

## Midyear Meeting 2023: The First In-Person Winter Meeting in Three Years

By Tom Jarvis

More than 400 lawyers and judges attended the New Hampshire Bar Association's Midyear Meeting (MYM) on Friday, February 17, at the DoubleTree Hilton hotel in Manchester to partake in an enormous event chock-full of continuing legal education sessions, award presentations, and networking.

This was the first in-person MYM since the COVID-19 pandemic paused live events, bringing things full circle, as the last live NHBA event preceding the pandemic was MYM in February 2020.

This year's meeting was entitled "Evolving Issues in the Legal Landscape," a name that evolved (pun absolutely intended) from discussions leading up to the event about how things have changed in the legal environment since the last in-person MYM and since the pandemic transformed the world itself.

"As is true most years, the Midyear Meeting was an enormous success," says NHBA President Jonathan Eck. "We were very fortunate to have high caliber and engaging speakers, and to have a diverse array of presenters ranging from very prominent national figures to well-known and highly regarded New Hampshire practitioners."



New Hampshire Supreme Court Justice James Bassett introducing the first presenter of the day, Akhil Amar, to nearly 400 Midyear Meeting participants. Photo by Rob Zielinski

NHBA Gender Equality Committee (GEC) Chair Lyndsay Robinson began the day speaking to the 70 attendees at the Gender Equality Breakfast. Robinson presented the Philip S. Hollman Award to Judge Susan 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.

"It was incredibly humbling to be honored by the NHBA at the breakfast," Judge Carbon says. "It is rewarding to see that all this work that we started 35 years ago is having a profound impact on the Bar and on society. So many people have come together to move this effort forward. Judge Hollman was one of the people on the committee itself, so I had a chance to work closely with him for a

year. He's such an incredibly gracious man and receiving an award in his name just means the world to me."

In her remarks to the breakfast attendees, she spoke of the importance of diversity and making sure that all women, not just white women like herself, are recognized and have support and opportunities to advance in their careers, and that the Bar is inclusive of all women. She stated, "it's important that we in the legal profession make sure that everyone feels included and that we represent the people we serve."

The breakfast concluded with Tanna Clews, CEO and president of the NH Women's Foundation, speaking to the breakfast goers about pay inequality, parental leave, negotiating for oneself, and other gender equality efforts that are still needed in the state. She began her allocution with a joke about the difficulty of following Judge Carbon, which resulted in a hearty round of laughter.

In the main room, Jonathan Eck greeted members as the master of ceremonies, saying that MYM is one of the highlights of the Bar year for him and encouraged everyone to become more involved in the Bar Association. He observed that

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## New Hampshire's First National Judicial Outreach Week Was a Success

By Mysty Shappy

In partnership with the New Hampshire Bar Foundation, the Judicial Branch kicked off its first National Judicial Outreach Week on March 1 with a presentation by Circuit Court Judge Ellen Christo and Attorney Lyndsay Robinson to a class of law students at the University of New Hampshire in Durham.

"Speaking to over 100 students at UNH about the Rule of Law, the New Hampshire court system, and my own experience as a judge was a privilege," says Judge Christo. "The students were engaged, and their many questions were perceptive and insightful. I left feeling as if we imparted why an independent, fair, and impartial judiciary was



Judge Ellen Christo and Attorney Lyndsay Robinson at the inaugural NJOW event on March 1 at UNH in Durham. Photo by Tom Jarvis

relevant and important to them."

The presentation covered the history of the Judicial Branch and the importance of maintaining an independent judiciary. Christo and Robinson personalized the law

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### PRACTITIONER PROFILE

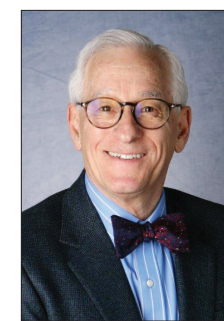
## David Wolowitz Does Not Remain Silent When He Sees Injustice in the World

By Kathie Ragsdale

David Wolowitz's determination to give voice to those who cannot speak for themselves has taken him from the wards of Concord Hospital to the slums of Liberia, Africa.

A practitioner for more than 45 years, Wolowitz spent the bulk of them at McLane Middleton, where he was co-chair of the firm's Education Law Group and became a national authority on how to protect children from abuse by peers and educators, from bullying to sexual misconduct. He has led more than 300 training sessions on that subject in 27 states and 10 countries.

Wolowitz stepped down as a director at McLane Middleton on January 1, but remains of counsel to the firm and now



works privately as an expert witness on the standard of care for safeguarding children.

"What I'm most proud of is helping schools create healthy and safe cultures, which I've done for more than 30

years," he says.

A native of Washington, DC, Wolowitz earned a bachelor's degree in Asian Studies at Washington University, and a master's degree in East Asian Studies from Harvard University, living

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## Letter From the Editor

I am excited and grateful to be the new editor for the *New Hampshire Bar News*. More than six years ago, I started at the NHBA as a part-time LRS intake staff member. At that time, I had been running my own freelance writing, editing, and proofreading business for about 11 years and needed to get out of the house (I worked from home before it was cool). Since I was a paralegal in another life, the LRS job was a great fit. Working part-time at the NHBA allowed me to continue running my literary business while being able to expand and flex the legal knowledge I had developed in my earlier career. The world was my oyster.

Fast forward to late 2020, my literary business – as with many other companies – became a casualty of the COVID-19 pandemic. Several of my clients had either gone out of business themselves or were tightening their purse strings. As such, when that dreadful year came to a close, so did my 15-year enterprise. Cue the violins.

In January 2021, I began working full-time at the Bar, with half of my time devoted to LRS and half devoted to writing articles for and proofreading the *Bar News*. Later that same year, I hung up my LRS boots and became solely dedicated to the Marketing and Communications Department as the Editorial and Marketing Coordinator.

In that role, I continued to write, edit, and proofread for the *Bar News* and took over the weekly *E-Bulletin*, the Bar Discourse podcast, and the NHBA's video



production (I'm hoping everyone will forget about me jumping around in a reindeer costume in the holiday video – oh wait, I just reminded you).

When our previous editors had resigned, I assumed many of their responsibilities for the issues we produced without an editor. The work on those issues as “unofficial editor” allowed for a very easy transition into my new role as NHBA Publications Editor. The move has also been easier due to my brilliant colleagues here at the NHBA. Their sage advice and feedback have been invaluable to me in this journey.

During my time at the Bar, I have developed a deep interest and investment in New Hampshire's legal community. I have spoken to and worked with many of you already, and I look forward to being able to do so even more in my new role.

Editing and writing have been a huge passion of mine for as long as I can remem-

ber. A massive milestone for my literary career was when I published my coming-of-age suspense novel, *Train of Consequences*, in 2010. But one thing I learned as a published author is that every writer needs an editor – no matter how great we may think we are. That's when I really began developing an enthusiasm for editing. It's a sensitive and challenging task that I thoroughly enjoy. A good editor handles a writer's work with care, ensuring each piece is as concise and informative as possible, while maintaining the author's voice, passion, connection, and integrity.

I am thrilled to use those skills and that passion to help shape the future of NHBA's flagship publication and to continue building relationships with the wonderful lawyers, judges, law students, professors, and legal staff in this great community to produce a publication that is relevant to and reflective of the NH Bar.

I am open to your suggestions on content for the *Bar News*, as well as the Bar Discourse. If you are interested in appearing on the podcast or submitting a *Bar News* opinion, practice area article, book review, news piece, or anything else, please don't hesitate to contact me at [tjarvis@nhbar.org](mailto:tjarvis@nhbar.org) or (603) 715-3212.

### Editorial Submission Tips

Here are some general tips to keep in mind when submitting longer content such as practice area articles and news articles to the *Bar News*:

- Include a concise, informative headline that captures attention.
- Submit materials in an editable document format (not PDF).
- Legal citations should be abbreviated as much as possible and incorporated into the article text. No footnotes, please.
- Include a small biographical paragraph at the end of the article that includes your name and practice area.
- Write informally and direct your writing to a general legal audience.
- Provide guidance and inform, rather than opinate (except for opinion articles).
- Try to keep the article between 800 and 1,000 words.

For a full list of NHBA Editorial Submission Guidelines, visit [nhbar.org/publications/submission-guidelines](http://nhbar.org/publications/submission-guidelines).

### The NHBA Welcomes Debra Murphy as New Human Resources Generalist

The New Hampshire Bar Association is pleased to announce Debra Murphy as the new Human Resources Generalist. In her position, Murphy will handle payroll, benefits, staff training, staff events, and all other human resource needs.



Prior to joining the NHBA, Murphy was the Human Resources Office Manager at Sodexo/Southern New Hampshire University for nearly 25 years.

Murphy possesses a Bachelor of

Arts in Social Science from Southern New Hampshire University. Earlier in her career, she was a visitation supervisor at Merrimack County Visitation Center, where she helped to provide a safe space for children to have meaningful contact with their parents.

“After almost 25 years in a university setting, I'm very excited to be working with the New Hampshire Bar Association,” Murphy says. “I'm looking forward to getting to know each of the departments and their roles within the organization. I look at my position as the bridge between NHBA employees and the organization itself, and I am here to do anything I can to ensure a nurturing, supportive, and positive workplace environment.”

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# The New Lawyers Committee is More Active Than Ever

By Tom Jarvis

The NHBA New Lawyers Committee (NLC) has been working tirelessly over the past year to support newer members of the Bar and to help foster an enduring connection with the New Hampshire legal community.

For more than 30 years, the NLC has monitored the integration of newly admitted members of the Bar into both the Association and the profession, planning meetings, providing materials, and educational and social programs to assist new admittees and make them feel welcome. According to NLC co-chair Laurie Young, the committee is not just for recent law school graduates, but also for lawyers who have practiced in another state who have just joined the New Hampshire Bar. The committee continues to support these lawyers for five years after they are admitted.

"The New Lawyers Committee is the face of the Bar to new attorneys," Laurie Young says. "We have a very collegial bar. It's something we pride ourselves on. The reason we can be so collegial is that we get to know each other and respect each other, and I think that starts with the New Lawyers Committee."

Young continues: "Our committee is very unique. People think it's made up of all new lawyers, but we actually have about half and half. It's a great opportunity for them to get involved and be leaders in the Bar right off the bat."

A large portion of the committee's efforts to support new lawyers is in the form of networking events. Over the past year, the NLC has ramped up the number of events to make up for the years of isolation during the COVID-19 pandemic.

"We are doing more events this year than we've ever done," Young says. "We couldn't do in-person events during the Covid years, so we have two or three years of attorneys who didn't have those opportunities. This made us feel an increased need to offer in-person events as much as possible. We are trying to meet the gap of isolation due to Covid by giving as many opportunities as we can for new lawyers to feel connected."

That's not to say the NLC was inactive during the pandemic. They just had to change the way they do things.

"Covid definitely changed the committee quite a bit," NLC co-chair Stephanie Tymula says. "We had to become very creative with everything going online. We tried to work around the challenges that Covid presented and still create opportunities to engage."



NLC co-chairs Stephanie Tymula (left) and Laurie Young at Practical Skills in December 2022. Courtesy photo

Some of those creative NLC events included a virtual chocolate tasting after the 2021 Midyear Meeting and a virtual tea and chocolate tasting the following year, as well as a virtual trivia night in April 2021.

One of the most unique and helpful events that the NLC has been organizing are dinners with judges. These limited-seating experiences give new lawyers an opportunity to have an informal dinner with an active judge.

"These are really unique events that speak volumes about practicing in this state and how close and collegial the Bar is," Tymula says. "I practice in multiple other states, and I've never heard of a program like that where you could sit and have dinner with a judge. It helps when you appear in front of the judge to see them more as a person. And the judges' enthusiasm to do this is remarkable, too."

So far this year, the committee has already hosted four dinners with judges and has two more planned – Judge Daniel St. Hilaire on April 26 and Judge Mark Attorri on May 24 – both at the Red Blazer in Concord. The NLC also have a dinner with Attorney General John Formella coming up on April 6.

Another upcoming occasion the NLC has planned is an open house on April 13 at the Federal Court in Concord. New lawyers will have the opportunity to tour the courthouse and enjoy casual conversation and refreshments with the federal judges.

"That stemmed from a federal judges panel I attended in the fall," Young says. "I was stopped by a couple of judges, and they said they felt like some lawyers are afraid of the federal court. They were especially cognizant of new attorneys. The judges have been vocal about how they want it to go – they want it to be an informal coffee. It's different than the dinners with judges because it will be a larger event."

The NLC enjoys collaborating with other committees and organizations, as well. So far this year, they worked with the NHBA CLE Committee to arrange a live CLE webcast on maintaining confidentiality



New lawyers at a NLC Dinner with US District Court Judge Samantha Elliott on October 12, 2022, at the Red Blazer in Concord. From left to right, Keri Welch, Katie Mosher, Catherine Denny, Samantha Puckett, Elise St. Lawrence, Simone Washington, Hon. Samantha Elliott, Allyson Moore, James Armillay, and Leah Durst. Courtesy photo

while venting to colleagues called *The Ethics of Venting* and partnered with the New Hampshire Association for Justice and Tri-State Defense Lawyers Association to host an Oktoberfest-themed networking event in October.

Upcoming collaborative events include a Negotiations Workshop on March 22 with the NHBA Gender Equality Committee and a networking event with the Concord Young Professionals Network in the fall. The committee is also planning a ski event at Gunstock Mountain sometime next year.

"There is a lot of support between the committees," Tymula says. "It's been great to have that level of collaboration. It opens up a whole other network for people that may be involved in one committee but not the other."

The NLC also sends delegates to swearing-in ceremonies to greet new admittees and welcome them to the New Hampshire Bar. Additionally, the committee hosts annual events such as the Bench and Bar Meet and Greet each December – where lawyers in practice under three years can network with each other and members of the judiciary in a social setting – and a social soirée following the Midyear Meeting in February, which is open to all attorneys, not just new lawyers. Photos from this year's Midyear Meeting Social can be found in this issue on page 24.

Additionally, committee members are currently working on new updates for their resource book, *Traps for the Unwary*, which identifies traps into which both new and experienced lawyers may fall, as well as a series of CLEs based on the subject. The most current version, updated in 2020, can be found at [nhbar.org/traps-for-the-unwary](http://nhbar.org/traps-for-the-unwary).

"The committee is the most active this

year than I have seen in past years," Tymula says. "We are really devoted to welcoming new lawyers and getting them involved in the Bar and making them feel welcome. We've been very involved and collaborating with other groups and committees to make a really chock-full calendar of events for new lawyers."

Young agrees with Tymula and hopes that experienced lawyers will help out more in the NLC.

"We are providing opportunities in different ways than we have before for new lawyers to meet each other, to meet our Bar, and to collaborate," Young says. "Anyone can be a part of that. I've encouraged a lot of attorneys to join the committee – especially the older ones – who tell me, 'These new attorneys don't get to go to court, and these new attorneys don't do this and that.' My answer to that is always, 'then what are you going to do about it?' Tell us what you want new lawyers to learn, and we'll give them the opportunity for it. You want them in court more? Tell them to come visit a court event. You want them to meet new people? Tell me an event we can do to foster that. We shouldn't have to have any kind of complaints about new attorneys without having an answer for it. New attorneys are the future of the Bar, and we should be supporting them anytime we can."

For a full list of recent and upcoming events, navigate to the NLC page on the NHBA website at [nhbar.org/new-lawyers-committee](http://nhbar.org/new-lawyers-committee). For additional information, contact NLC co-liaisons NHBA Member Services Coordinator Misty Griffith at [mgriffith@nhbar.org](mailto:mgriffith@nhbar.org) or NHBA Meetings and Events Coordinator Rebecca Bunyard at [rbunyard@nhbar.org](mailto:rbunyard@nhbar.org). ■

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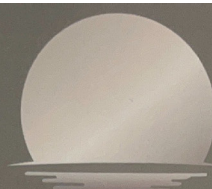
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# Re: Mitigate the Justice Gap, Vol. 33, No. 8, *New Hampshire Bar News*

As reported in the January 18, 2023, *Bar News*, the New Hampshire Supreme Court seeks a process for lawyers to record their pro bono hours.

Justice James Bassett stated the goal: “This will give 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.”

Justice Bassett’s view that it is people of “limited means” who need pro bono legal services does not capture the systemic problem. Justice Bassett and the Court must first examine why New Hampshire justice demands pro bono service from working lawyers.

The New Hampshire courts are no place for those of ordinary, even substantial means, not just those with limited means.

Access to the New Hampshire Superior Court is for the deep-pocketed or tax-funded litigants. The cause of the unaffordability in Superior Court is procedural abuse.

Deep-pocketed and taxpayer-funded litigants’ control of each procedural stage of civil lawsuits. The control is not predicated on the merits of their case. The deep-pocketed litigant’s control is based upon the case economics, meaning the legal cost to address the endless deluge of motions, discovery demands, depositions, and other tactical ploys.

Litigants who must pay an attorney

an hourly rate, whether it be \$150 an hour or \$750 and up, cannot control their litigation costs because the deep-pocketed or taxpayer-financed litigant on the other side drives those costs with filings and discovery demands. The economics of the case, not the case merits all too often drive the outcome.

In cases that do not have contingent fee potential, lawyers in private practice that base their livelihood on hourly charges cannot afford to take such cases because most clients cannot pay.

The solution to Superior Court procedural abuse has two parts.

One, Superior Court judges must have full supervisory and settlement control of the cases assigned to them. The New Hampshire custom, practice or rule that judges cannot know or participate in the settlement posture of the litigants is absurd, even silly. Judges cannot supervise or control their cases without understanding the case chemistry, the case economics and honest settlement positions of the parties. Under current New Hampshire practice, judges are stuck with the posturing litigants and their motions and procedural disputes without knowing why the case has not resolved.

Two, the Superior Court Rules must be changed to end procedural abuse. The most abused rule is Rule 12(d). Motions to Dismiss.

Plaintiffs seek judicial relief for a wrong file a complaint setting forth the facts of their claim together with the remedy for the wrong in damages or in equity such as injunction. Defendants’ intent on causing expense and delay file a 12 (d) motion to dismiss arguing that plaintiffs’ facts are too general, lack specificity; are not persuasive; not reasonably based; or lack gravity.

Such contentions are improper weight of the evidence arguments that must be made at trial not at the pleading stage of a case.

Rule 12 (d) should be amended to read: “A party may assert a defense by a motion to dismiss: (1) if the court lacks subject matter jurisdiction; (2) the venue is improper; (3) process is insufficient to affect personal jurisdiction over the defendant; (4) the complaint fails to state a claim for relief recognized by law.”

Superior Court judges applying an amended Rule 12(d) would not be required to wade through weight of the evidence arguments at the pleading stage of the case, delay and expense causing litigants would not file frivolous motions, and plaintiffs would not have to pay their attorney to defend such motions.

A second much-abused rule is Superior Court Rule 32. Alternate Dispute Resolution (ADR). Superior Court judges empowered to supervise the settlement could save litigants another substantial expense. ADR is required in all civil cases and is part of Structuring Orders.

Mediators charge fees and many insist on briefing on the facts and law. Mediation is often a refuge for the delay and expense causing litigant because mediation ending in impasse has no consequences to that litigant. A change to Superior Court Rule 32. would facilitate case settlement rather than force another expensive diversion.

Absent good faith on all sides, coupled with ongoing court-supervised settlement discussions, completely absent under current practice, the mediation comes and goes with no accountability. Litigants set on creating a mediation impasse have forced more expense with no consequences.

Rule 32 must be changed to require the mediator to file a sealed report following mediation impasses to the supervising judge that details the exact settlement proposals of the litigants. The impasse report must summarize the parties’ positions and make a settlement recommendation to the court. Knowing that the mediator will file a report with the supervising judge will end the posturing.

With the mediator’s report, the supervising judge can schedule settlement conferences upon terms that will encourage timely settlement. The conferences must include having parties personally present with settlement authority.

Regular conferences with the case responsible judge can facilitate other areas of procedural abuse such as overbroad discovery demands, unnecessary and repetitive depositions.

Trial conferences can be effectively used by the case responsible judge if the judge has performed his supervisory role in the pleading, discovery, and settlement stages of the case. Disputes about witnesses, exhibits and experts can be more efficiently handled without more motions and hearings.

Technology such as Zoom will facilitate trial management conferences by saving time and expense. The quantification of lawyers’ pro bono efforts is a good idea if it is intended to acknowledge the efforts of those lawyers and reward them in some way for their toil.

The Supreme Court, however, must recognize that fundamental steps must be taken to make the judicial process more accessible, fairer, and less costly.

Very truly yours,  
Arthur B. Cunningham

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## NHBA Mentor Advice Program Continues to Flourish

By Misty Griffith

In the two years since the NHBA launched the Mentor Advice Program (MAP), more than 200 members have participated in this program. MAP connects new or new-to-New Hampshire attorneys with an experienced practitioner for professional guidance. The NHBA has offered successful mentoring programs in the past, and we were so pleased to reintroduce an updated version of this important benefit for newer members in March 2021.

Members of the NH Bar take pride in their collegiality, and the willingness of so many talented attorneys to volunteer their time to mentor a newer member is a wonderful example of the welcoming nature of the NH legal community. More than 70 different law firms have one or more attorneys who have volunteered as a mentor. Retired members have also found mentoring to be a gratifying experience. One retiree shared that mentoring a new lawyer “made me feel useful.” Feedback from mentors is that participation in MAP has been enjoyable and rewarding.

Feedback from program advisees has been overwhelmingly positive.

“(MAP) is much needed and all new attorneys could benefit from it,” states one new attorney.

Several advisees have remarked about



how helpful it is to have a trusted advisor who is open to frank discussions. Many have described the program as a great experience, enriching, and reassuring. Participants have high praise for their mentors, one writes, “My mentor has been kind, knowledgeable and helpful throughout.” And another advisee shared, “I left with both a mentor AND a friend!”

The program takes great care to connect each applicant with a compatible mentor to meet their needs. Commonality of practice areas is the most important factor taken into consideration unless an advisee has other stated priorities. Other considerations taken into account include requests to be matched with a mentor who can provide sound advice about opening a solo practice or to connect with someone who can provide tips on networking and engagement within the NHBA. The most frequently requested practice areas are estate planning, civil litigation, and family law, followed closely by corporate law and criminal law.

Having a robust pool of available mentors enables us to match new attorneys with a compatible mentor promptly. If there is not an available mentor who is a good match for an advisee, we reach out to attorneys to recruit a mentor who is a good fit for the needs of each individual advisee.

MAP is truly a statewide program with participants from all 10 New Hampshire counties, as well as the neighboring states of Massachusetts, Vermont, and Maine. In fact, only 30 percent of program advisees practice in Manchester or Concord. MAP is meeting the real need for mentoring in the

more rural areas of the state.

While advisees come from firms of every size, more than half are from firms with five or fewer attorneys, including one-third of whom are solo practitioners. Additionally, MAP has advisees who are working for the government, nonprofit organizations, and corporate legal departments.

The Mentor Advice Program is designed for maximum flexibility to allow each pair to connect in the manner most convenient for them. While some pairs meet in person for coffee or lunch, others have connected entirely by virtual means taking advantage of video conferencing technology.

One mentor said of MAP, “The program does a real service by pairing the mentee and the mentor and facilitating the initial contact. From there the relationship can go wherever the mentor and mentee wish it to

go.” The program commitment is only for six months, but pairs are encouraged to continue the relationship beyond that time as they see fit.

MAP is continually introducing new mentoring pairs. The program welcomes experienced attorneys who would like to join the pool of available mentors.

New attorneys, or new to New Hampshire attorneys, are encouraged to take advantage of this exceptional resource provided by the NHBA. Sign up for MAP today to be connected with a mentor who will help you reach your fullest potential as a legal professional.

Applications for both advisees and mentors are available at [nhbar.org/mentor-advice-program](http://nhbar.org/mentor-advice-program). If you have questions, contact NHBA Member Services Coordinator Misty Griffith at [mgriffith@nhbar.org](mailto:mgriffith@nhbar.org). ■

## Letter to the Editor

Dear Editor,

I read with interest the article in the *NH Bar News* celebrating the NH Bar’s 150<sup>th</sup> Anniversary having been formed in 1873. I am writing in my capacity as a member of the Grafton County Bar Association [GCBA] and as the unofficial historian of the GCBA which, according to records maintained by the GCBA, was formed in 1793. According to *Black’s Law Dictionary*, the GCBA is the oldest, continuously meeting bar association in the United States. See, *Black’s Law Dictionary*, Revised Fourth Edition, copyright 1968.

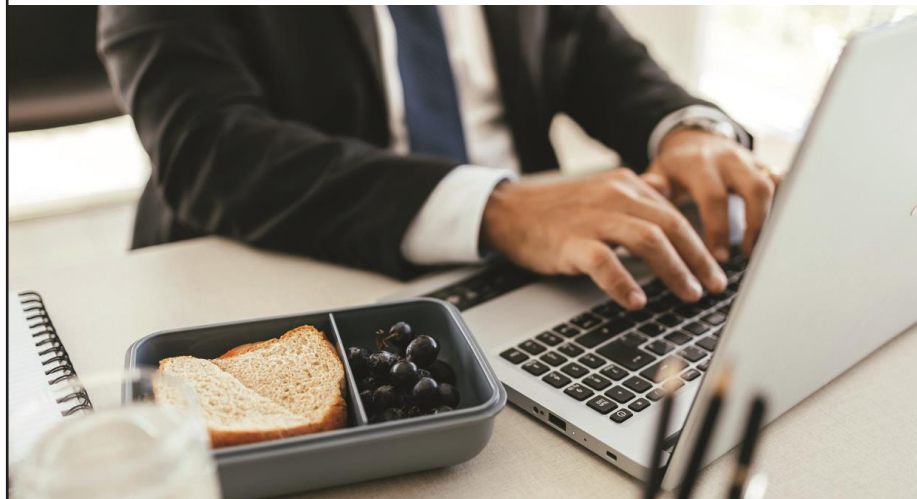
The GCBA celebrated its 200<sup>th</sup> anniversary in 1993, with a celebration at the Hanover Inn with presentations by then-NHBA

President Susan Carbon (now serving as a judge on the 9<sup>th</sup> Circuit Court – Family Division), Attorney General Jeffrey R. Howard (now serving as a judge on the 1<sup>st</sup> Circuit Court of Appeals), and Senior Associate Justice William F. Batchelder. See, Grafton County Bar Association, Bicentennial Celebration 1793 – 1993.

Congratulations to the NHBA as the oldest state bar association and its 150 years of service to the New Hampshire legal community. We look forward to your upcoming articles on NHBA history, service projects, activities and events, CLEs, workshops, and public education.

- Eric W. Janson

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## NHBA Board of Governors Election Starts April 1

Online balloting will begin April 1 and conclude April 15. An email containing your personalized ballot link will be sent from Intelliscan on April 1. Members who have not voted by April 7 will receive an email reminder. Because the NHBA Board of Governors ballot is sent as a bulk email message from Intelliscan, it may end up in your email application's spam filter. To ensure that you receive your ballot, please add [NHBA@intelliscaninc.net](mailto:NHBA@intelliscaninc.net) to your "safe senders" list. If you do not receive a ballot or need assistance, please contact Andrew Arbitell with Intelliscan at [aarbitell@intelliscaninc.com](mailto:aarbitell@intelliscaninc.com) or (610) 935-6172.

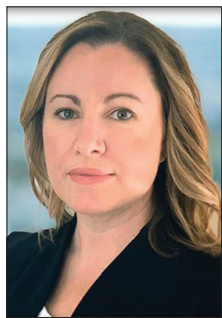
### NHBA 2023 Board Candidates

#### Officers

##### Kathleen M. Mahan

*President-elect: Nomination by Board of Governors*

Kate Mahan is a litigation partner at Hinckley Allen, located in their Manchester office. She practices in a wide range of intellectual property matters, including trade secrets, trademarks,



and copyrights, as well as business disputes related to corporate governance, non-compete conflicts, contract actions and other professional disagreements in both state and federal courts, arbitration proceedings, and appeals.

Kate received her JD, cum laude, from Suffolk University and her BA, cum laude, from Saint Anselm College. Prior to joining Hinckley Allen, Kate worked at a business boutique law firm for more than 12 years and clerked for both the New Hampshire Supreme Court and the New Hampshire Superior Court.

Kate is a member of the New Hampshire Bar Foundation Board of Directors, as well as the New Hampshire Bar Association's Committee on Cooperation with the Courts and the Federal Court Advisory Committee for the New Hampshire Federal District Court. She also is a long-time member of the Daniel Webster-Batchelder Inn of Court. Outside the legal profession, Kate serves on the board of her local food pantry, as well as on the Saint Anselm College Alumni Council.

I write to express my interest in becoming President-elect of the New Hampshire Bar Association Board of Governors.

As a New Hampshire native and a member of this Bar for the last 17 years, I have had the opportunity to observe firsthand some of the best that the New Hampshire Bar has to offer and some of the challenges that it faces. Serving as vice-president for the last year, member-at-large for four years, and as New Hampshire's

Young Lawyer Delegate to the American Bar Association House of Delegates before that, I have had the privilege of representing this Bar locally and nationally, while serving as an active conduit between the Association and its members. During this time, I have taken great pride in addressing concerns and other important issues that have arisen that impact the practice in this state and supporting the ongoing work of the Association and the Bar to maintain a valuable, effective, and supportive bar association for all the members.

It would be an honor to serve as President-elect, to serve our members, and to help the NHBA achieve its mission.

##### Derek D. Lick

*Vice President: Nomination by Petition for One-Year Term*

I sincerely ask for your vote for Vice President of the Bar Association, as I am committed to serving you and the profession by supporting this critical organization.

For more than a decade, I have volunteered for the Bar Association's Committee on Cooperation with the Courts, which is charged with fostering communication and cooperation



between the bench and the bar. In that role, I have witnessed first-hand the pressing issues facing both those of us who advocate for our clients before the courts and those in the Judicial Branch who must ultimately make the tough decisions in litigated matters. Additionally, I serve on the New Hampshire Supreme Court's Advisory Committee on the Rules, having first been appointed by the Bar and then by the New Hampshire Supreme Court. There, I have attempted to provide helpful input on rules that govern our practice.

I am a member of Sulloway & Hollis, PLLC, of Concord, where I practice in litigation, focusing of late mostly on land use and planning, construction and real estate disputes, and commercial litigation. I also represent insured parties in personal injury and other matters. I am a member of the Federation of Defense and Corporate Counsel, the Defense Research Institute, and the Tri-State Defense Lawyers Association.

Outside of work, I serve as the Moderator for the Town of Sutton and for the Kearsarge Regional School District in the Lake Sunapee/Kearsarge area of the state. I also serve as Chair of the Sutton Zoning Board, and as a member of the Board of Trustees of my local bank, Sugar River Bank. I also serve on the Board of the Concord-Lake Sunapee Rail Trail and Plan NH. Previously, I served on the Board of the League of New Hampshire Craftsmen and on the Kearsarge Area Council on Aging, the non-profit organization that oper-



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### NICK ABRAMSON

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### EVA H. BLEICH

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### KEVIN F. DUGAN

Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs

### JARED R. GREEN

Personal Injury Litigation – Plaintiffs and Product Liability Litigation – Plaintiffs

### HOLLY B. HAINES

Medical Malpractice Law – Plaintiffs and Personal Injury Litigation – Plaintiffs  
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ates a senior center serving nine towns in the Mt. Kearsarge area.

I graduated from Boston University with a degree in Journalism and from the Vanderbilt School of Law. Prior to entering law practice, I served as the Press Secretary for US Congressman Martin O. Sabo, the then-Chairman of the House Budget Committee, and a senior member of the House Appropriations Committee.

I reside in Sutton with my wife, Debbie, and my two daughters, with my two older sons attending or having just finished college.

Governor-at-Large

Kristin G. Fields  
Governor-at-Large  
Nomination by Petition for  
Three-Year Term

Kristin Fields is an associate at Walker & Varney, PC in Wolfeboro. She graduated from the University of New Hampshire School of Law in 2011. Immediately following her admission to the bar in November 2011, she worked as a fellow at New Hampshire Legal Assistance in Concord, assisting low income residents across the state in matters of housing and unemployment benefits. Kristin served as the vice president and treasurer of the Belknap County Bar Association in 2013, served two terms as Belknap County Governor and is currently serving as Governor-



at-Large. Prior to joining Walker & Varney, PC in 2022, Kristin was a solo practitioner in Laconia for several years, focusing primarily in the areas of family law (including divorce, parenting, post-divorce issues, guardianships) and estate planning. In 2018, Kristin received a New Hampshire Bar Pro Bono Program Rising Star award. She is a member of the Family Law, Real Estate and Trusts and Estates sections of the NHBA. Kristin grew up in Holderness and, as an adult, she and her family have lived there for almost 20 years. Her daughter, Audrey, is in her freshman year at Gettysburg College.

I have been a Governor-at-Large for the last term on the New Hampshire Bar Association Board of Governors. The Board is made up of many very dedicated members and I feel privileged to be able to work with them on the issues important to the membership of the NHBA. I would be honored to have your support to be able to continue my work as a governor-at-large to represent the interests of all members.

James A. Shepard  
Governor-at-Large  
Nomination by Petition for  
Three-Year Term

Jim Shepard is a long time prosecutor with the Department of Safety and also runs a part time solo law practice mainly focusing on family law. He has served as a Governor on the NH Board of Governors as both a county



governor and as an at-large governor. He serves on the NH Bar's Domestic Violence Advisory panel and was recently awarded the L. Jonathan Ross Award for his pro bono service.

I humbly seek your vote in my reelection bid as an at-large governor for the NH Bar Association's Board of Governors. I have been privileged to serve the last three years as one of your at-large governors and wish to continue in this important role. I love to talk to lawyers about the services provided by the Bar and listen to their concerns about how the Board can influence the Court and the legislature to make our jobs as lawyers easier.

Robert R. Lucic  
Governor-at-Large  
Nomination by Petition for the Remaining  
Two Years of a Three-Year Term

Bob Lucic has over 30 years of extensive complex commercial litigation experience throughout the United States including administrative agency proceedings, arbitrations, jury trials, and appellate practice involving both multi-national corporations and small businesses. Bob serves a wide range of manufacturing clients, including robotics aerospace, defense, and high-tech companies, as well as national, state, and municipal governments. He regularly counsels clients on intellectual property and anti-trust compliance issues. Bob's practice fo-



cus includes patent and trade secret litigation, environmental litigation, stockholder and partnership disputes, and investor disputes. He also provides strategic counseling to industrial clients and small businesses. Bob served for six years as the Chair of the Firm's Litigation Department.


Bob serves as an at-large member of the New Hampshire Bar Association's Board of Governors. He is also active in the Massachusetts Federal Bar Association.

Bob is the firm's liaison with Lex Mundi, the world's leading association of independent law firms. He is currently Regional Vice Chair for North America of their Litigation, Arbitration and Dispute Resolution Practice Group and is the Chair Emeritus for the Environmental Practice Group. He served as worldwide chair from 2017-2019. Bob assisted in organizing conferences on climate change in New York (2017) and Paris (2019).


Bob joined the firm in 1991 after practicing in New York City. He also speaks German and French.

I have been extremely fortunate over the past 30 years to have been a member of the New Hampshire Bar Association. When I was asked to step in and fill a vacancy on the Board of Governors, I was honored, and I knew that it was time for me to give something back to this amazing organization that works so hard to keep New Hampshire the superb place it is to practice law. I had always understood that there were many dedicated people within the Bar Association who made everything we take for granted happen, but I was amazed as I attended my first Board of Governors meetings just how sincere, thoughtful, and hardworking every-

BOG continued on page 8




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one was. It makes me more proud than ever to be a member of the New Hampshire Bar Association. I hope that I can continue to do my part with your support.

## County Governors:

**Monique M. Schmidt**  
*Cheshire County Governor*  
*Nomination by Petition for*  
*Two-Year Term*

Monique Schmidt is a public defender in Keene. In 2011, she graduated from Roger Williams University with a BA in American studies. She worked for Greenpeace in Boston, organizing communities around climate change and corporate abuse issues. There, Monique developed a lifelong dedication to public service and advocacy. In 2017, she graduated from Roger Williams University School of Law, became a member of the NH Bar, and went directly to work for the NH Public Defender in Keene.

Though Monique is a Massachusetts native – born and raised in Boylston, and currently living in Lancaster – Cheshire County is her home away from home. She looks forward to the opportunity to serve Cheshire County and connect with members of the legal community.

I am seeking re-election for a second



term to represent Cheshire County on the NHBA Board of Governors. I hope to continue what has been a wonderful opportunity to better understand and contribute to our legal community, here in Cheshire County and across the state. I appreciate your consideration and would be honored to have your vote.

**Barry C. Schuster**  
*Grafton County Governor*  
*Nomination by Petition for the Remaining*  
*Year of a Two-Year Term*

Barry Schuster has practiced business, real estate and municipal law since 1978. He represents individuals, businesses, and municipalities in a wide range of transactions and resolving disputes involving land use, real estate and corporate and business matters. A trial lawyer with 35 years of experience, Barry regularly appears before municipal boards, litigates in New Hampshire and Vermont trial courts, and has appeared in more than 30 appeals before the Supreme Courts of New Hampshire and Vermont. He also served for many years as a superior court mediator.

Barry actively participates in a number of civic organizations and has served on the boards of health care organizations, bank advisory committees and numerous community service boards and committees. He was elected to the Lebanon School Board for eight years and chaired the



Board for a three-year term where he has served for over 20 years. An active cyclist, he and his wife have logged miles biking over hill and dale throughout New Hampshire and Vermont, over mountain passes in Colorado and “cols” of the French Alps.

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

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

In the short time that I have been a member of the Board since my appointment to fill an unexpired term, I have gained a great appreciation for all that the Board does on behalf of our profession and the legal system. As an Upper Valley lawyer, it is not always easy to become acquainted with lawyers around the state but participating, both on-line and in person, has given me the chance to meet many of the committed and skilled lawyers who enhance our profession. Having only served part of an initial term, I would like to continue my service on the Board as a way to connect Upper Valley attorneys to those around the state and to assist with the Board in furthering its professional activities.

**Anthony Naro**  
*Hillsborough South County Governor*  
*Nomination by Petition for the Remaining*  
*Year of a Two-Year Term*

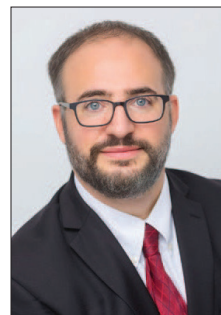
Tony Naro is a criminal defense and domestic relations attorney in private practice at Bernazzani Law, PLLC, in Nashua, NH. Prior to entering private practice, he was a public defender for over a decade, working as a trial attorney in Rockingham County, Hillsborough County, and as an Assistant Appellate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

Tony handles misdemeanors and felonies, including assaults, sex crimes, drug case, and DUI offenses. He has argued cases before the New Hampshire Supreme Court, tried dozens of cases before juries across the State, and appears in all ten New Hampshire counties.

Tony's domestic relations practice includes divorce, parenting, child support, restraining order, and guardianship matters in the Family Division. He is also proud of a strong pro bono practice and regularly volunteers for the DOVE Project and 603 Legal Aid. Tony also volunteers his time on the Board of Directors for the New Hampshire Association of Criminal Defense Attorneys and Friends of New Hampshire Drug Courts and is a member of the Hearings Committee for New Hampshire's Attorney Discipline System.

Tony earned his BA from the University of Massachusetts – Boston in political science and Africana studies. He earned his law degree from Suffolk University Law School in 2008 where he graduated with high honors.

I ask for your vote to serve as the Governor for Hillsborough County – Southern Judicial District. Hillsborough County has been my home since 2016, where I served as a public defender in Nashua, and also had occasion to represent clients out of the Northern Judicial District when needed. I am now a trial attorney at Bernazzani Law in downtown Nashua, representing clients



in criminal and domestic relations matters.

I have had the honor and privilege of serving as an appointed member of the Board of Governors after Attorney Kara Simard moved her work outside the county. I have thus far enjoyed working with my fellow board members across the state and understand how important the work we do is. I have board experience through two other boards of directors I serve on in New Hampshire. I hope to bring my experience from those boards to strengthen the work of the Board of Governors. If elected, I will work to ensure that the needs and perspectives of our county are represented. With that being said, I hope that in addition to voting for me, you will also reach out to let me know what you would like to see from the Bar and what issues you would like addressed as they pertain to our county.

**Petar M. Leonard**  
*Merrimack County Governor*  
*Nomination by Petition for*  
*Two-Year Term*

Petar Leonard is a shareholder and member of the litigation department at Orr & Reno, in Concord, where he focuses his practice on complex domestic relations issues. Petar currently serves on the Granite United Way Community Impact Committee and is a Collaborative Divorce New Hampshire board member. He is also an adjunct professor at the University of New Hampshire Franklin Pierce School of Law, where he teaches family law for the Daniel Webster Scholar Miniseries course. Petar served on the NHBA CLE Committee for several years and enjoyed chairing several family law CLEs during that time. Petar received his law degree from the University of New Hampshire School of Law and is a graduate of the University of Oregon.

I am seeking to be elected to the position of Merrimack County Governor. Since being sworn into the New Hampshire Bar, I have been an involved member in our community. I thoroughly enjoyed my time serving on the CLE Committee and the many experiences I had during my term of service. Over the years, I have attended many of our Bar events: I was particularly delighted to see the return of our Quid Pro Bono tournament, last summer. I am eager to become more involved in the Bar through this position. I look forward to the opportunity to serve my colleagues and contribute to the important work that the NHBA is doing on behalf of its members and our beloved state.

**Paul B. Kleinman**  
*Rockingham County Governor*  
*Nomination by Petition for*  
*Two-Year Term*

Paul B. Kleinman is a Boston University Law School graduate and has been a lawyer for the last 35 years.

I have been the managing partner in my law firm, Bouchard, Kleinman & Wright for the past 20 years. My



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practice focuses on complex civil litigation. I have served as the vice chair on the Bar's Insurance Committee and have been involved in specific projects such as the Pro Bono call marathons. As I get into the later stage of my career, I would like to give back in a more significant way to the legal community that has been so supportive of me through the years. This is why I seek to serve on the Board of Governors for Rockingham County. I do believe that my background and experience will allow me to be a valuable addition to the Board and the NHBA. I previously served on the Board of New Generations and presently serve on the Board of Great Bay Services who provides support for developmentally disabled individuals. My wife and I have four children and reside in Brentwood, NH. I am currently a member of the Town of Brentwood Planning Board.

I have been the Rockingham County Governor for the past two years and would request your support for an additional two-year term. The last two years have been eye opening to discover the immensely positive effects that the New Hampshire Bar Association has upon the legal community. I have enjoyed my experience including meeting new colleagues and reconnecting with old ones. I look forward to continuing to be a positive influence on the Board of Governors as well as the Rockingham County Bar Association. I have been a member of the NH bar since 1987. I have been the managing partner in my law firm, Bouchard, Kleinman & Wright, for the past 22 years. I have served as the vice chair on the Bar's Insurance committee and have been involved in specific projects such as the Pro Bono call marathons. I presently serve on the Board of Great Bay Services

who provides support for developmentally disabled individuals. I am currently a member of the Town of Brentwood Planning Board. I reside in Brentwood, NH, with my family and my firm's Rockingham office is in Brentwood, where I spend the majority of my time.

**Joshua M. Wyatt**  
***Strafford County Governor***  
*Nomination by Petition for the Remaining Year of a Two-Year Term*

Josh Wyatt currently serves as the City Attorney for the City of Dover, New Hampshire, where he has worked since 2019. Prior to working for the City, Josh was a shareholder in the litigation department for the law firm Devine, Millimet, & Branch, where he worked for ten years. Prior to working at Devine, Josh served as a New Hampshire Supreme Court law clerk for the Honorable Gary E. Hicks.

Josh is a graduate of the University of New Hampshire Franklin Pierce School of Law and the University of North Carolina at Chapel Hill. In law school, he was a member of the first graduating class of the Daniel Webster Scholar Honors Program as well as an intern with the Merrimack County Superior Court. Josh currently lives in Portsmouth, New Hampshire with his wife Erin and two daughters.

Josh Wyatt is asking for your vote as the Strafford County Governor. He is the current Strafford County Governor



and has filled that role since December 2022, having been appointed to fill the remainder of the first year of a term for a vacancy that was created when the prior governor moved out of Strafford County.

**Lyndsay N. Robinson**  
***ABA Association Young Lawyer Delegate***  
*Nomination by Petition for Two-Year Term*

Lyndsay Robinson is an attorney at Shaheen & Gordon, PA. Her practice consists of general civil litigation with a focus on family law, estate planning, probate administration, immigration, and other similar fields.



Lyndsay graduated from Saint Anselm College with a Bachelor of Arts in politics and a minor in Russian area studies. Upon graduation, Lyndsay attended the University of New Hampshire School of Law. She had the privilege of participating in a rigorous course load and graduating from the University of New Hampshire as a Daniel Webster Scholar. In addition to participating in the honors program, Lyndsay served as a Warren B. Rudman Summer Fellow and an American Bar Association Janet B. Steiger Fellow.

While in law school, Lyndsay had the honor of clerking at the 9th Circuit Manchester Family Division, serving as a legal consultant for the State of New

Hampshire Court Improvement Project, interning for the State of New Hampshire Attorney General's Office, serving as a Rule 36 Student Attorney for the Concord City Prosecutor's Office, and working as a law clerk for Tober Law Offices, PA.

Lyndsay is an active member of the Bar and is dedicated to serving her community. She currently serves as the Chair of the New Hampshire Bar Association's Family Law Section, Chair of the New Hampshire Bar Association's Gender Equality Committee, and Treasurer of the New Hampshire Women's Bar Association. She also serves on the Board for the New Hampshire Bar Foundation. Lyndsay is a member of Chief Justice MacDonald's advisory board for the New Hampshire Judicial Branch Steering Committee on Diversity and Inclusion.

She is involved with the New Hampshire Pro Bono DOVE Program actively representing victims of domestic violence and stalking. She was awarded the New Hampshire Bar Association's Pro Bono Program, Rising Star in 2020 and was also voted Best Attorney in Greater Nashua by the Nashua Telegraph in 2020. Lyndsay was selected as a New England Super Lawyers Rising Star for 2021 and 2022.

Lyndsay is beyond grateful for all of the opportunities the NH Bar has given her and would love to give back by serving as the ABA Young Lawyer Delegate. It would be an absolute honor to serve in this capacity. ■

# #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.

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

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Recent Cases	
Stroke following childbirth verdict*	\$43,360,000.00
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

## NJOW from page 1

to their audience, giving an example comparing the price of consuming an alcoholic beverage at 21 against the price if caught consuming the same beverage underage. Students were particularly interested in the impact of vicarious trauma on the mental health of judges and lawyers, as well as how judges ensure their impartiality.

On March 6, two outreach events were held in Jaffrey and Nashua. In the morning, New Hampshire Supreme Court Chief Justice Gordon MacDonald and Attorney John Garvey spoke to juniors and seniors from Conant High School in Jaffrey. The presentation was interactive, with many comments and questions from the students in attendance.

"The students were great," states Garvey, who was the founding director of the Daniel Webster Scholar Honors Program at the UNH School of Law. "They were engaged and asked many thoughtful, probing questions. It was energizing."

Particular attention was paid to the process of becoming a judge, and how the nomination and confirmation procedure in New Hampshire was different from the federal court system and the methods that are used in other states. When asked for their opinions on the recently proposed constitutional amendment to raise the mandatory retirement age of judges in NH to 75, many shared the feeling that the retirement age should stay



A student at Conant High School in Jaffrey posing a question to Chief Justice MacDonald. Courtesy Photo

at 70, with one student remarking to Chief Justice MacDonald, "No offense, but it is a young person's world."

The staff at Conant High School were thrilled at the opportunity to offer this experience to their students, and the event ended with a senior asking to take a photo for the yearbook.

In the afternoon, New Hampshire Superior Court Judge Jacalyn Colburn and Attorney David Tencza spoke with members of the Nashua Rotary at the Nashua Country Club. Attendance was higher than expected, with some Rotary members attending virtually. During the question-and-answer portion of the presentation, attendees were mostly interested in Colburn's experience as a judge.



Attorney David Tencza looks on while Judge Jacalyn Colburn speaks to members of the Nashua Rotary Club. Courtesy photo

"I enjoyed speaking to the Nashua Rotary Club," Judge Colburn says. "It was a great opportunity to reflect on the basics of democracy, the importance of three equal branches of government, and why our system is so vital to their professional and personal endeavors."

On March 7, there were two events. The first was with US District Court Judge Joseph Laplante and Attorney Julian Jefferson speaking to leadership and board members at Catholic Medical Center. The second was NH Superior Court Judge John Kissinger and Attorney Catherine Flinchbaugh at the Merrimack County Superior Courthouse at a public event hosted by the Concord Chamber of Commerce.

NJOW concluded on March 9 with a public presentation by Judge Charles Temple and Attorney Michael Iacopino at the New Hampshire Institute of Politics at Saint Anselm College. National Judicial Outreach Week, an initiative of the American Bar Association since 2017, is observed annually from March 1-10, with the recurring theme, "Preserving the Rule of Law." The New Hampshire Judicial Branch expects to participate annually in the future. ■

*Editor's Note: As this issue of Bar News went to print on March 8, and the article was written on March 7, the entirety of NJOW could not be covered. A follow-up article will be included in the next issue.*

## A CALL FOR NHBF AWARDS NOMINATIONS

*Please respond by March 31, 2023*

Submit your nominations for awards to NHBF Awards,  
2 Pillsbury St., Suite 300, Concord, NH 03301-3502  
or email [awards@nhbar.org](mailto:awards@nhbar.org).

### Robert E. Kirby Award

The Robert E. Kirby Award was established in 1996 to honor the memory of Bob Kirby, a young lawyer "of great skill, civility and good humor" who died that year at the age of 35. Kirby was an attorney with the Concord law firm of Gallagher, Callahan & Gartrell.

The purpose of the award is to honor Bob's memory and to remind all of us that decency, courtesy and perspective neither inhibits nor defeats excellent advocacy. The Kirby Award recipient is an attorney 35 years old or younger who demonstrates the traits of civility, courtesy, perspective and excellent advocacy.

### Frank Rowe Kenison Award

The Kenison Award was established by the Bar Foundation to recognize an individual (or individuals) who makes substantial contributions to the betterment of New Hampshire citizens through the administration of justice, the legal profession, or the advancement of legal thought.

The award is made annually, selected by vote of the Board of Directors of the New Hampshire Bar Foundation. Recipients need not be members of the New Hampshire Bar Association, but are carefully chosen to honor individuals who meet the criteria for the award in its broadest sense.

## MARK YOUR CALENDARS!

*Awards to be presented at the  
NHBF Annual Dinner on  
Thursday May 11, 2023*



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# Five New Hampshire Lawyers Recognized at Union Leader's 2023 "40 Under Forty" Awards



Becker



Carrier



Flynn



Melson



Moore

By Tom Jarvis

Each year, the *New Hampshire Union Leader* recognizes 40 professionals in the state that are under the age of 40 for their *40 Under Forty* awards. Since its inception in 2002, they have honored 880 Granite Staters who make a difference in their communities and professions. Nominations are gathered from across the state and represent all industries.

The recipients were honored at a ceremony on March 8 at the Capitol Center for the Arts in Concord. Out of the 18 women and 22 men recognized this year, five of them are NH lawyers. Each of them was asked what motivates them to give back to their community.

## Leif A. Becker

*Becker Legal, PLLC*

In 2022, Becker was given 603 Legal Aid's Pro Bono Rising Star award and was named in the Seacoast 10 to Watch list. He volunteers for 603 Legal Aid's DOVE program and for the NH Association for Justice.

"I know that I have been blessed to find myself so fortunate in life," Becker says. "And consider it a moral obligation to share my talents and resources with those who haven't enjoyed the same fortune."

## Megan C. Carrier

*Sheehan, Phinney, Bass & Green, PA*

Carrier was awarded the 2021 Robert E. Kirby award and volunteers on the boards of NeighborWorks, Waypoint, and the NH Board of Bar Examiners.

"Our community is interconnected, and we all benefit – directly or indirectly – by efforts to improve it," Carrier says. "Even if those efforts are geared toward addressing problems that may seem, on the surface, to affect certain individuals more than others."

## Matthew J. Flynn

*Merrimack County Attorney's Office*

Flynn volunteers as Secretary for the CMAR Scholarship Fund and participated

in the Puzzle Cup Hockey Tournament to raise funds to support families facing the challenges of autism.

"I find helping others in any capacity to be both fulfilling and rewarding," Flynn says.

## Bradford W. Melson

*Orr & Reno, PA*

Melson is a board member of NH Lakes.

"I am a flatlander by birth but have spent my entire adult life in New Hampshire and have observed that community engagement, service, and generosity is uniquely ingrained in the character of residents of this state," Melson says. "As an Eagle Scout, I have been attuned to the importance of giving back from a young age and in adulthood have had the good fortune to work for organizations that have supported and prioritized community service both within and outside the workplace, providing the opportunity for me to share my time, treasure, and talent in a variety of settings."

## Jason D. Moore

*Prosecutor, Merrimack Police Department*

In 2019, Moore was appointed as the Chair of the Juvenile Parole Board by Governor Sununu. He volunteers as an assistant JV coach for the Merrimack High School Lacrosse team and as a planning committee member for the Attorney General's Conference on Partnering for a Future Without Violence.

"My main focus on giving back revolves around coaching high school lacrosse," Moore says. "I remember how awkward those years were for me and how coaches and mentors were paramount in me winding up where I am today. In my opinion, competitive team sports are really important in developing into a well-rounded person. They help teach life lessons like the importance of physical fitness, dealing with adversity, and learning how to work with others."

rior Court prosecutor in the Hillsborough County Attorney's Office from 2007 until 2017.

Shaheen & Gordon, PA is proud to announce the addition of Attorney **Jay Buckey** to the civil litigation practice group. Buckey brings more than a decade of trial experience to the firm's Concord office. As a civil litigator, he works with clients on a variety of civil matters from representation of individual clients to complex commercial disputes. This includes representing clients in Superior Court and Federal District Court. Prior to joining Shaheen & Gordon, Buckey worked at the New Hampshire Public Defender, where he served as a managing attorney.

## In Memoriam

### John LeBrun

John LeBrun lost his battle with cancer on January 29, 2023, at the VNA hospice house in Concord. He was 68 years old. He put up the fight of a lifetime until the very end. He was born in Woonsocket, RI, on December 15, 1954, the fourth of five children born



to Robert and Pauline LeBrun. A proud graduate of Mount St. Charles Academy, John went on to receive his bachelor's degree from Rhode Island College, his master's in economics from the University of Rhode Island, and his JD from Franklin Pierce Law School. His law practice, Goldman and LeBrun, was his professional home for decades. Prior to his diagnosis, he was primarily representing clients at New Hampshire Hospital, a job he deeply valued.

John attended all his daughters' athletic events from childhood through high school. He played catch in the yard with us after dinner. He educated us on all things Beatles, Grateful Dead, Neil Young, and Allman Brothers. He taught us to ice skate and ski. Our friends remember trips in the "way, way back" of his Volvo wagon to play mini golf or ride go-karts on the weekends. As hard as work could be, he never carried it with him in the door at the end of the day; he was always just

"Dad" when he came home. His greatest love was our mom, Debbie. Married for 41 years, John loved Debbie more than anyone or anything. He was loyal, unwavering, and supportive throughout their marriage. They shared mutual loves of good music and good food, and as Mom always says, they traveled well together. Mom's extroversion perfectly complemented Dad's introversion. He kissed her every night when he walked in the door. Until the end, the most important thing to him was always that Mom was okay.

John is survived by his loving wife, Debbie LeBrun, of Henniker; his daughter, Emily Dillon, and son-in-law, Steven Dillon of Hillsborough; and his daughter, Audrey Redmond, and son-in-law, Aiden Redmond of Concord. He was a beloved "Papa" to his five grandchildren: John LeBrun, Colton Dillon, Savannah Dillon, Oscar Redmond, and Flynn Redmond. He leaves behind two sisters and a brother, as well as lifelong friends and colleagues across New England. We are grateful to the VNA hospice house for their compassionate care in his final days. Play a song by The Dead or root passionately for the New England Patriots as a way of remembering John and holding him in your heart.

A funeral service was held at St. Andrew's Episcopal Church in Hopkinton. For more information, please visit [holt-woodburyfh.com](http://holt-woodburyfh.com).

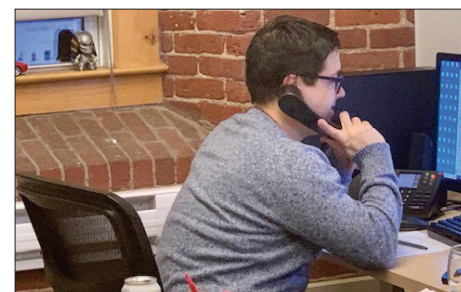
IN MEMORIAM continued on page 12

## LawLine

The NH Bar Association would like to thank all who made this February's LawLine a success. Volunteers from Ransmeier Spellman and from Drummond Woodsum participated in the event on February 8, 2023. More than 65 calls were fielded on a wide range of issues including probate law, consumer disputes, landlord/tenant issues, employment matters, and family law. Thank you again to all our volunteers for participating in this valuable public service!

LawLine is a public hotline, hosted by volunteer attorneys, on the second

Drummond Woodsum attorneys Demetrio F. Aspiras III, Anna B. Cole, and C. Christine Johnston helping clients with brief legal advice for LawLine. Courtesy Photos



Attorneys from Ransmeier Spellman who participated in LawLine from left to right: Biron Bedard, Daniel Federico, Nelson Raust, Griffin Kmon, Meaghan Jepsen, Lucas Burke, Jack Hepburn, and Jeffrey Rabinowitz. 3L Daniel Webster Scholar from UNH School of Law Rebecca Dowd (not pictured) also helped to answer the phone and direct calls. Courtesy Photo



## Coming and Going

The law firm of McLane Middleton is pleased to announce the hiring of attorneys **Jesse J. O'Neill** and **David C. Tencza**.

Jesse represents clients in a wide variety of litigation matters. Immediately prior to joining McLane Middleton, he worked at the New Hampshire Attorney General's Office for nearly nine years, first as an Assistant Attorney General and then as a Senior Assistant Attorney General.

Dave brings over 15 years of trial experience to the litigation department at McLane Middleton, primarily working with clients on family law and criminal related matters. Prior to his time at McLane Middleton, Dave worked for a smaller Nashua law firm and served as a Supe-



**Judy Ellen Reardon**

Judy Ellen Reardon, 64, of Manchester, NH, well-known political strategist, died December 16, 2022, following a long illness.

Born in Manchester, NH, on February 12, 1958, she was the daughter of Patrick and Viola (Vergas) Reardon.

An outstanding student, Judy graduated from Manchester High School Central, Class of 1976, where she was an editor of the award-winning Little Green newspaper. She earned a bachelor's degree from Dartmouth College and a degree in law from the University of Pennsylvania Law School.

Upon returning to Manchester, Judy was an associate at the McLane, Middleton Law Firm, while simultaneously serving two terms as a state representative. She shortly left for a career in public service, including as an attorney with the New Hampshire Public Defender and as Executive Director of Planned Parenthood of Northern New England. Judy devoted her life to bettering the lives of Granite Staters.

Many Granite State Democratic candidates benefitted from her advice and counsel, as did the New Hampshire Democratic Party, playing a major role in developing the strategies that transformed the state's political color from red to purple. Until her illness, she was a reliable part of the Democratic Party's Voter Pro-



tection Program.

Judy spent most of her career working with Senator Jeanne Shaheen. From the New Hampshire State Senate, the Governor's Office and in the US Senate, Judy filled many roles on Senator Shaheen's staff. These were many of her treasured memories.

Her last role was as consultant for Stop the Northern Pass, always working to keep New Hampshire beautiful. Judy volunteered in the Learn to Read Literacy Program and served as a Manchester Water Works Commission and previously on the Manchester Library Foundation Board.

Most importantly, Judy was a wonderful and loving sister and sister-in-law. Together, they traveled to many places around the world, enjoyed going to scary movies, and family events.

Judy is survived by her beloved sister, New Hampshire State Representative Patricia Cornell, and her husband, Rik Cornell; her devoted cat, Huey; and many cousins.

Memorial donations may be made to St. Jude Children's Research Hospital, [stjude.org](http://stjude.org). For more information visit: [connorhealy.com](http://connorhealy.com).

**Shari Rotman**

Simply put, Shari was an incredibly special person who was loved by all who knew her.

In 1967, Shari was born in Brookline, Massachusetts, to her parents, Michael and Lois Libenson. She grew



up in Newton, Massachusetts, with her loving sister, Laurie Yablon. Shari graduated from Newton North High School, the University of Rochester (BA, Political Science), and Suffolk University School of Law (JD). Following law school, Shari moved to Miami and worked for Church World Service as an immigration attorney obtaining asylum for refugees. Upon relocating to New Hampshire

in 1996, Shari worked for twenty-seven years at the Office of Public Guardian and fought fearlessly for her clients' interests. It meant much more to her than a job; her co-workers and clients were family.

Shari was a devoted mother and best friend to her daughters, Rebecca and Sammy. They loved her with all their hearts and her love for them was limitless. Shari was married to David for thirty years

**Membership Status Changes**

*Presented to the Board of Governors February 16, 2023*

**Active to INACTIVE:**

Kulp, Heather, Concord, NH (Jan. 10)  
Subach, Serge, Arlington, MA (Nov. 28, 2022)  
Licciardi, Michelle, Wakefield, MA (Jan. 19)  
Koegler, Carolyn, Hopkinton, NH (Jan. 30)

**Active to INACTIVE RETIRED:**

Polgrean, John, Bedford, NH (Jan. 23)

**Active to FULL-TIME JUDICIAL:**

Hersh, Justin, Concord, NH (Aug. 15, 2022)

**Active to LIMITED ACTIVE:**

Van Dorn, Jr., Edward, Hebron, NH (Jan. 18)  
Newhall, Jeremiah, Rochester, NY (Aug. 5, 2022)

**Active to MILITARY ACTIVE:**

Neumann, Jesse, Nashua, NH (Nov. 10, 2021)

**Active to RESIGNED:**

Lacoste, Laurie, Salem, NH (Jan. 2)

Coughlin, Timothy, Portsmouth, NH (Jan. 31)

**Inactive to INACTIVE RETIRED:**

Solomon, Robert, Orlando, FL (Jan. 6)  
MacMillan, Douglas, Salem, NH (Jan. 10)

**Inactive to ACTIVE:**

Jones, Blair, Portland, ME (Jan. 4)  
Burkhard, Elizabeth, Boston, MA (Jan. 31)  
Mitchell, Ryan, Manchester, NH (Jan. 27)

**Inactive to RESIGNED:**

DiCosola, Gyda, Albuquerque, NM (Jan. 30)

**Suspended to ACTIVE:**

Whitney, Mark M., Marblehead, MA (Feb. 3)

**Suspended to DISBARRED:**

Clark, Steven, Portsmouth, NH (Jan. 5)

**Honorary Inactive to DECEASED:**

Carney, Gerald, New London, NH (Jan. 21)  
Laflamme, W. Jean, Candia, NH (Jan. 23)

**Military Active to ACTIVE:**

Miller, Michael, Saco, ME (Feb. 3)

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**Attorney Stephanie Annunziata**

Stephanie joined Shaheen & Gordon in 2016. Her practice is dedicated to navigating families through conflict before the Family and Probate Courts. She advocates for her clients and their families in contested matters, including guardianships over children and incapacitated adults, trust and estate litigation, and complex divorce actions.

[sannunziata@shaheengordon.com](mailto:sannunziata@shaheengordon.com)  
(603) 225-7262  
107 Storrs Street, Concord, NH

CRYSTAL  
MALDONADO



**Attorney Crystal Maldonado**

Attorney Maldonado focuses on family law, including negotiating and litigating cases involving divorce, child support, parenting, domestic violence issues, and guardianships, as well as surrogacy and adoptions. Crystal also serves as an adjunct professor of family law at the University of New Hampshire School of Law since 2012.

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and he could not have loved her more.

A tenacious advocate, Shari was a warm, kind, brilliant, and beautiful woman, inside and out. She had an extraordinary sense of humor that drew others in. When anyone thinks of Shari, a smile will, undoubtedly, result.

Shari leaves behind her spouse, David, her daughter, Rebecca, and Rebecca's wonderful companion, Parker Cornbrooks; her father, Michael Libenson, and companion, Livia Greenberg; her sister, Laurie Yablon, and brothers-in-law, Brian Yablon and Jonathan Rotman; her aunt, Phyllis Barmack, and

companion, Saul Fern. She also leaves behind her best friends: Janey Goldberg, Jody Glasgow, and Matthew Boucher. She was predeceased by her younger daughter, Samantha Rose Rotman, and her mother, Lois Aaronson Libenson. Shari leaves behind a niece and nephews, countless cousins, and friends, all of whom held a special place in her heart.

As per her wishes, a small, private ceremony will be held in her honor. In lieu of flowers, donations can be made to Camp Sunshine, 35 Acadia Rd, Casco, ME 04015.

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JANUARY - DECEMBER 2023



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Attorney Jay Buckey

Jay joins Shaheen & Gordon's civil litigation group. He previously served at the New Hampshire Public Defender, where he was the managing attorney for the Newport office. Jay has over a decade of experience defending criminal cases in the New Hampshire courts. He has handled everything from juvenile offenses to serious felonies.

[jbuckey@shaheengordon.com](mailto:jbuckey@shaheengordon.com)  
(603) 225-7262  
107 Storrs Street, Concord, NH

Attorney Teresa Farley

Tess joins the firm's family law group. She has significant experience representing sexual assault and domestic violence survivors in matters including protection from abuse; divorce; and parental rights and responsibilities. She is an advocate of reproductive rights and was a co-founder of the Reproductive Freedom Fund of NH.

[tfarley@shaheengordon.com](mailto:tfarley@shaheengordon.com)  
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## Flying Solo – Words of Wisdom from Solo Practitioners

By Misty Griffith

Flying solo is not for the faint of heart, but more than one-third of New Hampshire attorneys embrace the challenges of solo law practice. This series of articles will share some of the joys, as well as the difficulties, of being your own boss. It is our hope that these stories may inspire other attorneys who are considering solo practice.

Thank you to this month's featured practitioners for taking the time to share their thoughts. We look forward to sharing sage advice from others in the coming months.

### Marcia Brown, NH Brown Law, PLLC

*Somersworth, NH/Atlantic Ocean, 28 years in practice, seven years as a solo*

#### What inspired you to become a solo?

Rather, I aspired to have flexibility, provide efficient affordable legal services with minimal overhead, and see the world. I also wanted to choose clients and causes that I love working for and have the time to do both.



**Best thing about solo practice:** The carpe diem aspect. Electronic filing, virtual meet-

ings (and occasionally hearings), and access to the internet allow my corner office to be anywhere. This juxtaposition of my legal work and being present to experience the wonders of the oceans is indescribably satisfying. Fit your passion into your life!

**Hardest thing about solo practice:** Administrative support and seeking advice. The support staff of a multi-member firm is replaced with vendors like Staples, or FedEx, thus you must plan ahead more for your administrative needs. Also, you can't just walk down the hall and ask a colleague a question, you have to pick up the phone and call someone during business hours. These aren't insurmountable. It just means you need to be more intentional and plan ahead.

**Memorable solo experience:** Getting clients the help they need is very, very satisfying and memorable. But what jumps out the most is what going solo has allowed me to experience. Whales eating between the shoals off Hatteras, Leatherback turtles, and dolphins in the dark water of night visible only by the bioluminescent trails they form. Amazing.



**Advice for a new solo:** Timely bill your clients. Retain an accountant. There are plenty of virtual accounting firms that offer great advice at reasonable rates. Know that you don't have to take every case. Solo is about fitting in

causes or experiences you want in your life.

**Would you advise anyone else to go it alone?** Absolutely. So long as they have a network of colleagues, they will be fine. Networking is easy through any of the Bar sections or committees, Women's Bar, NH Association of Justice, and other attorney groups. Join them and don't be afraid to pick up the phone or set up a video call and ask for advice. We (and our Bar staff) are all here to help each other provide great legal services and to feel good about what we do.

### Leif Becker, Becker Legal, PLLC

*Portsmouth & Concord, four and a half years in practice, three years as a solo*

#### What inspired you to become a solo?

I realized the job I wanted didn't exist, so I created it.

**Best thing about solo practice:** Flexibility. Final say on clients; control of practice.



**Hardest thing about solo practice:** Taking vacation.

**Memorable solo experience:** Every day is a memorable experience in litigation.

**Advice for new solo:** Grow your network; it's always helpful to have a list of other attorneys you can call to ask questions, seek advice, or fishbowl ideas.

**Would you advise anyone else to go it alone?** I think the decision is very dependent on the individual. I find that I thrive in an "eat what you kill" environment.

### Stephanie Burnham, Burnham Legal, PLLC

*Manchester, 21 years in practice, 13 years as a solo*

#### What inspired you to become a solo?

Originally, becoming a solo attorney was less a choice and more a necessity. As a new attorney, I knew that I wanted to practice in estate planning after graduating law school, but I did not have any connections or opportunities with other attorneys here in New Hampshire. My experience working as an intern for a solo attorney while in law school provided the courage to put out my own shingle.

Most recently, I made the choice to go back to solo practice after working at a



firm for six years. My inspiration to go back to solo practice came from realizing that I truly enjoyed managing my practice, making all the decisions, and growing my own client base. While I enjoyed my time working with some truly wonderful attorneys, I missed the flexibility and demands of controlling my practice.

**The best thing about solo practice:** The best thing about solo practice is the autonomy: having the ability to make all the decisions for your practice; to control the policies and procedures you would like in place for your business; and to choose how you would like to practice law.

#### The hardest thing about solo practice:

The hardest thing about solo practice is the responsibility and stress that lies on your shoulders. As a solo, you are responsible for your employees, taking care of your clients, marketing, steering the firm, and ensuring that legal representation and administrative tasks are all handled. That can lead to long hours even when you delegate certain tasks to employees. Ultimately, it is your firm, and you are responsible for all aspects of that firm, not just practicing law.

**Memorable solo experience:** My most memorable solo experience was the moment when, after considering the risks and rewards of leaving a firm and going back to solo practice, concern about the change shifted to a feeling of satisfaction and excitement: knowing that I was going to go back to being my own boss and that I had the confidence and skills to succeed.

**Advice for a new solo:** Stay in touch with other attorneys, get involved, and actually go to the meetings for clubs, sections, or activities that you are interested in. It is very easy to get caught up in day-to-day practice and work demands of being your own boss. However, the relationships that you make with other attorneys will bring you more job satisfaction, as well as connections that can help you later if you need someone to act as a sounding board.

**Would you advise anyone else to go it alone?** Being a solo-practitioner is not for everyone, but for some of us it is the best way to practice. The hours can be long and stressful; you have to be responsible for human resources, technology, billing, marketing, and there can be a lack of certainty and security in your success. However, it also is extremely rewarding to see something that you are building yourself become a success and to know that the hours that you are putting in are for your business. I truly enjoy the challenge of running my own practice, and I would absolutely encourage other attorneys with an entrepreneurial spirit to investigate whether or not it is the right choice for them. ■

## Section Connection

The Family Law and Trusts and Estates Sections hosted a collaborative meeting in January on Guardianships. The panel discussion was well-attended and both sections look forward to future collaboration on other topics in the future. We cannot wait to see you at future section meetings. ■

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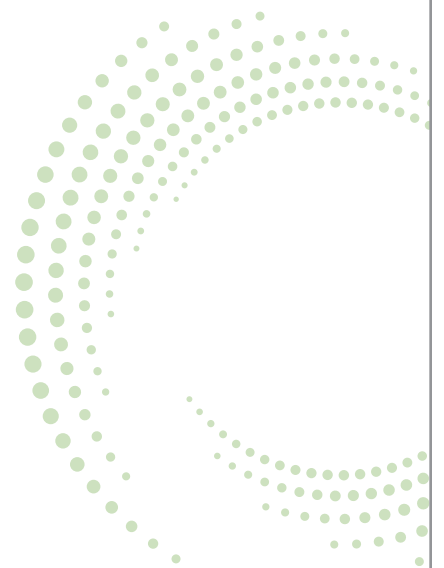
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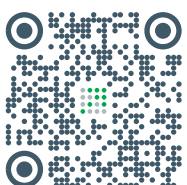
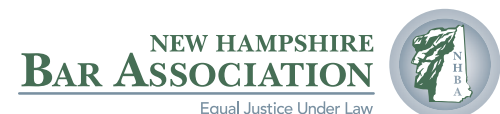
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# 603 Legal Aid Executive Director Sonya Bellafant Resigns

By Tom Jarvis

On March 2, 2023, Sonya Bellafant departed her role as Executive Director of 603 Legal Aid. Bellafant says she plans to take some time for self-care and recentering.

“It has been an incredible opportunity here, but it’s also been a very heavy lift,” Bellafant says. “It’s taken more of a toll on me physically and mentally than I had expected. So, I think it’s time for me to re-center and refocus before I feel like I am capable of being a leader somewhere else.”

Bellafant joined 603 Legal Aid (603LA) in May 2021, as its first Executive Director, when the NHBA Pro Bono Referral Program and Legal Advice and Referral Center merged, and she was later admitted to practice law in NH in November that same year.

Prior to 603LA, Bellafant was the Project Manager for the Legal Aid Society of Middle Tennessee in Nashville, TN. There, she directed a statewide project to help seniors identify and resolve core legal issues.

Under Bellafant’s leadership, 603LA has grown exponentially.

“One of the things I think I’m most proud of is increasing the visibility of 603 Legal Aid and the amazing work that the team here does,” Bellafant says. “We’ve done a really good job of letting people know exactly what 603 Legal Aid does and how successful they are at doing it.”

During her time at 603LA, Bellafant secured a new phone system that allows the call center to be more effective and help more low-income Granite Staters, ap-



Sonya Bellafant was Executive Director of 603 Legal Aid for nearly two years. She has worked hard to increase the visibility of the organization through various efforts, including branding that evokes feelings of brightness and hope. Photo by Tom Jarvis

plied for and gained more local and federal grants, created resources to allow attorneys to do Supreme Court cases, and hired a Pro Bono manager and other senior management which created a foundation for growth, to name a few things.

“The most rewarding part for me has been the ability to grow in my role as the Executive Director,” Bellafant remarks. “I’ve gotten a lot of great feedback from community partners – both within the legal realm and outside – and from funders, and the message has been that based on the work we have done here collectively and based on my leadership, they felt more comfortable providing funding and reach-

ing out to support 603 Legal Aid. That has been incredibly rewarding.”

Bellafant continues: “Many of the individuals here, for all too long, have gone almost unnoticed. The work that’s done by everyone here – it’s too vast and too incredible to articulate it fully – but I can tell you that they do it to the exclusion of all else, often selflessly, and that’s both motivational and inspiring.”

603LA Board co-chair Melinda Gehris praised Bellafant’s efforts during her tenure, as well as her “thoughtful and inspired leadership.”

“We will forever be grateful for her commitment, vision, diligence, and tenac-

ity,” Gehris says. “And we wish her the very best as she opens her next chapter.”

Bellafant says she is grateful for all of the support she had throughout her time at 603LA.

“Many of the justices with the New Hampshire Judicial Branch are very clear about the unique Bar here in the state and I couldn’t agree more,” Bellafant says. “It’s not only been welcoming, but also been incredibly supportive and that gave me the opportunity to realize my own professional growth in this setting. Executive Director is a tough job but having the support of people such as Chief Justice MacDonald, Mark Rouvalis, Justice Hicks, Justice Donovan, Justice Hantz Marconi, Judge Carbon, George Moore – I could go on and on – has meant the world to me.”

The Board of 603 Legal Aid has confirmed that Attorney Steven Scudder has been named as the Interim Executive Director. For more than 20 years, Scudder served as Counsel for the Standing Committee on Pro Bono and Public Service for the American Bar Association. Prior to that, he was the Deputy Executive Director for Legal Services at the NHBA for nearly 10 years.

“Steve is not only recognized nationally as a leading expert on the delivery of civil legal services to those who cannot afford a lawyer but is also uniquely knowledgeable about the legal services community and clients in New Hampshire,” 603LA Board co-chair Deborah Kane Rein said in a recent press release. “603 Legal Aid is fortunate that Steve has agreed to lead 603 during this interim period.” ■

## Volunteer Pro Bono Attorneys Urgently Needed!



The ABA and NHBA has partnered to offer NH Free Legal Answers, a virtual legal advice clinic. Volunteer attorneys provide brief information and basic legal advice on a *pro bono* basis to qualified users without any expectation of long-term client obligations. It’s easy to fit into even the most demanding schedule and you can provide answers 24/7/365 from ANY location with an internet connection.

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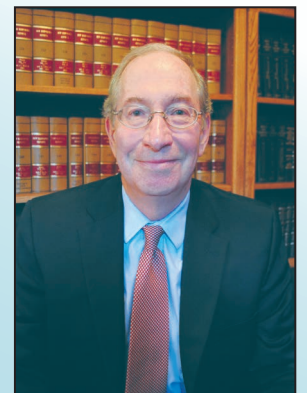
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# Who is Your Favorite Fictional Lawyer?

A Column That Talks About Everyone's Favorite Lawyers from Books, Movies, and TV

By Tom Jarvis

The fictional lawyers column is back! It's always fun to bring a little levity into the day by discovering who your favorites are, or even which ones you cringe at the most. The cringe factor is often one of the most amusing things to discuss.

As you all know, life as a TV or movie lawyer is drastically different from law practice in real life. Attorneys don't typically pace theatrically around the courtroom, dramatically pointing and shouting at the witness. Instead, they usually ask the judge's permission to approach a witness. Another glaring difference is that new witnesses don't march through the courtroom doors at critical moments – nor do they have dramatic music accompanying their arrival – and evidence doesn't magically appear at the last minute.

Who is your favorite fictional lawyer? And how do you think they would fare in a present-day New Hampshire courtroom? Here is what some of your colleagues have to say:

**Dennis Ducharme, Ducharme Resolutions, PLLC**

"Vinny Gambini from My Cousin Vinny and Harry Rex Vonner from A Time to Kill. I have trouble watching courtroom dramas because I



spend too much time critiquing the lack of reality. I like comedic characters because they can be over the top and break some rules without me gnashing my teeth and saying, 'that wouldn't happen.' Unfortunately, I think we have become a little bland and homogenized as a profession and that neither Vinny nor Harry Rex could cut it here today."

**Russell Hilliard, Upton & Hatfield, LLP**

"Alejandro 'Sandy' Stern from the Scott Turow novels, [because of] his exquisite civility and etiquette, insights into human nature, and consummate trial skills. [In NH, he would do] very well. His approach and skills would be appreciated and welcome anywhere."



**Jack Middleton, McLane Middleton**

"Perry Mason; he never lost a case. But it wasn't very realistic because he could always wrap up a whole case in an hour. He always



had the same opponent who lost every case [Hamilton Burger], and my kids used to call me that from time to time to be funny. He wouldn't do very well at all in New Hampshire, though."

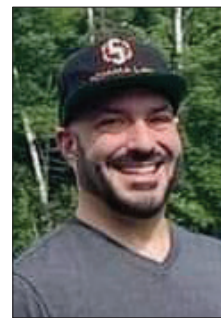
**Barry Schuster, Schuster, Buttrey & Wing, PA**

"Horace Rumpole [from the British TV show, Rumpole of the Bailey]. Although plodding and a bit irreverent, he always came through with fairness. [In a NH courtroom], he would probably be subject to contempt of court, but then released by the judge upon realizing that Rumpole's arguments and behavior were correct and justified."



**Christopher Somma, Somma Law, PLLC**

"Lieutenant Daniel Kaffee from A Few Good Men. He and I are very similar in a lot of ways. Like him, I too tend to work out and settle the majority of my cases – both civil and criminal. However, when



push comes to shove, he did the right thing and represented his clients with the vigor that they deserved and were entitled to, showcasing both his legal aptitude and his extraordinary abilities as an attorney. I act very similar, so [in a NH courtroom he would do] very well!"

**Joseph Steinfield, Attorney at Law**

"My Cousin Vinny. Vinny is a terrific cross examiner. Cross examination is how we find the truth. And in the movie, he certainly finds the truth because he has the gift. He would fare wonderfully in NH, it's a very hospitable place. I've tried many cases all around and what I've found in NH is that the general attitude about the 'NH way,' as it's called, extends to the judges and the court personnel. Not to denigrate judges and personnel elsewhere, but there's a courtesy level that seems to be maintained in this state, at least in my experience. So, if he came to NH, I'm sure he'd be just fine."



If you'd like to share your favorite fictional lawyer in this column, contact NHBA Publications Editor Tom Jarvis at [tjarvis@nhbar.org](mailto:tjarvis@nhbar.org). Please include your favorite fictional lawyer, why they are your favorite, and your opinion on how they would fare in a present-day New Hampshire courtroom. ■



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in Japan for a total of two and a half years before and after college.

But he felt “in limbo” regarding a career and enrolled at the University of Michigan Law School, with an interest in public service.

In 1974, he came to work at New Hampshire Legal Assistance as a summer student and ended up spending four years as an attorney there, then helped start the Public Defender Program in Rockingham County, where he worked another four years.

“All my interest in the law and my good fortune and opportunities came from being in public service law in New Hampshire,” Wolowitz says. “I don’t think I’d be where I am today if it weren’t for that. It shaped everything I did.”

One of his first cases at NHLA ended up before the state Supreme Court, when he represented women who had been wrongfully committed to the state hospital. New Hampshire did not have no-fault divorce at the time, and mental illness was considered grounds for divorce, Wolowitz explains. Husbands seeking to end a marriage could send their wives to doctors for a diagnosis of “hysteria” and that would be enough for commitment.

“I remember when I met my first client at the state hospital; they didn’t want to allow the women to have lawyers,” he remembers. “They said their husbands’ lawyers were their lawyers. I wasn’t going to allow that to happen.”

Neither was the NH Supreme Court. Wolowitz, then only two years into his practice, won the case, giving due process rights to the women.

Wolowitz also had a longstanding in-

terest in mental health issues, and soon after that success found himself approached by a young man under his parents’ guardianship who had been sent to the notorious Laconia State School for Children against his will. A judge told Wolowitz he could not represent the young man because his parents’ lawyer represented him and Wolowitz once again took the case to the NH Supreme Court, winning due process rights for his client. The school, where many children lived in sub-human conditions, was closed in 1991 following a federal class action lawsuit.

Following his public service work, Wolowitz joined the former Hampton law firm of Sanders & McDermott and won such acclaim as a litigator that he became an invited guest instructor for the Trial Advocacy Workshop at Harvard Law School, a position he held for 29 years.

In 1991, he was recruited by McLane Middleton and asked to do some work at Phillips Exeter Academy, becoming the school’s primary outside attorney, as well as primary outside attorney for St. Paul’s School in Concord and Phillips Andover in Massachusetts.

Tom Hassan, president of the non-profit School Year Abroad and the former principal of Phillips Exeter, has worked with Wolowitz for more than three decades.

“I, and scores of other school leaders, have benefitted greatly from David’s vast and deep experience in the law as it applies to schools,” Hassan says. “He is always there when needed, not only with sound legal advice, but very thoughtful approaches to dealing with people and the problems at hand. He is the ultimate lawyer, as well as counselor.”

Wolowitz also developed a reputation training mental health professionals on

ethics, particularly regarding inappropriate sexual behavior, well before the “Me Too” movement or Catholic Church sex abuse scandal were raising awareness of the issue.

What he learned and shared with clients is that rule-based training doesn’t work – that a professional may not be dissuaded from having sex with a client just because it is against the rules.

“You can’t just tell people what a rule is and expect them to follow,” Wolowitz explains. “What works is changing the culture.”

Wolowitz and McLane Middleton colleague Linda S. Johnson co-chaired the firm’s Education Law Group and developed a national education program to help do just that.

He sees four underlying behaviors in those who exploit or abuse the vulnerable – poor boundaries, unclear roles, a mishandled power balance, and a lack of accountability.

“What you can do is flip them,” Wolowitz says. “If you know having poor boundaries and role ambiguity, etc., are problematic, it’s not a leap to realize you can train people on having clear boundaries, clear roles, being accountable for their behavior, and using their influence for healthy childhood development.”

Johnson, who worked with Wolowitz for some 30 years, remains vice chair of the Education Law Group, says her former colleague “quickly developed a national and even international reputation as a go-to lawyer in the areas of risk prevention and crisis response for independent schools. Clients knew they could call upon David in times of crisis and he would guide them through appropriate responsive action with compassion for the people involved.”

She adds that he is also passionate about civil rights.

“One example is his many commentaries on the recent divisive concepts law and the chilling effect that has had on teachers’ rights to teach without fear of unjust retaliation,” Johnson adds. “He does not remain silent when he sees injustice in the world.”

Among Wolowitz’s more memorable cases was one involving More Than Me, an American charity running schools in Liberia, which Wolowitz was hired to investigate following allegations of rapes of students.

“It was one of the most powerful, moving experiences I’ve ever had because I met the girls who went to the school, they took me to their homes which I can tell you is not an invitation that was given lightly and not one not to be accepted,” Wolowitz says. “I had to be escorted into



David Wolowitz in Liberia, where a young girl was fascinated with his white hair. Courtesy Photo

the slums, but the family that took me in were wonderful.”

Following his and other investigations, the school was forced to close, and its assets were transferred to another organization.

In another case, he won a lawsuit against Lakeview NeuroRehabilitation Center in Ossipee after his client’s teenage daughter ran away with one of her caretakers despite warnings about her vulnerability. That facility, too, became the target of an investigation following multiple charges of abuse and neglect, including a client death, and closed in 2015.

Wolowitz’s primary work focus these days is as an expert witness in cases involving abuse or exploitation, such as situations where a coach has been convicted of sexually abusing students on his team and there is a dispute as to whether the school should have known about the abuse.

“The question I get hired for is, were the policy and training and reporting and prevention and response procedures adequate or within the standard of care,” he explains. “I look at the policies, the training, whether there were red flags, and then I give an opinion.”

Wolowitz is also on the board of the Heifetz International Music Institute in Virginia, and the Museum of New Arts in Portsmouth, and does volunteer governance training.

He and his wife, Susan, live in Greenland, where he enjoys bicycling, photography, and spending time with his grandchildren. ■

## Find the Law from Home: Free Remote Access to Westlaw Now Available

The New Hampshire Law Library is participating in a new pilot project that provides the public with free remote access to Westlaw, an extensive online data base for legal reference materials that is widely used by attorneys to research state and federal laws, regulations, and court cases.

The project is part of an ongoing commitment by the Law Library and the state court system to improve access to justice, especially for persons who cannot afford a lawyer or simply want to represent themselves in court. Westlaw offers a wide range of online resources that can help them prepare their case including previous court decisions that relate to their claim, find laws and statutes that might apply to their case, as well as newspaper and magazine articles, public records, law journals, law reviews, and legal forms.

“Access to Westlaw can help people representing themselves obtain the legal materials to explain their concerns and support their arguments,” law librarian Mary Searles says. “Rather than Googling and hoping the information you find is correct, Westlaw guarantees accuracy and reliability. Even if you are not thinking about going to court, but have a legal concern, Westlaw can help you figure that out.”

Attorney Mark C. Rouvalis, co-chair of the Access to Justice Commission commended the law library’s innovative efforts to “expand the ability of New

Hampshire residents to research and support their legal needs.” Remote access to Westlaw helps implement the Commission’s goal of increasing public access to legal information, especially for low-income people, older people, and people with disabilities, Rouvalis says.

There are now two ways for users to access Westlaw for free.

Unlimited use of Westlaw, for free, is available at public libraries in Derry, Dover, Portsmouth, and Littleton, or in person at the NH Law Library in Concord, located at the Supreme Court Building. Library staff are available at all four sites to assist patrons in using the research tools available through Westlaw.

For those who are unable to visit one of the five libraries, remote access to Westlaw is available through a link on the Law Library website, [courts.nh.gov/resources/nh-law-library](https://courts.nh.gov/resources/nh-law-library). Users are required to complete a OnePass registration and validate their email address before accessing the online content. Research sessions time out after 90 minutes and there are limitations on the number of free downloads.

“If you try remote access and need more help navigating the Westlaw data bases, you can go to one of the library locations,” Searles says. “Whether through the library or remote access, we want to bring reliable legal information to the people who need it, and at no cost.”

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# Phillips Exeter Academy Students Named State Champions of NH High School Mock Trial Competition

By Tom Jarvis

On Tuesday, February 14, 2023, at UNH Franklin Pierce School of Law in Concord, students from Phillips Exeter Academy (PEA) became state champions of the NH High School Mock Trial Association (Mock Trial Association) competition. The winners will go on to represent NH at the National High School Mock Trial Championship, which will be held on May 18-20 in Little Rock, AR.

This year's participating schools were PEA, Souhegan High School, and Bishop Guertin High School, as well as some teams of homeschooled high school students. This was the first live competition since the COVID-19 pandemic.

"The end results were so close," Mock Trial Association board member Lori Novell says. "PEA was crowned the champions by winning three of the five ballots with a total point spread of only two points."

The Mock Trial Association aims to promote an understanding and appreciation of the American judicial system through academic competitions for students. Each year, the Mock Trial Association Board, which consists of PEA Disbursement Manager Lori Novell, retired Souhegan teacher Dick Vassar, and Bishop Guertin teacher Brian Jackson, reviews criminal and civil cases and selects one for the students to use for the mock trials.

"This year it was a criminal case," Novell says. "The kids prefer the criminal cases because they are a lot more exciting."

Novell states that the PEA teams were self-taught. They did not have a teacher or lawyer that worked with them for the competition. She advised them, provided cri-



Students from Phillips Exeter Academy celebrating their victory in becoming NH High School Mock Trial State Champions. From left to right: Ethan Benenson, Angelina Gong, Tucker Gibbs, Anderson Lynch, David Goodall, Colin Jung, Michael Hsieh, and Michael Nardone. Courtesy Photo

tique, and handled the logistics of setting up the tournaments, but the students prepared themselves.

"As an adviser for the past six years of PEA's Mock Trial program, it is so humbling to be able to work with this group of students," Novell says. "Our mission as a mock trial team is to help develop each individual to allow them to reach their highest potential in a very competitive environment and to always remember, *non sibi* is what we stand for."

The mock trials are adjudicated by volunteer NH judges and attorneys and consist of a presiding judge, as well as scorekeepers who also provide feedback at the end of each trial. This year's presiding judge was retired Superior Court Judge John Lewis, and the scoring attorneys were Chris Seufert, Leslie Nixon, Callan Sullivan, Kayla Turner, and Beth Deragon.

"The high skill level of trial advocacy of the students of this age group was remarkable – easily equal to that of first-year law students," Attorney Beth Deragon says.

"They argued their cases vociferously but with decorum, leaving us with a sense of hope that the next generation will bring civility and respectful civil discourse to their workplaces, our courthouses, and beyond."

Deragon continues: "Furthermore, many of the participants were teenage girls who would benefit from receiving feedback and support from female litigators to encourage them to pursue their career aspirations."

Attorney Kayla Turner, who received 603 Legal Aid's Pro Bono Rising Star Award at this year's Midyear Meeting, says the kids thoroughly enjoyed being in an actual moot courtroom.

"The level of professionalism that I saw from those kids was astounding," Turner says. "These kids are just as poised as many of the attorneys I've seen in the courtroom. And they love the feedback. I can spend 30 minutes to an hour just giving them feedback. We were even talking about how to impeach a witness – that's something that many law students don't get to learn to do."

Attorney Leslie Nixon says she is al-



Volunteer New Hampshire attorneys scoring student performances during the 2023 NH High School Mock Trial Championship. From left to right: Chris Seufert, Kayla Turner, Beth Deragon, Leslie Nixon, and Callan Sullivan. Courtesy Photo

ways impressed by the amount of work and effort the students put into the mock trial competitions and how seriously they take them.

"I would highly recommend this to all New Hampshire trial lawyers," Nixon says. "It's not only a very rewarding experience in that you have the opportunity to see students who are enthused about a potential legal career, but you also have the chance to be with other trial lawyers and judges, and learn from their experiences, as well as teaching the students."

The Mock Trial Association is hoping to increase the number of participating schools over the next few years. According to Lori Novell, there were upwards of 16 schools each year prior to the pandemic.

To learn more about the National High School Mock Trial Association, visit [nationalmocktrial.org](http://nationalmocktrial.org). To volunteer for next year's NH High School Mock Trial competitions, contact Lori Novell at [lnovell@exeter.edu](mailto:lnovell@exeter.edu). ■

## Wellness Corner

### How to Have Difficult Conversations

By Amy Wood, Psy.D.

My job involves a lot of listening and talking (in that order) and so it goes that a topic of conversation I get into a lot is, well, *just that* - conversation. The importance of conversation in forging connections, processing emotions, figuring out solutions. The unfortunate lack of real live conversation in a world moving increasingly – especially since the pandemic – toward technological transactions over face-to-face discourse. And the need for conversation when misunderstandings and other interpersonal obstacles arise.



That last one, those "we need to talk" conversations, is what comes up most. How to summon the courage to speak honestly from the heart. How to confront another person without hurting feelings. How to bring up delicate matters without causing anger, shame, or fallout.

Approaching another person about a tense topic is never effortless, but the process can be eased considerably by keeping these three ice-breaking pointers in mind:

#### Make it your problem even when it isn't.

I speak with many attorneys who put off difficult conversations because they're fed up with having to accept responsibility for problems they haven't caused. Why, they lament, should they have to take on the task of addressing yet another person's poor performance; shouldn't the onus be on the misbehaving person to step up to the plate for a change?

It's important to remember here that not all of us are evolved enough to recognize when a "we need to talk" talk is in order, and even less of us are equipped with the social repertoire to open up the floor for a candid chat. If you're interpersonally adept, then why not exercise your social strength by getting the ball rolling? Instead of feeling resentful, appreciate that social sensitivity is your strength and take the lead. By demonstrating the importance of getting a difficult conversation going, you can be a role-model for others who aren't similarly gifted.

#### Prepare properly.

People generally dread difficult conversations because past experience - breaking up with someone really needy who didn't see it coming, firing a well-intentioned assistant who just couldn't cut it - dictates that such experiences will be highly stressful. Most of us head into a "we need to talk" talk with a sense of let's-get-this-overwith resignation, because we're

tired of ruminating about the predicament and just want it extinguished.

Difficult conversations go better when they are entered from a positive, hopeful, and unrushed perspective. So, get your heart and head in the right place by calming down and getting centered before you open your mouth. Appropriate prepping involves talking through the issue with someone objective so that you can get fear, exasperation, and other unproductive emotions out of the way, envisioning a positive outcome for all, and having faith that the other person will handle it okay.

#### Go for it like you're on the air.

Difficult conversations are most likely to go well when approached from the stance of a top-notch professional interviewer, whose goal is always to bring out the best in those they are interviewing - because if you don't bring out the best, you just get shut down, right? Great interviews don't happen when you judge, criticize, or intimidate. Similarly, "we need to talk" one-to-ones don't go well when you accuse, demand, berate, or threaten.

If you want a touchy discussion to go somewhere, make your top priority to encourage confidence and comfort in the other person by asking to understand before you ask to be understood. When you embrace others with curiosity and respect - what we all want, regardless of our differences - you are most likely to overcome conflict and discover common ground.

To carry a difficult conversation like a pro, and maybe even look forward to it a little bit, entertain these questions:

1. How would someone you respect for their wisdom, courage, emotional intelligence, and compassion deal with this?
2. Would the way I am thinking of bringing up this issue make the other person feel safe or threatened?
3. The way I'm thinking of dealing with this, would I be proud if some person I have huge respect for were there watching me?
4. Who might I talk through my perspective and the approach I'm considering with, so I can get a third-party view?

Try one of these questions – and let me know what you think. ■

*Maine Bar Journal Vol. 37, 2/2022. Reprinted with permission from the Maine State Bar Association.*

Maine-based psychologist Amy Wood, Psy.D. created *Law and the Good Life*, a research-based attorney wellness coaching and training system designed to address the challenges of lawyering. She frequently offers CLE opportunities through the MSBA. To learn about upcoming events, visit [mainebar.org](http://mainebar.org). For more information about Dr. Wood, go to [amywoodpsyd.com](http://amywoodpsyd.com).



## The Ethics of Working Remotely

Dear Ethics Committee:

*I just started a new job with a law firm in New Hampshire. At the time I received the offer of employment, my partner and I were living in New Hampshire. We have now relocated to Vermont. I am working remotely and have two first year associates who work directly for me. My partner also works from our home in Vermont for a different firm in New Hampshire. Do you have any tips or practical concerns that I should consider in order to maintain an ethical practice?*

It has now been more than two years since the COVID-19 pandemic increased the number of employees, including attorneys, who are working digitally from a location other than their principal law firm or office (hereafter referred to as “remote work”). The Pew Research Center recently reported that nearly 57 percent of the remote workforce either rarely or never worked from home prior to the coronavirus outbreak. With this rise in remote work, there are unique ethical considerations that attorneys must consider.

The ABA has defined virtual or digital practice as “technologically enabled law practice beyond the traditional brick-and-mortar law firm.” See ABA Opinion 498 (March 10, 2021). The Ethics Committee comments to the New Hampshire Rules of Professional Conduct (the “Rules”) reflect acceptance of the changing face of the legal practice in this state noting

“[t]he assumption that a lawyer must be licensed in New Hampshire simply because he or she happens to be present in New Hampshire no longer makes sense in all instances.” See Rule 5.5 (Comments). New Hampshire’s modifications of Rule 5.5(b)(1) and (2) and adoption of new Rule 5.5(d)(3) clarify that a lawyer who is licensed in another jurisdiction but does not practice New Hampshire law “need not obtain a New Hampshire license to practice law solely because the lawyer is present in New Hampshire.” Ethics Committee Comment 3 to Rule 5.5. Similarly, the Comments to the Rules recognize that remote and multi-jurisdictional practice is a “modern reality” which must be accommodated by the Rules. *Id.* (“The increased mobility of attorneys, and, in particular, the ability of attorneys to continue to communicate with and represent their clients from anywhere in the world, are circumstances that were never contemplated by the Rule. The adoption of Rules 5.5(b) and (c) in 2008 reflected the State’s growing recognition that multi-jurisdictional practice is a modern reality that must be accommodated by the Rules.”)

However, Vermont’s Rule 5.5(b)(1) bars a lawyer (who is not admitted to practice in Vermont) from establishing an office or other systematic and continuance presence in Vermont and does not include the permissive New Hampshire language. While we are unable to weigh in on how broadly Vermont authorities

might read this provision, it is an issue of which the lawyer should be aware. See Vermont Rule of Professional Conduct 8.5(a) (granting disciplinary powers over lawyers from other jurisdictions who provide “legal services in this jurisdiction.”); New Hampshire Rule of Professional Conduct 5.5(a) (“A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.”). Any attorney practicing remotely in a state where they are not admitted to practice should take note of Rule 8.5(a) and 5.5(a) because they may be subject to discipline in the state in which they are located, even if they are not admitted to practice in that state, *and* subject to discipline in the state in which they are admitted to practice. The New Hampshire lawyer practicing in Vermont must ensure that such practice does not constitute the “unauthorized practice of law” under Vermont’s version of Rule 5.5, in order to avoid a violation of N.H. Rule 5.5(a). Attorneys working remotely must be cognizant of the laws and Rules of Professional Conduct in the state in which they are located and should ensure that their practice of law outside of New Hampshire does not violate that state’s Rules of Professional Conduct.

While the New Hampshire Rules recognize that remote work is a modern reality, attorneys working remotely must consider and comply with applicable ethical responsibilities and ensure they can competently represent clients in the same or similar manner that they could in the office. See Rule 1.1. Lawyers must have plans in place to “ensure responsibilities regarding competence, diligence and communication are being fulfilled when practicing virtually” including staying abreast of the risks and benefits of relevant technology and promptly respond to a client’s needs no matter the attorney’s physical location. ABA Opinion 498 (March 10, 2021); *see also* Rule 1.3. Accordingly, attorneys are encouraged to evaluate whether it is possible to represent clients in a same or similar manner when they are located at home, or other locations that may invite distractions not present in the office.

Attorneys and timekeepers must be aware that there remains skepticism from some employers, and clients, whether attorneys are efficiently using their time while working remotely. For example, if

an attorney working from home becomes distracted by an unexpected delivery or a pet that needs attention, he or she must ensure that a client is not inadvertently charged for that time just as they would in the office when a call comes in or a co-worker stops by to chat. In some instances, there may be different or greater requirements to justify time entries or how an attorney maintains their time if timekeeping software is not available during remote work. Attorneys must remain diligent in timekeeping and vigilant to avoid discrepancies or inadvertent errors and to some extent, be aware that it is possible that remote time may be scrutinized in a different manner.

Most remote workspaces are not designed with complete confidentiality in mind. It is possible that due to the circumstances of remote practice, attorneys may place themselves at greater risk of disclosure of confidential client information. A remote lawyer’s obligation regarding protecting confidential client information is identical to that of an attorney practicing in a traditional office setting. A lawyer shall take “reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to representation of the client.” Rule 1.6. It is not hard to imagine multiple scenarios in which Rule 1.6 is ripe for violation in a remote setting. Remote attorneys should review the non-exhaustive list of factors in Comment 18 to Rule 1.6 and consider whether he or she has made reasonable efforts to comply with the Rules. For example, attorneys who are working remotely from home or at locations in which neighbors or other tenants live close by may want to make efforts to avoid certain locations of the property during client telephone or video calls so that confidential information is not overheard.

It is also vital for attorneys residing with roommates or family members to ensure that they have a separate workspace that is either locked or the workspace includes a secure area or file cabinet that cannot be accessed by anyone but the attorney. If remote attorneys maintain physical files, they should ensure that file names are redacted or hidden and not stored in common spaces. As in this inquiry, where two attorneys reside within the same household, they must also be careful to avoid inadvertent disclosures under Rule 1.6. This is especially true

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where an attorney may not be aware that an attorney household member or his or her firm represents an adverse party in a matter and inadvertent disclosures of confidential information could give rise to a conflict that may be imputed to an entire firm.

In addition, where a remote attorney plans to entertain friends or family, he or she should ensure that visitors cannot access any area that contains confidential client information, including laptops, file cabinets or work bags. It is clear from the ABA Opinions that in certain circumstances, a lawyer may be required to take special precautions where the nature of the client's information requires a higher degree of security. ABA Opinion 498 fn. 11; *see also* ABA Comm. On Ethics and Prof'l Responsibility Opinion 477R (2017). Examples of this may include representation in juvenile delinquency cases, and matters involving protective orders.

Attorneys supervising other remote workers must also understand that their supervisory obligations extend to remote practice. The ABA and New Hampshire rules differ in one important way with respect to supervisory obligations of attorneys under Rule 5.1. The New Hampshire Rule uses the phrase “each partner” and “each lawyer who . . . possesses comparable managerial authority” instead of the ABA's language of “a partner” and “a lawyer . . .” to emphasize that the rule applies to *all managers of a law firm and cannot be delegated*. Ethics Committee Comment to Rule 5.1. Each partner and each managerial lawyer in a New Hampshire practice has a duty to ensure other persons under their supervision are not

making it possible for unauthorized disclosure of information. Rule 5.1 and 5.3. For supervising attorneys who are located remotely, the Committee suggests that you have a weekly check-in with nonlawyers and subordinates to remind them about their obligations and to troubleshoot any technological concerns. *See* Rules 5.1 and 5.3 (each partner, and each managerial lawyer shall take reasonable efforts to ensure the conduct of nonlawyers and subordinate lawyers is compatible with the professional obligations of the lawyer).

ABA Formal Opinion 477R (the revised version of Formal Opinion 477) also suggests that in the context of electronic communications lawyers must set policies, understand and use reasonable electronic security measures, and train subordinates and employees in technology and information security periodically. For example, it may be necessary to have a filing system that is accessible remotely to ensure the supervising lawyer can access client files and ensure that tasks undertaken by nonlawyers, or subordinate attorneys are in compliance with the lawyer's professional obligations. Lawyers working remotely should be wary of the adage “out of sight, out of mind” to avoid potential violations of Rules 5.1 and 5.3.

Attorneys should also ensure that subordinate attorneys and staff are not using personal laptops, or email accounts to disseminate privileged information. ABA Formal Opinion 498 (supervising attorneys must supervise firms bring-your-own-device policy to ensure strong passwords to devices, routers, access through VPN, updates installed, and training completed on phishing attempts). Attor-

neys should consider using multi-factor authentication to access email or shared workspaces, firewalls, encrypted passwords and/or a password protected drop box or web-based document systems to exchange privileged information to ensure that documents are not intercepted. Finally, the ABA has issued guidelines regarding smart devices. ABA Opinion 498 encourages attorneys to disable smart technologies such as Siri or Alexa devices to avoid inadvertent disclosure of confidential information because “otherwise the lawyer is exposing the client's and other sensitive information to unnecessary and unauthorized third parties and increasing the risk of hacking.” This is especially important for firms without full-time technical support.

A remote attorney's obligations regarding practice-related administrative or supervisory tasks are also unchanged. The ABA considers this to be one of the potential limitations of remote practice and makes it clear that attorneys must be able to write and deposit checks where applicable, docket correspondence and communications, direct or redirect clients, check postal mail and maintain trust-accounting records while practicing virtually. ABA Opinion 498. Particularly for solo practitioners this is important. The ABA is clear that if a lawyer is not available at his or her physical office address “there should be signage (and/or online instructions) that the lawyer is available by appointment only and/or that the posted address is for mail deliveries only.” *Id.* Furthermore, attorneys must stay in contact with their clients. For example, if an attorney's remote practice is located in a jurisdiction within a different

time zone, it is this Committee's recommendation that the attorney should make him or herself available at reasonable hours within the home jurisdiction.

For more remote practice considerations, check out these related Ethics Committee Topics:

- i. Working Remotely Under NH Rule 5.5: <https://www.nhbar.org/working-remotely-under-nh-rule-5-5>
- ii. For lawyers working remotely while traveling, *see*: 12-5-18 Ethics Opinion re: Border Searches: <https://www.nhbar.org/2018-19-1-border-law-and-confidential-client-information-practical-considerations-and-ethical-obligations/>
- iii. Outsourcing Legal and Non-Legal Support Services: <https://www.nhbar.org/ethics/opinion-2011-12-05>

*This Ethics Corner Article was submitted for publication to the NHBA Board of Governors at its February 16, 2023 meeting. The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the Bar News and other NHBA media outlets. New Hampshire lawyers may contact the Committee for confidential and informal guidance on their own prospective conduct or to suggest topics for Ethics Corner commentaries by emailing: Robin E. Knippers at [reknippers@nhbar.org](mailto:reknippers@nhbar.org).*

## Internal Workplace Investigations

Counsel for employers are seeing an increased need for prompt internal investigations by independent fact-finders. Liz Bailey and Andrea Chatfield have over 40 years of combined experience in complex internal investigations for both private and public organizations. **We can help.**



### Liz Bailey

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# 80 Percent of Organizations Have Experienced Cybercriminal BEC Attacks Over the Last Year They Start with Email Eavesdropping Activities

By Zafar Khan

You may be barricaded inside the best of (fire)walls, but you could still be exposed by your recipients' nostalgia for their memorable passwords.

When you think about what happens out in the (internet) wild, when you send an email to your client, spouse, or friend, do you think they are as cybersecurity conscious or careful as you are? Do you trust all those who your email is forwarded to, to be security conscious enough to protect what YOU deem as sensitive information?

What is terrifying, is knowing that after you click "send," your sensitive information takes on a life of its own, as it hops around people's email accounts, often buried in a long-forgotten string of text after many replies and forwards.

Good news. Now there is a way to see if your email – after you click send, even after received or forwarded – is being actively eavesdropped on by cybercriminals.

We'll get right down to it. In most cases, it is where a cybercriminal has broken into an email account (think, your recipient, your



accountant, etc.) and they patiently eavesdrop on the correspondence until they see that there is some invoice received, wire instructions to fund an account, or escrow transaction details.

At the right time, the eavesdropper performs their trickery which ends in attempts to lure people into making a payment to the wrong place (the cybercriminal's bank account).

Amazingly, according to the FBI, their success rate today is five percent (\$2.4 billion last year) of the total dollar value of attempts (nearly \$50 billion last year).

Bottom line: Would you want to be able to see if your email was actively being eavesdropped on at your recipient, in real time? Who wouldn't!

Here is a brief rundown of this type of sophisticated email-initiated crime:

1. You (or your Accounts Receivable team) send an ordinary email to a client or customer about a payment due (invoice, purchase order, transaction closing escrow, etc.). Emails like these are sent on a very regular and frequent basis.
2. Your recipient's email account is being unknowingly eavesdropped on by a cybercriminal using a discovered reused password and IMAP protocol at their server, for example.
3. Within hours of your email going to your recipient, if the email is contemplating a payment, the cybercriminal copies only that email content (often including PDF payment details for a wire or ACH) and changes only one thing—the account where the money is to be sent! All you need is Photoshop and a dream.
4. An email will arrive in your recipient's inbox from what appears to be your email address (or it will come from a look-alike address – your name with a newly purchased domain one letter off from your domain), so the recipient only sees your original request and then a second one – the impostor email. To most people it would appear as if you sent the email twice.
5. The cybercriminal then has someone follow-up by phone with your unwitting recipient stating that they are your assistant

(or some other yarn), and they are following up to see when the invoice or purchase payment will be sent.

6. Your recipient sends the payment to the cybercriminal's bank account (thinking it was your account) and replies to the fake email address from the fake you with confirmation.
7. The cybercriminal immediately moves the funds from the cybercriminal's original bank to an offshore account. The money is now, for all intents, gone forever.

Meanwhile, a week or so later, the *real* you follows-up to find out when payment will be made. The recipient replies quizzically that it was already sent. Panic ensues when the account numbers are found to be wrong, and the funds are gone.

What if you had RMail PRE-Crime services with Email Eavesdropping™ alerts turned on? You would have known when your clients are being drawn into the above scheme before you are cut out of the loop. Put another way: if an email someone sends is being eavesdropped on due to an unknown security issue *with the recipient's email account*, you will be alerted. Plus, you will get alerts after they click SEND, before the message is sent, that they are about to correspond with a cybercriminal unknowingly, preventing the cybercrime while raising e-security awareness at the user level.

Contact RPost to receive our free white paper on PRE-Crime™ Active Threat Hunting. For more information visit [rpost.com](http://rpost.com). ■

Zafar Khan is CEO of RPost, a global leader in cybersecurity. Prior, Khan worked with Deloitte Consulting, Goldman Sachs, and US manufacturers to transfer DOE National Lab weapons technology to industry. Khan is a frequent invited speaker in tech and industry events, including at the US Presidential Trade Mission to Chile and Peru and on the US DOC-Homeland Security Cyber Security Panel.

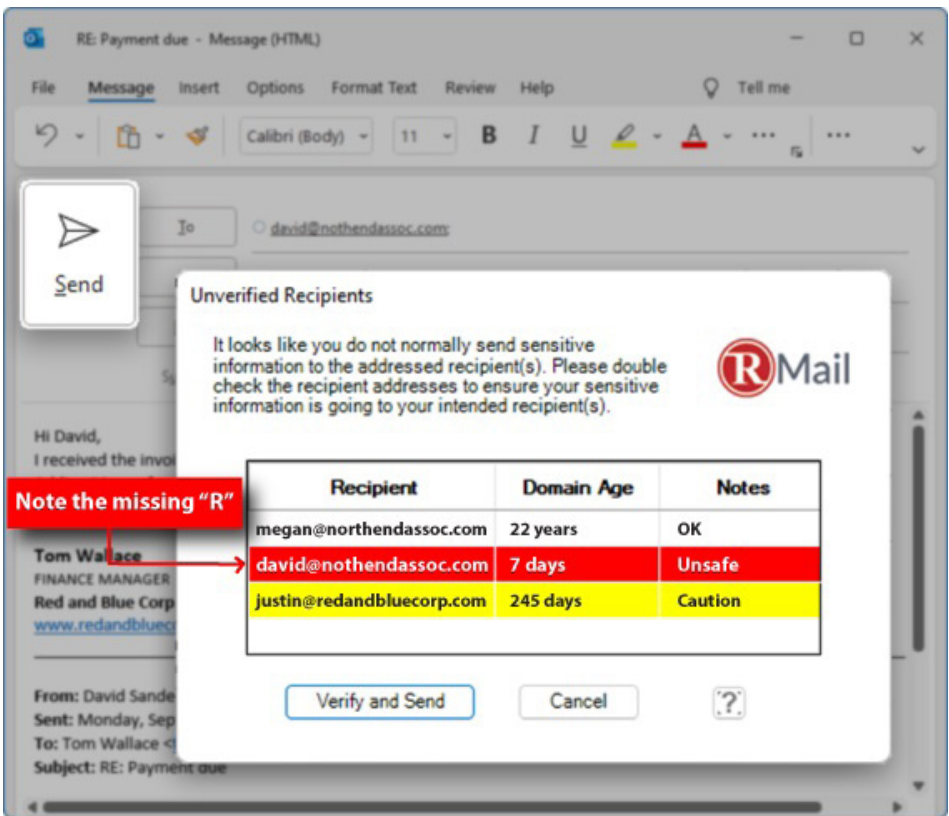
## MENTORS WANTED



### SHARE YOUR EXPERIENCE & KNOWLEDGE WITH THE NEXT GENERATION OF NEW HAMPSHIRE ATTORNEYS

The NHBA Mentor Advice Program (MAP) seeks experienced attorneys to help newer ones transition to the New Hampshire legal community and succeed in their practices. Volunteering as a mentor is rewarding, fun, and a great way to "pay it forward."

For additional information or to volunteer, contact Misty Griffith, our Member Services Coordinator at (603)715-3227 or [mgriffith@nhbar.org](mailto:mgriffith@nhbar.org)



A popup from RMail software that helps prevent BEC attacks by using AI to alert senders of a possible imposter. Courtesy photo





# CONTINUING LEGAL EDUCATION GUIDE

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

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

### MARCH 2023

**WED, MARCH 29 – 9:00 a.m. – 3:30 p.m.**  
Domestic Violence  
• 300 NHCLE min., incl. 60 ethics/prof.  
• Concord • NHBA Seminar Room/Webcast

### APRIL 2023

**MON, APR 3 – 12:00 p.m. – 1:00 p.m.**  
Modification of Parenting Plans  
• Webcast; 60 NHCLE min.

**TUE, APR 4 – 12:00 p.m. – 1:30 p.m.**  
Employee Misclassification: Independent Contractor  
vs. Employee; Exempt vs. Non-Exempt Status  
• Webcast; 90 NHCLE min.

**WED, APR 5 – 9:00 a.m. – 12:15 p.m.**  
Better Legal Writing  
• 240 NHCLE min.  
• Concord • NHBA Seminar Room/Webcast

**THU, APR 6 – 12:00 p.m. – 1:30 p.m.**  
Intellectual Property Case Law Update  
• Webcast; 90 NHCLE min.

**THU, APR 6 – 2:00 p.m. – 3:30 p.m.**  
2022 UCC Amendments  
• Webcast; 90 NHCLE min.

### MAY 2023

**WED, MAY 3 – 8:30 a.m. – 1:00 p.m.**  
Truly Fundamentals of Estate Planning  
for NH Practitioners  
• 240 NHCLE min., incl. 30 ethics/prof.  
• Concord • NHBA Seminar Room/Webcast

**THU, MAY 4 – 12:00 p.m. – 1:00 p.m.**  
The Sneaky Dozen: 12 Subtle Grammar & Writing  
Errors w/Lenne Espenchied  
• Webcast; 60 NHCLE min.

**THU, MAY 11 – 9:00 a.m. – 4:30 p.m.**  
Medical Malpractice Cases in New Hampshire  
• 360 NHCLE min., incl. 30 ethics/prof.  
• Concord • NHBA Seminar Room/Webcast

**MON, MAY 15 – Time TBD**  
Real Estate 101  
• Credits TBD  
• Concord • NHBA Seminar Room/Webcast

**WED, MAY 17 – 9:00 a.m. – 4:30 p.m.**  
Statutory Interpretation  
• 360 NHCLE min.  
• Concord • NHBA Seminar Room/Webcast

**THU, MAY 18 – 12:00 p.m. – 1:00 p.m.**  
Illogic & Ethics w/Lenne Espenchied  
• Webcast; 60 NHCLE ethics min.

**MON, MAY 22 – 9:00 a.m. – 4:30 p.m.**  
Bankruptcy Litigation  
• Webcast; 360 NHCLE min., incl. 60 ethics/prof.

**WED, MAY 24 – 9:00 a.m. – 4:30 p.m.**  
Navigating the Healthcare World  
• 365 NHCLE min.  
• Concord • NHBA Seminar Room/Webcast

**THU, MAY 25 – 8:30 a.m. – 10:30 a.m.**  
17th Annual Ethics CLE  
• 120 NHCLE ethics min.  
• Concord • NHBA Seminar Room/Webcast

### JUNE 2023

**THU, JUN 8 – 12:00 p.m. – 2:00 p.m.**  
Survey Says: The Top 5 Drafting Errors in Ambiguous  
Contract Cases w/Lenne Espenchied  
• Webcast; 120 NHCLE min.

**WED, JUN 14 – 8:30 a.m. – 4:45 p.m.**  
Practical Skills for New Admittees-Day 1  
• 360 NHCLE min., incl. 120 ethics/prof.  
• Concord - Grappone Conf. Center

**THU, JUN 15 – 8:30 a.m. – 12:00 p.m.**  
Practical Skills for New Admittees-Day 2  
• 180 NHCLE min.  
• Concord - Grappone Conf. Center

**WED, JUN 21 – 9:00 a.m. – 2:40 p.m.**  
Liability for Directors & Owners  
• 280 NHCLE min., incl. 30 ethics/prof.  
• Concord • NHBA Seminar Room/Webcast

**THU, JUN 22 – 12:00 p.m. – 1:00 p.m.**  
Quick Start Guide: 10 Drafting Dos & Don'ts Every  
Lawyer Should Know about Drafting Contracts  
w/Lenne Espenchied  
• Webcast; 60 NHCLE min.

**FRI-SAT, JUN 23-24**  
Annual Meeting 2023  
• Portsmouth • AC Marriott

**THU, JUN 29 – 12:00 p.m. – 1:00 p.m.**  
Fast Track Memo Writing for New Deal Lawyers  
w/Lenne Espenchied  
• Webcast; 60 NHCLE min.

## Breakfast Forum

### 17th Annual Ethics CLE

Thursday, May 25, 2023  
8:30 a.m. – 10:30 a.m.

120 NHCLE ethics/prof. min

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

Topics to be covered include:

- Common Ethical Issues in Litigation
- Updates on Recent Ethics Committee Opinions
- Refresher on Trust Account Obligations
- Ethics and Pro Bono Legal Services

#### Faculty

**Hon. Andrew R. Schulman**, New Hampshire  
Superior Court, Concord

**Stephanie K. Burnham**, Burnham Legal PLLC,  
Manchester

**Mark P. Cornell**, NH Supreme Court Attorney  
Discipline Office, Concord

**Elizabeth M. Murphy**, NH Supreme Court Attorney  
Discipline Office, Concord

**Emma M. Sisti**, 603 Legal Aid, Concord

**Richard Guerriero**, Program Chair, Lothstein &  
Guerriero, Keene

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

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#### How to Register

All registrations must be made online at  
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(if you missed any of the previously held programs,  
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## Midyear from page 1

MYM “serves as a unique opportunity to reconnect with or to meet fellow members of our Bar.”

In the first educational session of the day, NH Supreme Court Justice James Bassett introduced Sterling Professor of Law and Political Science at Yale University, Akhil Reed Amar, who presented *The Importance of the Rule of Law and Present-Day Challenges*, an intrinsic look at the rule of law, judicial independence, and impartial constitutional experts. He also read passages from his new book, *The Words That Made Us: America's Constitutional Conversation, 1760-1840*.

“There’s no mistaking Akhil Amar’s constitutional prowess,” NHBA Director of Professional Development Megg Acquilano says. “He brought us to a time in US history when our founders wrestled with what role the judiciary should play and shared a comprehensive characterization of ‘founding son,’ Joseph Story, powerhouse prodigy of Chief Justice John

Marshall, who crossed party lines and was unafraid to question partisan dogma.”

This was followed by a lively and thought-provoking panel discussion with Amar and former Assistant to the President and White House Counsel for President Biden, Dana Remus, moderated by Director of UNH Law School’s Warren B. Rudman Center, John Greabe.

“Part of the problem is that reporting on the [US Supreme] Court is always the five-four cases because that’s what’s juicy,” Dana Remus said during the discussion. “I’ve long said, we need the country to recognize how many nine-zip opinions there are.”

Before lunch was served, Chief Justice Gordon MacDonald spoke to meeting participants via a pre-recorded video about a recent analysis in conjunction with the National Center for State Courts that calls for more staffing to meet the court system’s current caseload. For the Circuit Court, seven new judges, 31 new clerical staff, and one new clerk are being requested, and the Superior Court needs one judge, four clerical staff, and one law clerk.

After lunch and award presentations (see facing page for recipients), the afternoon segued into two CLEs led by Belmont University Law Professor, David Hudson, *The Most Recent Term of SCOTUS and First Amendment Principles & Attorneys Speaking to the Press*, wherein he lectured on various topics surrounding the US Supreme Court, stare decisis, and the Lemon test, to name a few.

Participants were subsequently treated to a clever and informative demonstration of CaseLines by members of the NH Superior Court, including Chief Justice Tina Nadeau. The often-amusing presentation entailed court staff acting out a mock witness testimony in a fair use proceeding – complete with a bailiff who ordered the participants to rise when Justice Nadeau came onstage – wherein an attorney and her witness showed opposing counsel how to use the new cloud-based court exhibit and evidence management application.

“We were so grateful that the Bar agreed to allow us to do this presentation,” Justice Nadeau says. “The Bar has been an incredible partner in rolling out CaseLines

and providing training to the lawyers and making sure CLEs are available. We got some great feedback after the presentation from lawyers. Overall, it was a real success.”

The day was rounded out by a panel discussion on what lawyers need to be aware of when speaking to the press, between US Attorney Jane Young, Attorney Gregory Sullivan, and immediate Past Bar president Richard Guerriero, moderated by Assistant US Attorney Seth Aframe. The panel fielded questions and reflected on how judges address pretrial publicity and the intersection between the limits to attorney speech and attorneys’ individual free speech rights.

“This year’s MYM was really special,” NHBA Executive Director George Moore noted. “A distinguished variety of presenters, a very topical demonstration of CaseLines, and an excellent panel on practical tips for dealing with the press, all combined to make a great program. This, combined with an efficiently run awards luncheon, with 400 of your closest colleagues, made the day exceptional.” ■



Nearly 400 members of the Bar attended the first in-person Midyear Meeting since the pandemic. Photo by Rob Zielinski



NHBA president Jonathan Eck (left) with the recipients of the 2023 Presidents Awards. From left to right: Chrissy Hanisco, recipient of the Vickie M. Bunnell Award for Community Service; Sarah Blodgett, recognized with the Distinguished Service to the Public Award; and Melissa Davis, given the Award for Outstanding Service in Public Sector/Public Interest Law. Photo by Rob Zielinski



NHBA President Jonathan Eck, the master of ceremonies at Midyear Meeting 2023, encourages member to become more involved in the NHBA. Photo by Rob Zielinski



Michael Sheehan (left), Circuit Court Judge John Curran (center), and Kevin Collimore enjoying some downtime at the After-Hours Midyear Meeting Social, hosted by the NHBA New Lawyers Committee at Strange Brew in Manchester. Photo by Tom Jarvis



Superior Court law clerks socializing at Strange Brew after the Midyear Meeting. From left to right: Ben Chapman, Law Clerk Supervisor Stephani Roundy Knights, Helen Yurchenco, and Haley Goeckel. Photo by Tom Jarvis



NHBA New Lawyers Committee co-chairs Stephanie Tymula (left) and Laurie Smith Young (center) talking with Molly Lynch. Photo by Tom Jarvis





John Greabe (left), Dana Remus (Center), and Akhil Amar talking about the politicization and polarization of SCOTUS, the Twitterverse, and the importance of bipartisanship in a panel discussion following Amar's lecture on the Rule of Law. Photo by Rob Zielinski



Professor David Hudson lecturing to Midyear Meeting participants about SCOTUS and first amendment principles. Photo by Rob Zielinski



603 Legal Aid Pro Bono Manager Emma Sisti (right) posing with three of the four 2023 Pro Bono Award recipients. From left to right: Kayla Turner, who was given the Pro Bono Rising Star Award; Eric MacLeish, recipient of a Distinguished Pro Bono Service Award; and James Shepard, recognized with the L. Jonathan Ross Award for Outstanding Legal Services. Photo by Rob Zielinski



Joanne Stella (left) receiving a Distinguished Pro Bono Service Award from 603 Legal Aid Pro Bono Manager Emma Sisti. Photo by Rob Zielinski



NHBA Gender Equality Committee Chair Lyndsay Robinson (left) presenting the Philip S. Hollman Award to Judge Susan Carbon. Photo by Rob Zielinski



Superior Court Chief Justice Tina Nadeau presiding over the mock witness testimony in the Case-Lines demonstration. Photo by Rob Zielinski



Gender Equality Breakfast speaker Tanna Clews, CEO and President of NH Women's Foundation. Photo by Rob Zielinski



Sterling Professor of Law and Political Science at Yale University Akhil Amar signing copies of his new book, *The Words That Made Us: America's Constitutional Conversation, 1760-1840*. Photo by Rob Zielinski



# Domestic Violence

Wednesday  
**Mar. 29** 9:00 a.m. - 3:30 p.m.  
300 NHCLE min.  
incl. 60 ethics/prof. min.



NHBA Seminar Room/Live Webcast

This day-long program, a collaboration between the bench and the bar, will include presenters from the judicial branch, the public and private bars, the DOVE program, and victim advocacy organizations. The program will cover everything you need to know about handling both sides of a domestic violence case, including the law, appeals, managing family law cases when domestic violence is involved, the intersection between criminal and civil restraining order cases, and the ethical issues that can arise in domestic violence cases.

## Faculty

**Jack P. Crisp, Jr.**, CLE Committee Chair/Program Moderator, Crisp Law Firm, Concord  
**Gary N. Apfel**, Simpson & Mulligan, PLLC, Lebanon  
**Kristen Barnett**, NH Coalition Against Domestic & Sexual Violence, Concord  
**Doreen F. Connor**, Primmer, Piper, Eggleston & Cramer, PC, Manchester  
**Tracey G. Cote**, Shaheen & Gordon, Concord  
**Alan J. Cronheim**, Sisti Law Office, Portsmouth  
**Pamela Dodge**, 603 Legal Aid, Concord  
**John Garvey**, John Burwell Garvey Mediator, New London

**Joshua L. Gordon**, Law Offices of Joshua L. Gordon, Concord  
**Hon. Charles L. Greenhalgh**, NH 1st Circuit Court-Berlin/3rd Circuit Court-Conway  
**Richard Guerriero**, Lothstein Guerriero, PLLC, Keene  
**Hon. Anna Barbara Hantz Marconi**, NH Supreme Court, Concord  
**Margaret Huang**, NH Judicial Branch, Concord  
**Robert D. Hunt**, Davis/Hunt Law, PLLC, Franklin  
**Hon. James H. Leary**, 9th Circuit Court/District Division, Nashua  
**Mary Krueger**, NH Legal Assistance, Concord  
**Hon. Erin B. McIntyre**, 6th NH Circuit Court, Hillsborough  
**Brian R. Moushegian**, NH Attorney Discipline Office, Concord  
**Mariana C. Pastore**, Upper Valley Prosecutorial Association, Hanover  
**Lynda W. Ruel**, Attorney General's Office, Concord  
**Tina Schumacher**, Voices Against Violence, Plymouth  
**Kirk C. Simoneau**, Red Sneaker Law, PLLC, Manchester  
**Kristen I. Vartanian**, Rockingham County Attorney's Office, Kingston  
**Angelika R. Wilkerson-Martin**, 603 Legal Aid, Concord

## Learn@ Lunch Webcasts

**Modification of Parenting Plans**  
April 3, 2023 – 12:00 – 1:00 p.m.  
60 NHCLE min.



**Employee Misclassification: Independent Contractor vs. Employee; Exempt vs. Non-Exempt Status**

April 4, 2023 – 12:00 – 1:30 p.m.  
90 NHCLE min.

**Intellectual Property Case Law Update**

April 6, 2023 – 12:00 – 1:30 p.m.  
90 NHCLE min.

**2022 UCC Amendments:  
New Article 12 & Related Amendments**

April 6, 2023 – 2:00 p.m. – 3:30 p.m.  
90 NHCLE min.

## Better Legal Writing

Wednesday  
**Apr. 5** 9:00 a.m. - 12:15 p.m.  
180 NHCLE min.



NHBA Seminar Room/Live Webcast

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

## Faculty

**Justin S. St. James**, CLE Committee Member/Program Chair, Attorney at Law, Andover, MA  
**Joshua L. Gordon**, Law Offices of Joshua L. Gordon, Concord  
**Sophie M. Sparrow**, UNH Franklin Pierce Law School, Concord  
**M. Holly Vietzke**, One Law, LLC, Newton, MA

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## Medical Malpractice Cases in New Hampshire

Thursday  
**May 11** 9:00 a.m. - 4:30 p.m.  
360 NHCLE min.  
incl. 30 ethics/prof. min.



NHBA Seminar Room/Live Webcast

This program features some of the most experienced NH practitioners in the area of medical injury and malpractice cases. The full day program will cover the handling of medical malpractice cases from start to finish, including presentations on selecting and commencing a claim, insurance policies and coverage, retaining and examining expert witnesses, the standard of care, special challenges in mediation, physician licensing and the Board of Medicine, pros and cons of screening panels, and proving causation and damages in medical injury cases. The program will also touch on ethical issues confronting counsel handling these cases.

### Faculty

**Peter E. Hutchins**, Program Chair/CLE Committee Member, Law Offices of Peter E. Hutchins, Manchester

**Heather M. Burns**, Upton & Hatfield, LLP, Concord

**Nicholas D. Cappiello**, Lubin & Meyer, PC, Boston, MA

**Lindsey B. Courtney**, NH Office of Professional Licensure & Certification, Concord

**Todd J. Hathaway**, Wadleigh, Starr & Peters, PLLC, Manchester

**Bradley D. Holt**, Sulloway & Hollis, PLLC, Concord

**Kimberly Kirkland**, Reis & Kirkland, PLLC, Manchester

**Jonathan A. Lax**, Gallagher, Callahan & Gartrell, PC, Concord

**Michael S. McGrath**, Upton & Hatfield, LLP, Concord

**Randy J. Reis**, Reis & Kirkland, PLLC, Manchester

**R. Peter Taylor**, Hoefle, Phoenix, Gormley & Roberts, PLLC, Portsmouth

## Truly Fundamentals of Estate Planning for NH Practitioners

Wednesday  
**May 3** 8:30 a.m. - 1:00 p.m.  
240 NHCLE min.  
incl. 30 ethics/prof. min.



NHBA Seminar Room/Live Webcast

This program is designed to be a truly fundamental program for attorneys and paralegals who prepare estate planning documents but who have not had much experience in the field. It will cover everything from the initial meeting, advance directives, wills, trusts, basic tax considerations, potential conflict assessments as well as Medicaid issues.

### Faculty

**Robert A. Wells**, Program Chair/CLE Committee Member, McLane Middleton Professional Association, Manchester

**Patience E. Carlier**, Sulloway & Hollis, PLLC, Concord

**Alyssa Graham Garrigan**, Anderson & Ansell, PA, Bedford

**Jennifer R. Rivett**, Devine, Millimet & Branch, PA, Manchester

**Joshua R. Weiher**, McLane Middleton, Professional Association, Manchester

## Contract Drafting with Lenne Espenchied – Webcast only

### The Sneaky Dozen: 12 Subtle Grammar and Writing Errors

May 4, 2023 – 12:00 - 1:00 p.m.  
60 NHCLE min.

### 7 Questionable Associations that Cause Contract Litigation, and How to Avoid Them

Date TBD – 12:00 - 1:00 p.m.  
60 NHCLE min.

### Illogic and Ethics

May 18, 2023 – 12:00 - 1:00 p.m.  
60 NHCLE ethics min.

### Survey Says: The Top 5 Drafting Errors in Ambiguous Contract Cases

June 8, 2023 – 12:00 - 2:00 p.m.  
120 NHCLE min.

### Quick Start Guide: 10 Drafting Dos and Don'ts Every Lawyer Should Know about Drafting Contracts

June 22, 2023 – 12:00 - 1:00 p.m.  
60 NHCLE min.

### Fast Track Memo Writing for New Deal Lawyers

June 29, 2023 – 12:00 - 1:00 p.m.  
60 NHCLE min.

## Navigating the Health Care World

Wednesday  
**May 24** 9:00 a.m. - 3:30 p.m.  
365 NHCLE min.



NHBA Seminar Room/Live Webcast

This full day seminar will address cutting edge developments in the health system focusing on recent changes that impact access to and delivery of care for both insured and uninsured patients. The program is geared toward the non-healthcare lawyer who needs to understand and navigate the health care system to advocate for themselves, their families, and their clients.

### Faculty

**Debra Dyleski-Najjar**, CLE Committee Member/Program Chair, Najjar Employment Law Group, PC, Andover, MA

**Judith F. Albright**, Rath, Young & Pignatelli, PC, Concord

**Kenneth C. Bartholomew**, Rath, Young & Pignatelli, PC, Concord

**David R. Craig**, David R. Craig & Associates, New Boston

**Andrew B. Eills**, Sheehan Phinney Bass & Green, PA, Manchester

**Mary Goreham**, US Department of Labor, Boston, MA

**Lucy C. Hodder**, UNH Franklin Pierce School of Law, Concord

**Maria M. Proulx**, Anthem Blue Cross & Blue Shield of NH, Manchester

**Christine Tang-Chin**, US Department of Labor, Boston, MA

**Lawrence W. Vernaglia**, Foley & Lardner, LLP, Boston, MA

**Thomas Wright**, Turning 65 Workshop, Portland, ME

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## Real Estate 101

Monday  
**May 15**

Time TBD  
Credits TBD



NHBA Seminar Room/Live Webcast

This comprehensive CLE will cover the basics of real estate practice: real estate contracts; deeds and leases; surveys; title, title insurance, and title searches; residential and commercial closings; choice of entity; mortgages and foreclosure; revenue stamps and forms; adverse possession, quiet title, and partition; liens; and condominiums. Presented by an experienced and lively panel of New Hampshire lawyers.

### Faculty

**Amy Manzelli**, Program Chair/CLE Committee Member, BCM Environmental & Land Law, PLLC, Concord

**Suzanne Brunelle**, Devine, Millimet & Branch, PA, Manchester

**Kate C. Catalano**, Catalano Law Offices, PLLC, Portsmouth

**Lisa A. Mindlin**, Summit Title Services Corporation, Manchester

**Martha L. Prizio**, First American Title Insurance, Concord

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

## Statutory Interpretation

Wednesday  
**May 17**

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



NHBA Seminar Room/Live Webcast

This CLE course will cover the basics, as well as a few advanced topics, in the field of statutory interpretation: how courts determine what statutes mean in hard cases. It will cover the foundational concepts that underlie the techniques courts utilize to determine what statutes mean, such as statutory text, legislative intent, and statutory purpose. It will also explain basic doctrinal techniques such as textual canons, substantive canons, the sometimes-controversial question of legislative history, and the proper and effective use of dictionaries, both legal and standard. The faculty will also address more cutting edge issues and techniques in the field, such as corpus linguistics.

### Faculty

**Jack P. Crisp, Jr.**, Program Chair/CLE Committee Chair, The Crisp Law Firm, Concord

**Hon. N. William Delker**, NH Superior Court, Concord

**Hon. Anna Barbara Hantz Marconi**, NH Supreme Court, Concord

**James Heilpern**, Brigham Young University, Provo, UT

## Bankruptcy Litigation

Monday  
**May 22**

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



Live Webcast

Today's commercial transactions face their most grueling tests in the crucible of the bankruptcy court. This seminar will explore the most common bankruptcy tests of commercial transactions: motions for relief, avoidance powers, fraudulent conveyances and claims to discharge. The faculty will also discuss the substantive procedural, ethical, and constitutional aspects of the most common and feared bankruptcy litigation.

### Faculty

**Edmond J. Ford**, Program Chair/CLE Committee Member, Ford, McDonald, McPartlin & Borden, PA, Portsmouth

**Kimberly Bacher**, Office of the US Trustee, Concord

**Ryan M. Borden**, Ford, McDonald, McPartlin & Borden, PA, Portsmouth

**Hon. Peter G. Cary**, US Bankruptcy Court-District of Maine, Portland, ME

**Eleanor Wm. Dahar**, Dahar Law Firm, Manchester

**Joseph A. Foster**, McLane Middleton, Professional Association, Manchester

**William S. Gannon**, Attorney at Law, Manchester

**Jonathan M. Horne**, Murtha Cullina, LLP, Boston, MA

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

## Liability for Officers, Directors & Owners of Limited Liability Companies & Closely-Held Corporations

Wednesday  
**June 21**

9:00 a.m. - 2:40 p.m.  
280 NHMCLE min.  
incl. 30 ethics/prof. min.



NHBA Seminar Room/Live Webcast

This CLE will address legal exposure for individuals in a corporate and limited liability company setting. This will include potential liability for officers, directors and shareholders.

### Faculty

**Arnie Rosenblatt**, Program Chair/CLE Committee Member, Hinckley, Allen & Snyder, LLP, Manchester

**Peter G. Callaghan**, Preti Flaherty Beliveau & Pachios, PLLP, Concord

**Nicole Fontaine Dooley**, Welts, White & Fontaine, PC, Nashua

**Kathleen M. Mahan**, Hinckley, Allen & Snyder, LLP, Manchester

**Jennifer S. Moeckel**, Sheehan Phinney Bass & Green, Manchester

**Edward J. Sackman**, Bernstein, Shur, Sawyer & Nelson, PA, Manchester

**Michael B. Tule**, McLane Middleton, Professional Association, Manchester

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# Trust and Estate Law

## What You Should Know About the Newly Adopted Administrative Rules Pertaining to Estates and Trusts with Charitable Beneficiaries

By Nelson Raust and Griffin Kmon



Raust



Kmon

Effective October 7, 2022, the Attorney General has adopted administrative rules outlining the regulation of charitable trusts, including charitable non-profit organizations. These rules, found in Chapter Jus 400 of the New Hampshire Code of Administrative Rules, codify long-standing procedures of the New Hampshire Department of Justice's Charitable Trusts Unit (CTU) with a few new requirements. Incorporated by reference into the rules are updated forms, all of which are dated September 2022.

The CTU is responsible for overseeing over 7,000 New Hampshire charities, as well as donated conservation easements and trusts and estates with charitable beneficiaries. The CTU also has jurisdiction over charitable trust funds held by municipalities, professional fundraisers, and charitable sales promotions. With such a broad scope, it is likely most New Hampshire attorneys will need to interact with the CTU at some point in their careers. However, many attorneys may be unaware of the administrative rules pertaining to charitable trusts. This article aims to summarize key provisions of the rules that apply to trusts and estates with charitable beneficiaries.

In particular, practitioners dealing with trusts and estates should be aware of the registration and annual reporting requirements for charitable trusts, the notice requirements for estates with charitable bequests and non-testamentary express trusts with charitable beneficiaries, and the registration requirements for those trusts

and estates where distributions to charitable beneficiaries will take more than one year to complete.

### Jus 402 – Registration of Charitable Trusts

New Hampshire-based charitable trusts must register with the CTU pursuant to RSA 7:28 and Jus 402.01. A charitable trust is broadly defined as “any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, nonprofit, educational, or community purpose.” RSA 7:21, II(a).

Importantly, charitable trusts must register within six months after any part of the income or principal is authorized or required to be expended for a charitable purpose. RSA 7:28, I; Jus 402.03(a). Charitable trusts register by filing *Form NHCT-11: Application for Registration* either online or by mail. The list of documents required to be included with the application are found in Jus 402.04. Registered charitable trusts are also required to submit annual reports by filing *NHCT-12: Annual Report*. Those requirements can be found in Jus 404.02.

Jus 402.01(c) provides a few exceptions to the registration requirements, which include:

- Estates subject to probate court administration involving a will which included a charitable bequest, so as long as the administrator of the estate complies with Jus 403.01;
- Express trusts where the charitable donation remains revocable by the settlor;
- Express trusts which have a present obligation to make distributions to a charitable beneficiary where the interests are fully distributed within one year from the inception of the trustee's power and the trust complies with Jus 403.02; and
- Express trusts which are irrevocable

but have no present obligation to make distributions to charitable beneficiaries provided the trust complies with Jus 403.02.

### Jus 403.01 – Estate Notification Requirement

Pursuant to Jus 403.01, administrators of estates with charitable bequests must provide notice to the CTU by filing *Form NHCT-17: Notice as to Estates with Charitable Bequests* within 30 days of being appointed as administrator (initial notice) and again within 30 days of distribution of the bequest (distribution notice). Jus 403.01. However, in cases where the Director of Charitable Trusts has already entered an appearance, the initial notice is not required.

If the initial notice is required, a copy of the will and petition for estate administration must be included with the notice. The distribution notice must include the names of the charitable beneficiaries, the amount and date of the distribution, and a copy of the final probate accounting and receipts from each charitable beneficiary. Provided these requirements are met, registration in accordance with Jus 402 is generally not required.

However, if the will creates a charitable trust and the final distribution to charitable beneficiaries will *not* be made within one year from the trustee's power to make the distributions, the trustee must register with the CTU within six months, as outlined above. See Jus 402.01.

### Jus 403.02 - Notice of Non-testamentary Express Trusts with Charitable Beneficiaries

Under Jus 403.02, trustees of non-testamentary trusts with charitable beneficiaries must give notice to the CTU by filing *Form NHCT-18 Notice of Irrevocable Charitable Interest in Trust* within six months of the date that an interest of a charitable beneficiary becomes irrevocable. Jus 403.02. This notice must include a copy of the trust instrument and any amendments.

Where distributions to charitable ben-

eficiaries are required to be made, trustees can submit an updated Form NHCT-18 every five years from the date of the initial notice with no additional documentation required. Further, trustees must provide final notice at the time distributions to charitable beneficiaries commence. This notice must contain documentation to verify the distributions to charitable beneficiaries, and if the distribution is based on a formula or percentage, a copy of the statement showing the valuation of the trust.

However, if under the terms of the trust the distributions required to be made to charitable beneficiaries will *not* be completed within one year from the trustee's powers to make the distributions, the trustee must register with CTU as outlined above. Jus 403.02(e).

In addition to the provisions discussed above, practitioners should also be aware the rules contain a form to request a determination by the CTU as to whether registration is required under the rules and a process for applying for a waiver of rules. Pursuant to Jus 402.02, parties may submit *Form NHCT-10 Request for Pre-Registration Review*, along with supporting documentation, which the CTU must then review to determine if registration is required. Further, Jus 417.01 sets forth certain circumstances under which the Director of Charitable Trusts may waive any rules.

*A special thank you to Director Diane Quinlan and Assistant Director Michael Haley of the Charitable Trusts Unit for their help with this article. Chapter Jus 400, updated forms, and more resources regarding the obligations of charitable trusts are available on the CTU's website: [doj.nh.gov/charitable-trusts](http://doj.nh.gov/charitable-trusts). ■*

*Nelson Raust is a Director at Ransmeier & Spellman, PC, and focuses his practice on estate planning and trust and estate administration. Griffin Kmon is an Associate at Ransmeier & Spellman, PC, and focuses his practice on advising non-profit organizations and trust and probate litigation.*

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## Estate Creditors: To Pay or Not to Pay

By: Nadine M. Catalfimo

I have spoken with New Hampshire attorneys who question whether creditors who send a bill to an estate but do not file suit against an estate for payment within one year should be barred from getting paid by the estate. Those same attorneys even go so far as to question whether the attorney for the estate has a duty to the beneficiaries to eliminate a creditor claim that does not sue the estate within the one-year time period set forth in RSA 556:5 to avoid paying the creditor's claim. I hold the position that a creditor's claim should be barred by RSA 556:5 only when the executor satisfies all state and federal notice requirements to ascertain the debts and obligations of a decedent, and when a creditor does not timely give notice of its claim to an executor. However, under state and federal common law, there are notice requirements for creditors and executors that need to be considered.

The State of New Hampshire has a legitimate interest in the speedy settlement of the debts of a decedent. It is understandable and reasonable why a state has a self-executing statute setting forth when a creditor is barred to bring a claim against an estate. However, there are exceptions and creditors



may have a right to be paid by an estate under certain circumstance that extend beyond RSA 556:5.

One loophole that may be argued by a creditor could be based on the fourteenth amendment to the US Constitution and the due process requirement that balances a state's legitimate interests against "adversely affected" protected property interests of a creditor when that property interest is terminated by state action when no actual notice is given to the creditor by an executor. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950).

To balance a state and a creditor's interest, the US Supreme Court held that an executor must send a creditor "actual notice" and make a reasonably diligent effort to uncover the identity of "known or reason-

ably ascertainable" creditors when state action terminates a creditors property interest. *Tulsa Professional Services v. Pope*, 485 US 478, 479-490 (1988).

The US Supreme Court explained that "actual notice" must be made by an executor when the creditor is known or could have reasonably been ascertained by the estate. *Id.*

In *Tulsa*, the US Supreme Court explained that "mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice" to a creditor by an executor, and further explained that for creditors who are not "reasonably ascertainable ... publication notice can suffice." *Tulsa* at 490. The US Supreme Court further held that to "give notice by mail or such other means is certain to ensure

"actual notice" by an executor to a creditor. *Id.* at 478.

While most seasoned probate attorneys are aware of the notice requirements of *Tulsa*, others may not know about it, perhaps don't remember *Mullane* or *Tulsa* in their constitutional law class or have not put together how these landmark cases may apply to creditor of an estate in New Hampshire, or even understand what constitutes "notice" by an executor and creditor under New Hampshire common law or "actual notice" by an executor to a reasonably ascertainable or potential creditor under *Tulsa*.

New Hampshire has a creditor non claim statute. See RSA 556:1-5 and 556:29. Creditors are required to file notice of a claim with the executor within six months, and file suit within a year, See RSA 556:5, but not within six months of the date of appointment of the executor. RSA 556:2-3. The register of the probate court will publish a notice of the administration in a local newspaper. Creditors are not required to file a notice of claim with the NH Circuit Court – Probate Division, although some do anyway to notice the court that they have a claim against the estate.

New Hampshire common law provides that a creditor's claim can be "oral, written, or a combination of both." *Frost v. Frost*, 100 NH 326 (1956). A "notice" of a creditor claim to the executor does not need to be sent via registered mail, although it would be sufficient notice. See RSA 556:2, *Davis v.*

CREDITORS continued on page 36

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## Is New Hampshire a Tax Haven for Trusts?

By Jan Myskowski

The short answer is yes, but it's complicated. New Hampshire does not impose a state-level income tax on trusts, but that does not mean the income generated by the assets of a particular trust will not be taxed by New Hampshire or another state. For the vast majority of trusts, the income generated by the assets are taxed either to the grantor of the trust or to the beneficiaries of the trust. Generally, the state or states in which the grantor or beneficiaries reside will impose state-level income tax on that income. Avoiding that outcome requires three key elements: (1) the trust must be "domiciled" in New Hampshire (have its principal place of administration in New Hampshire), (2) the trust must be an irrevocable, non-grantor trust that will generally accumulate all income rather than distribute income to its beneficiaries, and (3) the trust must not have a nexus with any state other than New Hampshire sufficient to subject the trust to the income tax jurisdiction of a state other than New Hampshire.

Before delving into each of these critical elements, we should review some preliminary matters.

First, we must recognize that a trust is



not an entity. Instead, a trust is a three-party relationship between a grantor, a trustee, and at least one beneficiary. The subject of the relationship is the ownership and use and enjoyment of property. Unlike an entity, in which we would have to worry only about that entity's singular nexus with a taxing authority, with a trust we must consider the nexus of the grantor, the nexus of the trustee, the nexus of each beneficiary, and potentially the nexus of the property if it is tangible.

Next, we must review the ways in which trusts are categorized for income tax purposes. "Grantor" trusts are those in which the person who created the trust retained one or more of the rights and pow-

ers enumerated in sections 671 to 679 of the Internal Revenue Code. Grantor trusts are considered owned by the grantor of the trust for income tax purposes, and the grantor must report all items of income and loss associated with the trust on his or her personal income tax return for federal income tax purposes.

All other trusts are categorized as "non-grantor" trusts. Non-grantor trusts are further subcategorized into "simple" and "complex" trusts. Simple trusts are those in which the terms of the trust mandate that trust income be distributed out of the trust to one or more beneficiaries such that income can never accumulate in the trust. The net taxable income of a simple trust is

reported for federal (and where applicable state) income tax purposes by the beneficiaries who receive it. Complex trusts are those in which the trust income may but need not be distributed to the trust beneficiaries, such that there is the possibility for trust income to accumulate in the trust. The distributed income of a complex trust is taxed to the beneficiaries who receive it, and the accumulated income is taxed to and reported by the trust (technically by the trustee of the trust).

Finally, we should review the nature of the income tax regime in New Hampshire. New Hampshire's only income tax is the interest and dividends (I&D) tax imposed under RSA Chapter 77. Particularly instructive for our purposes is RSA 77:10, which governs the taxation of interest and dividend income from trusts and foundations. RSA 77:10 calls for imposition of the I&D tax on the interest and dividend income generated by grantor trusts when the grantor to whom trust income is taxed for federal purposes resides in New Hampshire (that grantor must report the income personally). RSA 77:10 also calls for imposition of the I&D tax on interest and dividend income distributed by non-grantor trusts to beneficiaries who reside in New Hampshire (those beneficiaries must report the income personally).

Note carefully what is excluded from I&D taxation. Interest and dividend income that is accumulated in a non-grantor, com-

TRUSTS continued on page 36



Benjamin Siracusa Hillman



Laura Tetrault



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## The Importance of Special Needs Trust Planning

By Theo Vougias

People with disabilities are sometimes not able to work because of the nature of their disability and require public benefits to pay for basic necessities, such as food and shelter. The general rule with disability public benefits is that the applicant must be poor at the time of application and must remain poor while receiving public benefits. While public benefits have come a long way, they do not do everything.

For parents with a child with a disability who is receiving means-tested public benefits, planning for the demise of the parents is of critical importance. Parents want to know that their child will be well-cared for after they are gone. However, parents sometimes opt not to leave an inheritance in favor of a child with a disability because they fear that the inheritance will have a negative impact on public benefits, such as Supplemental Security Income and Medicaid. In those cases where parents choose to exclude the child with a disability, the hope and expectation is that the other children will help care for their sibling. That arrangement may be wrought with peril as those children may lose interest in helping care for their sibling with the disability, or they may get sued, divorced, or pass on.

There is, however, a powerful and



potentially life-transforming planning opportunity for parents to leave assets in trust for their child with a disability without jeopardizing public benefits. That type of trust is commonly referred to as a special needs trust, which is a purely discretionary trust for the sole benefit of the child. A special needs trust is used to supplement public benefits. While a special needs trust must be structured to follow complex rules and may not be an ideal solution in all circumstances, for many people it is an effective option.

There are two types of special needs trusts, "third-party" and "first-party" trusts. One of the most fundamental questions that must be answered where special needs trust planning is warranted is where the assets come from. Answering that question will confirm which type of trust must be used.

If an individual desires to make a gift

or leave an inheritance in favor of a person with a disability, then a third-party trust should be used as that type of trust may be funded with assets that are deemed to belong to an individual other than the trust beneficiary. For example, parents may establish a third-party trust to be funded upon the death of the surviving parent through the parents' own estate plan. In the case of an individual who desires to make a lifetime gift or leave a death-time bequest in favor of the third-party trust, the check should be written directly to the third-party trust, or the individual should weave the name of the third-party trust into his or her own estate plan.

A first-party trust conversely may only be funded with assets that are deemed to belong to the trust beneficiary. The most common occurrences for the funding of

a first-party trust include (i) a lump-sum check from the Social Administration representing the underpayment of benefits; (ii) a settlement resulting from an accident; or (iii) an individual making a lifetime gift or leaving an inheritance directly to the trust beneficiary. In those cases, the beneficiary may place the funds into the first-party trust with no negative impact on public benefits.

While there are no restrictions with respect to who is permitted to establish a third-party trust or as to the age of the beneficiary at the time of its establishment and funding, a first-party trust may only be established by a parent, grandparent, guardian, the court, or the beneficiary, and must be funded before the beneficiary attains the age of 65. Given the small universe of people that are permitted to establish a first-party trust, it is important to establish a standby first-party trust well in advance of any possible need for that type of trust for spend-down purposes. There are strict rules and time constraints related to the actual spend-down and the reporting of the spend-down to the public benefits agencies.

The other major difference between third-party and first-party trusts includes the permitted remainder beneficiaries under each trust following the death of the beneficiary. With a third-party trust, other family members, friends and charities may be named as the remainder beneficiaries. With a first-party trust, Medicaid must be named as the recipient of the remaining funds up to the amount remaining in the trust, not to ex-

PLANNING continued on page 37



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# The Prudent Investor Rule: Application and Limits

By James Mulhern

This article explores the intersection among the “prudent investment rule,” its modification by means of settlor instructions in the trust instrument, and the limits of such modification. It will cover the development of the modern rule and its current place in New Hampshire law. It will then explore some of the circumstances where modification may be appropriate and discuss how and why such modification must be done with caution and is not unbounded.



## The Default Prudent Investor Rule

One of the core responsibilities of a trustee is to invest the trust property. The question then arises: What types of investments are appropriate for a trustee, considering the trustee’s duty to administer the trust “prudently?”

Early approaches to answering this question focused nearly exclusively on limiting downside investment risk. These approaches emphasized the importance of “safe” investments, such as government bonds, while largely ignoring other factors, such as the effect of inflation or the opportunity cost of foregoing compound growth.



The drive toward the modern prudent investor rule can be traced back to the seminal Massachusetts case of *Harvard College v. Amory*, 9 Pick. (26 Mass.) 446 (1830)). In *Harvard*, the Massachusetts Supreme Judicial Court stated:

*All that is required of a trustee to invest is, that he shall conduct himself faithfully and exercise sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.”*

Beginning in the 1950s, “modern portfolio theory” (MPT) developed in the economics scholarship. MPT emphasized the importance of diversification and the need to analyze any individual investment’s risk only in relationship to an overall portfolio of assets. Law reformers soon sought to incorporate MPT’s insights into the law of trustee investing. By 1994, the Uniform Law Commission (ULC) had prepared the Uniform Prudent Investor Act (UPIA), which endeavored to align trustee duties with the MPT.

The ULC has summarized the Rule as follows.

§ 227. General Standard of Prudent Investment

*The trustee is under a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust.*

Prudent Investment principles are embraced under New Hampshire law and codified in RSA 564-B:9-901 *et seq.*: “a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule . . . [except that the rule] may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust [except to waive the requirements of good faith and that a trust benefit the beneficiaries].” RSA 564-B:9-901. In addition to emphasizing the importance of diversification and overall portfolio risk-return profile in light of the goals of the trust, RSA 564-B:9-902 requires trustees to consider general economic conditions, the effects of inflation, tax consequences, and liquidity needs.

## Settlor Modification of the Duty of Prudent Investment

As mentioned above, the default rule imposing on the trustee a duty to follow the prudent investment rule can be waived or modified in the trust instrument. This is in line with trust law’s overall touchstone: the settlor’s intent.

RULE continued on page 37

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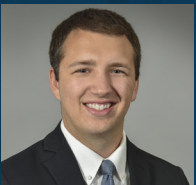
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## When Your Public Charity is Actually a Charitable Trust

By Amanda Nelson

Lawyers are frequently asked to sit on the board of a nonprofit organization. But many lawyers are not versed in nonprofit law, and even fewer understand how modern nonprofits came to be. This understanding is critical when serving on the board of an organization that was founded in the late nineteenth/early twentieth century, before the development of state business law and federal tax law that governs modern nonprofit organizations, and never updated their structure as the laws changed.

Modern nonprofit organizations tend to follow the same structure: there is a state-law business entity, usually a corporation governed by a board of directors, that has sought nonprofit status both at the state level and with the IRS. But many nonprofits were founded long before the adoption of the modern legal and regulatory structure, and of those nonprofits there are a number in New Hampshire that are still operating under their foundational documents—namely, a charitable trust agreement. Problems arise when the board of trustees of these organizations fundamentally misunderstand their structure and attempt to raise funds that, under their trust agreement structure, violate



IRS rules or the rules of grant-making organizations.

A little history is key to understanding how these organizations came to be. In the late nineteenth and early twentieth century, people of means wanted to leave money to a particular charitable endeavor. The only real mechanism for doing so was through a trust agreement as the modern concept of a nonprofit charitable organization did not yet exist. However, trust law was established such that donors could create a foundation overseen by a board of trustees, knowing that the trust provisions would be respected by the courts even though the purpose of the trust was to financially support a charitable endeavor.

Everything changed in 1913, with the

passage of the Sixteenth Amendment to the US Constitution. This amendment created the federal income tax. The statutes and regulations resulting from the Sixteenth Amendment did carve out an exception. Those organizations that had a charitable purpose were exempt from paying a federal income tax. The policy behind this decision was that these organizations were providing a public good and that the income was not being used to enrich the boards of these organizations. It would be unfair to force them to pay taxes on their income which would take funds away from their charitable purposes. Ironically, because of this exemption, moving forward, charitable organizations would be governed by tax statutes and regulations.

In 1954, the IRS adopted the 500s under Subchapter F. With the creation of this tax status, the number of nonprofit organizations grew exponentially. Generally, those that existed prior to this restructured themselves, forming a state-law corporation, obtaining 501(c)(3) status from the IRS, and petitioning the probate court to dissolve the trust and put the funds into an endowment that would be managed by a board of directors.

However, there were some organizations that never went through this process. Instead, they obtained tax-exempt status for the trust but otherwise did not reorganize. Many of them were smaller organizations who either did not want to spend the money to completely restructure or did not see the need because they did not understand the ramifications to their fundraising capabilities. These types of organizations are classified by the IRS as 501(c)(3) private foundations as opposed to a 501(c)(3) public charity. This classification can have a major impact on the amount that a donor can deduct as a charitable donation on their tax return.

When a donor gives to a public charity, the tax deductibility of that donation is generally capped at 50 percent of the donation (60 percent cap for cash contributions). A donation to a private foundation is generally capped at 30 percent of the donation. Donors looking to maximize their charitable deduction on their tax return generally do not favor private foundations. Additionally,

TRUST continued on page 37

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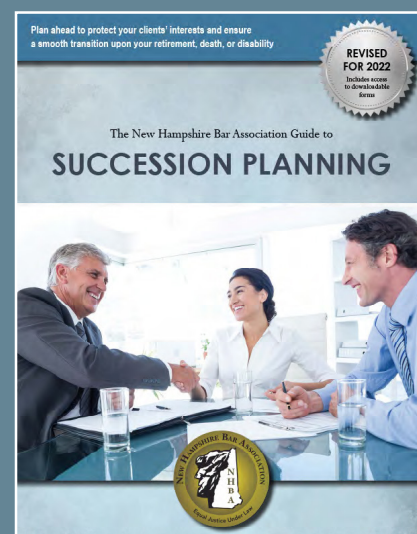
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## An Estate Planner's Guide to Key Changes Under SECURE 2.0

By Joshua R. Weijer

Just as most estate planners, financial advisors, employers, and plan administrators had gotten accustomed to the recent changes to federal laws and regulations that control retirement accounts, on December 29, 2022, President Biden signed into law an omnibus funding bill that included the SECURE 2.0 Act of 2022 (SECURE 2.0). Viewed as a sequel to the passage of the Setting Every Community Up for Retirement Enhancement (SECURE) Act, this new variant contains some 92 separate provisions that alter the laws and regulations governing employer plans and IRAs. Most of SECURE 2.0's modifications are welcomed as they generally provide a net-benefit for taxpayers (though the resulting rules are still not as tax-advantageous as the pre-SECURE Act environment, circa 2019). Some changes are retroactive, while others began rolling out January 1 of this year. Many of these changes will take effect in years 2024, 2026, and some even as late as 2033.

A complete summary of SECURE 2.0's changes are too expansive for the scope of this article. Additionally, many of the changes affecting any client's retirement accounts are more appropriately



discussed with their financial advisor or their employer. However, the following are pertinent changes every estate planning attorney should be aware of when counseling clients who are establishing comprehensive estate plans or are administering trusts that contain retirement accounts:

The requirement to begin taking Required Minimum Distributions (RMDs) from traditional IRAs will increase from age 72 to age 73 beginning this year, and then to age 75 in 2033. Clients who intend utilize charitable gifting to offset income tax liability otherwise generated by forced withdrawals should be apprised of these changes when establishing or reviewing their long term or annual gifting schedules. (Tangentially, the penalty for not taking an

RMD is reduced from 50 percent of the amount required to be withdrawn to 25 percent—and reduced even further to 10 percent, if corrected within two years of the originally scheduled withdrawal date.)

While RMDs were not required from Roth IRAs during the life of the IRA holder under previous law, lifetime RMDs were required from Roth accounts within 401(k)s and other defined contribution plans. SECURE 2.0 will exempt in-plan Roth accounts from RMDs during the life of the participant, effective 2024.

There is now a better option for clients with overfunded or unused 529 plans—beginning in 2024, holders of such accounts may now rollover unused plan funds into Roth IRAs for benefit of the 529 plan's

beneficiary. These assets may be shifted to Roth IRAs so long as: (1) the 529 Plan is at least 15 years old; and (2) the amount rolled over is within the limits for Roth IRA contributions – i.e., the lesser of either: (a) the beneficiary's earned income; or (b) \$6,500 dollars (for 2023), and provided that the beneficiary's Modified Adjusted Gross Income falls below the applicable threshold limits for Roth IRA contributions. Additionally, the 529 plan beneficiary must still be eligible to make Roth IRA contributions. However, any beneficiary who receives such rollovers will only be allowed to do so up to a total of \$35,000 over the course of his or her lifetime.

This means that, beginning next year, if an older child has a qualifying 529 plan which has assets no longer needed for their education, then the funds from the 529 plan can be rolled into a Roth IRA for the child rather than he or she taking taxable distributions and incurring penalties by applying funds for purposes other than education. This provides tremendous opportunity for families who are planning for a young child's future success and financial savings and encourages those making annual gifts to give greater consideration to gifting to 529 plans. An estate planner who recognizes any client's underutilized 529 plan should alert him or her to this change and encourage them so have their financial advisors facilitate any such rollover.

Clients who want to directly benefit

*SECURE 2.0 continued on page 37*

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## Creditors from page 30

*Cray*, 109 NH 181 (1968), which explains that registered mail is not the only exclusive method of sending a creditor notice by an executor. *Id.*

The New Hampshire Supreme Court also held that a “bill” sent to the attorney for an estate stating a “definite amount of indebtedness” was held to be sufficient notice of a creditor’s claim. *Hurd v. Varney*, 83 NH 467 (1929). Notice by a “letter” received from a creditor is also sufficient notice of a claim. *Judge of Probate v. Runnells*, 66 NH 271 (1890).

The New Hampshire Supreme Court has also addressed the issue of actual notice by an executor to “known or reasonably ascertainable creditor” of an estate in *Stewart v. Farrell*, 131 NH 458, 465 (1989), citing *Tulsa Professional Services v. Pope*, 485 US. 478 (1988). It remanded this case back to the trial court regarding the *Tulsa* claim raised by the plaintiff to determine if the creditor was entitled to “actual notice as opposed to publication notice,” explaining that the court should consider “whether the executrix could have discovered, after reasonable diligence, both the plaintiff’s name and the fact that they had a cause of action against the defendant.” *Id.* at 466 at an analysis of *Tulsa*.

The issue of “notice” is factual, and lack of an actual “Tulsa” notice may create an opportunity for a creditor to come back to haunt an estate for its claim beyond the self-executing statute of limitations set forth under RSA 556:5. For this reason, all rea-

sonably known or potential creditors of an estate should receive written notice of the appointment of the executor of an estate that states the deadline to file a claim and references their appointment to comply with the constitutional due process requirements raised by *Tulsa*.

Of course, there are always exceptions, depending on the facts and circumstances of a case. For example, secured interests (such as mortgages), insolvent estates and the order of priority set forth under RSA 554:19 may eliminate a creditor’s claim in some cases. Or after an executor sends written notice to a creditor and the creditor fails to timely send notice of their claim to the executor. However, generally speaking, an executor should not intentionally try to avoid a claim of a creditor that they know exists, or reasonably should know exists, and intentionally not pay a creditor because they did not file suit against the estate, relying on the one year statute of limitation in RSA 554:19. Creditors may seek an extension of time to file a claim against an estate pursuant to RSA 556:28, when justice and equity require it and argue lack of notice when applicable. For this reason, executors should send written notice to all potential or known creditors of an estate after the executor is appointed by the court and pay the legitimate creditor claims of a decedent. ■

*Nadine M. Catalfimo has been in practice for over a decade and working in the areas of trust and estate law, including probate, estate planning, and trust administrations, for over 30 years.*

## Trusts from page 31

plex trust is not subject to New Hampshire’s I&D tax. The fact that the accumulated income of a non-grantor trust is not subject to income taxation by the State of New Hampshire is one of the reasons it has become attractive to situs such trusts in New Hampshire. It is worth noting that the I&D tax has been repealed altogether effective January 1, 2027. This fact does not affect our analysis. Trusts that would currently avoid income taxation in New Hampshire will simply continue to do so after full repeal.

With this important groundwork laid, lets return to the three critical elements noted in the opening paragraph. If we want a trust to be free from the imposition of state-level income taxes: (1) the trust must be “domiciled” in New Hampshire (have its principal place of administration in New Hampshire), (2) the trust must be an irrevocable, non-grantor trust that will generally accumulate all income rather than distribute income to its beneficiaries, and (3) the trust must not have a nexus with any state other than New Hampshire sufficient to subject the trust to the income tax jurisdiction of a state other than New Hampshire.

### Trust Domicile

A full exploration of what determines the principal place of administration of a trust is beyond the scope of this article, but at a bare minimum we want a trustee who resides in or has its business operations located in New Hampshire, and we want the trust to state that it is governed by the laws of the state of New Hampshire.

### Trust Design

The trust must be irrevocable. All trusts that are revocable by the grantor are categorized as grantor trusts. The grantor must not retain rights in or powers over the irrevocable trust that would result in grantor or trust status under sections 671-679 of the Internal Revenue Code. The trust must not be a simple trust. If the trust mandates that income be distributed to the beneficiaries, the income will be taxed to the beneficiaries at the state-level in the states in which they reside (a small caveat here for trusts created in 2027 or later and in which all beneficiaries are certain to reside in New Hampshire). Where state-level income tax is a substantial consideration in the design, the trust must be a complex non-grantor trust that not only allows the trustee to accumulate trust income, but in which the trustee

almost certainly will accumulate trust income.

### Exclusively New Hampshire Nexus

Perhaps most importantly of all, where New Hampshire is the chosen jurisdiction, the trust must not have sufficient nexus with another state or states in which state-level income taxes are imposed on the accumulated income of complex non-grantor trusts. A full discussion of the bases for nexus between trusts and tax jurisdictions is beyond the scope of this article but suffice it to say that having a figure head trustee located in New Hampshire with assets custodied or situated in other states (particularly real estate) can lead to a trust that is subject to the tax jurisdiction of those other states.

With all these factors considered, we can see that the answer to the question posed in the title of this article is yes. With careful attention to the relevant details, New Hampshire can provide a tax haven for trusts. But having answered that question, this article also highlights the fact that a relatively narrow class of trusts can avail themselves of that haven, and the rigors required will likely make this planning attractive only for those situations in which the trust income would otherwise be subject to very onerous state-level income taxation.

Indeed, particular attention must be paid to the burden of federal income taxation of trust income. The rate brackets for trusts are highly compressed, and most trust income will be taxed at the highest marginal rates for federal income tax purposes. For many situations, that income would be taxed at the highest marginal rates in the hands of the grantor or the beneficiaries in any event, but the tradeoffs must be evaluated carefully to ensure that state-level income tax savings are not eroded or outstripped by increased federal income taxation.

In the end, state-level income taxation should be just one of many considerations when deciding whether to situs a trust in New Hampshire. ■

*Jan Myskowski is a partner at Pierce Atwood, LLP. He focuses his practice on estate planning, estate and trust administration, non-judicial trust reformations and modifications, matters before the probate court including guardianships, reformations, and contested will and trust disputes, and matters before the US Tax Court.*

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## Planning from page 32

ceed the total amount of medical assistance paid on behalf of the beneficiary.

Regardless of the type of trust, a special needs trust may not be used for food (groceries) and shelter related expenses (rent and basic utilities), as there are public benefits that pay for food and shelter. The trustee of a special needs trust is permitted to purchase a residence for the beneficiary to live in since there is no public benefits program that will help purchase a residence.

In addition, a special needs trust may also be used for a myriad of purchases including, without limitation, medical and dental expenses not covered by public benefits, transportation, travel, training and education, electronic equipment, and the prepayment of reasonable funeral expenses. Lastly, while direct purchases for things other than food are shelter are generally permitted, the trustee is not permitted to give cash to the beneficiary.

Through careful pre-planning, parents can establish and provide for the ultimate

funding of a special needs trust for a child with a disability who is receiving public benefits. This pre-planning provides parents with peace of mind in knowing that the parents' wishes to help enhance the child's life options and to provide the child with the ability to live as independently as possible will be carried out. ■

*Theo Vougiaris is a Shareholder Attorney with Devine, Millimet & Branch, Professional Association, focusing on estate planning and trust and estate administration.*

## Trust from page 34

many grants and other forms of funding are only available to 501(c)(3) public charities, and not private foundations.

And this is where the problems arise. The first is that these organizations tell donors and grant-makers that they are a 501(c)(3) but do not clarify that they are a private foundation. This claim isn't meant to deliberately deceive donors or grant-making institutions. Rather it is usually the result of a fundamental misunderstanding about the differences between being governed by a trust agreement classified by the IRS as a private foundation and overseen a board of trustees versus a state-law corporation with 501(c)(3) public charity status run by a board of directors. After all, their mission statement and services are those of a classic 501(c)(3) public charity. Imagine, however, should donors discover that they were taking greater deductions than permitted under the Internal Revenue Code (or the IRS discovered this) or grant-makers gave grants based on false information!

The second problem is that they *do* understand the difference between their status as a private foundation and that of a public charity and that this difference restricts their fundraising efforts. As a result, they are forced to continue to draw upon trust funds with little outside support. They also have the added expense of bonding the members of their board of trustees. Organizations that were considered well-funded a century ago are now struggling to make ends meet.

These problems are easily fixed by updating their structure from a trust agreement to a modern nonprofit structure although it could take a while to accomplish (sometimes up to two years or more). Both the Charitable Trusts Unit and the probate courts have been supportive of charitable organizations who are attempting to update their structure to be classified as a 501(c)(3) public charity so that these organizations can thrive and continue to play a pivotal role in their communities. Lawyers who join a nonprofit board, particularly of an organization that has been around for multiple decades or longer, should be aware of the possibility that their organization is based on an antiquated trust structure and, to survive, needs to modernize that structure. ■

*Amanda Nelson is the owner of the law firm, Artium Amore, which assists the artistic community with law services relating to intellectual property, art estate planning, licensing contracts, and non-profit legal issues.*

## Rule from page 33

There are many circumstances under which a trust instrument *should* modify or even waive the default prudent investor rule so that the trust may be administered to meet the settlor's goals. Some common examples would be a trust designed to hold a concentrated position in a closely held family business, even if it is underperforming; non-income-producing real estate (such as a family cottage); or artwork or other collectibles with sentimental value.

If the settlor has strong desires as to what property should be held in the trust, or how it should be held, and if these desires may conflict with the duty of prudent investing, those wishes and associated instructions to the trustee should be clearly stated as a material purpose in the trust instrument. A boilerplate waiver of the prudent investor rule may be insufficient to protect a trustee who fails to meet the rule's requirements if the trust does not provide a reasonable justification for the waiver. Best practice

is always to customize a clause modifying the prudent investor rule to the specific concerns of the settlor.

### Limitations

A potential tension exists between, on the one hand, the settlor's stated intent with respect to trustee's investment of trust assets, and the interests of the beneficiaries on the other. There are limits to how far a settlor can go in dictating the terms of trustee investment, even if instructions are clearly stated as a material purpose of the trust. In essence, a settlor cannot force a trustee to invest in a manner that is capricious or conflicts with the trust principle that a trust be, fundamentally, for the benefit of its beneficiaries. One area of current debate on this front concerns the power of a settlor to mandate that a trustee invest in socially or environmentally conscious endeavors, even at the expense of return. See generally Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG*

*Investing by a Trustee*, 72 STANFORD L. REV. 381 (2020).

"A settlor may destroy his own Rembrandt. But he cannot establish a trust and order his trustees to destroy it." Gareth H. Jones, *The Dead Hand and the Law of Trusts*, in DEATH, TAXES AND FAMILY PROPERTY 119, 126 (Edward C. Halbach, Jr., ed., 1977).

Although instructing trustees to burn Rembrandts does not arise regularly in practice, tailored exceptions to the prudent investor rule do. Careful drafting, which indicates the settlor's goals while recognizing the limits imposed by law, is indicated. ■

*James Mulhern is a partner at Mulhern & Scott, with a particular interest in trusts and estates, tax, and appellate litigation. He has written articles on topics including asset protection trusts, grantor trust taxation, rules of construction for wills and trusts, electronic estate planning, empirical examination of the prevalence of will substitutes, and the appropriate corporate-level taxation of hybrid financing instruments.*

## SECURE 2.0 from page 35

charities with assets held in their traditional IRAs may soon make larger Qualified Charitable Distributions (QCDs). QCD's have historically been capped at an annual amount of \$100,000, but this limit will now be indexed for inflation beginning in 2024.

Additionally, SECURE 2.0 now permits a one-time IRA charitable distribution of up to \$50,000 (also indexed for inflation beginning 2023) to charities through charitable gift annuities or charitable remainder trusts effective this year. This additional rollover can be a tax-efficient way to fund charitable trusts.

The Act establishes an online searchable database that will allow a participant or beneficiary to identify the administrators of plans in which the participant or beneficiary may have a benefit. Beginning in 2025, plan administrators will be required to share information with the Department of Labor in an effort to centralize this process. The Department of Labor has a mandate to establish this database within 2 years of enactment. If done correctly, this will minimize the amount of effort (and frustration) many probate estates undertake when marshalling assets of decedents who died without comprehensive or organized estate plans.

Estate planners that frequently work in tandem with their clients' financial planners, wealth managers, and CPA's ought to review the SECURE Act (the initial SECURE Act, the regulations thereto, and the most recent SECURE 2.0) in its entirety, to ensure their clients are receiving the most comprehensive tax and planning advice possible. ■

*Joshua Weijer is an associate in McLane Middleton's Trusts & Estates Department. He advises clients in a number of areas including estate planning, tax planning, fiduciary matters, and estate and trust administration.*

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# New Hampshire Access to Justice Commission Releases 2022 Annual Report

By Tom Jarvis

This past month, the New Hampshire Access to Justice Commission released its 2022 Annual Report on its progress in addressing the legal needs of disadvantaged Granite Staters. The report outlines the Commission's accomplishments for the year, stemming from the successes of 2021, and provides a glimpse into their focus for 2023.

Since the Commission was established in 2007, it has worked to improve access to justice for all New Hampshire citizens, especially those of limited economic means. In 2021, the Commission completed a civil legal needs assessment, led by New Hampshire Legal Assistance Executive Director Sarah Mattson-Dustin, which provided significant research on pro bono services and made recommendations to the New Hampshire Supreme Court, including the assignment of a part-time court staff member to support the Commission, substantive changes to increase pro bono services, and the piloting of the Court Navigator Program in Circuit Courts. The Commission also restructured to form five task forces to improve New Hampshire's Justice Index scores.

The Justice Index is an annual report by the National Center for Access to Justice that snapshots how well each state does in securing access to justice for the most vulnerable populations.

"New Hampshire scored low on the Justice Index," Commission co-chair Mark Rouvalis says. "As a result of that, we reorganized into five different task forces with the idea of making improvements. First, to see whether the information in the survey accurately characterized the efforts that we already had in place. And second, to look for ways where we could improve on the issues that were identified as being problematic. We have made substantial progress in looking to improve on areas in the Justice Index where we needed improvement, and now we are looking at how best to use ARPA monies to advance infrastructure that will serve the state in the long term."

The five task forces created by the Commission each focused on one of the key policy areas identified in the Justice Index related to providing access to justice:

## User-Friendly Courts

A task force that focuses on the barriers many self-represented litigants experience when bringing their cases to court and addresses Justice Index benchmarks for design and planning and plain language and simplification issues. Some of their goals include civics education to non-attorneys, focusing on basic court practices, simplify-

ing notices to improve hearing compliance, and developing a pilot program with public libraries to provide presentations on legal topics.

## Civil Legal Aid

A task force on attorney access, with benchmark targets including right to counsel, pro bono services, and unbundling. They are focused on projects including court forms for unbundled legal services, free or low-cost copies, and free copies of court documents for indigent defendants and pro bono attorneys.

## Language Access

Seeks to remove barriers associated with limited English proficiency by improving service delivery, communicating court services, and technology. Aligning with the Administrative Office of the Court (AOC) language access team, this task force aims to educate New Hampshire attorneys on best practices for working with limited English proficiency clients. The task force will also assess current court language access policies and procedures.

## Access for All

Concentrates on the rights of people with disabilities. The Justice Index benchmarks for this task force are like that of Language Access, with the goal of increasing support for the disabled. Goals include annual training for judges and court staff on assisting persons with disabilities, providing specialized childcare for children with disabilities, and providing notice of rights to accommodation of disability on all court correspondence.

## Fees and Fines

A task force concerned with polices, abolition of harmful practices, and data collection to ensure monetary fines are an accountability mechanism and not an overt or unintended practice that creates economic and racial oppression. Goals of this task force include making the fee waiver process more transparent and user-friendly, addressing revenue reduction concerns, and offering "Fast Pass with Dignity," a checkbox form for litigants receiving public assistance or qualified under federal poverty guidelines.

The first of the Commission's 2022 achievements is an expanded Court Navigator Program, which now includes two non-attorney staff providing navigator services. The Commission Report indicates that with ARPA funding, the



Access to Justice Commission co-chair Mark Rouvalis says the Commission has made substantial progress on improving areas of concern identified by the Justice Index rating. Photo by Tom Jarvis

program will be able to further expand to include volunteer navigators and robust metrics and reporting capabilities.

"This Court Navigator Program is designed to get people legal information – especially those who are unrepresented – to better help them navigate through the court process," Rouvalis says. "This also helps to take some of the strain off the clerks' offices, who are frequently faced with questions on how to file a motion, fill out a form, etc. It's a little bit like an ombudsman at the court."

Rouvalis continues: "We came up with a committee we called the Beg, Borrow, and Steal Committee. The idea was to look elsewhere, what other people are doing, and what we can recreate here that is successful. We got the idea [for the Court Navigator Program] from other navigator programs in other states."

Another Commission achievement is the passing of HB 1343, which allows for paralegals to represent litigants in a limited set of case types and court locations. A report on the pilot is due to the legislature in January 2025.

"We were there just to support the passage of that," Rouvalis says. "I testified before the House Committee, along with many others. Senator Ned Gordon led the way, and Sarah Mattson-Dustin was actively involved."

Research and recommendations were also provided to the NH Supreme Court for voluntary pro bono reporting. An article on these recommendations, *Continuing to Mitigate the Justice Gap: NHSC Says Voluntary Pro Bono Reporting Is in the Early Stages of Implementation*, was published in the January 2023 issue of *Bar News* and can be found at [nhbar.org/bar-news-january-18-2023](https://nhbar.org/bar-news-january-18-2023).

The Commission also worked with the AOC to create Americans with Disabilities Act bench cards to make the court more accessible for those with disabilities and improve ADA compliance. The Fees and Fines task force also completed phase one of enhancing court communications, which resulted in improved signage and plain-language information on the website that proactively informs the public that they can request a filing fee reduction or elimination.

In 2023, the Commission will work with the AOC on six ARPA-funded initiatives: simplification and translation of court forms, expanding the court legal navigator program, alternative dispute resolution, legal navigator portal, virtual court center, and data collection to measure disparate impact.

"I've been the Chair of the Access to Justice Commission and been a member since 2011," Rouvalis says. "We haven't had the funding that we have now to implement commission initiatives. We've had support over the last few years for a legal needs assessment that was done with a combination of court monies and private funds. Now we are looking at using ARPA funding for further legal navigator expansion, simplification of court forms, legal navigator portal, and virtual court centers that will help the people of the state gain information and access to the court system more easily."

The full 2022 Access to Justice Commission Report can be found on the Judicial Branch's website at [courts.nh.gov/resources/committees/access-justice-commission](https://courts.nh.gov/resources/committees/access-justice-commission). ■

## Talesha L. Saint-Marc Selected as Newest US Magistrate Judge

The judges of the US District Court have selected Talesha L. Saint-Marc to fill the second (recently created) full-time US Magistrate Judge position in the District of New Hampshire. It is anticipated that Attorney Saint-Marc will begin her term in June.

A lifelong New Hampshire resident, Attorney Saint-Marc completed her undergraduate studies at Franklin Pierce College, *summa cum laude*, and received her law degree from Northeastern University in 2009. Upon graduation, Attorney Saint-Marc served as a law clerk in the New Hampshire Supreme and Superior Courts for three years, and then went on to specialize in labor and employment law with Bernstein, Shur, Sawyer & Nelson.

Saint-Marc has been an active and engaged member of the New Hampshire Bar Association, currently serving as the Chair of both the Labor and Employment Section and the Diversity Equity and Inclusion



Committee. Additionally, she previously served as the Hillsborough County Representative for the Women's Bar Association. Her community service endeavors are numerous and varied, including serving on the Board of Directors for New Hampshire Legal Assistance, Vice President of the Rivier University Board of Trustees, President of the Board of Directors for the Circle Program, and a volunteer for the Big Brothers Big Sisters of Greater Nashua.

Chief Judge McCafferty commented on her appointment: "Attorney Saint-Marc's selection was the result of an extensive and robust review process conducted by a Merit Selection Panel, which was comprised of accomplished members of the federal bar. She is a tremendously talented and successful lawyer, and she has an unwavering commitment to public service. Her intellect, empathy, and experience, when combined with her measured and calm demeanor, will make her an outstanding judge. The other judges and I very much look forward to welcoming Attorney Saint-Marc as a colleague and serving with her for years to come." ■



February 2023

**In Re H.B.; In Re G.B., No. 2022-0303**  
February 1, 2023  
*Vacated and remanded*

## Neglect Petition

- Whether Circuit Court erred when it dismissed DCYF's petitions for neglect against Mother based on erroneous interpretation of RSA 169-C:3.

The New Hampshire Division of Children, Youth and Families (DCYF) received three reports in 2021 concerning Mother's alcohol use and its impact on the parenting of her children, H.B. and G.B. DCYF assessed each report, but did not file a neglect petition against Mother. Later in 2021, police filed a report of concern with DCYF after responding to an incident where H.B. was with Mother while she was intoxicated at a gas station. The police arrested Mother and charged her with driving under the influence, driving with an open container, and endangering the welfare of a child. In February of 2022, DCYF filed neglect petitions against Mother regarding both H.B. and G.B.

The trial court held an adjudicatory hearing where it concluded that DCYF presented insufficient evidence to support a finding of neglect. Under RSA 169-C:3, XIX(b), DCYF had the burden of showing that the children were likely to suffer serious impairment and "the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian." The trial court held that it was likely that the children's physical safety would suffer "under the serious impairment definition" if their "mom is constantly under the influence of alcohol." Nonetheless, because DCYF failed to offer any evidence about the financial status of the children's parents, the trial court reasoned that DCYF failed to meet its burden. The trial court therefore dismissed the petitions. DCYF subsequently appealed.

On appeal, the Supreme Court concluded that the trial court erred as a matter of law by requiring DCYF to present evidence of the parents' financial means to meet its burden of proving neglect. The Court explained that DCYF had the burden to show that "any deprivation of parental care or control under RSA 169-C:3, XIX(b) was not due primarily to the lack of financial means of the parents, guardian, or custodian." The Court stated that the inquiry is not whether the parents possess or lack financial means; rather it is whether a lack of financial means is the primary cause of neglect. The Court reasoned that this could be shown through evidence that the parents do not

lack financial means, but it is not the only method. DCYF could meet this standard by providing evidence that neglect was primarily due to something other than a lack of financial means. The Court vacated the trial court's decision and remanded it to the trial court to determine whether the children were neglected in accordance with the Court's decision.

*John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Laura E.B. Lombardi, Senior Assistant Attorney General, on the brief), for the New Hampshire Division for Children, Youth and Families; Jorel V. Booker, of Dover; by memorandum of law, for Mother.*

**Petition of New Hampshire Division For Children, Youth And Families, No. 2021-0563**

February 8, 2023

*Affirmed and remanded*

## Statute of Limitations

- Whether the statute of limitation tolling provision of RSA 508:8 applies to claims brought against the State under RSA 541-B.

The respondent, as parent and next friend of two minors, filed a complaint against the New Hampshire Division for Children, Youth and Families ("DCYF") asserting various claims. DCYF moved to dismiss the complaint because it was time-barred by the three-year statute of limitations set forth in RSA 541-B:14, IV, which does not contain an express tolling provision. The trial court denied DCYF's motion to dismiss. It ruled that RSA 508:8, which allows an infant or mentally incompetent person to bring a personal action within two years after such disability is removed, operated as a tolling provision that must be read into RSA 541-B:14, IV. The trial court stated that to conclude otherwise would lead to an absurd and unjust result. DCYF filed a petition for original jurisdiction with the Supreme Court seeking review of the trial court order.

After reviewing its prior reasoning in *Opinion of the Justices*, 126 N.H. 554 (1985), the Supreme Court explained that when the State waives its sovereign immunity—such as through RSA 541-B—a statute restricting the ability of a party to sue the State must comport with the principles of equal protection. The Court explained that DCYF had the burden to demonstrate that RSA 541-B:14 is constitutional and satisfied intermediate scrutiny. The Court held that DCYF failed to articulate an important governmental reason for foreclosing lawsuits brought

## At-a-Glance Contributor



**Jonathan P. Killeen**

Shareholder at  
Boyle | Shaughnessy Law PC in  
Manchester, NH

by a child plaintiff against the State compared with a child plaintiff against a private tortfeasor. The Court reasoned that to hold otherwise would violate constitutional equal protection guarantees by creating two classes of similarly situated persons. The Court also held that, contrary to DCYF's argument, RSA 541-B does not create a statutory remedy that does not otherwise exist. Rather, the purpose of the statute is to waive sovereign immunity in certain circumstances.

As a result, the Court held that RSA 508:8 must be read into the provisions of RSA 541-B:14, IV in order to comport with the equal protections guarantees under the New Hampshire Constitution.

*John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Anthony J. Galdieri, Samuel Garland, Assistant Attorney General, and Lawrence P. Gagnon, attorney, on the brief, and Anthony J. Galdieri, orally) for the New Hampshire Division for Children, Youth and Families; McLane Middleton, Professional Association, of Manchester (Scott H. Harris on the brief and orally), and Tenn and Tenn, Professional Association, of Manchester (Mary E. Tenn on the brief), for the respondent.*

**Marc Chartier, Individually, And As Administrator of The Estate of Lisa Chartier v. Apple Therapy of Londonderry, LLC & a., No. 2021-0166**

February 10, 2023

*Vacated and remanded*

## Negligent Infliction of Emotional Distress

- Whether the *Corso* test regarding bystander recovery for emotional harm applies to a claim for negligent of misdiagnosis.

On January 5, 2018 Lisa Chartier (decedent) underwent knee surgery, following which on January 12, 2018 she began reporting symptoms consistent with deep vein thrombosis (DVT). Despite the decedent reporting these symptoms to her medical providers, they did nothing to determine if the decedent had DVT. On January 17, the decedent suffered a medical episode in the presence of her husband. The decedent was taken to the hospital where the husband stood in the threshold of the room while doctors performed chest compressions on the decedent before she ultimately passed away due to a pulmonary embolism caused by DVT. As a result, the husband filed various claim, including negligent misdiagnosis against the decedent's medical providers, which caused the husband to suffer negligent infliction of emotional distress (NIED). In response, the defendants moved for partial summary judgment, which the trial court granted. The trial court dismissed the NIED claim because "the time between the negligent act," which the trial court treated as the defendants' negligent failure to diagnose the decedent's DVT—and the husband's emotional injury was "simply too attenuated to recover for" such a cause of action. The husband appealed the decision.

On appeal, the Supreme Court explained its decision in *Corseo v. Merrill*, 119 N.H. 647 (1979), which held that a plaintiff does not need to be in the so-called physical "zone of danger" to recover for NIED. Rather, a plaintiff may recover for NIED where he or she shows, among other things, certain foreseeability factors that include geographic proximity to the accident scene and contemporaneous perception of the accident. The Court reasoned that resolution of the appeal came down to the meaning of the term "accident" as used in *Corso*. The Court explained that its analysis in *Corso* did not consider a plaintiff's contemporaneous perception of a defendant's negligent conduct; rather, it focused on "the event resulting from the defendant's negligence." Therefore, the Court held that the term "accident" does not refer to a defendant's negligent conduct. The Court went on to say that "accident" meant the "sudden, unexpected, and shocking event involving serious physical injury to a third party." Accordingly, the Court held that the decedent's pulmonary embolism caused by DVT—and not the alleged negligent misdiagnosis—was the "accident." Therefore, the trial court erred in granting summary judgment for the defendants because the plaintiff claimed he suffered severe emotional distress manifested by physical symptoms from contemporaneously perceiving the sudden, unexpected, and shocking suffering and death of the decedent.

Justice Bassett was the lone Justice to dissent. In his opinion, based on a review of *Corso* and its progeny, as well as the Supreme Court's historical reluctance to expand liability under *Corso*, he opined that the term "accident" meant a defendant's negligent act. He reasoned that the Supreme Court's decision to interpret the term "accident" the way that it did departed from the Court's interpretation of the foreseeability principles set forth in *Corso* that will, in turn, result in expanding the scope of liability for NIED claims. According to Justice Bassett, under the Supreme Court's ruling, such claims will affect various professions and businesses because "the consequences of negligence . . . could cause emotional injury to a family member days, weeks, months, or years after the negligent conduct."

*Abramson, Brown & Dugan, of Manchester (Jared R. Green on the brief and orally), for the plaintiff; Wadleigh, Starr & Peters, PLLC, of Manchester (Todd Hathaway and Gretchen W. Wade on the joint brief, and Todd Hathaway, orally), for defendant Apple Therapy of Londonderry, LLC; Morrison Mahoney, LLP, of Boston, Massachusetts (Tory Weigand and Justin R. Veiga on the joint brief), for defendants Heather C. Killie, M.D. and Four Seasons Orthopedic Center, PLLC d/b/a New Hampshire Orthopedic Center.*

AT-A-GLANCE continued on page 40

## Changes Concerning Candia Circuit Court

Beginning February 17, 2023, all Candia Circuit Court (110 Raymond Road, Candia, NH) cases, other than criminal matters, will be heard in the Derry Circuit Court (10 Courthouse Lane, Derry, NH) location. Criminal matters and other matters as deemed necessary by the presiding judge will continue to be heard at the Candia Circuit Court location. The Candia Circuit Court location will only be open and staffed on Mondays. On all other court business days, members of the public may seek assistance at the Derry Court or file via US mail.

The consolidation of staff will ensure reliable customer service and avoid unpredictable court closures.



*The State of New Hampshire v. Philip Perez*, No. 2021-0270  
February 14, 2023  
*Affirmed*

### Harmless Error

- Whether trial court's evidentiary ruling excluding hearsay statements resulted in reversible error.

Philip Perez was charged with and convicted of various felonies for driving his motor vehicle into the victim. The victim was taken to the hospital for his injuries but, prior to trial, passed away due to unrelated reasons. Two witnesses testified against the defendant at trial. One witness testified to observing the defendant "veer in" and hit the victim while he was in a crosswalk. A second witness testified that the defendant "sped up" as he approached the victim and "drove over" in the victim's direction so as to appear to "purposefully hit" the victim. Both witnesses testified that the defendant "took off" shortly thereafter. The defendant argued that he did not purposefully or knowingly hit the victim with his vehicle; rather, he claimed the victim jumped in front of his car. A jury convicted the defendant for striking the victim.

On appeal, the defendant argued that the trial court erred when it denied his motion *in limine* to admit the victim's statements that he made two days after the incident, while he was in the hospital. The victim's medical records reflected that he told his medical providers if he was discharged from the hospital, he "will throw himself in front of [a] car to 'kill himself.'" The defendant claimed the statements were admissible based on various exceptions to the rule against hearsay. The State argued, in part, that any error excluding the victim's statements was harmless beyond a reasonable doubt. The Supreme Court explained that to establish harmless error, the State had to show beyond a reasonable doubt that the error did not affect the verdict. In doing so, the Court considered if: (1) the other evidence of the defendant's guilt was of an overwhelming nature or; (2) the evidence that was improperly omitted was inconsequential in relation to the strength of the State's evidence of guilt.

The Supreme Court concluded that the State met its burden of proving that any error in excluding the victim's statements did not affect the verdict and was harmless beyond a reasonable doubt. The Court explained that the evidence of the defendant's guilt, primarily based on the witnesses' testimony, was of an overwhelming nature and the evidence excluded was inconsequential in relation to the strength of the State's evidence. The witnesses' testimony as to the defendant's conduct was consistent with the defendant purposefully hitting the victim. Neither witness corroborated the defendant's claim that the victim jumped in front of his car. The Court also stated that because the defendant drove away within seconds of the accident, this action supported "consciousness of guilt" and that the defendant purposefully hit the victim.

*John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Sam M. Gonyea, attorney, on the*

*brief and orally) for the State; Stephanie Hausman, Deputy Chief Appellate Defender, of Concord, on the brief and Thomas Barnard, Senior Assistant Appellate Defender, of Concord, orally, for the defendant.*

*In Re J.P.S.; In Re J.S.*, No. 2022-0011  
February 28, 2023  
*Affirmed*

### Abuse Petition

- Whether Circuit Court erred with respect to finding of abuse by Mother towards J.P.S. pursuant to RSA 163-C:3.

Mother was an intravenous drug user while she was pregnant with J.P.S. Due to her drug use, after J.P.S. was born he was subsequently diagnosed with neonatal abstinence syndrome (NAS). The New Hampshire Division for Children, Youth and Families (DCYF) filed various abuse and neglect petitions against Mother. The trial court entered a finding of "true" with respect to one petition that alleged abuse of J.P.S. by Mother though injuries sustained by J.P.S. after birth, which were caused by Mother's prenatal narcotic use. Mother appealed.

On appeal, Mother argued that the trial court erred when it included "a viable fetus within the statutory definition of a child under RSA 169-C:3(V) (2022)." Pursuant to the statute, "child" means "any person who has not reached his eighteen birthday." The Supreme Court ruled that it did not need to reach the issue of whether a "fetus" is a "child," because when DCYF filed the abuse petition J.P.S. had already been born and satisfied the plain language of the statute.

The Supreme Court then turned to whether "a finding of abuse pursuant to RSA 169-C:3, II(d) can be sustained based upon a mother's prenatal substance abuse that manifests in physical injuries to the child after birth." In concluding that the finding could be sustained on such grounds, the Supreme Court reasoned that the statute did not include language that required the injurious conduct and the resulting injury to exist concurrently. The Supreme Court indicated that the relevant portion of the statute refers to "any child who has been . . . [p]hysically injured," demonstrating that the statute focused on the status of the child, as opposed to the injurious conduct.

The Supreme Court went on to conclude that the trial court's findings were supported by the evidence; namely that after J.P.S. was born, he was a "child" whose physical injuries from NAS subsequently manifested and were caused by Mother's actions before delivery. As a result, these findings were consistent with the plain language of RSA 169-C:3, II(d). Justice Hantz Marconi concurred specially, reasoning that the legislature may wish to clarify the statute, particularly with regard to pre-birth acts causing injury "by other than accidental means," to avoid uncertainty, or undesirable results, in future cases.

*John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Sam M. Gonyea, attorney, on the brief and orally), for the New Hampshire Division for Children, Youth and Families; Law Office of Chadwick-Fricano-Weber, of Nashua (Joseph C. Fricano on the brief and orally), for the respondent.*

## NH Supreme Court Orders

### LD-2022-0008, *In the Matter of Casey L. Miller, Esquire*

On December 1, 2022, the Professional Conduct Committee submitted a request from Attorney Casey L. Miller to resign in accordance with Rule 37(11). In accordance with this rule, the Professional Conduct Committee also submitted its recommendation that the resignation be denied as tendered in its revised form. Attorney Miller's request was accompanied by his revised affidavit, which, the court concludes after review, satisfies the requirements of the rule.

Having reviewed the revised affidavit of Attorney Miller and the recommendation of the Professional Conduct Committee, the court accepts and approves Attorney Miller's resignation from the Bar. See Rule 37(11).

MacDonald, CJ, and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: February 9, 2023  
ATTEST: Timothy A. Gudas, Clerk

### ADM-2023-0002, *In the Matter of H. Paul Carroll, Esquire*

Attorney H. Paul Carroll 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 Carroll 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 Carroll has not filed his annual trust accounting certificate and has not paid the \$300 in assessed delinquency fees, as required by Supreme Court Rule 50-A.

3. **NHMCLE Certification** - Attorney Carroll 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.

On the day of the show-cause hearing, Attorney Carroll filed a motion to enlarge time by sixty days to complete the New Hampshire Bar Association requirements for the 2022/2023 year. Justice Hantz Marconi addressed that motion during the hearing and decided to extend Attorney Carroll's deadline until November 15, 2022, to satisfy the following bar licensure renewal requirements: (1) payment of the annual bar dues for 2022/2023; (2) filing the annual trust accounting certificate; and (3) payment of all delinquency fees assessed for non-compliance with the annual licensure renewal requirements. Justice Hantz Marconi also ordered Attorney Carroll to file his NHMCLE affidavit by December 31, 2022, for the reporting year ending May 31, 2022. Attorney Carroll did not satisfy these requirements by the as-extended dates. In a subsequent telephonic hearing with Attorney Carroll on January 19, 2023, Justice Hantz Marconi provided him with an opportunity to obtain a waiver of his unsatisfied 2022/2023 requirements if he were to change his bar status to Limited Active and to pay the associated dues for that status by January 31, 2023.

Attorney Carroll has neither changed his bar status nor complied with his 2022/2023 requirements. Accordingly, Justice Hantz Marconi recommended to the court that Attorney Carroll be suspended from the practice of law in New Hampshire.

Attorney H. Paul Carroll is hereby suspended from the practice of law in New Hampshire for failure to complete the re-

quirements listed above. Attorney Carroll is ordered to notify his clients in writing that he has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by March 13, 2023, that he has completed this task. On or before March 28, 2023, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Carroll's files and to take action to protect the interests of his clients.

MacDonald, CJ, and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

ISSUED: February 10, 2023  
ATTEST: Timothy A. Gudas, Clerk

### ADM-2023-0003, *In the Matter of Steven N. Fuller, Esquire*

Attorney Steven N. Fuller 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 Fuller 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 Fuller has not filed his annual trust accounting certificate and has not paid the \$300 in assessed delinquency fees, as required by Supreme Court Rule 50-A.

3. **NHMCLE Certification** - Attorney Fuller 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.

At Attorney Fuller's request, the show-cause hearing was continued to November 29, 2022. As of the November 29, 2022 hearing, Attorney Fuller was not in compliance with the requirements listed above. Despite his noncompliance, Justice Hantz Marconi did not recommend his suspension at that time. Instead, Attorney Fuller was allowed additional time to achieve compliance, but he has not done so.

Accordingly, Justice Hantz Marconi recommended to the court that Attorney Fuller be suspended from the practice of law in New Hampshire.

Attorney Steven N. Fuller is hereby suspended from the practice of law in New Hampshire for failure to complete the requirements listed above. Attorney Fuller is ordered to notify his clients in writing that he has been suspended from the practice of law in New Hampshire and to notify the Attorney Discipline Office by March 13, 2023, that he has completed this task. On or before March 28, 2023, the Attorney Discipline Office shall advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Fuller's files and to take action to protect the interests of his clients.

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

ISSUED: February 10, 2023  
ATTEST: Timothy A. Gudas, Clerk

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopted on December 22, 2022, among other amendments to court rules, the following amendments to New Hampshire Rule of Criminal Procedure 12.

### I. 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.)*

The December 22, 2022 Order provided that the “amendments to New Hampshire Rule of Criminal Procedure 12 shall take effect on March 1, 2023.” The Supreme Court now amends its December 22, 2022 Order concerning New Hampshire Rule of Criminal Procedure 12 by adding a Comment at the conclusion of the amended rule to make clear that the amendments taking effect on March 1, 2023, apply only to cases filed on or after March 1, 2023.

1. Add a Comment to New Hampshire Rule of Criminal Procedure 12, as amended by the Supreme Court’s December 22, 2022 Order. The Comment and the amendments adopted on December 22, 2022, are set forth in Appendix A.

### Effective Date

The amendments to New Hampshire Rule of Criminal Procedure 12, previously adopted on December 22, 2022, and the Comment added by this Order shall take effect on March 1, 2023.

Date: February 15, 2023

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



### R-2023-0001 In re January 24, 2023 Report of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before **March 20, 2023**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments.

In accordance with Rules 3 and 4 of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing, comments should be submitted through the supreme court’s electronic filing (e-filing) system into existing case no. **R-2023-0001**, using “Rules Docket Entries” as the Filing Type and “Comment on Rule” as the Filing Subtype. The address of the supreme court’s e-filing system is: <https://ctefile.nhecourt.us/login>. The e-filing system is also accessible through the Electronic Services page of the New Hampshire Judicial Branch website: <https://www.courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non>. Prior to registering with the e-filing system, attorneys should review the Quick Guide – Registering as an Attorney E-Filed; nonlawyers should review the Quick Guide – Registering as a Nonlawyer E-Filed. The Quick Guides are available on the Electronic Services page.

Persons who are unable to submit their

comments electronically may mail or deliver them to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The language of the proposed rules changes and background regarding the proposals may be found in the January 24, 2023 Advisory Committee on Rules Report, which is available at: <https://www.courts.nh.gov/resources/committees/advisory-committee-rules/reports-court>.

Copies of the January 24, 2023 Advisory Committee on Rules Report are also available upon request submitted to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are available on the Internet at: <https://www.courts.nh.gov/resources/court-rules>.

The New Hampshire Supreme Court is requesting comment on recommendations to amend the following rules:

#### I. Supreme Court Rule 53.1

This proposed amendment was developed by an Advisory Rules subcommittee appointed to consider whether to award continuing legal education (CLE) credit for pro bono work performed by those lawyers who are in active status. It would allow active status members of the New Hampshire Bar Association who volunteer for assigned pro bono cases through 603 Legal Aid, NH Legal Assistance, and the Disabilities Rights Center to earn up to 360 general minutes of CLE credit annually at a rate of sixty CLE credit minutes for every 300 billable-equivalent minutes of pro bono representation provided to a client. CLE Ethics credits cannot be earned from pro bono service.

#### II. Supreme Court Rule 53.2(A)(2)

This proposed amendment would exempt from CLE requirements any lawyer who holds the position of judicial referee, and would limit the existing exemption for lawyers who occupy the positions of full-time judge, full-time magistrate, full-time marital master, judicial referee, state reporter, full-time supreme, superior and circuit court clerks and deputy clerks to those who occupy those positions in the State of New Hampshire Judicial System for any time during the reporting year.

#### III. Supreme Court Rule 53.2(A)(3)

This proposed amendment would exempt from CLE requirements any lawyer who holds the position of part-time judge, part-time magistrate, part-time marital master, part-time judicial referee, part-time supreme, superior and circuit court clerks and deputy clerks who occupy those positions in the State of New Hampshire Judicial System for any time during the reporting year, unless such individual was in the active practice of law at any time during the reporting year.

#### IV. Supreme Court Rule 53.2(A)(4)

This proposed amendment would exempt from the CLE certification requirement NHBA Limited Active Status lawyers.

#### V. Supreme Court Rule 53.2(A)(5)

This proposed amendment would exempt from the certification requirement those lawyers who were first admitted to New Hampshire practice after December 1. Currently, newly-admitted lawyers are exempt from the CLE requirement only.

#### VI. Supreme Court Rule 53.2(A)(6)

This proposed amendment would exempt from the CLE certification requirement those lawyers who are on active duty for the United States Armed Forces for more than three months of the reporting year. Currently, these lawyers are exempt from the CLE requirement

but not the certification requirement.

#### VII. Supreme Court Rule 53.2(A)(7)

This proposed amendment would exempt from the certification requirement those lawyers who change from any NHBA active membership status to any inactive membership status before December 1 of the reporting year. Currently, such lawyers are exempt from the CLE requirement but not the certification requirement.

#### VIII. Supreme Court Rule 53.2(A)(8)

This proposed amendment would exempt lawyers from the certification requirement who are elected State or Federal officials not engaged in the practice of law during a reporting year. Currently, such lawyers are exempt from the CLE requirement but not the certification requirement.

#### IX. Supreme Court Rule 53.2(B)(1)

This proposed amendment would update the exemptions for meeting the minimum CLE requirements to be consistent with the amendments being proposed to Supreme Court Rule 53.2(A).

#### X. Supreme Court Rule 53.2(B)(2); 53.2(B)(3); 53.2(B)(4); 53.2(B)(5)

This proposed amendment would delete this portion of the Rule, which exempts certain lawyers from the CLE requirement. The deleted language would be unnecessary if the recommended amendments to Supreme Court Rule 53.2(a) are adopted.

#### XI. Supreme Court Rule 53.3(A)

This proposed amendment would update the exemptions for filing a certification to be consistent with the amendments recommended by the Committee to Supreme Court Rule 53.2(A).

**NOTE:** The language of the proposed amendments to New Hampshire Supreme Court Rules 53.1, 53.2 and 53.3 is set forth in Appendix A.

#### XII. Supreme Court Rule 53.4

This proposed amendment, submitted by the Bar Association, “is intended to formalize and align the NHMCLE waiver process for annual NHMCLE requirements with the current waiver process for annual NH Supreme Court fees and Trust Account Compliance filing.”

The language of the proposed amendment is set forth in Appendix B.

#### XIII. New Hampshire Rule of Criminal Procedure 19

This amendment would clarify when criminal cases may be transferred from Superior Court to Circuit Court and from Circuit Court to Superior Court.

The language of the proposed amendment is set forth in Appendix C.

Date: February 16, 2023

ATTEST: Timothy A. Gudas, Clerk



### R-2023-0002 In re Suggested Amendments to Rules 1 and 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing, and Suggested Amendments to Supreme Court Rule 48-B

Advisory Committee on Rules Chair, Justice Patrick E. Donovan, recently received suggestions to amend Rules 1 and 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing. In light of the judicial branch’s objective to expand electronic filing, the technical nature of the suggested amendments, and the circuit court’s goal to implement electronic filing in nonemergency involuntary admission cases under RSA chapter 135-C in the summer of 2023, Justice Donovan referred the sugges-

tions directly to the supreme court pursuant to Supreme Court Rule 51(c)(3) and Rule 51(f) (Special Cases).

Justice Donovan also recently received suggestions to amend Supreme Court Rule 48-B. Justice Donovan determined that the suggestions call for a technical change, and he therefore referred the suggestions directly to the supreme court pursuant to Supreme Court Rule 51(c)(3) and Rule 51(f).

On or before **March 20, 2023**, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments addressing the suggestions.

In accordance with Rules 3 and 4 of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing, comments should be submitted through the supreme court’s electronic filing (e-filing) system into case no. **R-2023-0002**, using “Rules Docket Entries” as the Filing Type and “Comment on Rule” as the Filing Subtype. The address of the supreme court’s e-filing system is: <https://ctefile.nhecourt.us/login>. The e-filing system is also accessible through the Electronic Services page of the New Hampshire judicial branch website: <https://www.courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non>. Prior to registering with the e-filing system, attorneys should review the Quick Guide – Registering as an Attorney E-Filed; nonlawyers should review the Quick Guide – Registering as a Nonlawyer E-Filed. The Quick Guides are available on the Electronic Services page.

Persons who are unable to submit their comments electronically may mail or deliver them to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The language of the suggested amendments to Rules 1 and 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing is set forth in Appendix A and Appendix B. The language of the suggested amendments to Supreme Court Rule 48-B is set forth in Appendix C. A copy of the suggested amendments is also available upon request to the clerk of the supreme court at the address listed above. The current rules of the New Hampshire state courts are available on the Internet at: <https://www.courts.nh.gov/resources/court-rules>.

The supreme court is requesting comments on the suggestions to amend the following rules:

#### I. Rule 1 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing – Scope and Effective Date of Rules

This suggested amendment, the language of which is set forth in Appendix A, would add the person over whom nonemergency involuntary admission is sought or ordered to the category of persons who are exempt from electronic filing, unless the person chooses to register as an electronic filer.

#### II. Rule 11 of the Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing – Filing a Document Which is Entirely Confidential

This suggested amendment, the language of which is set forth in Appendix B, would add to the list of “confidential documents” those filed with or issued by the court in nonemergency involuntary admission cases under RSA 135-C.

#### II. Supreme Court Rule 48-B – Family Mediator Fees

This suggested amendment, the language of which is set forth in Appendix C, would (1) increase the mediation fee for divorce/parenting mediation from \$300 to \$450 for

ORDERS continued on page 42



four hours of mediation service and one hour of administrative work, and modify the sliding scale to determine the fee for mediation beyond four hours, and (2) clarify that an indigent party's requirement to repay the mediation fee for cases involving dependent children is governed by RSA 461-A:7.

Date: February 16, 2023

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

◆  
**LD-2023-0004, *In the Matter of  
Lisa A. Wellman-Ally, Esquire***

On February 17, 2023, the Attorney Discipline Office (ADO) filed a petition for the summary suspension of Attorney Lisa A. Wellman-Ally from the practice of law in New Hampshire. The ADO's petition states that Attorney Wellman-Ally has engaged in the following "serious misconduct," as defined by Supreme Court Rule 37(9-B)(b):

Here, Ms. Wellman-Ally mishandled client funds in two client matters, as she was out of trust in the amount of \$13,831.36 for one client and \$5,790.19 for another client. She was dishonest regarding the amounts she held in trust for these clients with third parties who sought to intercede on these clients' behalf, and could not write checks to these clients for funds due to them without first "replenishing" her IOLTA with personal funds (i.e. commingling).

According to the petition, Attorney Wellman-Ally's misconduct violates several Rules of Professional Conduct, including Rules 1.4, 1.15, 3.3, 4.1, 8.1, 8.4(a), 8.4(c), as well as Supreme Court Rule 50, and "poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession." Attorney Wellman-Ally has assented to the ADO's petition.

Based on the information contained in the ADO's assented-to petition, the court finds that Attorney Wellman-Ally has engaged in serious misconduct which poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession, and, therefore, that Attorney Wellman-Ally's summary suspension from the practice of law is necessary. See Supreme Court Rule 37(9-B).

Accordingly, it is hereby ordered:

(1) Pursuant to Rule 37(9-B), Attorney Lisa A. Wellman-Ally is immediately suspended from the practice of law in New Hampshire pending further order of this court.

(2) Copies of the petition for summary suspension and of this order shall be served on Attorney Wellman-Ally by first-class and certified mail at the latest address that Attorney Wellman-Ally provided to the New Hampshire Bar Association. If Attorney Wellman-Ally seeks a hearing pursuant to Rule 37(9-B) notwithstanding her assent to the petition, she shall file a written hearing request on or before February 24, 2023.

(3) Attorney Wellman-Ally is enjoined from further use of her IOLTA and operating accounts. She is further enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed.

(4) Attorney Wellman-Ally is required to inform all clients of her suspension, and to submit an affidavit to the ADO and this court attesting to same, no later than February 24, 2023, as set forth in Supreme Court Rule 37(13)(b), (d).

Pursuant to Supreme Court Rule 37(17), the court appoints Attorney Andrea Q. Labonte, ADO Assistant General Counsel, to take immediate possession of the client files and trust and other fiduciary accounts of Attorney Wellman-Ally, and to take the following

actions:

(1) Attorney Labonte shall notify all banks and other entities where Attorney Wellman-Ally has trust or fiduciary accounts and operating accounts of Attorney Wellman-Ally's suspension from the practice of law and of Attorney Labonte's appointment by the court.

(2) Attorney Labonte shall prepare an inventory of Attorney Wellman-Ally's client files and shall file a copy of the inventory with the Supreme Court on or before April 21, 2023, together with a report of her actions taken under this order and recommendations as to what further actions should be taken.

(3) If Attorney Wellman-Ally was in possession of any client funds or property, Attorney Labonte shall file an appropriate motion requesting authority to distribute them.

Attorney Wellman-Ally is ordered to cooperate with Attorney Labonte in performing the tasks as directed by the court. The expenses of Attorney Labonte and all other expenses that have been or may be incurred by the ADO in the investigation and prosecution of this matter are assessed against Attorney Wellman-Ally. To the extent that expenses are paid in the first instance from the funds of the attorney discipline system, Attorney Wellman-Ally is responsible for reimbursement.

MacDonald, CJ, and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: February 21, 2023

ATTEST: Timothy A. Gudas, Clerk

◆  
In accordance with Supreme Court Rule 37(3)(a), the Supreme Court appoints Attorney Mitchell M. Simon to the Professional Conduct Committee, to serve a three-year term commencing March 1, 2023, and expiring February 28, 2026.

Issued: February 24, 2023

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

◆  
In accordance with Supreme Court Rule 37(5)(a), the Supreme Court appoints Mr. James L. Snyder as a non-attorney member of the Complaint Screening Committee, to serve a three-year term commencing March 1, 2023, and expiring February 28, 2026.

In accordance with Supreme Court Rule 37(5)(a), the Supreme Court designates Ms. Kelly G. Lewis, a current member of the Complaint Screening Committee, to serve as its vice chair, commencing immediately.

Issued: February 24, 2023

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

◆  
In accordance with Supreme Court Rule 37(4)(a), the Supreme Court appoints Attorney Andrew J. Piela and Attorney James Shepard to the Hearings Committee. Each is appointed to serve a three-year term commencing March 1, 2023, and expiring February 28, 2026.

Issued: February 28, 2023

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

◆  
In accordance with Rule 58.2(A) and (B), the Supreme Court reappoints Attorney Sean R. List to the New Hampshire Lawyers Assistance Program (LAP) Commission, to serve a three-year term commencing March 1, 2023, and expiring February 28, 2026. Attorney List is further reappointed vice-chair of the LAP Commission.

Issued: February 28, 2023

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

## Classifieds

### POSITIONS AVAILABLE

**ASSOCIATE ATTORNEY** – BCM Environmental & Land Law is looking for an Associate Attorney practicing New Hampshire law (with the possibilities to expand to Vermont and/or Maine) in the areas of land use, environmental, agricultural, real estate law, and related fields, including renewable energy and local food in Concord or Keene office. Detailed job description/application submission requirements at [bcmenvirolaw.com](http://bcmenvirolaw.com).

**ATTORNEY** – We are seeking an experienced Attorney to join BCM Environmental & Land Law practicing New Hampshire law (Maine and/or Vermont a bonus) in the areas of land use, environmental, agricultural, real estate law, and related fields, including renewable energy and local food in the Concord or Keene office with possibility for remote work. Opportunity to move into ownership. Salary commensurate with experience and book of business. Detailed job description/application submission requirements at [bcmenvirolaw.com](http://bcmenvirolaw.com).

**ASSOCIATE ATTORNEY** – The Crisp Law Firm, PLLC located in Concord is looking for an associate attorney with two to five years of experience. Our firm's practice concentrates in the areas of family law, estate planning and probate, business representation, and professional licensing and certification. We offer a collegial atmosphere, benefits, and competitive salary. If you interested in learning more about this opportunity email Attorney Sara Crisp at [sara.crisp@crisplaw.com](mailto:sara.crisp@crisplaw.com).

**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](mailto:Officemanager2223@gmail.com). Replies held in strict confidence.

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

**PARALEGAL / LEGAL ASSISTANT** – Well established law firm in Nashua NH has an immediate opening for an experienced Paralegal / Legal Assistant to work with our Family Law team. This position requires a thorough knowledge of the Family Law area including preparation of child support and alimony guidelines and Uniform Child Support and Alimony Orders, preparation of pleadings, accumulation and review of financial disclosures from clients and opposing parties, preparation of financial affidavits and asset and debt spreadsheets, obtaining and review of discovery received from opposing parties and preparation of follow-up letters and pleadings to obtain missing disclosures or discovery from clients and opposing counsel and their paralegals, and assistance in preparation for trial including organization of exhibits. We offer competitive wages and benefits. Please e-mail your resume to Attn: Veronica Hamilton at [vhamilton@lawyersnh.com](mailto:vhamilton@lawyersnh.com).

**FULL TIME RECEPTIONIST** – Russman Law Offices Exeter law firm seeks a full-time receptionist to join our team immediately. Successful candidate must have excellent phone and organizational skills, and have the ability to multi-task in a fast-paced and growing environment. Client contact, computer skills and general office duties also required. Please forward your resume and cover letter to [kphinney@russmanlaw.com](mailto:kphinney@russmanlaw.com). Salary commensurate with experience.

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Bernstein Shur has offices in Maine and New Hampshire and advises clients from across the U.S. and around the world. Our 125+ award-winning attorneys and professionals are driven and deliver results on behalf of our clients, while striving to achieve the highest level of professional excellence. Our office culture is collaborative, authentic, and respectful. In 2022, Bernstein Shur was named one of Maine's Best Places to Work for the 11th time. Bernstein Shur offers competitive compensation and excellent benefits, while making quality of life a priority. Visit [bernsteinshur.com/who/careers](http://bernsteinshur.com/who/careers) for more information.

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## ASSISTANT FEDERAL PUBLIC DEFENDER

The Federal Public Defender Office for the Districts of Massachusetts, New Hampshire, and Rhode Island seeks a full-time Assistant Federal Public Defender (AFPD) for its Concord, New Hampshire office.

The AFPD primarily represents indigent individuals charged in federal district court with committing federal criminal offenses. The AFPD also represents clients on appeal before the circuit court, in post-conviction proceedings, and as grand jury or trial witnesses. The AFPD reports directly to the Federal Public Defender or another designated supervising attorney.

The position requires managing cases at various stages of litigation; preparing pleadings, briefs, and motions; appearing on behalf of clients in court hearings and at other related proceedings; developing litigation strategies; meeting with clients, experts, witnesses, and family members; and performing other duties as assigned.

All applications received by 5:00 PM on Friday, March 31, 2023, will be considered. For details and application process please visit <https://www.fd.org/employment> or call the office at 603-226-7360. We are an equal opportunity employer.

## FEDERAL PUBLIC DEFENDER FOR THE DISTRICT OF PUERTO RICO

The United States Court of Appeals for the First Circuit is accepting applications for the position of Federal Public Defender for the District of Puerto Rico. The term of appointment is four years. The current annual salary is \$183,500.

The Federal Public Defender provides federal criminal defense to individuals unable to afford counsel. The defender supervises a staff of more than 50 people, including trial lawyers, an appellate unit, investigators, and support personnel. The defender is also responsible for providing training to the panel of lawyers who take indigent federal appointments. The office is headquartered in San Juan, Puerto Rico. In applying for the position of Federal Public Defender for the District of Puerto Rico, all applicants should be aware that the Federal Public Defender Office (FPDO) will serve not only as a traditional law office representing individual defendants, but also as a resource center for all practicing federal defense attorneys.

Completed applications must be received no later than Tuesday, April 11, 2023. An application form may be obtained from the Court's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov). Please email completed applications or any questions to [ca01\\_chjobs@ca1.uscourts.gov](mailto:ca01_chjobs@ca1.uscourts.gov). More information about the District of Puerto Rico FPDO can be found at <https://pr.fd.org>.



## OFFICE OF THE ATTORNEY GENERAL FULL-TIME ATTORNEY VACANCY

\* \* \* \* \*

### CIVIL LITIGATION UNIT DIVISION OF LEGAL COUNSEL

The New Hampshire Department of Justice seeks a full-time litigator to join its Civil Law Bureau practice. The Bureau represents the State, its agencies, and its employees before state and federal trial and appellate courts and administrative bodies. Civil litigators work on a wide array of cases including complex and novel issues of state and federal law.

The ideal candidate will have experience litigating both routine and complex civil disputes in state or federal court or before administrative tribunals. Excellent analytical and writing skills are a must; state or federal clerkship experience is a plus. Experienced attorneys seeking high-tempo, diverse, and rewarding work as part of a talented team are strongly encouraged to apply.

*All positions include competitive salary commensurate with experience and excellent benefits. Successful candidates must have a Juris Doctor from an accredited law school and good standing in the New Hampshire Bar (or waiver eligible). If you are interested in any of these vacancies, send a cover letter, CV, and writing sample to: New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, c/o Sean Gill, Chief of Staff, or email [employment@doj.nh.gov](mailto:employment@doj.nh.gov).*

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## OFFICE OF THE ATTORNEY GENERAL FULL-TIME ATTORNEY VACANCIES

\* \* \* \* \*

### CONSUMER PROTECTION AND ANTITRUST BUREAU PUBLIC PROTECTION DIVISION

The New Hampshire Department of Justice seeks an experienced and motivated attorney with a demonstrated interest in health care law to join the Consumer Protection and Antitrust Bureau. The Bureau is responsible for investigating and prosecuting cases of unfair and deceptive business practices and unfair methods of competition, reviewing proposed mergers, investigating anticompetitive conduct in various industries, and prosecuting cases of white-collar crime, complex financial fraud, and financial exploitation of the elderly. It exercises statewide civil and criminal prosecutorial authority and participates in multistate investigations and prosecutions with the U.S. Department of Justice, Federal Trade Commission, and other state attorneys general. The Bureau is composed of a multidisciplinary team including attorneys, sworn law enforcement investigators, a financial analyst and support staff.

The successful candidate will be primarily responsible for handling matters involving the enforcement of state and federal antitrust laws. Recent antitrust matters with the Bureau have focused on preserving competition within the health care sector. The successful candidate will be assigned primarily to antitrust cases but will also work on other consumer protection enforcement matters.

Complex civil litigation experience is preferred but not required. Strong legal research and writing skills, a collaborative work ethic, individual initiative, and the ability to identify strategic solutions in a fast-paced, team environment are highly desirable.

### CHIEF, ELECTION LAW UNIT DIVISION OF LEGAL COUNSEL

The New Hampshire Department of Justice seeks a qualified and conscientious attorney to lead its Election Law Unit. The Chief leads the Unit to investigate and prosecute election law violations and enforce campaign finance and election procedures. The Unit also partners with the Secretary of State's Office to train state and local elections officials regarding the conduct of elections and renders advice and assistance to officials on election days. Fully staffed, the Unit consists of two attorneys, two investigators, and a paralegal working within a collaborative and collegial environment.

The ideal candidate will have litigation experience, leadership ability, commitment to the non-partisan enforcement of election laws, capacity to work well under pressure, and aptitude for effectively communicating with elections officials and the public.

*All positions include competitive salary commensurate with experience and excellent benefits. Successful candidates must have a Juris Doctor from an accredited law school and good standing in the New Hampshire Bar (or waiver eligible). If you are interested in any of these vacancies, send a cover letter, CV, and writing sample to: New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, c/o Sean Gill, Chief of Staff, or email [employment@doj.nh.gov](mailto:employment@doj.nh.gov).*

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[dgarland@nhlawfirm.com](mailto:dgarland@nhlawfirm.com)



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Specifically, we are seeking a **PARALEGAL** with one or more years of experience in litigation. Expertise in the following areas is desirable, but not required: trial and exhibit preparation, discovery practice, motion and correspondence drafting, calendaring, client management, billing, and general file organization.

KWC offers a competitive compensation and benefits package in a collegial, supportive, and energetic environment. Interested candidates should forward their cover letter and resumé to Nicole J. Schultz-Price, Esq., Management Committee, at [nschultzprice@massfirm.com](mailto:nschultzprice@massfirm.com).

## Litigation/Construction Attorney

Preti Flaherty is a full-service law firm with more than 100 attorneys and offices in ME, NH, MA and D.C. We are seeking a mid-level or senior associate to work in our Construction and Litigation Practice Groups in either of the firm's Boston, MA or Concord, NH offices.

The ideal candidate will have:

- Experience in a sophisticated litigation practice;
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- Construction litigation and/or experience in Massachusetts is desirable, but not required;
- Practical experience in construction and/or engineering is also desirable, but not required.

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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](mailto:hr@dwmlaw.com). All inquiries are held in the strictest confidence. No phone calls, please.



## Regulatory Counsel

Unitil Service Corp., Hampton, NH

### Position Purpose:

Advises and represents Unitil companies in electric and natural gas regulatory matters in New Hampshire, Massachusetts, and Maine. Recent matters include, but are not limited to, electric and natural gas rate regulation, integration of renewable resources, and modernization of the electric grid. Also reviews and negotiates business agreements, and advises on state and federal regulatory corporate laws and regulations. Advises the Unitil companies in connection with civil litigation, claims, enforcement, and compliance matters as necessary. Works with outside counsel and service providers as necessary to investigate, evaluate, and resolve claims and litigation.

### Qualifications:

- A Juris Doctorate degree is required. Bar admission, or a willingness to seek bar admission, in New Hampshire is required. Bar admission in Massachusetts and /or Maine is also a plus.
- A minimum of five years experience in a position demonstrating strong supervisory, organizational, communication, investigative, writing, negotiation, and litigation skills. Strong written and oral advocacy skills are essential. Familiarity with natural gas and electric utility regulation, policy matters, and operating activities is a plus.

To apply for this position: <https://unitil.com/our-company/careers>



### PROBATE, TRUSTS AND ESTATE PLANNING ATTORNEY

Morneau Law, a steadily growing Nashua firm, is seeking a probate, trusts, and estate planning attorney with 3-7 years' experience to join our team. Someone who is dedicated to giving back to the community and a self-motivated team player would thrive in our position.

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Please send your cover letter, resume and salary requirements to:  
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## Legislative and Bill Drafting Attorney

### Office of Legislative Services

The General Court's Office of Legislative Services (OLS) is seeking a full-time attorney in its Legal and Drafting Division at the State House in Concord. Responsibilities include: drafting legislation and amendments for members of the House of Representatives and the Senate; ensuring that all legislative documents meet the technical and editorial standards of OLS; advising members of the legislature in resolving practical, technical, and legal issues in their drafting requests; compilation and review of statutory changes enacted in each legislative session for publication in the New Hampshire Revised statutes annotated (RSA); and assisting the OLS Administrative Rules Division in reviewing and presenting agency rules to the Joint Legislative Committee on Administrative Rules. Candidates for the position must be a graduate of an accredited law school and admitted to the NH Bar Association or will pursue admission. Starting salary is \$71,974.76. This is not a remote-work position. More information may be found at [www.gencourt.state.nh.us](http://www.gencourt.state.nh.us). The application deadline is February 28, 2023. To apply, please submit a resume and cover letter to:

David J. Alukonis, Director  
Office of Legislative Services  
[david.alukonis@leg.state.nh.us](mailto:david.alukonis@leg.state.nh.us)

## 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](mailto:sue.corrow@cooscountynh.us)

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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](mailto: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](mailto: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](mailto:hr@uptonhatfield.com).

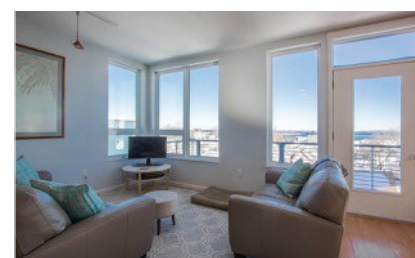
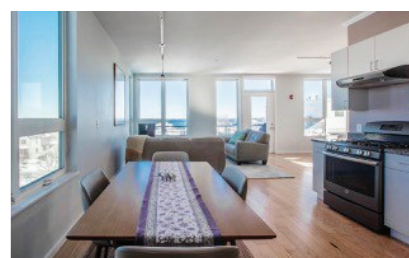
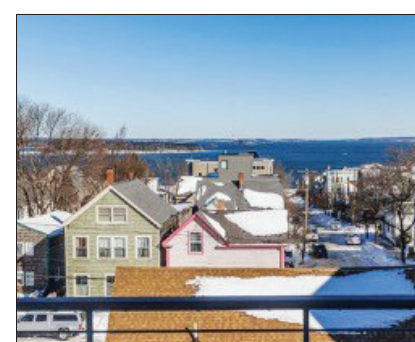
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### **TAX ATTORNEY (BURLINGTON, VT)**

Downs Rachlin Martin PLLC – one of Northern New England’s largest law firms – is seeking an attorney with at least three years of experience to join its tax practice at its Burlington, Vermont office.

Qualified candidates should have substantial experience addressing complex commercial transactions, with a strong background in partnership and corporate tax matters. Experience should include structuring mergers and acquisitions, business formations, debt and equity financings, workouts, private equity and venture capital transactions. Experience with executive compensation, New Markets and other tax credit issues would be valuable in this position. Our practice includes controversy representation across a wide range of state and local tax matters necessitating excellent research, writing and verbal skills. There is an opportunity to succeed to an established tax practice.

### **CORPORATE/COMMERCIAL ATTORNEY (BURLINGTON, VT)**

Downs Rachlin Martin PLLC – one of Northern New England’s largest law firms – has an opportunity for a corporate/commercial attorney to practice within its dynamic business law group in Burlington, Vermont.

The ideal candidate will have over six years of relevant experience working with colleagues and clients on matters involving venture capital transactions (entity formation, seed financings, capitalization tables, portfolio management), mergers and acquisitions (asset and stock purchases, mergers, due diligence) and debt and equity financings (mortgages, Uniform Commercial Code, promissory notes and loan agreements). The firm’s business law group is engaged in wide a variety of transactions locally, nationally and internationally. A partial book of business is preferred. This is an opportunity to become part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

### **COMMERCIAL AND BUSINESS LAW ATTORNEY (BURLINGTON, VT)**

Downs Rachlin Martin PLLC - one of Northern New England’s largest law firms - has an opportunity for a junior corporate/commercial attorney to practice within its dynamic business law group in Burlington, Vermont.

The ideal candidate will have over two years of relevant experience involving corporate and entity formation, mergers and acquisitions (asset and stock purchases, mergers, due diligence) and debt and equity financings (mortgages, Uniform Commercial Code, promissory notes and loan agreements). Experience with captive insurance matters a plus, but not required. The firm’s business law group is engaged in wide a variety of transactions locally, nationally, and internationally. This is an opportunity to become part of a team of attorneys committed to delivering top-quality service to growing and successful businesses.

DRM is committed to investing in our attorneys’ professional growth and development. We offer excellent mentorship, and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including industry-leading paid parental leave and two generous retirement plans.

Please submit a cover letter and transcript along with resume for consideration. APPLY HERE: [https://www.appone.com/MainInfoReq.asp?R\\_ID=4440732&B\\_ID=83&fid=1&Adid=0&ssbcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2](https://www.appone.com/MainInfoReq.asp?R_ID=4440732&B_ID=83&fid=1&Adid=0&ssbcolor=17143A&SearchScreenID=2521&CountryID=3&LanguageID=2)

## **TOWN OF BEDFORD New Hampshire**

### **Prosecutor – Bedford Police Department**

Full time, Non-Affiliated - \$83,055 - \$110,021. 90-95% paid health and dental; NHRS retirement.

**PRIMARY DUTIES** Special agent of the Chief of Police authorized to sign department complaints under oath; does research and makes all decisions on the prosecution or disposition of cases; must assure witnesses are notified and subpoenaed for trial/hearing dates and evidence is available when needed. Assist officers at ALS hearings when required. Cooperate with the Office of the County Attorney and prepare all cases to be presented before the Grand Jury.

**QUALIFICATIONS** Bachelor’s degree from accredited college or university as well as a JD from an Accredited Law School. Must be admitted to practice law in the State of NH by the New Hampshire Bar Association or a sworn officer who has completed specialized training in Police Prosecution. Valid driver’s license required. Must have thorough knowledge of police investigation methods, state laws, local ordinances and police regulations with emphasis on the NH Criminal and Motor Vehicle codes. Thorough knowledge of the principles and practices of court prosecutions. Supervises a FT Legal Assistant.

**APPLICATIONS ACCEPTED UNTIL FILLED** – Required application and information at: [https://www.bedfordnh.org/230/Employment\\_Opportunities](https://www.bedfordnh.org/230/Employment_Opportunities). Call 603-792-1315 with questions. EOE

### **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)**

#### **DCYF Attorney Duties include:**



- 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](mailto:deanna.baker@dhhs.nh.gov).



## ASSISTANT COUNTY ATTORNEY

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

**ESSENTIAL JOB FUNCTIONS:**

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

**REQUIRED EDUCATION AND EXPERIENCE**

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

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

**Status:** Full Time/Exempt

**Submission Requirements:**  
Employment application and resume required.

**Apply Online:**  
<https://www.governmentjobs.com/careers/rockinghamnh>

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

## 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.

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

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[www.co.grafton.nh.us/employment-opportunities](http://www.co.grafton.nh.us/employment-opportunities), E-mail: [hr@graftoncountynh.gov](mailto:hr@graftoncountynh.gov)

Grafton County Human Resources

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

E.O.E.

## 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](mailto:lroy@mckan.com).



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