Hampshire State Law

As a result of the pandemic, most

states, including New Hampshire, adapted to provide residents safe healthcare via telehealth. As an example, on March 17, 2020, New Hampshire issued Emergency Order #8, which provided, “All medical providers shall be allowed to perform healthcare services through the use of all modes of telehealth . . . to treat the residents of the state of [New Hampshire] for all medically necessary services.” Through this broad availability of telehealth services, the number of telehealth visits grew exponentially in New Hampshire, as well as nationally.

In New Hampshire, the state regulatory approach maintains that the location of the patient dictates which state laws govern the practice of medicine. RSA § 329:1-d, II provides, “[a]n out-of-state physician providing services by means of telemedicine shall be deemed to be in the practice of medicine and shall be required to be licensed under this chapter.” There-

fore, when treating a New Hampshire-based patient via telehealth, a doctor must be licensed to practice in New Hampshire. This holds true for nurses, as well. RSA § 326-B. Thus, state licensure requirements dictate telehealth’s utilization.

On occasion, physicians located out-of-state and licensed in other jurisdictions are called upon to assist New Hampshire physicians and provide consultation through means associated with telehealth, such as reviewing x-rays or other diagnostic scans. In these instances, an out-of-state physician may provide medical advice without needing to be licensed in New Hampshire, but the licensed New Hampshire provider bears the responsibility for the patient’s diagnosis and treatment. RSA § 329:21, II. Notably, regular or frequent consultation by an out-of-state physician shall constitute the practice of medicine without a license. *Id.*

Federal Law

In connection with the increasing use and changing field of telehealth, on July 20, 2022, the Office of Inspector General (OIG) released a Special Fraud Alert (SFA) highlighting the potential fraud and abuse risks that may occur in an arrangement between telehealth companies and physicians.¹ The OIG has and is investigating arrangements involving companies in violation of federal laws while engaged in offering providers telehealth services. A clear example of such fraud involves payment from a telemedicine company to a provider to generate orders or prescriptions for medically unnecessary items or procedures which can also result in the submission of fraudulent claims to Medicare, Medicaid, and other Federal healthcare programs.

The OIG has completed dozens of investigations of fraudulent schemes varying in design and operation including “international and domestic telemarketing call centers, staffing companies, Practitioners, marketers, brokers, and others.”

Such fraudulent schemes may implicate multiple Federal laws, including the Federal anti-kickback statute leading to criminal, civil, or administrative liability for Practitioners, Telemedicine Companies, and any other participants. See §§ 1128B, 1128(b)(7), 1128A(a)(7) of the Social Security Act; see also 18 U.S.C. § 1347; see also 31 U.S.C. §§ 3729-33. Violation of the Federal anti-kickback statute constitutes a

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felony with a maximum fine of \$100,000, imprisonment up to 10 years, or both, and an exclusion from all Federal healthcare programs. See § 1128B of the Social Security Act.

The SFA provides a stark reminder that technological advances face legal and regulatory restrictions. The SFA contains a list of suspect characteristics related to practitioner arrangements with telemedicine companies which, taken together or separately, could suggest a heightened risk of fraud and abuse:

1. Practitioner ordering or prescribing medical items or services for purported patients that were identified or recruited by the Telemedicine Company.

2. The Practitioner does not have sufficient contact with or information from the purported patient to meaningfully assess the medical necessity of the items or services ordered or prescribed.

3. The Telemedicine Company compensates the Practitioner based on the volume of items or services ordered or prescribed.

4. The Telemedicine Company only furnishes items and services to Federal health care program beneficiaries and does not accept insurance from any other payor.

5. The Telemedicine Company claims to only furnish items and services to individuals who are not Federal health care program beneficiaries but may in fact bill Federal health care programs.

6. The Telemedicine Company only

furnishes one product or a single class of products, potentially restricting a Practitioner's treatment options to a predetermined course of treatment.

7. The Telemedicine Company does not expect Practitioners (or another Practitioner) to follow up with purported patients nor does it provide Practitioners with the information required to follow up with purported patients.

Telehealth is here to stay but, as in any growth industry, so are those who enter the industry with fraudulent intentions. The OIG, therefore, "encourages practitioners to use heightened security, exercise caution, and consider the provided list of suspect criteria prior to entering into arrangements with Telemedicine Companies." It is anticipated that, due to the potential impact and risk to the victims, fraudulent schemes within the telehealth industry will continue to be a high priority enforcement area for both the Department of Justice and the OIG. Telehealth providers should consult legal counsel to ensure compliance and remain vigilant to any legal pitfalls. ■

Endnote

1. Office of Inspector General, Special Fraud Alert: OIG Alerts Practitioners to Exercise Caution When Entering Into Arrangements with Purported Telemedicine Companies (Jul. 20, 2022), oig.hhs.gov/documents/root/1045/sfa-telefraud.pdf.

Andrew Eills and Kaitlin Murphy are attorneys in the healthcare practice group at Sheehan Phinney.

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agency. Even though the PREP Act provides for an exclusive federal cause of action for willful misconduct, the court found that the "specifically defined" federal cause of action was too limited to find complete preemption.

The Ninth Circuit also rejected Glenhaven's alternative argument—that the PREP Act completely preempted any claim for willful misconduct—because plaintiffs' state-law claims did not clearly allege conduct that fit the PREP Act's definition of willful misconduct. Thus, the PREP Act did not "entirely supplant state[-]law causes of action."

Finding no basis for federal jurisdiction, the Ninth Circuit affirmed remand, leaving the state court to determine the application and scope of PREP Act immunity.

Other circuit decisions

Other jurisdictions have similarly held that the PREP Act does not completely preempt state-law claims. However, the Ninth Circuit differs on the question of preemption as it pertains to state-law claims of willful misconduct.

On similar facts, the Third Circuit in *Maglioli v. Alliance HC Holdings, LLC*⁵ unequivocally held that the "PREP Act creates an exclusive cause of action for willful misconduct" and "easily satisfies the standard for complete preemption[.]" The Fifth Circuit and the Seventh Circuit have opined in dicta that the PREP Act completely preempts willful misconduct claims but does not preempt other claims. See *Mitchell v. Advanced HCS, LLC*⁶ (following *Maglioli*

and declining to find preemption for ordinary negligence claims); *Martin v. Petersen Health Operations, LLC*⁷ (finding no preemption where allegations did not pertain to a covered countermeasure).

Looking ahead

While courts have consistently found a lack of complete PREP Act preemption of all state-law claims, there is inconsistency regarding preemption of willful misconduct claims, which the Supreme Court has declined to resolve. Accordingly, going forward there may continue to be inconsistent holdings among the Circuit Courts of Appeal, and interpretation of the PREP Act's immunity protections may vary by state. ■

Endnotes

1. 42 U.S.C. § 247d-6d.
2. 27 F.4th 679 (9th Cir. Feb. 22, 2022).
3. 729 F.3d 917, 920 n.1 (9th Cir. 2013).
4. 969 F.3d 895, 906 (9th Cir. 2020) (citation omitted).
5. 16 F.4th 393, 407-09 (3d Cir. 2021).
6. 28 F.4th 580, 586-87 (5th Cir. 2022).
7. 37 F.4th 1210, 1213-14 (7th Cir. 2022).

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is a statutory term that includes clinical mental health counselors, pastoral psychotherapists, independent clinical social workers, and marriage and family therapists. These clinicians are governed by the Board of Mental Health Practice under RSA Chapter 330-A, whereas psychologists are governed by the Board of Psychologists under RSA Chapter 329-B.) State regulations require psychologists and licensed mental health professionals to adhere to the ethics codes of their respective professional associations.

These legal and ethical requirements stipulate the contents of an adequate clinical record in two ways: (1) by identifying specific elements that must be present in clinical records, and (2) by imposing a duty of care and requiring competence, which imply that progress notes will be precise and constructive so that they support the client's wellbeing and avoid harm.

The specific elements of clinical records are relatively easy for clinicians to incorporate into progress notes on a consistent basis. Clinical records of any New Hampshire psychologist or licensed mental health professional must include, at a minimum, the date of service, type of service, outcome of service, and signature of the service provider. Informed consent also must be documented when given. Ethics codes require that additional specific elements be present in clinical records, and the required elements vary somewhat among the different mental health professions. For example, licensed clinical mental health counselors are required to preserve all communication regarding treatment, including emails and texts.

The more difficult part of notetaking is qualitative: ensuring that progress notes are appropriately thorough and constructive, so that they evidence a level of care commensurate with the standards of the profession. There are, however, several best practices that promote the legal adequacy of a progress note and protect against malpractice liability:

- Include supplemental factual details (location, length of encounter) and chief therapeutic and diagnostic elements of the encounter (clinical decisions, symptoms, functional status, referrals, etc.)
- Avoid jargon and be as concise as possible while still creating a complete and accurate progress (clinical) note for the record. The progress note—a part of the client's medical record—is not the place for a clinician's personal opinions or reactions to the client. (Opinions are more correctly included in a "psychotherapy note," also called a "process note." Distinct from a progress note, a psychotherapy note captures a clinician's more subjective impressions, may contain details considered inappropriate for medical records, and is used by the clinician for future sessions. Access to the psychotherapy note by anyone other than the clinician is typically more limited than with the progress note. See 45 C.F.R. 164.501)
- Enter the note into the client's record as soon as possible, and ensure there is a time and date stamp, in case of a subpoena.
- Never alter the note once entered into the client's record. If circumstances necessitate an amendment, do not delete any part of the record. Instead, identify the language being amended, and justify the amendment in writing.
- Consider any additional information required for the managed care context, such as demonstrating medical necessity for treatment.
- Describe why sound judgment dictated any major change in the treatment plan.
- Provide the rationale for any decision to warn (or not to warn) others in the case of the client's threatened violence or risk of self-harm or suicide.
- Document consultation with colleagues, especially in clinically challenging circumstances.

To help mental health clinicians and institutional providers avoid liability while promoting high-quality service delivery, attorneys can encourage the adoption of policies that standardize notetaking and integrate best practices. The maxim, "If it was not documented, it did not happen," is never so true as in mental health care today. Equip providers to create notes that guarantee that their good work "happened." Doing so will protect providers and enable clinicians to serve their clients competently and confidently.

Madeline Christie Hutchings is an attorney at Sheehan Phinney Bass & Green PA, working in the areas of mental health practice, nonprofit and charitable institutions, and estate planning.

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NHBF and Courts To Participate in National Judicial Outreach Week

By Mysty Yackel Shappy
NHBF Staff

National Judicial Outreach Week, which is held in early March each year, is coming to New Hampshire through a partnership between the New Hampshire Judicial Branch and the New Hampshire Bar Foundation, with staff support from the New Hampshire Bar Association. This year's outreach week will occur from March 1 to March 10.

Speaking events will be held throughout the state during which judges and Bar members will meet with the public to discuss the importance of upholding the rule of law in the United States. The programs are an extension of the court system's commitment to equal access to justice and part of an ongoing effort to build public understanding and trust in the judicial system. The presentations will include materials from the American Bar Association about the importance of maintaining the independence of the judicial system as well as information specific to New Hampshire's judicial system and its history. Presentations will conclude with an opportunity for attendees to ask questions of the presenting judge and lawyer.

"I am convinced from my own experience on the bench that the more information people receive about the courts and the more they hear directly from judges and lawyers, the more they trust the legal system," says retired Superior Court Judge Richard McNamara, who is a member of the New Hampshire Bar Foundation Board of Directors. McNamara and fellow board member Attorney John Garvey are co-chair-



ing the outreach effort.

The first National Judicial Outreach Week took place in 2017 from March 5 to 11 and has been celebrated annually since. The program was developed by the ABA's Judicial Outreach Network Committee "to encourage judges and lawyers who support a fair and impartial judiciary to engage the community directly." New Hampshire Associate Supreme Court Justice Anna Barbara Hantz Marconi is the liaison between the judicial branch and the Foundation for this outreach project.

"All of us in the court system are excited to team up with the Bar Foundation on this important effort to give the pub-

lic a firsthand look at our judicial system and how it works for the communities we serve," Justice Hantz Marconi says.

According to the ABA, "One of the most effective ways to promote public understanding and commitment to our courts is to have more members of the public, especially students and young people, meet more of our active and retired judges outside the courtroom. [Outreach programs are] the surest way for the public to see the dedication and integrity of America's judges and their unwavering commitment to fairness, impartiality, and the rule of law."

The outreach week in New Hampshire will conclude on March 10, with an event at

the NH Supreme Court in Concord marking the International Day of Women Judges, which was established a year ago by a United Nations resolution urging its members to "promote the full and equal participation of women at all levels of the judiciary." The event will be hosted by the New Hampshire Bar Foundation, in partnership with the New Hampshire Women's Bar Association. Details about this and additional events will be available on the New Hampshire Bar Foundation website.

National Judicial Outreach Week is slowly taking hold in many states across the country. The Massachusetts Trial Court has participated in National Judicial Outreach Week for the last several years, with visits to senior centers and schools. Presentations to schools include information about "potential career pathways in the judicial branch of government," according to Massachusetts Superior Court Associate Justice Mark Mason. When speaking to criminal justice students at Smith Vocational and Agricultural High School in 2022, Mason said, "Fundamentally, what we all share with you is that we want to help people."

The Hawaii State Judiciary, which has participated in National Judicial Outreach Week since its inception in 2017, has seen consistent participation from both judges and the public. Upon completion of the 2020 NJOW activities, then Third Circuit District Court Judge Margaret Masunaga said, "National Judicial Outreach Week got me thinking about the rule of law and due process this year, and I was just feeling proud to be an American."

Read more about National Judicial Outreach Week at nhbarfoundation.org. ■

NH Supreme Court At-a-Glance

DECEMBER 2022

EMPLOYMENT LAW

Cassandra Caron, et al v. New Hampshire Department of Employment Security, et al
No. 2021-0478
December 7, 2022
Affirmed

- Whether the New Hampshire Department of Employment Security, and its Commissioner, were required to reinstate benefits available from the Pandemic Unemployment Assistance available under the CARES Act, pursuant to NH State Statute.

In response to the COVID-19 pandemic, the United States Congress enacted the CARES Act, which established among other things, temporary unemployment benefit programs, including the Pandemic Unemployment Assistance (the PUA). The PUA provided unemployment compensation to individuals who were otherwise able to work, but who were unemployed for a COVID-19 related reason, as defined by statute. As required by the CARES Act, PUA benefits were distributed by the United States Department of Labor through agreements with States, and their own unemployment agencies.

On March 28, 2020, the Governor of New Hampshire signed an agreement with the United States Department of Labor to distribute the PUA benefits to New Hampshire citizens through the New Hampshire Department of Employment Security. The

agreement provided that either party could terminate upon thirty (30) days' notice. In May 2021, the Governor of New Hampshire provided the Department of Labor the requisite thirty (30) days' notice that New Hampshire would be terminating the agreement, which was effective June 19, 2021. Had the Governor not terminated the agreement, the federal funding for the PUA program was set to expire in September of the same year.

In August of 2021 the Plaintiffs filed for injunctive relief, seeking to have the Court order the New Hampshire Department of Employment Security, and its Commissioner, reinstate benefits available under the PUA. The Plaintiffs based their request on NH RSA 282-A:127, which requires the Commissioner of the New Hampshire Department of Employment Security to, "cooperate to the fullest extent...to secure to this state and its citizens all advantages available under the provisions of the Social Security Act..." See: NH RSA 282-A:127, I.

In determining that NH RSA 282-A:127 was inapplicable, the Court looked to whether the PUA program was providing funds under the provisions of the Social Security Act. The Court determined that the CARES Act and PUA program made use of the accounting system that was already in existence in the Social Security Act. However, the Court also noted that Congress had not amended the Social Security Act, and that the funds from the PUA program therefore did not flow from the Social Security Act. The Court therefore determined that there was no requirement pursuant to NH RSA 282-A:127 for the New Hampshire Department of Employment Security to reinstate the PUA program.

At-a-Glance Contributor



Sam Harkinson

Previously employed as an Assistant County Attorney, and as an insurance adjuster, now as an attorney at Seven Rivers Law Office.

Michael Perez, Perez Law, on the brief and orally for the Plaintiffs. The Office of Attorney General John M. Formella, the office of Solicitor General Anthony J. Galdieri, Assistant Attorney General Nathan W. Kenison-Marvin on the brief and orally for the Defendants.

CRIMINAL LAW

The State of New Hampshire v. Daniel Laguerre
No. 2022-0523
December 16, 2022
Affirmed

- Whether a trial court, in reviewing a defendant's motion for bail modification, is allowed to consider a defendant's safety concerns while incarcerated.

The Defendant was arrested for domestic violence related crimes. While out on bail,

he was subsequently arrested again, for additional domestic related crimes against the same victim. The trial court ordered that the Defendant be held at a house of correction pending trial. The Defendant then made a motion to amend bail, based on allegations that he was not receiving adequate medical attention while incarcerated. The trial court found that, pursuant to NH RSA 597:2, it did not have authority to consider the Defendant's safety concerns while incarcerated in evaluating whether to amend bail.

On appeal, the Defendant focused his argument on the merits of the phrasing found in NH RSA 597:2, III, specifically, "[w]hen considering whether to release or detain a person, the court shall consider the...[s]afety of the public or the defendant..." See: NH RSA 597:2, III. The Defendant argued that the trial court has an ability to consider safety concerns, including lack of medical care, in evaluating bail because it would relate to the safety of the defendant. The State countered that the bail statute only allows a trial court to consider the defendant's safety while on release, and not while incarcerated.

The Court agreed with the State, finding that, while "...New Hampshire's bail statute has been amended many times, it has consistently required trial courts to determine whether a defendant's release would endanger the safety of the defendant or the public, without mentioning the defendant's safety while confined."

The Office of Attorney General John M. Formella, and the Office of Solicitor Gen-

AT-A-GLANCE continued on page 32

In accordance with Supreme Court Rule 37(3)(a), the court reappoints Attorney Caroline K. Leonard to the Professional Conduct Committee, to serve a three-year term commencing January 1, 2023, and expiring December 31, 2025. The court further designates Attorney Leonard to continue to serve as a vice chair of the Professional Conduct Committee.

Issued: December 15, 2022
ATTEST: Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire

Supreme Court Rule 42(II)(a) provides that one member of the Committee on Character and Fitness shall be a member of the Board of Bar Examiners. As of October 3, 2019, Attorney Mary E. Tenn, chair of the Board of Bar Examiners, replaced Attorney Willard Martin as the Board of Bar Examiners member of the Committee on Character and Fitness. In accordance with Rule 42(II)(a), the court appoints Attorney Tenn, nunc pro tunc, to the Committee on Character and Fitness to serve the remainder of Attorney Martin's term expiring October 1, 2021, and reappoints Attorney Tenn, nunc pro tunc,

to a three-year term on the Committee on Character and Fitness, expiring October 1, 2024.

Issued: December 15, 2022
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

Pursuant to RSA 494:1, IX, the court reappoints Attorney John E. Durkin and Attorney Stephanie Bray to the Judicial Council, to serve three-year terms commencing January 1, 2023, and expiring December 31, 2025. The court also reappoints Ms. Nina Gardner, a non-lawyer, to the Judicial Council, to serve a three-year term commencing January 1, 2023, and expiring December 31, 2025.

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

In accordance with Rule 39(2)(a)(5), the Supreme Court reappointed Delton Jonathan Record, Jr., on June 2, 2021, as an alternate public member of the Committee

on Judicial Conduct, with a term expiring June 30, 2024. On November 1, 2022, the Supreme Court received notification of Mr. Record's resignation from the Committee on Judicial Conduct. Mr. Record has since determined that he is capable of continuing to serve.

Therefore, in accordance with Rule 39(2)(a)(5), the Supreme Court reappoints Delton Jonathan Record, Jr., as an alternate public member of the Committee on Judicial Conduct, to serve a term commencing immediately and expiring June 30, 2024.

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

In accordance with Supreme Court Rule 39(2)(a)(1), the Supreme Court appoints Judge Jennifer A. Lemire as a circuit court judge member of the Committee on Judicial Conduct, effective immediately, for the remainder of a three-year term expiring July 31, 2024. Judge Lemire is appointed to replace Judge Susan B. Carbon, who has resigned as a member.

In accordance with Supreme Court Rule 39(2)(a)(1), the Supreme Court appoints Judge Polly L. Hall as an alternate circuit court judge member of the Committee on Judicial Conduct, effective immediately, for the remainder of a three-year term expiring July 1, 2024. Judge Hall is appointed to replace Judge Lemire, who no longer serves as an alternate member.

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

The Supreme Court of New Hampshire, pursuant to RSA 490:4, directs that proceedings in every State court in New Hampshire may be suspended on Friday, February 17, 2023, to facilitate continuing judicial and legal education and to accommodate any judges' meetings being held in conjunction with the midyear meeting of the New Hampshire Bar Association. A judge or master may decide not to suspend proceedings if the judge or master and the lawyers on a case do not plan to attend the midyear meeting, or if the judge or master, in his or her discretion, decides that the efficient administration of the court or ensuring justice in a particular case compels that

a case be scheduled for a hearing or trial, or that a hearing or trial continue to be litigated, on that day.

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

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

I. Supreme Court Rule 37(8) - Attorney Discipline System
(This amendment gives the Attorney Discipline Office reciprocal subpoena power, allowing it to issue a subpoena in this jurisdiction when a subpoena has been duly approved under the law of another disciplinary jurisdiction.)
1. Amend Supreme Court Rule 37(8) as set forth in Appendix A.

II. Supreme Court Rule 37(9-A) and 37(9-B)
(This amendment addresses immediate suspension by the court of an attorney who engages in serious misconduct that poses an immediate and substantial threat of serious harm to the public.)
1. Amend Supreme Court Rule 37(9-A) and 37(9-B) as set forth in Appendix B.

III. Supreme Court Rule 37(14)(b)(2)(B)
(This amendment addresses the procedure to be followed by attorneys who seek reinstatement following a suspension of more than six months and requires that any applicant seeking reinstatement take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the filing of the petition for reinstatement.)
1. Amend Supreme Court Rule 37(14)(b)(2)(B) as set forth in Appendix C.

IV. Supreme Court Rule 37(20)(i)
(This amendment adds references to Supreme Court Rule 35, as adopted on November 16, 2022, to make Supreme Court Rule 37(20)(i) consistent with Rule 35, which applies to appearances in court by eligible paraprofessionals.)
1. Amend Supreme Court Rule 37(20)(i) as set forth in Appendix D.

V. Supreme Court Rule 37A(V)
(This amendment allows attorneys to request annulments, not only of reprimands,

At-A-Glance from page 31

eral Anthony Galdieri, Audriana Mekula, on the memorandum of law for the State. Rath, Young, Pignatelli, P.C., Cassandra A. Moran and Michael S. Lewis on the brief for the Defendant.

FAMILY LAW

Petition of the State of New Hampshire No. 2022-0124
December 16, 2022
Affirmed

- Whether NH RSA 169-B:6, IV(b) is ambiguous in requiring that a manifestation review take place in all instances, or whether an exception applies pursuant to Federal statutes that are incorporated.

In October 2021 a juvenile was suspended from school for striking a fellow student, after which time the State of New Hampshire filed a delinquency petition in the Circuit Court, Family Division. As required by statute, before filing its delinquency petition the State confirmed with the school district that a manifestation hearing had occurred. The school district confirmed that a manifestation hearing was not required. At a hearing on the delinquency petition, the Respondent argued for dismissal, arguing that a manifestation hearing is required procedurally by NH RSA 169-B:6, IV(b). The State argued that NH RSA 169-B:6, IV(b) not only incorporates 20 U.S.C. § 1415(k)(1)(E), which requires a manifestation review, but also that the state statute incorporates an exception, found at 20 U.S.C. § 1415(k)(1)(B), which applied in the instant case. The trial court granted the Respondent's motion, without prejudice, finding that the NH RSA 169-B:6, IV(b) was ambiguous.

In analyzing, the Court looked at the statutory framework of the NH RSA 169-B:6, IV(b), and reviewed the information that a school district must provide to the trial court before a juvenile's initial appearance

in a delinquency petition. The Court also analyzed 20 U.S.C. § 1415(k)(1)(E), as the state statute states that, "[i]f the school district has determined that the child is a child with a disability, a magnification review pursuant to 20 U.S.C. § 1415(k)(1)(E) occurred." See: NH RSA 169-B, IV(b). 20 U.S.C. § 1415(k)(1)(E) in turn provides the Federal requirements for a manifestation review. However, 20 U.S.C. § 1415(k)(1)(B) provides that a school district is allowed to remove a child with a disability who violates a code of student conduct from school, if it is not for more than ten days. Thus, the Court concluded that reading both 20 U.S.C. § 1415(k)(1)(E) and 20 U.S.C. § 1415(k)(1)(B) together, a school district may not be required to conduct a manifestation review if a child with a disability is suspended for less than ten days.

On appeal, the parties both argued that NH RSA 169-B:6, IV(b) was not ambiguous, but they also argued that the interpretation by the other was inaccurate. The Court, however, found that both of the parties arguments in interpretation were reasonable and consistent with the statutory language. Accordingly, it found that NH RSA 169-B:6, IV(b) was ambiguous. The Court, in its majority opinion, went on to conclude that the exception found in 20 U.S.C. § 1415(k)(1)(B) did not apply to the procedural protections found in NH RSA 169-B:6, IV(b), and that a manifestation review was required in all cases.

The dissenting justices argued that NH RSA 169-B:6, IV(b) was not ambiguous, that the exception found in 20 U.S.C. § 1415(k)(1)(B) should apply, and therefore that manifestation reviews need not take place where the school district has not suspended a child with a disability for more than ten days.

The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Sam M. Gonyea on the brief and orally for the State. The Office of Public Defender, Senior Assistant Appellate Defender Thomas Banard for the Respondent.

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mands, but also of public censures.)

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

VI. Supreme Court Rule 40 - Procedural Rules of Committee on Judicial Conduct

(The amendments allow the Judicial Conduct Committee to vote to hold a matter in abeyance at any stage of the proceedings for "good cause," and add language to include as "good cause" a deferral to provide an opportunity for the judge to submit to a confidential evaluation under the supervision of the New Hampshire Lawyers Assistance Program.)

1. Amend Supreme Court Rule 40 as set forth in Appendix F.

VII. Supreme Court Rule 50-A - Trust Accounting Certification Requirement

(This amendment exempts from the trust accounting certification requirement members of the bar who hold military active membership status and those members who hold limited active membership status and meet the criteria set forth in the Supreme Court's August 10, 2022 order. It also corrects a typographical error in Rule 50-A(2).)

1. Amend Supreme Court Rule 50-A as set forth in Appendix G.

VIII. New Hampshire Rule of Criminal Procedure 12 - Discovery; Evidence of Other Crimes, Wrongs or Acts

(These amendments establish separate requirements for the introduction of Rule 404(b) evidence in Circuit Court cases and in Superior Court cases.

The amendments do not change the current deadline of 14 days before trial in the Circuit Court for notice of intent to introduce Rule 404(b) evidence. They establish that notice requirements apply to both parties and that notice must be in writing and must articulate the permitted purpose for which the proponent intends to offer the evidence and the reasoning that supports

that purpose. The proponent must provide the opposing party with access to all materials the proponent will rely on to prove the commission of the alleged other crimes, wrongs, or acts.

In the Superior Court, the amendments set deadlines in relation to jury selection and are structured with the intent to provide sufficient notice so that issues related to Rule 404(b) evidence are resolved prior to the final pretrial conference.)

1. Amend New Hampshire Rule of Criminal Procedure 12 as set forth in Appendix H.

IX. New Hampshire Rule of Professional Conduct 3.3

(This amendment corrects a spelling error in the rule.)

1. Amend New Hampshire Rule of Professional Conduct 3.3 as set forth in Appendix I.

X. New Hampshire Rule of Professional Conduct 8.5(c)

(This amendment adds RSA 311:2-a to make clear that Rule 8.5 applies to the newly-enacted law that authorizes appearances in court by eligible paraprofessionals.)

1. Amend New Hampshire Rule of Professional Conduct 8.5(c) as set forth in Appendix J.

Effective Date

The amendments to New Hampshire Rule of Criminal Procedure 12 shall take effect on March 1, 2023. The remaining amendments shall take effect on January 1, 2023.

Date: December 22, 2022

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



LD-2022-0007, In the Matter of Steven A. Clark, Esquire

On October 7, 2022, the Professional Conduct Committee (PCC) filed a petition

recommending the disbarment of Attorney Steven A. Clark. The PCC also filed a record of its proceedings with this court. In accordance with Rule 37(16), the court provided notice to Attorney Clark of the PCC's disbarment recommendation and ordered him to file a response on or before November 28, 2022, identifying any legal or factual issues relating to the PCC's recommendation that he wished the court to review. Attorney Clark did not file a response.

The court has reviewed the PCC's recommendation for disbarment and the PCC record. The PCC adopted a hearing panel report, which concerned Attorney Clark's representation of clients in a quiet title action and which found, among other misconduct, that Attorney Clark failed to appear for several hearings in the action, including a show-cause hearing that was ordered to address his failure to appear at a trial management conference, failed to keep the clients informed of ongoing developments in the action, failed to communicate with the clients, abandoned his clients and thereby caused the need for them to hire new counsel at additional cost, failed to cooperate with the Attorney Discipline Office (ADO) during its investigation, and affirmatively obstructed the ADO's efforts to obtain and inventory client files pursuant to an order from this court. Those facts were undisputed because Attorney Clark did not respond to the ADO's notices of charges, see Rule 37A(III)(b)(3)(A), and did not participate in the hearing before the panel.

The PCC determined that Attorney Clark violated the following Rules of Professional Conduct: Rule 1.1 (requiring competence); Rule 1.3 (requiring diligence); Rule 1.4 (requiring adequate communications with clients); Rule 1.16 (requiring a lawyer to protect the client's interests when withdrawing or terminating representation); Rule 3.4(c) (prohibiting knowing disobedience of an obligation under the rules of a tribunal); and Rule 8.1(b) (prohibiting non-compliance with ADO demands for information). The PCC further adopted the hearing panel's conclusion that a sanction of disbarment was warranted, given the seriousness of Attorney Clark's misconduct, the injury that it caused to his clients, and the harm that it caused to the legal system and to the reputation and standing of the legal profession.

In light of the seriousness of Attorney Clark's misconduct, which includes violations of Rules of Professional Conduct 1.1, 1.3, 1.4, 1.16, 3.4(c), and 8.1(b), the court concludes that disbarment is the appropriate sanction.

THEREFORE, the court orders that

Steven A. Clark be disbarred from the practice of law in New Hampshire. He is hereby assessed all costs and expenses incurred by the attorney discipline system in the investigation and prosecution of the matter.

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

DATE: January 5, 2023

ATTEST: Timothy A. Gudas, Clerk



ADM-2023-0001, In the Matter of Byron J. Siegal, Esquire

Attorney Byron J. Siegal was ordered to appear at the New Hampshire Supreme Court on November 1, 2022, for a hearing before Justice Anna Barbara Hantz Marconi, to show cause why he should not be suspended for the following:

1. **Bar Dues and Court Fees** - Attorney Siegal has not paid his 2022/2023 bar dues and court fees, and the \$100 in assessed delinquency fees. See Supreme Court Rule 42A.

2. **Trust Accounting Certification** - Attorney Siegal has not filed his annual trust certificate and has not paid the \$300 in assessed delinquency fees, as required by Supreme Court Rule 50-A.

3. **NHMCLE Certification** - Attorney Siegal has not fulfilled NHMCLE requirements of Supreme Court Rule 53 for the reporting year ending May 31, 2022, and has not paid the \$300 in assessed delinquency fees.

Attorney Siegal did not respond to the order or appear for the November 1, 2022 hearing. Justice Hantz Marconi recommended to the court that Attorney Siegal be suspended from the practice of law in New Hampshire.

Attorney Byron J. Siegal is hereby suspended from the practice of law in New Hampshire for failure to complete the requirements listed above, and for his failure to appear for the November 1, 2022 hearing. This suspension is in addition to the interim suspension imposed in case no. LD-2022-0006, *In the Matter of Byron J. Siegal, Esquire*, in which Attorney Andrea Q. Labonte of the Attorney Discipline Office was appointed to make an inventory of Attorney Siegal's files and to take certain actions to protect the interests of his clients.

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

ISSUED: January 9, 2023

ATTEST: Timothy A. Gudas, Clerk

US District Court Decision Listing

* Published

SOCIAL SECURITY

12/19/22 *McDonald v. SSA*
Case No. 22-cv-86-JL, Opinion No. 2022 DNH 153

Ms. McDonald appealed the Social Security Administration's denial of her application for supplemental security income under Title XVI of the Social Security Act. She argued that the Administrative Law Judge ("ALJ") did not properly evaluate the opinions of her mental health providers about her limitations. The court granted the plaintiff's motion to reverse the decision of the Acting Commissioner of Social

Security and remanded the case for further administrative proceedings, concluding that the ALJ improperly rejected certain opinions for lack of a function-by-function assessment in work-related terms. 13 pages. Judge Joseph N. Laplante.

INSURANCE

12/19/22 *Missy J, LLC v. Westchester
Surplus Lines Insurance
Company*
Case No. 21-cv-848-SE, Opinion No. 2022 DNH 157

The plaintiff, the owner of a multi-residen-

LISTING continued on page 34

US Bankruptcy Court Opinion Summary

Note: The full text of the opinion below will be available on the Bankruptcy Court's website at www.nhb.uscourts.gov.

In re Prospect-Woodward Home, 2023 BNH 001, issued Jan. 6, 2023 (Harwood, C.J.) (unpublished) (determining that RSA 447:12-a did not govern a priority dispute between a construction contractor's mechanic's lien and a construction lender's mortgage and finding that the construction contractor's mechanic's lien had priority over the construction lender's mortgage, pursuant to New Hampshire's general race-notice rule, as the construction lender was at least on inquiry notice regarding the contractor's unrecorded interest in the property as tree clearing work had commenced on the project before the construction mortgage was recorded).

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TRIAL ATTORNEYS

tial apartment complex, brought a declaratory judgment action against its liability insurer. The plaintiff sought a ruling that the parties’ liability policy provided coverage for injuries that a visitor to the complex sustained when he was attacked by a dog. The parties filed cross-motions for summary judgment. After a hearing, the court granted the defendant’s motion and denied the plaintiff’s motion, holding that a provision in the policy, which excluded from coverage any bodily injury arising out of a dog’s presence at the plaintiff’s premises, unambiguously applied to the incident in question. 8 pages. Judge Samantha Elliott.

**INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

12/15/22 *Doe v. West Alton Marina, LLC et al.*
Case nos. 22-cv-194-LM, 22-cv-195-LM, 22-cv-226-LM, 22-cv-236-LM, 22-cv-240-LM; Opinion No. 2022 DNH 155P

Five child victims filed separate lawsuits

alleging that they suffered sexual assault while working at West Alton Marina. The lawsuits are consolidated for purposes of discovery and pretrial litigation. Among other claims, the victims brought claims of Intentional Infliction of Emotional Distress against all five defendants, which include Marina itself, an employee who was the primary perpetrator of the abuse, and the Marina’s three owners who allegedly facilitated the abuse. Each defendant, with the exception of the primary perpetrator, moved to dismiss at least some victims’ IIED claims. The facts of the case presented a question of first impression in New Hampshire—whether an allegation that adults facilitated child sexual abuse in a workplace (without any evidence that they perpetrated the abuse) suffices to state a claim of IIED. The court held that it does, finding that the plaintiffs’ complaints each sufficiently alleged the elements of IIED under New Hampshire law—that the defendants’ (1) extreme and outrageous conduct (2) intentionally or recklessly caused (3) the plaintiffs’ severe emotional distress. 27 pages. Judge Landya McCafferty.

SECTION 1983

12/5/22 *McMenamon v. Shibinette*
Case No. 21-cv-479-PB, Opinion No. 2022 NH 151

The plaintiff brought suit under 42 U.S.C. § 1983 against three state actors seeking damages and injunctive relief based on allegations that the defendants (1) unlawfully terminated the plaintiff’s federal benefits and (2) retaliated against him for exercising his First Amendment rights. The plaintiff also sued one of the defendants in her capacity as a private actor under state tort law. The defendants moved for summary judgment. The court granted summary judgment as to the Section 1983 claims, concluding that the plaintiff (1) failed to state a claim for damages because he did not demonstrate a causal connection between the defendants and the alleged violations and (2) lacked standing to seek injunctive relief because he did not demonstrate a likelihood of future harm. The court declined to exercise supplemental jurisdiction over the plaintiff’s state law claims. 15 pages. Judge Paul Barbadoro.

HABEAS CORPUS

12/15/22 *Fox v. Hazelwood*
Case No. 21-cv-159-PB, Opinion No. 2022 NH 156

The petitioner filed a habeas petition under 28 U.S.C. § 2241, claiming that he was denied due process at a disciplinary proceeding that resulted in the loss of good conduct time. The petitioner claimed that (1) the disciplinary hearing officer’s (DHO) finding that the petitioner was in possession of stolen items was not supported by sufficient evidence and (2) the proceedings were insufficiently impartial because one of the investigating corrections officers was biased against the petitioner. The defendant moved for summary judgment, which the court granted. The court concluded that the DHO’s finding was adequately supported by evidence that the petitioner concealed items that belonged to food services and that he could not have obtained through authorized channels. The court further concluded that the petitioner’s claims of impartiality were legally insufficient, as due process does not require an impartial investigator. 9 pages. Judge Paul Barbadoro.

NH Superior Court Judicial Assignments: January - March 2023

COURT	HILLS NO	HILLS SO	ROCKINGHAM	MERRIMACK	STRAFFORD	CHESHIRE	BELKNAP	SULLIVAN	CARROLL	COOS/GRAFTON
MO/WK	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>	<i>Judges</i>
1/2/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G); (C) 1/5
1/9/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard Attorri	+Honigberg		+Bornstein (C) MacLeod (G)
1/16/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
1/23/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
1/30/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
2/6/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard Attorri	+Honigberg		+Bornstein (C) MacLeod (G)
2/13/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) 2/13, 17; (G) 2/14-16 MacLeod (G); (C) 2/14-16
2/20/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
2/27/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
3/6/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard Attorri	+Honigberg		+Bornstein (C) MacLeod (G)
3/13/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
3/20/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
3/27/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)

+Supervisory Justice

Assignments commence on the first Monday of each month

Schedule is subject to change.

Effective 12/31/22

Classifieds

POSITIONS AVAILABLE

LOOKING FOR AN ATTORNEY TO BUY PRACTICE: Well-established Law Firm located in downtown Concord is seeking a highly motivated attorney. Owner would like to develop a relationship with an attorney who would assume the practice upon his retirement. Potential candidates should have 5-10 years' experience and some portables. If interested, please send your resume, cover letter to: **Officemanager2223@gmail.com**. Replies held in strict confidence.

LITIGATION ASSOCIATE – Laboe & Tasker, PLLC, a small boutique elder law, estate planning, and business planning firm with a state-wide practice located in Concord, NH, seeks an ambitious, extroverted litigator, willing to expand his/her skills into new practice areas. The firm litigates matters directly related to our transactional expertise. The ideal candidate will have 2-6 years of experience in any area of civil litigation, and strong research, writing and communication skills. Excellent interpersonal skills required. Prior involvement with probate and trust law is desirable but not required. Contested probate matters will be the primary focus of this position but will not be the exclusive scope of litigation matters undertaken. Our firm environment is collaborative, collegial, and supportive. Competitive compensation and benefits offered. Please send cover letter and resume to Attorney Kerri S. Tasker at **ktasker@laboelaw.com**.

ASSOCIATE: Robinson, Boesch, Sennott & Daly P.A., of Portsmouth, seeks a full time Associate to join our Estate Planning, Elder Law, Probate and Trust Administration practice. The candidate must be licensed in New Hampshire and have 3 or more years experience in estate planning. Preference for Maine license as well. Unique opportunity to join a small established boutique law firm with partnership potential. Interested applicants please forward resumes to Karen Lindbom, Office Manager at **klindbom@nhprobatelaw.com**.

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

PARALEGAL – Fast-paced law office seeks a full-time rock star paralegal with 5+ years of real estate, estate planning and probate experience. The ability to draft Purchase and Sale Agreements, estate planning and business formation documents is expected. Professionalism, attention to detail, and the ability to work independently are key attributes. If this is you, we would like to meet you. We offer a very competitive compensation package including health insurance and 401(k) with employer match. For confidential consideration, please send your resume and cover letter to **nick@frascalaw.com**.

ESTATE & TRUST ADMINISTRATION PARALEGAL – Robinson, Boesch, Sennott & Daly, PA is a small firm of 6 attorneys and 7 team members located at the Pease Tradeport in Portsmouth, New Hampshire. We are excited to announce this newly created position and look forward to adding a new member to our existing team. Our ideal candidate is an experienced Probate and Trust Administration Paralegal who is able to successfully work independently and has a strong commitment to providing excellent client service. A good sense of humor is not required but we do find it is helpful! As a firm, we understand and value the importance of family and life outside of work. We are proud to provide our employees with flexibility and a professional yet "office casual" atmosphere. We currently have several paralegals who work both in the office and remotely, and we anticipate also extending that option to the right candidate. Finally, it should be noted that we currently have anywhere from 1-3 very spoiled office dogs who may be found napping in their respective offices on any given day, so this position may not be a great match for someone with allergies! Interested applicants please forward resumes to Karen Lindbom, Office Manager at **klindbom@nhprobatelaw.com**.

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Litigation Attorney

Based in Nashua's historic Millyard district, Cullen Collimore Shirley PLLC is seeking an attorney with 3 to 5 years of experience to join their civil trial practice as an associate. Civil litigation experience, strong writing skills, and NH bar admission required. Competitive salary and comprehensive benefits package offered. Send resume, cover letter, salary/other requirements and references to: Lynn Hughes, Cullen Collimore Shirley PLLC, 37 Technology Way, Suite 3W2, Nashua, NH 03060. Replies held in strictest confidence.



WELTS, WHITE & FONTAINE, P.C.
ATTORNEYS AT LAW

Family Law Attorney

Well established, mid-sized, Nashua multi-practice law firm is seeking a family law attorney to work with our family law team in its growing practice. A minimum of two years of experience in family law is preferred. Candidates should be admitted to practice in New Hampshire or be admitted in a reciprocal state. Excellent benefits package and competitive salary.

Email resume and salary requirements to Veronica Hamilton at **vhamilton@lawyersnh.com**.

STATE OF NEW HAMPSHIRE NH OFFICE OF THE CHILD ADVOCATE Associate Child Advocate, Job ID#27763

Acts as primary legal counsel to the Office, acts as agent of the Director, receives/investigates complaints regarding administrative actions of executive agencies, manages daily operations of the office, and serves as acting Child Advocate performing duties pursuant to RSA 21-V.

Qualifications: Juris Doctorate from an American Bar Association recognized law school, must be an active member in Good Standing of the New Hampshire Bar Association, five years' experience in active practice of law, valid driver's license and/or access to transportation for statewide travel.

Salary \$64,681.50 – \$76,908.00 plus generous benefits

For further information, contact Cassandra Sanchez, The Child Advocate
Cassandra.L.Sanchez@ChildAdvocate.nh.gov

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Sr Staff Attorney

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DrummondWoodsum

ATTORNEYS AT LAW

Labor and Employment Attorney

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

This position is open to qualified applicants who have excellent academic credentials, research, writing, and analytical skills, and who are highly motivated to learn. We are seeking a candidate who has strong interpersonal skills, and who is able to balance client advocacy with compassion and understanding. Applicants with 1-3 years of prior litigation or employment/labor law experience are preferred, but applicants without prior experience are encouraged to apply, including recent law school graduates. We are invested in the success of all our associates and will provide training, mentoring, and resources to support your development as a labor and employment practitioner. New Hampshire bar admission is not required, but strongly preferred.

At Drummond Woodsum, we have created a firm culture that emphasizes devotion to serving our clients, collaboration and collegiality, and a respect for work-life balance. In addition to the firm being a great place to work, we are also fortunate to be based in northern New England, one of the most beautiful areas of the country.

Drummond Woodsum offers a competitive compensation and benefits package, including competitive medical and dental insurance, a generous profit-sharing retirement contribution, paid parental leave, contributions to your HSA, STD/LTD, and professional development. We are committed to diversity and inclusion in our hiring practice and encourage qualified candidates of all backgrounds to apply for the position. To apply, please send your cover letter and resume to **hr@dwmlaw.com**. All inquiries are held in the strictest confidence. No phone calls, please.

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!

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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.

Probate & Trust Paralegal

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

The ideal candidate will have an understanding of fundamental probate and trust concepts, experience administering estates, and be proficient in preparing fiduciary inventories, accountings, court pleadings, and correspondence. Any candidate having some proficiency with accounting practices in any field will be given close consideration. 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. Proficiency with QuickBooks is desirable but not required.

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

ASSISTANT COUNTY ATTORNEY

TITLE: ASSISTANT COUNTY ATTORNEY

LOCATION: Strafford County Attorney's Office at the Justice & Administration Building, 259 County Farm Road, Dover, NH 03820

QUALIFICATIONS: Juris Doctor from an accredited law school. Must be a member in good standing of the New Hampshire Bar Association.

JOB DESCRIPTION:

- Under the general direction of the County Attorney, the Assistant County Attorney will draft indictments, complaints, and pleadings.
- Researching pertinent case law, decisions, and legislations.
- Present investigations and cases to the Grand Jury; conduct Bench trials, Jury trials and all required hearings related to the assigned caseload in the Superior and/or District Courts.

- Must be able to handle multiple tasks, meet deadlines, be organized, have communication skills, and able to negotiate. Must be an effective team member.
- Have a working knowledge of principles and rules of criminal law and the New Hampshire criminal justice system.
- Mandatory criminal record check is required for all new employees.
- Salary will commensurate with litigation experience.

Benefits:

Medical, Dental, Life Insurance, Holiday & Sick time, Longevity Pay, Short Term Disability, NH Retirement System

Please send over cover letter, resume, and references to County Attorney Tom Velardi at tvelardi@co.strafford.nh.us

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TRUSTS & ESTATES ATTORNEY

Admission to the NH Bar and 2+ years experience required

CORPORATE ATTORNEY

Admission to the NH Bar and 2+ years experience required
Experience in transactional and M&A work preferred but not required

LITIGATION ASSOCIATE

Admission to the NH Bar and 4+ years relevant experience

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Orr&Reno

Corporate Attorney

Orr & Reno, PA seeks a mid-level transactional attorney to join its Concord, New Hampshire-based corporate practice team representing and advising closely-held businesses and entrepreneurs, both within New England and beyond. Responsibilities will include a wide range of matters such as entity formation and structuring; mergers, acquisitions, and divestitures; debt and equity financings; corporate governance; and commercial contract drafting and negotiation.

Candidates should have a strong academic background, be admitted to the New Hampshire Bar with a minimum of three years' prior experience in a firm or in-house setting, have a sound understanding of fundamental corporate law concepts and transactional practice, and a demonstrated desire to live, work, and participate in the greater New Hampshire community. This position offers an excellent opportunity for mentoring and practice development for younger attorneys with a desire to continue to learn as a relied upon and contributing member of a close-knit team.

Since 1946, Orr & Reno, PA has distinguished itself by providing clients with high-quality legal services, while offering market-competitive compensation and comprehensive benefits, a collegial and team-based approach to practice, excellent employee and attorney retention, and placing unique emphasis on fostering a fun, friendly, and positive work culture. Orr & Reno, PA is an equal opportunity employer. Remote, hybrid, and flexible working arrangements may be considered.

To apply for this position, please send a cover letter and resume to:

Orr & Reno, P.A.

Attn: HR Coordinator

PO Box 3550

Concord, NH 03302-3550

Fax: (603) 223-9060

Via email (please send in Word format only)

resumes@orr-reno.com

EOE

No phone calls or agencies, please.

CITY OF MANCHESTER
Attorney I (Prosecutor) - City Solicitor



Department: City Solicitor

Job Status: Full-Time

Shift: 8:00 AM - 5:00 PM

Hour Per Week: 40

Rate of Pay: \$69,367.80 to \$98,901.91 –
plus comprehensive benefits package

Job Description: Grade 23 - Works within the Office of the City Solicitor and with the Manchester Police Department prosecuting juvenile matters within the 9th Circuit Court - Manchester.

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

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

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

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

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We will also consider newly admitted attorneys.

Only attorneys, who wish to live in beautiful northern New Hampshire, need apply.

We are located in Plymouth NH.

Contact Ora at oralaw@gmail.com.

ASSISTANT COÖS COUNTY ATTORNEY

The Office of the Coös County Attorney currently has an opening for a full-time Assistant County Attorney. The Assistant County Attorney is primarily responsible for representing the State in the prosecution of felony crimes in Coös Superior Court. The position may also involve administering a federal grant, discussing legal aspects of cases with staff and police, and counseling law enforcement on legal matters. Trial or jury trial experience is preferred, and experience prosecuting criminal cases and working with victims of crime is a plus. Other responsibilities may include being available to take calls and to provide advice and guidance to local law enforcement during non-office hours.

Minimum Qualifications: Juris Doctor degree and be a member in good standing of the New Hampshire Bar Association.

Application Process: Please send a resume and cover letter to the address below.

John G. McCormick, Coös County Attorney
55 School Street, Suite 141
Lancaster, NH 03584
603-788-5560 (fax)
sue.corrow@cooscountynh.us

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HAMEL MARCIN DUNN REARDON & SHEA, PC
ATTORNEYS AT LAW

Healthcare Litigation Attorney

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ATTORNEY – Upton & Hatfield seeks an attorney with 5+ years' experience for its Concord location to concentrate in the areas of estate planning, probate, trust, business, and real estate law. The right candidate would have an excellent work ethic, strong communication and interpersonal skills, and a willingness to learn. Community involvement is important. Competitive benefit and compensation package. Please submit resume with writing sample to: Lauren Irwin, Upton & Hatfield, LLP, P.O. Box 1090, Concord, NH 03302-1090 or lirwin@uptonhatfield.com. All inquiries will be held in strict confidence.

BUSINESS ATTORNEY – Upton & Hatfield, LLP seeks a business and real estate associate for our Concord office. Candidates should have a strong academic background, be self-motivated with strong verbal and writing skills, and be interested in participating in the Concord business community. Competitive benefit and compensation package. Please forward resume with writing samples to Lauren Simon Irwin, Esquire, Upton & Hatfield, LLP, PO Box 1090, Concord, NH 03302-1090, or via email to lirwin@uptonhatfield.com. All inquiries will be held in strict confidence.

PROBATE PARALEGAL - Upton & Hatfield, LLP, seeks a full-time paralegal to assist with trust/probate administration. Applicant should have a proven work history including experience with probate, account administration, estates, trusts, including statement reconciliations, financial reporting, preparation of tax information for outside tax preparer. Excellent organizational, time management, communication, and writing skills are essential. The successful candidate will be professional, accountable, and able to prioritize work and deadlines. Bookkeeping experience a plus. A minimum of 5 – 7 years of experience is preferred. This is a full-time position. Competitive benefit and compensation package. Please forward resume to Pamela Woodworth, Administrator, Upton & Hatfield, PO Box 1090, Concord, NH 03302-1090 or via email to hr@uptonhatfield.com.



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McLane Middleton is seeking an Environmental and Energy Attorney to join our team of skilled professionals. The ideal candidate should possess 1-3 years' experience with an Environmental and Energy focus. The work may include environmental permitting and compliance, environmental litigation and energy project development and siting. NH bar required, admission in MA a plus.

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McLane Middleton is seeking an entry-level real estate attorney with 1-3 years of relevant experience for our Manchester, NH office. General real estate knowledge and a strong interest in real estate law is preferred. This successful candidate must possess excellent academic credentials, communication, and writing skills.

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Jessica Boisvert
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jessica.boisvert@mclane.com



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.

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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.

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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.

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The Division for Children, Youth and Families is seeking Child Protection Attorneys Statewide

The DCYF Legal Team is a dynamic group of experienced child protection attorneys and their legal assistants, stationed around the state, who seek judicial protection for children subjected to abuse or neglect. The focus of our work is on the immediate protection of the child and strengthening, whenever possible, families to eliminate abuse and neglect in the home. The DCYF Legal Team works in partnership with the New Hampshire Attorney General’s office. We offer paid training, competitive salaries up to \$84,844.50, and a comprehensive benefits package. **Benefits Summary (nh.gov)**

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- Litigating multiple cases on behalf of DCYF to protect abused and neglected children and ensure children are provided safe, permanent homes.
- Conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.
- Advising DCYF on its duties and responsibilities.

Requirements: J.D. from an accredited 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. **Recent graduates are encouraged to apply – an exception may be requested for years of experience.**

How to APPLY: Please go to the following website to submit your application electronically through NH First: **Candidate Space (nh.gov)**. Enter Attorney in the Job Title field and apply to the location of your choice. Positions will remain open until filled.

For questions about this position, please contact Attorney Deanna Baker, Legal Director at (603) 271-1220, deanna.baker@dhhs.nh.gov.

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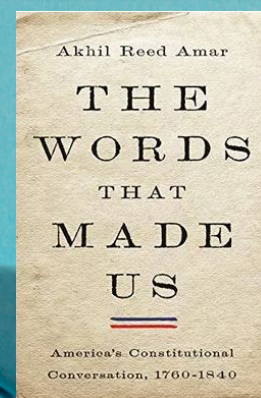
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MEET OUR SPEAKERS & CLE PRESENTERS

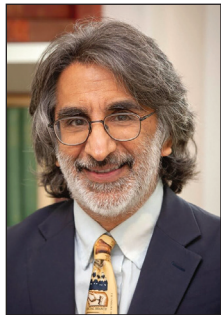
Akhil Reed Amar

Sterling Professor of Law & Political Science at Yale University

Akhil Reed Amar will be presenting a CLE on “The Importance of the Rule of Law and Present Day Challenges.” The commitment to the rule of law means that every citizen is ruled by the same laws, applied through a fair and equal judicial process. How are attorneys and courts addressing and defending challenges to this law?

Professor Amar earned his undergraduate degree from Yale University. He then attended Yale Law School and graduated with his JD. Professor Amar went on to clerk for Judge Stephen Breyer of the US Court of Appeals for the First Circuit, who later became a US Supreme Court Justice. Justices across the spectrum on the Supreme Court have cited his work in more than 45 cases. Professor Amar ranks among America’s five most-cited mid-career legal scholars.

A distinguished contemporary American legal thinker, Professor Amar holds the position of Sterling Professor of Law and Political Science at Yale University. He is also an adjunct professor of law at Columbia University. Professor Amar is the author of numerous publications and books, most recently, *The Words That Made Us: America’s Constitutional Conversation, 1760-1840*.



Dana A. Remus

Covington & Burling

Dana A. Remus will be participating in a panel discussion following up on Professor Amar’s talk on the importance of the rule of law. Moderated by John Greabe, the discussion focuses in particular on the extent to which the unwritten constitution and unwritten norms are “law.”

Attorney Remus earned her undergraduate degree from Harvard University and her JD from Yale University. She went on to clerk in the US Court of Appeals for the Third Circuit. She also clerked for Justice Samuel Alito of the US Supreme Court.

Originally from New Hampshire, Attorney Remus served as White House Counsel for President Joe Biden. Earlier in her career, Remus joined the Obama administration, serving as Deputy Assistant to the President and Deputy Counsel for Ethics. After President Obama left office, she joined the Obama Foundation as general counsel, and served as counsel to Michelle Obama. She left the Foundation in 2019 to become general counsel for the Joe Biden 2020 presidential campaign.



David L. Hudson

Assistant Professor of Law at Belmont University Law School

David L. Hudson will be leading two CLEs. In the first, he will discuss the last term of the United States Supreme Court and the important cases of that term. In the second, he will address recent issues still pending before SCOTUS and what the first amendment means to the freedom of speech.

Professor Hudson earned his undergraduate degree from Duke University and his law degree from Vanderbilt University School of Law. He served as an attorney and scholar at the First Amendment Center in Nashville, TN for 17 years. Professor Hudson has taught classes at both Vanderbilt Law School and Nashville School of Law. He serves as a Justice Robert H. Jackson Legal Fellow for the Foundation for Individual Rights in Education and a First Amendment Fellow for the Freedom Forum Institute.

Professor Hudson holds the position of Assistant Professor of Law at Belmont University Law School. He teaches Legal Information and Communication and is the author, co-author, or co-editor of more than 40 books. For much of his career, he has worked on First Amendment issues. His published works have been cited and relied upon by other scholars and courts.



About the NHBA President’s Awards Recipients

By Jonathan Eck

The New Hampshire Bar Association presents several different awards each year at the annual Midyear Meeting. One of the main awards given is the Vickie M. Bunnell Award for Community Service, which is presented to “an attorney from a smaller firm (four or fewer attorneys) who has exhibited dedication and devotion to community by giving of their time and talents, legal or otherwise.” This award honors the memory of Vickie M. Bunnell, a country lawyer, by celebrating the achievements of a lawyer whose practice and personality capture the community spirit of its namesake. One of the other major awards presented at the Midyear Meeting is the Distinguished Service to the Public Award, which is presented to an attorney “who best exhibits service to the public on behalf of the administration of justice.”



This year, Concord attorney Christine (“Chrissy”) Hanisco, from the Stein Law Firm PLLC, is the recipient of the Vickie M. Bunnell Award for Community Service. After many years working as a public defender, Chrissy transitioned to private practice where she developed an assisted reproduction practice, in addition to her adoption practice, at a time when that area of the law was in its infancy in New Hampshire. Chrissy assists with adoption, traditional and gestational surrogacy, and egg, sperm, or embryo donation. She helps individuals who are looking to build families and who hope to provide a loving and supportive home to a child through adoption and/or assisted reproduction technology. In addition to her representation of clients, in 2019 Chrissy co-drafted legislation and successfully advocated for the passage of legislation that requires small and large group insurance plans to provide coverage for diagnosis and treatment of infertility and to provide fertility preservation benefits for those undergoing medical treatment for diseases and conditions when the treatment may impact their fertility. In 2020, Chrissy helped draft and led advocacy efforts through the New Hampshire Legislature, including with recent legislation that modernized certain aspects of New Hampshire’s adoption statute. Those amendments included

codifying protections for second parent adoption, which offers protections for LGBTQ+ couples and helps them secure parental rights through confirmatory adoption.

Chrissy has also been widely recognized as someone who is willing to lend a hand of support to someone in a time of need, whether it be assisting another lawyer with a legal question, covering a case for a colleague, bringing dinner to a friend, or offering kind words of encouragement. Chrissy is known for her caring and compassionate nature. I have had the pleasure of serving on the Board of Governors with Chrissy for several years now, and I have observed her to be a thoughtful, articulate, well-prepared, and committed board member. She has also provided board service through Resolve New England, the Capital Region Mothers of Multiples, and the Grievance Committee for the Society for Ethics in Egg Donation and Surrogacy.

It is also my honor to announce that Sarah Blodgett, current Circuit Court Administrator, and former Executive Director of the New Hampshire Judicial Council, is this year’s recipient of the Distinguished Service to the Public Award. One nominator

RECIPIENTS continued on page VII

PRESIDENT’S AWARDS

Vickie M. Bunnell Award for Community Service

Christine M. Hanisco

The Stein Law Firm PLLC
chanisco@steinlawpllc.com

This award was instituted in 1998 to honor the memory of Vickie M. Bunnell (“A Country Lawyer”) and to applaud the community spirit that is a hallmark of our profession. It is presented to an attorney from a small firm (four or fewer attorneys) who has exhibited dedication and devotion to community by giving of their time and talents, legal or otherwise.

In the early part of her legal career, Chrissy Hanisco spent more than a decade at the New Hampshire Public Defender. She left there to develop an assisted reproductive technology practice, an area of New Hampshire law that was in its infancy at that time. In addition to representing individuals looking to expand their families, Chrissy has led numerous advocacy efforts in the New Hampshire Legislature. In 2020, she drafted and advocated for the passage of legislation that modernized New Hampshire’s adoption statute by codifying protections for second parent adoption, a provision that offers protections for LGBTQ+ couples to secure parental rights through confirmatory adoption.

In addition to a robust, small-firm practice, Chrissy serves on the NHBA Board of Governors, as Vice President of Resolve New England’s Board of Directors, and was former Vice President of the Capital Region Mothers of Multiples. Additionally, she is the Chair of the Grievance Committee for the Society of Ethics in Surrogacy and Egg Donation.



Distinguished Service to the Public Award

Sarah T. Blodgett

Administrative Office of the Courts
sblodgett@courts.state.nh.us

This award is presented to the nominee who best exhibits service to the public on behalf of the administration of justice.

Sarah T. Blodgett recently joined the New Hampshire Judicial Branch as a Circuit Administrator. She began her legal career at the New Hampshire Public Defender (NHPD) in 2005. She then worked as an Assistant Attorney General handling administrative prosecutions for licensing boards, including the Boards of Medicine and Mental Health Practice. Sarah continued to work with the licensing boards and was appointed Acting Executive Director of the Office of Professional Licensure and Certification by Governor Hassan in 2016.

Later that year, she became Director of the Judicial Council. During that time, she advocated for increased budgets for NHPD, court-appointed counsel, CASA, and New Hampshire Legal Assistance. She also worked tirelessly in her role at the Judicial Council to help secure legal counsel for indigent criminal defendants and has lobbied for more funding and organized trainings for attorneys she has recruited to take on appointed cases.

Sarah has also taught Legal Writing at University of New Hampshire School of Law and serves on the Board of Directors of the Bar Foundation and is a Bar Foundation Fellow.



COMMITTEE AWARD

Award for Outstanding Service in Public Sector/ Public Interest Law

Melissa L. Davis

UNH Franklin Pierce School of Law
melissa.davis@law.unh.edu

The Public Sector/Public Interest Law Award is presented to a member of the NH Bar or an organization employing eligible members, with at least five years of service in government, military, law enforcement, or public interest law services (including prosecution, public defense, legal advocacy in low-income communities or for individuals with disabilities at a nonprofit organization), or at another nonprofit organization.

Melissa L. Davis joined UNH Law in August of 2020 to direct the Criminal Practice Clinic. As Director, she supervises students as they represent clients in criminal cases in New Hampshire’s Circuit and Superior Courts.

Melissa joined the New Hampshire Public Defender (NHPD) in 2005 as a staff attorney. She practiced in Strafford, Grafton, and Coos Counties, representing indigent clients accused of a range of criminal offenses. In 2017, she became the lead trainer for the New Lawyer Trial Skills Course, a multi-day training in theory-driven trial preparation for new lawyers at the NHPD. In 2018, she became Managing Attorney for the Littleton office of NHPD. Professor Davis is a board member of the New Hampshire Association of Criminal Defense Lawyers.



2023 PRO BONO AWARDS – PRESENTED BY 603 LEGAL AID

L. Jonathan Ross Award

This award was named for Jon Ross in 1988 to recognize his work on the state and national level to mobilize bar leaders to support civil legal services for the poor along with his unsurpassed leadership and dedication to *pro bono* legal services.

Jim Shepard

Attorney Jim Shepard joined the *pro bono* volunteer panel in 2010. He has assisted close to 60 different individuals, donating over 285 hours of his time to represent and assist clients. He has also been on the ground floor of projects that Pro Bono has undertaken to expand services throughout New Hampshire. Attorney Shepard was at the ready when Pro Bono initiated a project to serve victims of domestic violence in the underserved North Country and he quickly said yes to providing advice through a virtual clinic in conjunction with the Strafford County Family Justice Center.



Attorney Shepard serves on the NHBA's Board of Governors and served as a member of the Board of Directors for the Pro Bono Referral Program, prior to the formation of 603 Legal Aid in 2021. He also serves on the Domestic Violence Advisory Counsel.

Attorney Shepard's commitment to *pro bono* is even more impressive when considered in the context that it is done through his solo private practice, which is secondary to his full-time job as a prosecutor for the Department of Safety.

Distinguished Service to Pro Bono

This award is presented to a person or organization who has provided consistent support to the Pro Bono Program over many years. Recipients of this award typically volunteer their time and expertise not only by providing direct client representation, but also mentoring newer volunteer lawyers, providing support to Pro Bono staff on difficult legal issues, and being advocates for New Hampshire's vulnerable residents in the legislature and courts. This Award aims to recognize the unsung heroes of the Pro Bono Program.

Joanne Stella

Attorney Joanne Stella has shown commitment to advocating for both victims of crime since her time in law school researching Title VII & IX sexual harassment law and for indigent litigants, beginning her career as a public defender.

In more than 20 years of service, Attorney Stella has balanced a busy practice with providing *pro bono* representation in over 70 cases. Though she is a pillar of the DOVE (Domestic Violence Emergency) Project in seacoast communities, Attorney Stella also has provided indefatigable advocacy for low-income New Hampshire litigants in family law cases, landlord-tenant cases, and criminal record annulments. Her compassionate approach and expert representation are critical for positive outcomes for her clients. Attorney Stella's unstinting generosity with her time, extraordinary commitment to *pro bono* work, wide range of expertise, and willingness to take on complex cases makes her a champion among champions.



Eric MacLeish

Attorney Eric MacLeish joined the 603 Legal Aid Pro Bono Panel in 2020 and has accepted over 30 DOVE cases in some of the most rural and under-served areas of New Hampshire, dedicating over 250 hours of his time to the representation and support of survivors of stalking, domestic violence, and sexual assault. Attorney MacLeish began doing *pro bono* work with 603 Legal Aid after more than 40 years in private practice. He has achieved national recognition for his work representing victims of sexual assault at private schools and from within the Catholic Church.

Attorney MacLeish's work with the DOVE Project has him in regular contact with crisis center advocates who partner with DOVE. They uniformly describe him as a "tireless champion" who "comes through" when no other attorney is available; whose "compassion is astounding;" who is candid and accessible; who "goes above and beyond to connect" with his clients; and whose



clients feel like they have his full attention and fighting spirit for difficult but desperately needed orders. He is also a generous and knowledgeable mentor for new DOVE volunteers, providing them with the support and confidence they need to assist their clients effectively and compassionately. Attorney MacLeish is a stalwart and consistent supporter of *pro bono* and is a true exemplar of why it is so important to provide *pro bono* legal services to low-income individuals.

Rising Star Award

Rising Stars make valuable contributions during their first five years as attorneys and help ensure that the Pro Bono Program fulfills its commitment to equal justice for the low-income and disadvantaged throughout the Granite State.

Kayla Turner

Attorney Kayla Turner, a 2018 Daniel Webster Scholar, has demonstrated a commitment to justice in New Hampshire since serving as an assistant county attorney.

Attorney Turner, now of Morrison & Mahoney, brings those skills to bear for the DOVE Project, fearlessly jumping into challenging cases on a tight timeframe. Representing survivors of domestic violence and stalking at their final protective order hearings, Attorney Turner practices with efficacy and empathy. She consistently exceeds her clients' expectations and never hesitates to help her local crisis center meet the high demand for services at Final Protective Order hearings. Attorney Turner's advocacy regularly results in positive outcomes for clients beyond just the granting of final protective orders: she often obtains additional orders which provide for housing or financial support for survivors, which in turn gives them the safety net and confidence they need to extricate themselves fully from abusive relationships. Attorney Turner is a vocal supporter of Pro Bono and is a leader among her peers in volunteering her time and expertise. Without newer volunteers such as Attorney Turner, it would be infinitely harder to continue to meet the vital needs for New Hampshire survivors.



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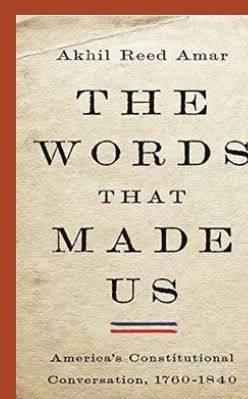
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SCHEDULE-AT-A-GLANCE

(subject to change; we invite you to visit our exhibitors during lunch and designated breaks throughout the day)

Gender Equality Breakfast

Tanna Clews; CEO & President
New Hampshire Women's Foundation

Registration and Check- In / Continental Breakfast / Exhibitor Showcase

President's Welcome / In Memoriam Video

Jonathan Eck, Esq.; Orr and Reno

CLE: The Importance of the Rule of Law and Present-Day Challenges

Akhil Reed Amar, Esq.; Sterling Professor of Law at Yale Law School

CLE: Rule of Law Panel Discussion

Moderated by John Greabe, Esq.; Director, Warren B. Rudman Center for Justice, Leadership & Public Service. Panelists include Dana Remus, Esq., Former White House Counsel to President Biden and Partner, Covington & Burling

Video: Attorney Wellness and Mental Health

NHSC Chief Justice Gordon MacDonald

Business Meeting / Honors and Awards Luncheon / Book Signing

CLE: The Most Recent Term of SCOTUS

David Hudson, Esq.; Professor at Belmont University College of Law

CLE: First Amendment Principles and Attorneys Speaking to the Press

David Hudson, Esq.

CLE: CaseLines Presentation

CLE: Attorneys and the Press – Limits on Speech and Ethical Concerns

NH Attorney Panel Discussion
Seth Aframe (moderator), with Jane Young, Richard Guerriero, and Gregory Sullivan

NHBA New Lawyers Committee Social



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On June 1, 2021, the NHBA Pro Bono Referral Program and the Legal Advice and Referral Center (LARC) merged to become 603 Legal Aid, a civil legal aid provider offering legal representation, advocacy, and education. In partnership with volunteer attorneys and community organizations, 603 Legal Aid works to make justice a reality for and with people who experience economic hardship that threatens their basic human needs. With this merger, 603 Legal Aid seeks to improve the already robust efforts to expand access to justice for New Hampshire's most vulnerable residents. One effort that has been implemented is the creation of a statewide in-take process for people seeking civil legal aid. This consolidated intake process serves the purpose of eliminating the confusion on the part of our clients regarding which civil legal service organization to call to help them with their concern.

For more information, please visit our website at www.603legalaids.org.



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The NH Superior Court will showcase CaseLines in the Exhibitor Hall. Attorneys are cordially invited to visit and pick up tips, FAQs, and training information. Stop by for quick downloads of useful information, or stay a while to talk with CaseLines experts. Digital Evidence is here, and this is your opportunity to learn more and find out how a digital evidence management platform can benefit your practice. Join Superior Court Chief Justice Tina Nadeau for a mock hearing showcasing CaseLines capabilities and features from 3:00 pm to 4:00 pm in the Armory.

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Learn More About the NHBA by Visiting Our Exhibitor Booths at MYM 2023

By Tom Jarvis
NHBA Staff

NHBA's annual Midyear Meeting, scheduled for Friday, February 17, 2023, and will be in person. In addition to numerous informative CLE speakers, multiple award ceremonies, and a post-event social at Strange Brew (sponsored by the New Lawyers Committee), there will be multiple exhibitor booths featuring products and services to help you better manage your practice. A number of these booths will be devoted to NHBA services, including the following:

Attorney License Renewal

The NH Supreme Court requires all members of the Bar to renew their license each year, completing three key compliance steps through the NHBA Member Portal. Bar staff will be on hand to answer your questions and provide additional information about your obligations.

Law Related Education (LRE)

The NHBA is committed to improving civics instruction in schools through its LRE programming. Students need civics and social studies instruction to better prepare them for participation as citizens. Programs include We the People: The Citizen and the Constitution, We the People: Project Citizen, A Lawyer & Judge in Every School, and Beyond High School: A Guide to Your Rights and Responsibilities. These programs would not be possible without the assistance of volunteer attorneys. Stop by the LRE booth to find out how you can help.

NHBA Leadership Academy

The NHBA Leadership Academy is a nine-month leadership training program designed to foster the professional growth and enhance the leadership skills of a diverse group of attorneys. This program is designed with curriculum most meaningful for those in practice between three and 10 years. The next class begins in October 2023, but it's not too early to start preparing now. A brochure and other information is available at the Leadership Academy Midyear Meeting exhibitor booth.

Member Records

This NHBA department maintains our member records database, processes attorney information and membership status changes, issues member ID cards, and can issue letters of good standing on behalf of NHBA members. Bar staff will be at this exhibitor booth for any questions or status changes you may have.

Member Services

Your Bar Association works hard for you! We offer many services to NHBA members at all stages of their legal careers,

such as the Mentor Advice Program (MAP) and the Lawyer Referral Service (LRS). MAP pairs new attorneys with experienced practitioners to provide guidance regarding ethical, practical, and professional issues. LRS provides pre-screened referrals for prospective clients in all areas of practice. LRS connects more than 3,000 prospective clients with Panelists annually and generates more than \$2 million in fees for Panelists per year. Many other services are offered for free or at a discount. Find out how your bar dues are being used when you visit our MYM exhibitor booth.

New Lawyers Committee

Did you know that the New Hampshire Bar Association has several standing committees that are made up of members appointed by the Bar President? These are a great way to network and share your experience with your peers. The NHBA New Lawyers Committee makes it easy for newly admitted members of the NH Bar to acclimate into Granite State legal practice. This Committee also plans meetings, social events, and educational materials.

Professional Development

The ever-growing complexity of the law requires that NH attorneys maintain a commitment to continuing legal education and professional development. The minimum amount of CLE time each year is 720 minutes, set by the NH Supreme Court under Rule 53. The NHBA Professional Development department helps members meet these requirements by providing a wide online catalog of locally produced and national programs. Drop by their exhibitor booth to learn more.

Publications and Advertising

The NHBA publishes information on a regular basis through the monthly *Bar News*, the weekly *E-Bulletin*, specialty publications, social media, and the nhbar.org website. Are you interested in writing for the *Bar News*? Do you want to promote yourself or your firm to our members? Just curious about everything we do? Then stop by our exhibitor booth.

Sections and Forums

We've developed several Sections to allow attorneys interested in a particular practice area to meet, communicate, and collaborate with each other. Join one or more to build your knowledge and skillset in a welcoming environment. More than 2,000 NHBA members currently belong to one or more of the Bar's 19 sections, which cover a wide array of practice areas. Make some time to stop by our MYM exhibitor booth to learn more and meet the staff who keep our sections and forums running smoothly.

Judge Susan Carbon to receive the Philip S. Hollman Award at Gender Equality Committee's MYM Breakfast

By Tom Jarvis
NHBA Staff

Each year (excepting the COVID-19 years), the NHBA Gender Equality Committee (GEC) hosts a breakfast on the morning of the NHBA's Midyear Meeting (MYM). This year's event takes place at the DoubleTree by Hilton in Manchester



on Friday, February 17, 2023. During the breakfast, the GEC presents the Philip S. Hollman Award for Gender Equality to someone who promotes gender equality through leadership and educating others, as well as taking initiative in matters of gender equality.

The 2023 Hollman Award recipient will be the Honorable Susan B. Carbon for her copious efforts to advance gender equality in New Hampshire. Judge Carbon chaired a task force that was created in 1987 by the NHBA to perform a gender bias study on the status of women in the legal profession. This task force and its findings planted the seeds for what

would eventually become the GEC in 1994. Since then, Judge Carbon has been a champion for gender equality in the state, a staunch advocate for increasing the number of women in leadership, and a mentor for numerous women in the legal profession.

In addition to her duties on the bench, Judge Carbon is also the director of the US Department of Justice's Office on Violence Against Women, nominated to the position by President Barack Obama in 2009. She is also a former NHBA president and was named judge of the year in 2020 by the National Court Appointed Special Advocate/Guardian Ad Litem Association for Children.

The GEC breakfast will also host a speaker, Tanna Clews, CEO and President of the NH Women's Foundation. She will speak about pay inequality, parental leave, negotiation for oneself, and more. The NH Women's Foundation invests in opportunity and equality for women and girls in the Granite State through research, advocacy, education, grantmaking, and philanthropy.

This popular event, made even more so by the absolutely apropos and deserving recipient of the Hollman Award, has limited seating. So, register now for this must-attend event by navigating to the Midyear Meeting registration page at nhbar.org.

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Recipients from page II

recognized Sarah as a "tireless advocate for the programs funded by the Judicial Council, including the Public Defender, NHLA, and CASA." Sarah was lauded for having "extensive subject matter knowledge, relentless diplomacy, and dogged persistence through challenging budget times" in her role as Executive Director of the Judicial Council. In a nomination submitted for Sarah, she was referred to as a "model public servant" and an honest straightshooter who worked hard to help people who are entitled to legal counsel get high-quality representation. In addition to working to secure funding for the indigent

defense system, Sarah personally recruited attorneys and helped place cases with counsel. One of Sarah's nominators remarked, "As a former public defender herself, Sarah felt this mission to her core." We thank Sarah for her commitment to the administration of justice and her exemplary public service. It will be a privilege to recognize her with the Distinguished Service to the Public Award at the Midyear Meeting.

Please congratulate Chrissy and Sarah on their well-deserved recognition. Hopefully many of you can join us as we celebrate their achievements at the luncheon during the Midyear Meeting on February 17, 2023 in Manchester.



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