

Looking Back, Looking Ahead: The New Hampshire Bar Association Turns 150 This Month

By Tom Jarvis

On July 2, 1873, New Hampshire became the first state to establish a “modern state bar association” with incorporation – by a special act of the New Hampshire legislature – as the Bar Association of the State of New Hampshire (BASNH), making it the oldest statewide bar association in the United States.

The purposes for the association were copied almost word for word from those of the New York City Municipal Bar Association. There was considerable selectivity in who was asked to join, inviting just 218 of a possible 320 attorneys and judges in the state. Only 40 elected to join during its first year.¹

That same year, Ulysses S. Grant was sworn in as US President for a second term; Congress enacted the Comstock Law, making it illegal to send any obscene, lewd, or lascivious items through the mail; and the New York stock market crashed,

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Outgoing President Jonathan M. Eck passes the gavel to incoming president Paul W. Chant. Photo by Rob Zielinski

Annual Meeting 2023: A Sesquicentennial Celebration Venerating Diversity

By Tom Jarvis

The New Hampshire Bar Association's Annual Meeting, held on June 23-24, took place at a new venue this year: the AC Hotel by Marriott in Portsmouth. The event, entitled “Changemakers: 150 Years of Navigating Uncharted Waters,” consisted

of a two-and-a-half-hour CLE program, activities celebrating history and diversity, a reception on the rooftop overlooking the city, and a spirited banquet with the bestowment of the annual President's Awards and the passing of the gavel to new NHBA

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Ride for Resilience: The 100-Mile Bike Ride for New Hampshire Children's Trust

By Grace Yurish

In October, riders will pedal their way 100 miles across the Granite State to benefit the New Hampshire Children's Trust (NHCT) and various family resource centers, while raising awareness about the support available to prevent child abuse and neglect.

The NHCT is the governor's designated statewide community-based child abuse prevention agency and is the state's chapter of Prevent Child Abuse America. Founded in 1986 as a quasi-governmental organization, the NHCT became a non-profit corporation in 2011. The Children's Trust works hand in hand with family resource centers to help families endure challenging times. Located across the state, family resource centers provide a variety of programs, classes, and resources to help educate and strengthen families.

NHCT Director of Advancement



Mark Knights in front of Community Action Partnership of Strafford County. Courtesy Photo

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Paul Chant: The NHBA's 124th President

It is with great pleasure and some trepidation that I take on the role of Bar president. I have been actively involved with the Bar since my admission well back into the last century.

To members who attended the 2023 Annual Meeting in Portsmouth, my apologies, as you have heard much of what follows.

I believe in the Association. I believe in its mission to serve three constituencies: the clients we serve, the court system, and of course, you, the members of the Bar.

I think the Bar is generally doing a good job serving these constituencies. Our Association staff is strong, and we have an excellent executive director in George Moore. We also have an excellent Board of Governors and a strong group of officers. I am very much looking forward to working with President-Elect Kate Mahan, Vice President Derek Lick, Secretary Susan Lowry, and Treasurer Chris Regan throughout this year.

I have four primary goals.

First, I think an area in which the Association can be stronger is in delivering to you the best Continuing Legal Education programs possible. This year, we

President's Perspective



By Paul W. Chant

Cooper Cargill Chant
North Conway, NH

will be taking a good look at how we can better serve you in the delivery of CLEs, including improved technology at the Bar Center and enhanced two-way interface with online attendees. We want to ensure that you have access to the best tools possible, and that we are giving you programs worthy of your time and money.

Second, artificial intelligence is coming to our profession, and fast. We need to understand the challenges and changes AI will bring and provide proper information for our members about the benefits and dangers of AI. We have formed a special committee, which Bob Lucic of Sheehan

Phinney has thankfully agreed to chair.

Third, prior Bar leaders have worked very hard to make sure that we have a strong, productive relationship with the Chief Justice, the Supreme Court, and the Superior and Circuit Courts. We will continue to maintain that level of communication and trust. It is of great value to the courts, the public, and to you.

Finally, too many lawyers have difficulty with the many stresses of this profession. We have a significant problem with lawyer wellness and with the misuse of substances and we don't have enough support readily available for members who are facing these issues. We want lawyers to reach out before little problems become big problems. Recently, we have started discussions with the Lawyers Assistance Program and the court system to develop a collective and collaborative framework to address these issues. I think together we can do great things to help our members.

Again, it is my pleasure to take on this role. Please know I am here to help. Let me know how I can. pchant@coopercargillchant.com; (603) 356-5439. ■

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Wellness Corner

The New Hampshire Lawyers Assistance Program: Inside the Organization

By Jill O'Neill

New Hampshire legal professionals refer to the New Hampshire Lawyers Assistance Program (NHLAP) for confidential support related to stress and burnout, addiction issues, mental health challenges, life and career transitions, cognitive decline and aging, or when facing discipline. When comparing the national lawyer well-being statistics on the prevalence of mental health and substance use disorders, two to three thousand New Hampshire legal professionals meet the criteria for a clinical disorder requiring intervention and treatment. Although we have seen NHLAP referrals more than double this



year, there are misconceptions about whom exactly NHLAP serves, what services NHLAP offers, and unaddressed concerns about confidentiality resulting in an underutilization of NHLAP services. This article will answer these questions, address concerns, share important information, and explain how NHLAP can offer meaningful support.

Getting help when you need it is crucial in building your resilience. At any given time over our lifespan, we will encounter difficult life experiences. How well we endure hardship is determined by our resilience. Resilient people tap into their strengths and support systems to overcome challenges and work through problems. When faced with personal or professional difficulties negatively impacting your well-being, ask for help. Not because you are weak. But because you are strong. NHLAP services are available to members



of the New Hampshire legal profession, without limitation, including lawyers and judges, regardless of their status, and law students. Our services are available to you throughout your legal career into retirement. NHLAP services

are free of charge as funded by the LAP Assessment Fee, included in the annual Bar membership dues. NHLAP offers a "no wrong door" approach. Whether you are calling for yourself, as a concerned colleague (anonymity preserved), or as a family member – we are here to help.

Don't believe everything you think.

Many times, the root cause of our own suffering is our own thinking. Numerous legal professionals suffer in silence due to negative beliefs about seeking help—shame, stigma, fears of reputational harm, and

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Brian McEvoy: The “Artsy” Advocate

By Kathie Ragsdale

By day, Brian McEvoy prosecutes child abuse and neglect cases, witnessing what he calls “the entirety of humanity in terms of the wonderful things it’s capable of and the worst things it’s capable of.”

By night, he creates paintings – most of them portraits that capture the pain, resilience, and uncertainty of what it means to be human.

He sees the two as related.

“I regard practicing law as an art form,” says McEvoy, a Bar member for more than 30 years and a prosecutor for the state Division for Children, Youth and Families (DCYF). “I regard art as a discipline, and they’re symbiotic.”

“I’m not really satisfied with producing artwork that isn’t of the highest quality,” he adds. “If it’s not my best effort, I feel it’s not worth producing. The same is true of going to court. If I’m going to court, I’m going to court fully loaded and I would prefer people know I go to court in that regard. I don’t fool around.”

A native of Newmarket, New Hampshire, McEvoy attended the former Marlboro College in Vermont, majoring in philosophy and economics, before a four-year stint in the Navy, where he navigated a submarine.

Enrollment at what is now the University of New Hampshire School of Law followed.

“I was just pretty good at debating things, and it seemed like a reasonable direction to go in for a philosophy major,” he says of his career choice.

After graduation, he spent a half-dozen years working for the law office of David Bownes, focusing primarily on criminal defense, before going off on his own, partnering first with Judith Homan, then going solo. Criminal defense and immigration law again accounted for much of his practice.

McEvoy says he is particularly proud of a case where he won a not guilty verdict in front of a jury for a man accused in a non-fatal shooting.

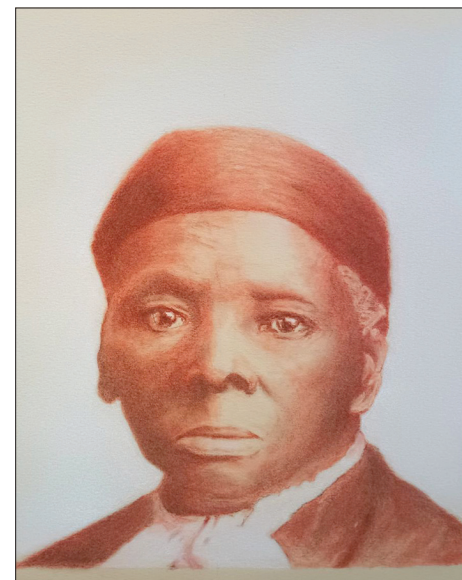
“Any shooting from a defense point of view is extremely difficult because, human



Brian McEvoy holds his Happy Buddha painting, done in black and white and burnt umber oil on linen. Courtesy Photo



General Dwight D. Eisenhower, charcoal and white chalk on drywall board. Courtesy Photo



Harriet Tubman, done in sanguine, charcoal, and white chalk on Canson Mi-Teintes toned paper. Courtesy Photo

behavior being what it is, we want to jump to those types of conclusions,” he says. “It was very satisfying.”

In 2007, McEvoy moved to DCYF, where he has remained, except for a four-year period when he worked for Child Support Enforcement.

He calls the work “very intense.”

“The wonderful parts are, for example, a parent or parents who are able to get over their drug problem and get their kids back,” he says. “People don’t realize how difficult that is. The worst you see is homicide.”

McEvoy says he is also gladdened by seeing “kids who, notwithstanding the trauma they’ve been subject to, have been resilient and maintain a positive outlook on life and do well. There’s a lot of those, more than one would think.”

His officemate at DCYF, Lori Chandler, has known McEvoy for a decade and a half, since she was an assistant county attorney

in Belknap County, and calls him “a very honest man whose ethical fiber is practically unmatched.”

“He is up front and honest,” Chandler says. “He does what he says he is going to do, and he does it with his unique style of poise and humor. I am in awe of his legal

skills and hope that some of those skills rub off on me.”

A similar view is offered by Deanna M. Baker, legal director for New Hampshire DCYF, who calls McEvoy “a diligent and skilled trial attorney” who is “professional and respected by colleagues, clients, parent attorneys, CASA/GALs, and courts.”

Baker adds that McEvoy is “known among his colleagues for the doodle art he creates and many of us take great joy in exploring his legal files and seeing his ‘real’ artwork.”

That “doodle art” began years ago as a reaction to the intensity of the courtroom.

“To relieve stress in court,” McEvoy explains, “I would draw cartoons, try to draw emotions. The judges just thought I was taking notes.”

Five or six years ago, his wife, Melissa, gave him a drafting table for his birthday, and a painter was born. McEvoy took a few art classes and started painting, primarily portraits, “because I’m interested in people’s souls and bringing them to life,”

MCEVOY continued on page 14

“To relieve stress in court, I would draw cartoons, try to draw emotions. The judges just thought I was taking notes.”
– Brian McEvoy

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Did the Supreme Court Just Reject Affirmative Action or Approve It?

Introduction

The recent 6-3 Supreme Court of the United States (SCOTUS) ruling that race-conscious admissions programs at Harvard and the University of North Carolina are unlawful will undoubtedly shape the future of affirmative action policies and have significant implications for society as a whole.

The ruling has been met with mixed reactions. Some people outside the Court believe that this is a step forward for the country while others believe that it is a step backward taking special exception with the exemption for military academies as being “insulting” and that this decision is “a slap in the face.” Does it call for equal treatment? Equitable treatment? Justice for some? Justice for all?

In a democracy, representation is an essential principle. If Harvard, Yale, and Princeton are curating our elite, then it makes perfect sense — for reasons of political stability and fairness — to make sure that African Americans and Hispanics are well represented in those classes. This is a consideration that is perennial in government and in life — it is why English kings once contemplated giving out peerages to loads of Labour members and Catholics, to balance an overly Tory and Protestant body.

The Case: A Closer Look – A Narrow Application

The decision should not be seen, as the media seems to tout it, as a broad

statement on the illegality of affirmative action. The SCOTUS majority opinion, which all six conservative justices joined, stated that the Court has “permitted race-based admissions only within the confines of narrow restrictions. University programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some point—they must end.”

As with most Supreme Court decisions, this decision hinges on the specifics of the cases themselves. Illustrative of the case specifics, Esther G. Lander, Aileen M. McGrath, and Amanda S. McGinn argue in an article published in Akin that, “The Court noted that Harvard and UNC did not seek to justify their affirmative action programs based on evidence of their own past discrimination and rejected the notion that affirmative action could be justified to remedy the effects of societal discrimination at large, which would impose disadvantages on individuals who bear no responsibility for the harm purportedly suffered by the beneficiaries of affirmative action...The Court also found that Harvard’s and UNC’s use of race as a plus factor in college admissions is not ‘narrowly tailored’ to achieve their articulated interests.”

The wording of the ruling leaves room for interpretation. Who is to say what constitutes “narrowly tailored?” And how are we to resolve the conflict where the decision recognizes that institutions prepare people to live in society, which

is admittedly discriminatory, yet rejects the notion that affirmative action could be justified to remedy the effects of societal discrimination at large?

Looking Ahead: The Future of Affirmative Action

Nine states (including New Hampshire) have banned the use of race in admissions policies at public colleges and universities. The rate of people of color at institutions of higher learning in those states has remained largely the same. This seems to detract from the arguments of those who criticize the decision and minimize the concerns about the ruling’s impact. But organizations such as the NAACP are ramping up campaigns to convince the public of the grave nature of the decision.

While the ruling was focused on academic institutions, legal scholars believe there will be ramifications for businesses looking to become more diverse as the same argument used in this case could be used in a case involving Title VII which focuses on employment.

Unlike in higher education, in the employment context affirmative action that involves racial or gender preferences to achieve diversity has never been a permissible justification. Rather, under Title VII, race- or gender-conscious affirmative action by private employers (including government contractors) is generally unlawful in the absence of a remedial purpose.

Thus, although the decision does not change the landscape for private employers, where the use of affirmative action is already extremely limited, employers should anticipate increased scrutiny and challenges to their workplace affirmative action plans and diversity initiatives. Employers who wish to develop written affirmative action/diversity plans should thus ensure that their plans are either remedial, narrowly tailored to cure documented and identified statistical imbalances in specific jobs, temporary, and do not unduly harm non-beneficiaries of the preference OR ensure the diversity of perspectives that lead to better decision-making, innovation, and market penetration/mission reach.

Conclusion

The SCOTUS decision on affirmative action puts renewed emphasis on the Constitution and is likely to disrupt diversity efforts. Was this ruling inevitable? When should affirmative action stop? Who gets to say when it should stop? How should it stop? To answer these questions, we need a national discussion of reparations. Only then will we come to a common understanding of how to navigate the path toward greater equality and inclusivity, finding the delicate balance between diversity and equal opportunity.

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To submit a nomination, please go to <https://www.nhbar.org/about-the-bar/bar-awards> where you will also find a list of past recipients.

If you should have any questions, please reach out to Cindy Roberts at croberts@nhbar.org or at (603) 715-3267.

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150-Year Retrospective: The 1991 Pamela Smart Trial The First-Ever Televised Trial in US History

By Tom Jarvis

Looking back through the history of the New Hampshire Bar Association in celebration of its 150th year inevitably brings to mind the most publicized trial in Granite State history: the Pamela Smart trial. Spanning 14 days, it was the first trial in the nation to be broadcast live on television from start to finish, gavel to gavel.

In March 1991, 22-year-old Pamela Smart was found guilty of conspiracy to commit murder, accomplice to first-degree murder, and witness tampering in connection with the death of her husband, Gregory Smart, who was found shot to death in their home in Derry on May 1, 1990.

She was the media coordinator at Winnacunnet High School in Hampton and began having an affair with a 16-year-old student, William Flynn. Smart was accused of convincing Flynn and three of his friends to kill her husband. Flynn and the others pleaded guilty in a cooperation agreement in exchange for lesser charges, while Smart was sentenced to life in prison.

By 2015, Flynn and his friends had all been released from prison. Smart has requested commutation three times – the most recent in 2022 – and each petition has been unanimously denied by the Executive Council.

What made this trial so infamous was the media frenzy that ensued. Its popularity even inspired the creation of two films. One was a made-for-TV movie called *Murder in New Hampshire: The Pamela Smart Story*, which starred Helen Hunt and Chad Allen. The other, only loosely based on the Smart



Pamela Smart during the trial in 1991. Photo by Geoff Forester/Concord Monitor

story and with changed names and details, was called *To Die For*, and starred Nicole Kidman and Joaquin Phoenix. There were also several books and two documentaries made about the Smart story.

"It was a case of first impression with regard to media exposure," Smart's long-time attorney Mark Sisti says. "I guess anytime there is a first, it's going to attract attention for a long period of time. And it was not only national coverage. There were news trucks from Japan, Germany, and Australia. The thing got completely out of control. I don't think there was a trial since then in this state that allowed for such a bizarre media circus."



Pamela Smart in 2021, 30 years into serving a life sentence. Courtesy Photo

Paul Twomey, Sisti's former law partner and former co-counsel for Smart, believes her trial was the impetus to Court TV.

"It was oppressive. I don't think I've ever seen anything like it since," Twomey says. "The media was everywhere. They would follow us to court – we'd be like 40 miles away from the court and people would be following us. I think it was profoundly disturbing, the atmosphere in that courtroom – the way it just got completely out of control. I liked Judge [Douglas] Gray a lot, he was always one of my favorite judges, but I think the thing got away from him."

Twomey continues: "I just can't even

tell you how strange it was to have judges and politicians come in and be seated in special spectator seats for VIPs, watching the trial of a human being. A real person died – they have a family. It wasn't entertainment; it shouldn't have been entertainment. It was something that shouldn't have happened. She's a real human being, and she's on trial for her life. These kids all had families. All of them shouldn't have been shown. I feel bad for the kids, too. I feel bad for Billy Flynn and his mother and the rest of the kids. The whole thing was awful."

According to Twomey, it wasn't long after the Pamela Smart trial that the courts began implementing rules to control the media coverage in court.

"The OJ Simpson thing was somewhat similar a year or two later, but even then, there were more rules in place," he says.

Paul Maggiotto, who was the assistant attorney general and lead counsel for the State at the time of the trial, says he wasn't worried about the press.

"It was clearly unprecedented, the amount of press coverage," Maggiotto says. "I think what people believed is that there is a great interest in watching a trial live. I remember kids in high school later coming up to me and telling me they watched it in school as a lesson in civics. So, it had a real educational benefit by being broadcast live. [At the time of the trial], I was new to the office. I had been a district attorney in Brooklyn and had tried about nine homicide trials before I even got to New Hampshire, and because of that experience, I had a lot of com-

SMART TRIAL continued on page 6

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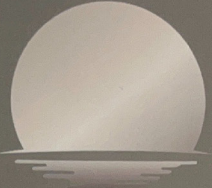
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Smart Trial from page 5

fort level with the press. The fact that there was a lot of press involved did not scare me away, where I think some of the people in the office wanted nothing to do with it for that reason.”

Maggiotto began working as a defense attorney two years after the trial and now operates a solo practice in Concord. When asked how the Smart trial affected his career going forward, he says it gave him some name recognition at times.

“When I put my name on the door and stopped working for other people, it certainly gave me some recognition that I otherwise wouldn’t have had,” he says. “But as a defense lawyer, you’re only as good as your latest victory, so to speak. Clients want you to win, they want you to do well for them, so they don’t really care about what you might



Paul Maggiotto, former assistant attorney general and lead counsel for the State in the 1991 Pamela Smart trial. Courtesy Photo

have done in the past.”

Maggiotto says he is proud of his work on the Smart trial, but he’s prouder of the appellate work in the case because that was more out of his comfort zone.

“There are other cases that have given me a lot of satisfaction and pride,” he says. “Smart was one of them, but it’s not like leaps and bounds above the others.”

Sisti says he is also proud of the work he did for Smart and the work that he continues to do for her.

“We are going to latch on, we’re going to hold, and we are going to succeed in the end. I am confident of that,” Sisti says. “I take pride in the craft that I am engaged in. There are a lot of lawyers out there doing the same stuff I’m doing that are not getting this attention, and they’re in the trenches every day. We should be proud of what they’re doing. As assigned council in criminal cases, as public defenders – they don’t get any kind of glory, they don’t get any kind of attention, but they are battling every day. My hat goes off to them. They’re in there, they’re fighting, and they’re doing the right thing.”

In February 2023, Sisti appeared before the New Hampshire Supreme Court, asking them to compel the Executive Council to reconsider a full hearing on Smart’s commutation petition. Sisti argued that Governor Sununu and the Executive Council did not fairly consider her request, having only reviewed it for under three minutes before rejecting it. The Court denied Smart’s petition.

“She’s more than happy to sit down in front of any or all of the executive counselors and the governor and look them straight in the eye and answer any questions they would want to offer to her,” Sisti says. “She’s not afraid of them. It seems as though they are afraid of her. I think one of the fears that they



Mark Sisti standing outside the New Hampshire Supreme Court after Smart’s petition to compel a hearing for commutation in 2023. Photo by Paula Tracy/InDepthNH.org

may have is that they’re actually witnessing somebody that has been a rehabilitation success, and now they don’t know what to do with her.”

Sisti says they are preparing for the next commutation request.

“We are not stopping,” he says. “I’m assembling support for her now. We’re hoping we can get a hearing – a fair hearing. We hope that the Executive Council and the governor would be gracious enough to extend that time to us – more than two minutes and 34 seconds – and sit down and have an honest, true, and full hearing so that the public understands what’s going on, so that the electorate that put them in office understand what their true position is. Then, we can all sit back, and we can judge Pam Smart after

we all examine her achievements and can ask piercing questions with regard to her rehabilitation and remorse, instead of conjecture. We have to take this thing out of the media, we have to take this thing out of the politics, and we have to start to judge her as a human being – just like our constitution in the state would direct us to do.”

Mark Sisti and Paul Maggiotto both appear in the brand new episode of the Bar Discourse (the NHBA’s podcast), wherein they have a more in-depth and candid conversation about the Pamela Smart trial, the media frenzy surrounding it, how it affected their careers, the movies and books made about the trial, and more. You can listen to the episode now at soundcloud.com/thebar-discourse. ■



THE BEST LAWYERS – YEAR AFTER YEAR

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Who is Your Favorite Fictional Lawyer?

By Tom Jarvis

Most of the fictional lawyers that appear in this column are from very well-known movies and TV shows, but there are some here and there that are more obscure. And then there are some fictional attorneys that would likely never appear on a list of favorites (or worsts), for one reason or another, but should fall into a category of honorable mentions.

One that comes to mind is Bob Loblaw from the show *Arrested Development*, with his Bob Loblaw Law Blog and his ability to lob law bombs. Another would be Unfrozen Caveman Lawyer from *Saturday Night Live* in the 1990s, who used his perceived naiveté as a trial strategy. One of my favorite honorable mentions would have to be Jackie Chiles from *Seinfeld*, a parody of Johnnie Cochran whose cases would often be derailed by his own client, Cosmo Kramer.

Anyway, as Attorney Rudy Baylor (from John Grisham's *The Rainmaker*) said, "There are few things in life worse than a long-winded lawyer." I assume the same holds true of journalists. So, without further ado, here are a handful of New Hampshire lawyers sharing who their favorite fictional lawyers are:

Amy Cann, McLane Middleton

"I have to say my favorite fictional lawyer is Vincent Gambini from *My Cousin Vinny*. He is bumbling and has challenges with criminal procedure, but he is passion-

ate about helping his client, he does his homework, and his cross-exam skills are excellent. It's also a super funny movie. I think he would fare better in NH than he did in Alabama – at least we would understand his Brooklyn accent and he might blend better."

Mark Rufo, Attorney Mark Rufo, PC

"My favorite fictive lawyer is 'Whiplash Willie' Gingrich, as portrayed by Walter Matthau, from the 1966 Billy Wilder movie *The Fortune Cookie*. When Gingrich's brother-in-law (Jack Lemmon) is injured, he foolishly imagines himself fine the next day. But Gingrich correctly points out that because he is not a doctor, how can he possibly know there is nothing wrong with him? Also, how can he know that he can walk? Should the brother-in-law ill-advisedly listen to his own legs? Or should he rather listen to the advice of skilled professionals? Obviously, the lat-



ter! Soon the brother-in-law is confined to a wheelchair and has all the textbook symptoms of permanent nerve damage. (You don't believe me? Read the textbook yourself!) Through hard work, creative intelligence, and thinking outside the box of so-called 'legal ethics,' Gingrich negotiates a whopping settlement offer. There are some final complications. But I won't spoil the movie by telling you what they are. Whiplash Willie would fit into any courtroom in 21st Century America."

Anthony Sculimbrene, Gill & Sculimbrene

"A really obscure character from the reboot of the *Battlestar Galactica* TV series, Romo Lampkin, played by a really excellent character actor named Mark Sheppard. It would have been Atticus Finch prior to the release of *Go Set a Watchman*. Lampkin is basically representing a person that betrayed all of humanity to an alien power resulting in complete subjugation of humanity. Everyone HATED his client and yet he still did an amazing job representing him. As a character, he was loathsome, and as a lawyer, he was pretty unethical, but he really did care about getting his client a fair trial. That's



always admirable. He is probably a bit too much of a caricature to be an effective lawyer in real life, but his argumentation style of conceding everything he had to but fighting like hell on the actual points at issue would work really well."

Robert Stein, The Stein Law Firm

"My favorite fictional lawyers are the tag team of Denny Crane and Alan Shore [from the TV show *Boston Legal*]. They are my favorites because people say I look like Denny, and he and I have an affinity for Canadian horses. Alan Shore spews out social justice issues in a way that I wish I could. Neither would be welcome in a New Hampshire courtroom, and both would be held in contempt on a regular basis, but they sure push the window of what is allowable, and at the core of what they are doing, raise issues of social justice, and a process by which cases are litigated." ■



Want to tell us your favorite? Please contact NHBA Publications Editor Tom Jarvis at 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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Words of Wisdom from Solo Practitioners

By Misty Griffith

More than one-third of New Hampshire attorneys are solo practitioners. This series profiles New Hampshire lawyers who have embraced the challenge of solo practice. It is our hope that their experiences may inspire other attorneys who are considering flying solo. Thank you to this month's featured practitioners for taking the time to share your words of wisdom. Solo practitioners who are willing to share your advice and experience, please contact Member Services Supervisor Misty Griffith at mgriffith@nhbar.org. We would love to include you in a future article.

Joseph Garrison, Garrison Law

*15 years in practice,
seven years as a solo*

What inspired you to become a solo?

I was in a transition period, moving from a law firm after being with the New Hampshire Public Defender for several years, and made the decision with my wife that it was the right time to open my own practice.



Best thing about solo practice:

Having a solo practice provides me with flexibility to choose my clients and work in a way that suits my life and meets my family's needs.

Hardest thing about solo practice:

There's a lot going on at all times. In addition to legal work, there are also all the other aspects that come with running a business. It's a daily challenge but it's extremely rewarding.

Memorable solo experience:

As a solo, I'm in control of choosing my cases. Several years ago, I was approached by an acquaintance who needed help with a private adoption. Although I specialize in criminal defense, I used my discretion to help them complete their family. Now I get to see them in the community as a happy family unit.

Advice for new solo:

Get as much experience in the area of law you're interested in first. I was interested in criminal law, and I was lucky enough to work with the New Hampshire Public Defender Program for a number of years, so now a majority of my practice focuses on all types of criminal defense work. Running a business is extremely demanding, and anyone considering going solo should make sure they're well-versed in their area of law first.

Would you advise anyone else to go it alone?

It's worked out well for me, but anyone considering a solo practice should be realistic about their ability to both run a business and practice law.

Kyle Griffin, Law Office of Kyle P. Griffin, PLLC

14 years in practice, six years as a solo

What inspired you to become a solo?

The ability to forge my own path as an attorney. I truly enjoyed working as an Assistant County Attorney with Strafford County and as an associate at a smaller law firm, but I believed by starting my own law practice I could focus on areas of law important and enjoyable for me.



Best thing about solo practice:

Deciding which cases and clients to represent. By managing your clients and caseload you can typically set the correct work-life balance schedule for an enjoyable and profitable life outside work.

Hardest thing about solo practice:

Being in two places at same time. Unfortunately, court cases can be scheduled for the same date and time in two different locations, which results in the continuation of one of the hearings. With all current cases, it usually takes a long time to even get a hearing date in any court. The client with the continued hearing is usually not happy and there is always a

balancing test in determining which hearing to continue.



Memorable solo experience:

As a solo practitioner, there tend to be memorable experiences on a monthly basis but arguing a case before the New Hampshire Supreme Court stands out as the most memorable.

Advice for new solo:

Have enough experience in the public sector or with a larger firm to feel comfortable with a few different areas of law before starting your own practice. Also, continue to pursue knowledge and experience in all areas of law that you have an interest in.

Would you advise anyone else to go it alone?

Yes, definitely. If you're a good lawyer and not afraid to take the risks associated with solo practice, the rewards are worth it.

Judith N. Reardon, Law Office of Judith N. Reardon

*Almost 42 years in practice
(admitted Oct. 1981), 39 years as a solo*

What inspired you to become a solo?

I've always wanted to help people who can't afford normal legal fees. That's not an economic model that appeals to employers, so I decided to go solo. I think I also liked the adventure of figuring out my own legal strategy from research and observations rather than being supervised. And my be-



loved was willing to create my computer system, phone system, and billing system, in return for my being his lawyer, Human Resources Department, and business advisor. What an irresistible deal!

Best things about solo practice:

Choosing your cases and setting your own schedule (as other solos have written, that allows for a really interesting personal life).

Hardest things about solo practice:

Setting billing rates and comparing my earnings to the Bar's annual salary survey. (Doing what you love to help people does have a financial cost!) Staffing also depends on a lot of luck when you only have one or two employees, and I was very fortunate.

Memorable solo experience:

Sticking with some clients who had multi-year probate battles with family members to eventually achieve a positive result in each of those cases. Memorable personally: having my two Siberian Huskies in my office every day and being able to go cross-country skiing on Wednesdays.

Advice for new solos:

Show each client that you care about what's important to them and can come up with a customized solution to their problems. But always be realistic with them – don't let them assume that what they seek will be easy to get because they are "right." Do thorough research and explain your Plan A and Plan B (and Plan C, etc.).

And always be respectful, and if possible friendly, with opposing counsel, experts, witnesses, court staff, and everyone you deal with. You will learn a lot, and will avoid making mistakes, and will receive a lot more cooperation and respect. (The lawyers from large firms might even refrain from burying you in paper, though I wouldn't count on that!)

Would you advise anyone else to go it alone?

Yes! But only if you enjoy figuring everything out for yourself, and don't mind the likelihood of low earnings. And only if you can find at least two good staff people or colleagues who will buffer you in times of emergencies. ■



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Network Early, Network Often: The Importance of Building Relationships in Law School

By Alex Attili

Networking can be a great way for professionals to make connections and build relationships. It is especially important that young professionals start building these relationships as early in their career as possible so that they have time to develop.



“The number one reason to start networking early is to give your network time to grow,” Neil Sirota, assistant dean of career services at the University of New Hampshire Franklin Pierce School of Law, says “I always encourage people to think of their network like a seed. It won’t grow overnight and it isn’t transactional. You want to build genuine relationships. It’s going to take some time, but that’s a good thing. It’s never too early to start networking. If any high-school students read this article...start networking!”

At the law school, Sirota teaches a class entitled The Legal Profession, where students are introduced to different aspects of the legal profession through a variety of panels and assignments. One of these assignments requires students to begin networking with legal professionals.

Rising 2L Shray Tapiawala, currently

interning at Rath, Young, and Pignatelli in their renewable energy department, said he thought the networking assignment was “phenomenal.”

“I am a very introverted person, but I understand that these types of connections aren’t coming to you on a golden platter,” Tapiawala says. “You need to work for it. You need to put in the effort of reaching out to people and talking to them. If you don’t do that, you can’t grow those connections. I know many people complained about [the assignment] because they felt uncomfortable reaching out, but it was like getting a hand from the legal community that said, ‘here’s how you do this.’”

Sirota emphasized that “people are all the same. They *want* to be helpful.” He specifically wants students who are new to networking to know that they do not have any less of a right to talk to someone just because they are students.

“Sure, there are always going to be jerks out there, but most of the time, you’re never ‘imposing’ on someone,” Sirota says. “They want to help you. Just be authentic about it. Your work life should be a part of your overall life, so don’t do something you hate just because you think it looks good on paper. Do what you think is fun and networking will happen organically. The best networking stories are typically about meeting people at these obscure places or events like a frisbee golf tournament or a grocery store. Just find people doing things that you think are fun and do that. Find the legal professionals doing the things you want to do and talk to them.”



to someone like me who is South Asian,” he says. “So, I joined the South Asian Bar Association of Boston, as well as the Boston Intellectual Property Law Association to get some new perspectives. They host a lot of events and I can even participate in a mentorship program. I’ve had a lot of great networking experiences with these organizations.”

Tapiawala hopes to pursue a career in renewable energy law working on project finance and project development. He says that

as a student, it is important to find what he calls “sponsors” early on in a networking journey.

“There’s a difference between a mentor and a sponsor,” he says. “Anyone can be a mentor and give you advice, but a sponsor will stand up for you. They’re that person who recommends you for a job when an opening comes up. They’ll fight for you.”

Lastly, Sirota wants to clear up the misconception that networking involves cocktail parties or golf-outings.

“I hate cocktail parties,” Sirota admits. “No one wants to be there, and everyone is uncomfortable. Just expand your definition of networking. Most people can tell if you’re being inauthentic or asking for something. So, don’t be so Machiavellian about the process. Find people you genuinely want to talk to and do things you genuinely want to do. Enjoy yourself.” ■

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\$28.8M Verdict

Brown vs. Browell, M.D., et al
Failure to diagnose aortic aneurysm and dissection

\$28.8M Verdict

Luppold vs. Flores, N.P., et al
Leg amputation due to blood clot misdiagnosed as sciatica

\$15M Settlement

Kekula vs. Boston Children’s Hosp.
Death of infant undergoing sleep study

\$10M Verdict

Lucifora vs. Kroll, M.D., et al
Lung cancer diagnosis delay

\$4.95M Verdict

Gadde vs. Gordon, M.D., et al
Failure to test for cancer

\$4.65M Verdict

Bunker vs. Dhillon, M.D., et al
Failure to diagnose stroke

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LRAP Is an Important Recruiting Tool for NH Legal Nonprofits

By Mysty Yackel Shappy

Last month, the Bar Foundation announced the 2024 IOLTA grant awards, which exceeded \$1 million for the first time in over a decade. While the primary purpose of these awards is to directly provide much-needed operational funding to nonprofit organizations providing civil legal aid in New Hampshire, a small portion is reserved to fund the New Hampshire Bar Foundation's Law School Loan Assistance Program (LRAP).

This program provides financial assistance to qualified staff attorneys who are employed at New Hampshire Legal Assistance (NHLA), 603 Legal Aid (603LA), and the Disability Rights Center - NH (DRC-NH).

LRAP has been in existence since 2000, and the stated mission of the program is to "provide law school loan assistance, in the form of forgivable loans, to ensure the ability of NHLA, 603LA, and DRC-NH to recruit and maintain a diverse body of highly qualified staff attorneys."

Attorney Kayla Turner was first introduced to civil legal aid in New Hampshire when she interned at DRC-NH in 2016.

Upon receipt of her JD from the University of New Hampshire School of Law, where she was a Daniel Webster Scholar, she worked as an assistant county attorney in Strafford County, and then transitioned to a private firm. In February 2023, she returned to DRC-NH as a staff attorney.

When asked about the financial impact of that decision, Turner said, "Pivoting from private practice to a non-profit was financially daunting, but LRAP helped ease that burden."

The 2020 Law School Student Loan Debt Survey Report, released by the American Bar Association (ABA), paints a grim picture of the impact of law school debt on recent graduates. With 95 percent of new lawyers graduating with at least some debt and an average student loan balance of over \$160,000, new graduates are having to make some tough decisions about where to live, when to get married or have children, and where they choose to work.

Over one-third of respondents stated that they "chose a job that pays more money instead of a job I really wanted."

Furthermore, individuals of color have a much higher average loan balance of over \$180,000.

All these factors contribute to a difficult recruiting environment for legal aid organizations, who struggle to compete with large- and medium-firm salaries, and who strive to have a diverse staff who can connect with clients of all backgrounds.

"At Disability Rights Center - NH, the LRAP program is a critical part of our efforts to recruit attorneys, particularly recent graduates who are often facing large student loan debt," DRC-NH Executive Director Stephanie Patrick says. "The LRAP program allows these attorneys to pursue a career in public interest law, which may otherwise be unaffordable for them with our lower salaries. We always share LRAP program information as part of our recruiting package, and I know it makes a difference."

In a joint request to the IOLTA Grants Committee, NHLA, 603LA, and DRC-NH stated, "The program is also an essential tool in our efforts to build staff diversity."

"The LRAP program offered by the NHBF to assist with my student loan payments has been a critical component of my ability to remain working for Legal Aid for the last nine years," NHLA-Manches-

ter Managing Attorney Stephen Tower says. "The burden of those loan payments would have prevented me from finding a place I could afford to rent in New Hampshire without a slew of roommates, and I don't think I could manage the starving college student lifestyle again in my mid-thirties. I almost certainly would have left the field long ago without the LRAP program."

While supporting a career path of service, LRAP also allows its recipients to see a future where student loans are no longer impacting their lives.

Attorney Tower stated, "I have one more year until I reach the ten-year mark of eligibility for the federal Public Service Loan Forgiveness Program, and I would never have been able to stay in public interest long enough to qualify for that program without New Hampshire's LRAP program."

In her final thoughts, Attorney Turner shared, "LRAP has also helped get me closer to my financial goals. It will accelerate my plan to pay off my law school debt and I will pay far less interest overall and I now hope to be debt free within five years. I am so grateful for this program!" ■

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In Memoriam

Stanley Mark Hawthorne

Stanley Mark Hawthorne, 73, of Windham, Maine, passed away on June 11, 2023, after a long and hard-fought battle with diabetes, heart failure, and kidney failure.



He is survived by his loving wife and sweetheart of 50 years, Corinne "Renee" Hawthorne, his daughter Michelle Hayhurst and husband Roger Hayhurst and grandsons Maxwell, Jack, Oliver, and Samuel, his son Christopher Hawthorne and wife Natasha Hawthorne, granddaughter Victoria, and daughter Kristin Conroy "little pumpkie" and husband Nicholas Conroy, and granddaughter Kali and grandson Owen, and brother John "Jack" Hawthorne and wife Dareth Hawthorne, sister-in-law Kathleen Hawthorne, and sister Judith "Judi" Hanks, as well as many nieces and nephews.

He is predeceased by his parents, Rev. John Richard Hawthorne and Sarah Council Reese Hawthorne, sister Sharon Peters, and brother and best friend Stephen Hawthorne.

Stan was born to missionary parents on June 4, 1950, in Cochabamba, Bolivia. His mother traveled three days on mule back to give birth to him in a hospital. He lived in the Andes Mountains amongst the natives until the age of eight. When he returned to the United States, his family lived in California and then later moved to Bergenfield, New Jersey, where he attended high school and was an avid athlete in wrestling and football. The youngest of five, he grew up idolizing his big brother Steve and they remained extremely close until Steve lost his battle to cancer in 2018.

In 1969, Stan enlisted in the US Navy and served two tours in the Vietnam War on a PCF Swift Boat. When he returned from Vietnam he was stationed in Groton, Connecticut, and was on the USS Greenling. This was Stan's second escape from death, when the USS Greenling on

a training mission went 150-200 feet below crush depth and lived to tell the tale. It was in Groton that he met the love of his life, Renee and talked her into spending the rest of her life with him.

Soon after marrying in 1974, they had their first daughter, Michelle, in Illinois, then traveled all over the United States camping and visiting nearly every national park over a seven-week period. When they settled in Arizona, they had their son Christopher, and then returned to the east coast to Connecticut where Stan attended UCONN and later had his youngest daughter, Kristin.

In 1984, he moved the family to New Hampshire where he attended Franklin Pierce Law School. For the next 30 years, he practiced family and criminal law in the Tri-City and Lakes Region area. He loved to argue and prove his point; the only thing he might have loved more was driving. He took several breaks from practicing law to pursue his other passion as an interstate truck driver.

His hobbies varied greatly, from hiking the White Mountains and Grand Canyon with his son Chris and friends, to snowmobiling to Canada with his wife, fishing and canoeing many streams and lakes across the USA and camping with his wife and children telling ghost stories around the campfire.

When Stan retired in 2018, he and his wife moved to Windham, Maine, to live closer to his youngest daughter Kristin and grandkids. Throughout his years on earth, he shined his light on many people and was quick to help anyone in need. He was a devoted and loving husband, father, grandfather, brother, uncle, friend, and patriot and will be greatly missed.

A graveside service will be held at Southern Maine Veterans Memorial Cemetery on Thursday, August 10, 2023, at 12:00 pm.

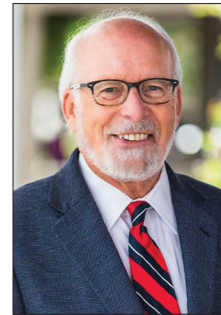
In memory of our colleague, the NHBA Board of Governors has made a contribution to the NH Bar Foundation.

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

Community Notes

Chant, Douglas at New Hampshire Press Awards Dinner

NHBA President Paul Chant was the keynote speaker at the New Hampshire Press Association's Annual Awards Dinner held on June 15 at Saint Anselm College. The New Hampshire Bar Association was the awards sponsor for the evening. Chuck Douglas won the First Amendment award for the third straight year. He is publisher of *The Bow Times* newspaper with a circulation in the Concord area of 4,350 copies each month as well as practicing law.



R. James Steiner Earns National Award



R. James Steiner of Concord recently received one of Scouting's highest honors, the Silver Antelope Award, during the BSA's National Annual Meeting held in Atlanta, Georgia. The Silver Antelope

Award, created in 1942, is the regional-level distinguished award of the Boy Scouts of America. Recipients of this award are registered Scouters of exceptional character in their region. The award recognizes their distinguished service to youth.

Jim has served as the immediate Past President of Scouting for New Hampshire, a Board Member, the New England Area Vice President for Membership, as well as on a national committee advising the national scout leadership. He also served as the Subcamp Administrative Officer at one of five basecamps at the 2013 National Jamboree.

NHLA Launches New Website to Help Community Members Access Resources

New Hampshire Legal Assistance (NHBA) has launched a new website at nhla.org with the goal of making access to legal resources as user-friendly as possible for the community.

Over the past 52 years, NHLA attorneys and paralegal advocates have worked in all of New Hampshire's courts, including the New Hampshire Supreme Court and the federal district court for New Hampshire, to protect the legal rights of people with low income in civil cases related to their basic human needs. NHLA says that its refreshed website includes improvements related to access for people with disabilities and access for people who speak languages other than English.

NHLA's updated website will also feature easy-to-use tools that aim to increase the prominence of information about applying for legal services through NHLA's partner organization, 603 Legal Aid, and to simplify navigation pertaining to specific areas of law. Other additions to the website include an interactive timeline of NHLA's history and impact across the state.

LawLine

The NHBA would like to thank Donahue, Tucker & Ciandella, as well as Attorney Paul Maggiotto, for a hugely successful LawLine event held on June 14, 2023. More than 60 calls were handled from counties all over New Hampshire on a variety of legal topics including probate matters, landlord/tenant disputes, rights regarding consumer law, and family law. Thank you again to all our volunteers for participating in this valuable public service. It is because of your ongoing support and determination to help the residents of New Hampshire that we are continually

able to offer this resource each month.

LawLine is a free public hotline, hosted by volunteer attorneys, on the second Wednesday of each month from 6:00 pm to 8:00 pm. Assemble a handful of colleagues in your office to take calls, and we will forward the phone calls from the public. You can still volunteer and make a difference this year. We are seeking volunteers for August 9, 2023, as well as dates in 2024.

For more information, please contact NHBA Lawline Coordinator, Anna Winiarz, at awiniarz@nhbar.org.

Jest Is For All

by Arnie Glick



"What makes this extra relaxing is knowing that I'm an invitee and not a trespasser."

GLICK



Now Streaming on the Bar Discourse: A Conversation About the 1991 Pamela Smart Trial

In honor of July being the NHBA's 150th anniversary, the new episode of the Bar Discourse is a conversation with Mark Sisti and Paul Maggiotto about the first-ever trial that was televised from start to finish in the nation – and the impetus for Court TV – the 1991 Pamela Smart trial.

Sisti is Smart's long-time defense attorney and Maggiotto was the assis-

tant attorney general and lead counsel for the State at the time of the trial. The pair talk with host Tom Jarvis about their experience with the dramatic trial, how it affected them, and even their thoughts about the movie, *Murder in New Hampshire: The Pamela Smart Story*.

Listen now at soundcloud.com/thebardiscourse.

Membership Status Changes

Presented to the Board of Governors June 23, 2023

Active to INACTIVE:

Reyns, Paul, West Lebanon, NH (April 28)
Prince, Robert, Dracut, MA (March 27)
Rudolph, James, Concord, NH (May 19)
Metell, Amanda, Concord, NH (May 19)
Cooper, Monica, Milford, NH (May 25)
Bloomfield, Roger, Wilder, VT (May 25)
Tennyson, Jr., Chester, Hull, MA (May 30)
Sieck, Casey, Boston, MA (May 26)
Rothfelder, Martin, Westfield, NJ (June 1)
Chabot, Daniel, Haverhill, MA (May 31)
Livi, Matthew, Kings Point, NY (May 24)
Mariolis, Constantine, Bolton, MA (April 19)
Monica, Linda, Marco Island, FL (June 1)
Boyce, Shannon, Southbridge, MA (June 1)
McGohey, Elisabeth, Hooksett, NH (May 31)
Borovick, Gerald, Sudbury, MA (May 31)
Waller, Zachary, Manchester, UK (May 31)
Campbell, Jeffrey, Nashua, NH (May 31)
Torrey, Daniel, North Andover, MA (May 19)
Henry, Christopher, Cranston, RI (May 31)
Johnson, Steven, Augusta, ME (June 1)
Boyle, Christopher, Lincoln, VT (May 31)
Rommel, Chelsie, Lynden, WA (May 29)
Hyde, Maria, St. Louis, MO (May 31)
Worthen, Cynthia, Marblehead, MA (May 31)
Bortz, Nicholas, Wakefield, MA (June 2)
Fiest, James, Manchester, NH (May 31)
Fernandez, Patricia, Galveston, TX (May 31)

Active to INACTIVE RETIRED:

Mail, Katherine, Portsmouth, NH (May 25)

Tamposi, Jr., James, Temple, NH (May 26)
Govoni, Gregory, Bonita Springs, FL (May 30)
LaPointe, Scott, Barrington, NH (May 30)
Callanan, Mary Ann, Hooksett, NH (May 30)
Houlihan, John, North Andover, MA (May 25)
Nerenz, Claire, Sussex, WI (May 24)
Eastman, Julia, Wilbraham, MA (May 31)
Hamel, Gretchen, Concord, NH (May 31)
Karl, Lucy, Hopkinton, NH (June 1)
Kitchen, John, Gilford, NH (June 1)
Falkenham, Eric, Pinehurst, NC (June 1)
Daniels, Robert, Nashua, NH (May 31)
Lyons, Ray, Harvard, MA (May 31)
Devine, Catherine, Amherst, NH (May 16)
Deans, Dorcas, Center Conway, NH (May 31)
Turner, Clydia, Portsmouth, NH (June 1)
Grossman, Daniel, East Thetford, VT (May 31)

Active to MILITARY ACTIVE:

Fadley, Andrew, Adams, NY (May 10)
Taylor, Duncan, North Haverhill, NH (June 9)

Active to RESIGNED:

Gosselin, John, Belmont, MA (May 31)
Loureira, Thomas, Portland, ME (June 1)
Philpot, Jeffrey, Meredith, NH (May 31)
Hanson, Carl, New London, NH (May 31)
Csatari, Thomas, Hanover, NH (May 16)

Inactive to INACTIVE RETIRED:

Jobe, Denise, Deering, NH (May 3)
Sheffer, Mary, Bow, NH (May 19)
Baer, Lisa, Norwich, VT (May 31)
Eyman, Thomas, West Burke, VT (May 16)

Carlson, David, Gorham, NH (June 1)
Martin, Kristin, Mount Pleasant, SC (May 31)

Inactive to MILITARY INACTIVE:

Fraga, Michael, Senoia, GA (May 4)

Inactive to ACTIVE:

Yoder, Colleen, Lodi, CA (June 1)

Inactive to RESIGNED:

Harris, William, Elberta, AL (May 19)
Peterson, Catherine, Glenview, IL (May 15)
Fuller, Stephen, Charlotte, NC (May 25)
Morse, Nathaniel, Columbus, OH (June 2)
Henschel, George, Baltimore, MD (June 6)

Inactive Retired to ACTIVE:

Werme, Paula, Milford, NH (June 9)

Inactive Retired to RESIGNED:

Allen, Richard, Canton, MA (June 1)

Full-time Judicial to PART-TIME JUDICIAL:

Lyons, William, Manchester, NH (May 12)
Yazinski, John, Naples, FL (May 25)

Honorary Active to HONORARY INACTIVE:

Struckhoff, III, Eugene, Lebanon, NH (May 31)

Suspended to DISBARRED:

Wellman-Ally, Lisa, Claremont, NH (May 31)

Professional Announcements



We are very pleased to announce that
Attorney Elroy Sequeira
has become a Partner in the firm.

Practice areas include: Criminal Defense and Family Law

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Ph: (603) 224-6999 Fax: (603) 782-4399
elroy.sequeira@cohenwinters.com • www.cohenwinters.com

DEVINE MILLIMET

ATTORNEYS AT LAW

Devine Millimet is pleased to welcome Peter Leberman to the firm. Located in our Downtown Manchester office, Peter is a graduate of Washington and Lee University School of Law, and has nearly 40 years of experience.

As an Of Counsel Member of the Devine Corporate team, he will work on a variety of matters within the Business, Mergers & Acquisitions, and Real Estate practice areas.

Welcome!

PETER W. LEBERMAN

Of Counsel

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pleberman@DevineMillimet.com

www.DevineMillimet.com

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DEVINE MILLIMET

ATTORNEYS AT LAW

Devine Millimet is pleased to welcome Alex Manocchi, Associate, to the firm. Located in our Downtown Manchester office, Alex is a graduate of Albany Law School, and has been in practice for 7 years.

As a member of the Devine Corporate team, he will work on a variety of matters with a focus in the Mergers and Acquisition practice area.

Welcome!

ALEX J. MANOCCHI

Associate

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DEVINE MILLIMET

ATTORNEYS AT LAW

Devine Millimet is pleased to welcome Jeffrey Weinstein to the firm. Located in our Downtown Manchester office, Jeff is a graduate of Villanova University Law School, and has decades of experience in corporate law, litigation strategies, and healthcare.

As an Of Counsel Attorney on the Devine Corporate team, he will focus on corporate, healthcare, nonprofit and strategic legal matters.

Welcome!

JEFFREY A. WEINSTEIN, ESQ.

Of Counsel

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DEVINE MILLIMET

ATTORNEYS AT LAW

Devine Millimet is pleased to welcome Stephen Zaharias to the firm. Located in our Downtown Manchester office, Steve graduated from the University of New Hampshire School of Law in 2014, and has been in practice for several years.

As an Of Counsel Member of the Devine Litigation team, he will work on a variety of matters within the Corporate Law, Business, Commercial & Financial Litigation, and Dispute Resolution practice areas.

Welcome!

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Not Just a Requirement: From Tech Competence to Tech Enthusiasm

By Jeffrey Schoenberger

We've all heard the horror stories. In 2017, Outlook's inline autocompleteness feature bested a WilmerHale employee, who inadvertently sent privileged documents regarding a PepsiCo whistleblower scandal to a *Wall Street*



Journal reporter.¹ A Florida law firm automatically deleted all emails caught in their spam filter and paid the price when they failed to file an appeal to an order because the notification email was classified as spam.² Jared Kushner's personal attorney fell prey to an imposter using the email address kushner.jared@mail.com, when a simple check would have shown that this was not Kushner's secure, private email address.³ Former Trump political operative Paul Manafort's attorneys filed a motion containing sensitive material that was improperly redacted, revealing sensitive information to the public.⁴

In 2012, the American Bar Association amended Rule 1.1, Comment 8 of the Model Rules of Professional Conduct to require lawyers to "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology," prompting 39 states, including New Hampshire,

to adopt the requirement as part of their rules of professional conduct.⁵ But is satisfying this bare minimum obligation enough to avoid the above-mentioned misfortunes?

Instead of focusing on dodging the worst-case scenario, we should try to achieve the best-case scenario. Keeping abreast of changes sounds like we're barely staying afloat, bailing out buckets of water from a sinking dinghy, instead of charting our own course and expertly navigating our way across the sea.

Let's embrace tech competence. We use technology every day. How can we apply solid technology to streamline our processes, boost our efficiency, and benefit our clients and ourselves? I suggest three guiding themes.

Culture

"Culture is not an initiative, culture is the enabler of all initiatives." – Larry Senn.

People must want to use the technology or at least be willing to give it a fair shake. How do you get folks in the office to buy in and give new tech a chance? First, make trying new things rewarding. Create incentives for skill building; small rewards and acknowledgments for doing something "the new way." Second, give your employees a voice in the process. For example, if you want to implement a new method for electronic document storage, but you, as an attorney or firm administrator, haven't filed or re-

trieved documents yourself in years, the staff probably has better ideas on what parts of the system are currently broken. Third, provide patient, ongoing support. Like any new skill, it takes a while to do it smoothly and automatically. You can mandate all the training you want on the most sophisticated software available, but your firm won't reap any of the benefits without the right mindset.

Training – the "I Needs"

With tons of exciting products to choose from, and new options being introduced every year, it's tempting to try every novel piece of new tech. Slow down! First, seek training on what you already own. These are the "I Needs" and they are your competency basics. If you've never received training on a product from a qualified expert, then you are under-utilizing that product. The competency basics could be as simple as keyboard shortcuts for Windows (<https://support.microsoft.com/en-us/windows/keyboard-shortcuts-in-windows-dcc61a57-8ff0-cffe-9796-cb9706c75eec>) or macOS (<https://support.apple.com/en-us/HT201236>), or learning how your word processor truly works so you stop fighting it when formatting documents.

Training is necessary for both tech competence and facilitating your firm's overall growth and success. Fulfill your CLE requirements with technology-oriented seminars and bring your knowledge back to the firm.

Remember, you don't need to be an expert, but you do need to know how to protect client information, while working efficiently and accurately. Ask yourself how much time you're wasting, and potentially overbilling for, when you're constantly renumbering, reformatting, and rebuilding documents. Can everyone in your office properly encrypt an email, redact, and lock a PDF, or erase metadata in a Word document? Training your "I Needs" is a small investment with a big impact.

Fill the Gaps – the "I Wants"

Once you've created a culture of tech competency and everyone is up to snuff on utilizing the current products, then you can enthusiastically explore your "I Wants." Have you always wanted to automate routine documents or maximize Word's built-in document assembly features? Believe it or not, you can do far more than just a mail merge, and in doing so cut your drafting time in half while increasing accuracy. Does scheduling client meetings take an inordinate amount of time? Invest in Microsoft 365 training and learn how to streamline the process. Maybe you want a way to automate information collection from clients, instead of spending hours on an initial consultation. Maybe you're simply looking for a better way to internally organize and share cases. Once you know exactly what you're already working with, you can ably identify the gaps and make smarter technology investments. ■

Endnotes

- <https://abovethelaw.com/2017/09/wilmerhale-and-the-terrible-horrible-no-good-very-bad-day-of-leaking-client-whistleblower-docs-to-the-wsj/>
- https://www.abajournal.com/news/article/law_firms_automatic_deletion_of_spam_emails_is_blamed_for_failure_to_file_t
- <https://www.newsweek.com/jared-kushner-private-email-account-was-not-disclosed-senate-674248>
- <https://www.theatlantic.com/politics/archive/2019/01/paul-manafort-lawyers-failed-to-redact-documents/579910/>
- https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc1-1-comment-8.pdf

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

McEvoy from page 3

he says.

For a portrait of the late jazz saxophonist John Coltrane, one of McEvoy's favorites, he used charcoal and white chalk on inked watercolor paper.

"I think the pain he went through in his life comes out in that piece," he says.

Another, of abolitionist Harriet Tubman, shows a strong-faced woman with a determined expression but also a certain weariness.

"I thought her emotional essence came out in that drawing," says McEvoy, who used sanguine, charcoal, and white chalk for the piece.

In his portrait of Dwight D. Eisenhower, made from a photograph, "the General has a very concerned look on his face and the reason I did it that way was, I was thinking, 'what was he feeling the morning of D-Day?' I think I was successful in capturing that."

McEvoy also uses graphite, oil, and watercolor, and works early in the morning before work, as well as after dinner, usually a minimum of an hour a day. The

former bedroom of one of his two grown children acts as his art studio. He has sold a few portraits of family members and pets, as well as some landscapes, but has never exhibited – one of his goals for this year.

A former Belknap County Attorney of the Year for his pro bono work, McEvoy says the DCYF staff is "just amazing with very dedicated people who care, and it's fun to work in that type of environment."

An ardent traveler, McEvoy is also fluent in German, as his brother Stephen is married to an Austrian and lives in Vienna.

"I'm very grateful to have been a lawyer and to have added artwork on to that occupation," he says.

Judge James Carroll, who met McEvoy more than two decades ago when he coached his son in baseball, says he is grateful to McEvoy for his service in the Navy submarine fleet, and to his son's present military service. He calls McEvoy "a zealous advocate, well-prepared and respectful to all involved."

Chandler adds a further description – "the truly incredible Brian, the 'artsy' lawyer who certainly does not suffer fools lightly." ■

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prioritizing work over self-care. For many, it is not easy to be vulnerable or trusting of others. Confidentiality is our hallmark – any contact with NHLAP is guaranteed confidential. NHLAP was established by New Hampshire Supreme Court Rule 58 as an independent non-profit organization, separate from the Court or the Bar. Further protections, pursuant to Rule 8.3, provide NHLAP relief from having to report attorney misconduct. There is no risk to your law license by reaching out.

Mental health is brain health. While often spoken about separately, mental health is a central part of brain health – they are not separate or distinct. Maintaining a healthy brain during one's life is the uppermost goal in pursuing health and longevity. The Cleveland Clinic on Brain Health says, "Lifestyle has a profound impact on your brain health. What you eat and drink, how much you exercise, how well you sleep, the way you socialize, and how you manage stress are all critically important to your brain health."

NHLAP adopts a holistic approach focusing on addressing the presenting issue(s), optimizing brain health, and building lawyer resilience.

"The best way out is always through" - Robert Frost. Often, when individuals reach out to NHLAP, they have reached their limits yet remain apprehensive about whether they are ready to receive assistance. At NHLAP, we meet individuals where they are without adding pressure to take specific actions. Most NHLAP clients wish they hadn't waited so long before contacting NHLAP for assistance.

Brief description of NHLAP services: When you contact NHLAP for your own

personal or professional needs or to share concerns with another, you will receive education about the issues being presented, develop goals for addressing the issues, learn about the resources that can assist, and determine appropriate strategies moving forward. Here at NHLAP, we understand the legal culture, the nuances of legal stress, and the personality characteristics, making up the typical "lawyer profile" to leverage strengths and challenge sophisticated defensive mechanisms. We are equipped to assist you in designing a personalized plan of support. The NHLAP staff have a background in delivering mental health and recovery services.

Case management services. NHLAP will assist legal professionals in navigating and connecting to vetted specialists for assessment, psychotherapy, inpatient or outpatient treatment, career counseling, executive coaching/mentorship, and other personal or professional needs. A common request is for assistance finding a therapist. NHLAP is connected to a network of outside treatment providers with experience in treating lawyers. Staff at NHLAP can help you, your family member, or your colleague connect to services easily. During the consultation with NHLAP staff, we will obtain pertinent information to match providers, coordinate the first visit, and provide follow-along support to ensure you are satisfied with the care.

Individual peer support. NHLAP volunteers are members of the legal community who provide confidential peer support to legal professionals who contact NHLAP for assistance. Peer volunteers support our legal community by sharing their lived experiences recovering from and/or adapting to challenging situations involving mental health, substance use, addiction concerns, or other issues such as

transitioning into law practice or retirement. Connecting to another who has overcome a similar challenge has a tremendous therapeutic benefit. Quite commonly, legal professionals who utilize NHLAP services become NHLAP peer volunteers. Here at NHLAP, we focus on building community.

Lawyers Concerned for Lawyers Recovery meeting. This monthly meeting is exclusively for lawyers, judges, and law students in or seeking recovery from unhealthy substances and coping behaviors – and is always confidential. All stages of sobriety and behavior abstinence are welcome to connect with peers and gain support. You may join in observing; active participation in the group is not required.

Process peer support group. This weekly meeting is exclusively for public defenders intended to hold a safe space to shed the accumulating daily stress and develop healthier practices. We discuss, process, and brainstorm ideas and strategies to address personal and professional challenges in a confidential setting. The group is co-facilitated by a peer (public defender) and NHLAP Director. If you feel like the stress of the job is heavily weighing on you and you struggle to find support from others who understand your stress, this group is for you! To register for NHLAP's peer support groups please visit the events page on our website at www.lapnh.org.

Wellness programming. NHLAP offers personalized information and resources to merge healthier living with your law practice. NHLAP offers free educational programming/CLEs for judges, law firms, bar associations, law schools, and other organizations in all areas related to well-being in law. NHLAP can support leadership and management in addressing systemic issues to improve wellness, staff engagement, and job satisfaction by

connecting with field experts, employer well-being toolkits, policy templates, and other resources. Please visit our social media pages for wellness tips or to learn more about NHLAP's upcoming educational programs and events.

Professional monitoring services. The NHLAP's Health and Recovery Monitoring Program is a voluntary program for legal professionals adversely impacted by a mental health condition, substance use disorder, or co-occurring disorder. The goal is to restore competency and fitness to practice through participation in a formal evaluation and recommended treatment coordinated and monitored by NHLAP. If you face discipline, please proactively contact NHLAP for help developing a support plan.

"The more time you spend contemplating what you should have done...you lose valuable time planning what you can and will do," says American rapper, Lil Wayne.

The NHLAP is a safe place. We offer an inclusive, recovery-friendly environment. "No wrong door" recognizes that each person is unique and has unique needs, requiring a personalized support plan. NHLAP is your one-stop access point. There is no wrong reason for contacting NHLAP.

To learn more, please visit our website at www.lapnh.org. To contact NHLAP, call the helpline at 1-877-224-6060 or the main number at (603) 491-0282. You may send a secure message through our website. To request NHLAP outreach for a colleague you are concerned about, please contact NHLAP Executive Director Jill O'Neill. ■

Jill O'Neill is the executive director of New Hampshire Lawyers Assistance Program and can be reached at jill@lapnh.org.



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A Call to Action

Editor's Note: In her closing remarks during the CLE at the 2023 Annual Meeting, Lyndsay Robinson recommended the following for building a bar that is diverse, equitable, and inclusive.

1. Create and implement a plan to assess DEI efforts over time. I cannot emphasize how important it is to collect data, but it is equally important to analyze and evaluate the data. Collecting data can help track progress and constantly reevaluate policies. The New Hampshire Bar Foundation did a diversity survey in 2022, which contained several important recommendations, including requiring DEI CLE participation and having a section on the NHBA website as it relates to diversity.
2. Employers should create ways to obtain consistent and ongoing feedback from employees through use of surveys, focus groups, and other tools to provide more equitable and inclusive work environments.
3. Ensure that there are ways for employees to file/address concerns without fear of being terminated.
4. Create "culture change" by removing barriers to hiring, retaining, and promoting attorneys.
5. Implement training on diversity, equity, and inclusion. Include specific focus on anti-racism, bias, and trauma-informed lawyering.
6. Create transparent and equal recruitment, promotion and retention policies and connect attorneys to professional development opportunities.
7. Implement policies and resources to address the "flexibility stigma" that often relates to motherhood, reproductive health care, and other gender-related planning and decision-making – this includes menopause. Establishing work-life balance has been an issue throughout all the reports. Women bear this burden far more than men.
8. Provide mentorship, allyship, and sponsorship programs and practices to increase women's advancement opportunities.
9. Offer counseling, therapy, and other support to attorneys who experience trauma and secondary trauma.
10. Provide private spaces and time for lactation, rest, and wellness.
11. Recognize many women balance caretaking responsibilities with legal careers, and improve access to high-quality, affordable care for children and other dependents. This was a huge issue as far back as the first study in 1988. It was one of the 12 major recommendations that came out of that study, and it is still a huge problem today.
12. Implement continual, data-driven evaluations and incorporate feedback from employees to ensure that all places of employment are inclusive.
13. Require all members of the Bar to complete a certain number of minutes of CLE every year focused on DEI training.
14. Be aware of unconscious bias. Train on this. (And if you see overt bias, address it. Failure to do so is complicity.)
15. Promote pay equity on all levels.
16. Acknowledge holidays of all cultures.
17. Periodically assess company policies.
18. Build a culture of diversity and inclusion internally.

Annual Meeting from page 1

president Paul Chant.

"I am excited that we had such a strong turnout," Chant says. "As always, it was great to see many of the lawyers I have seen in Bar activities over the years and lawyers I have worked with and against. The collegiality was wonderful."

The first morning began with outgoing NHBA president Jonathan Eck welcoming the attendees and introducing the CLE, *Weathering the Storms, Seeking New Horizons*.

Circuit Court Judge Susan Carbon opened the CLE by sharing some historical statistics on women's rights and women in the New Hampshire Bar before concluding with the following: "Numbers matter – and watching the numbers progress in the profession is important – but diversity, equity, and inclusion is more than just numbers. We need to talk about belonging, about being truly authentic and backing up our beliefs with what we do. How do we get there?"

Manchester NAACP President James McKim, who was the keynote speaker, talked about the paradox of diversity, defined DEI, and explained the attributes of discrimination. After he gave some tips on conversational and engagement norms to help with interactions in the workplace and eliminating bias in the employment cycle, there was a panel discussion on overcoming barriers and obstacles to resistance with McKim, Judge Carbon, New Hampshire Supreme Court Justice Gary Hicks, UNH Law Dean Megan Carpenter, UNH Law professor Ellen Musinsky, and attorneys Lyndsay Robinson and Lauren Irwin. The CLE closed with remarks and a call to action by Lyndsay Robinson, which can be found in the sidebar of this article on this page.

"I am proud to have been associated with this event and others that are part of a movement within the New Hampshire Bar to ensure that justice is equitably served and that the practitioners of justice understand how to interact in an equitable and inclusive manner," McKim says. "Equality is a difficult concept to implement. Unfortunately, equal treatment does not always result in equality. And we are challenged to treat everyone fairly because of our own biases. Equitable treatment is needed for true justice. That is the message we wanted as the takeaway from the event."

After lunch, meeting goers had a choice between two Portsmouth activities: the Black Heritage Trail tour or a visit to Strawberry Banke Museum. The trail participants were treated to a guided tour around the town of Portsmouth, spanning from the docks to an African American burial ground memorial, learning historical facts along the way about the trans-Atlantic slave trade and the subsequent tribulations of those who found their freedom.

Visitors of Strawberry Banke engaged in a self-guided tour around the nearly 10-acre outdoor history museum, which includes beautifully restored buildings, costumed role players, and more than 30,000 artifacts, all dedicated to bringing early American history to life.

In the evening, as Jonathan Eck's last few hours as NHBA president wound down, he kicked off the awards banquet by recognizing newly confirmed and recently retired judges before bestowing the three President's Awards.

Russ Hilliard of Upton & Hatfield received the E. Donald Dufresne Award for Outstanding Professionalism.

"It was a humbling experience to receive an award in Don Dufresne's name. He is among the finest attorneys I have known," Hilliard says. "Thanks to those who nominated me, and to past president Eck and president Chant for

their kind words at the Annual Meeting."

The Distinguished Service to the Legal Profession Award was given to Thomas Quarles of Devine Millimet.

"I was very grateful to be given this recognition from my fellow Bar members," Quarles says. "I was also thrilled to celebrate with the many colleagues from my law firm that attended, as well as other members of the Bar that I knew."

Superior Court Chief Justice Tina Nadeau was bestowed the Justice William A. Grimes Award for Judicial Professionalism, but was unable to attend the meeting and accepted the award via a prerecorded video speech.

After the awards program, Jonathan Eck gave an overview of the past 150 years as a bar association, then took a few moments to recognize past president Richard Guerriero, immediate past president Sandra Cabrera, and incoming president Paul Chant before passing the gavel and stepping down as president.

Paul Chant, the NHBA's 124th president, closed out the evening by acknowledging the accomplishments of Jonathan Eck and how his entry into the role of president was accelerated and unconventional due to Sandra Cabrera becoming a judge almost immediately after she became president. When Eck became president, he never experienced having a gavel passed to him at an Annual Meeting, as is the custom of the New Hampshire Bar, so Chant presented him with his own gavel.

Chant then outlined his four goals for his year as president, which are listed in his column on page two of this issue.

"I appreciated the nice reception I received as I took the gavel," Chant says. "It's nice to know I have so many good friends in this profession. I look forward to hearing from Bar members how we can enhance the services we provide to better serve our members, the public, and the courts."

"The collegiality demonstrated throughout the day was one more example of the New Hampshire advantage—getting together to explore where we've been over our 150-year history, and enjoying where we are at the moment," NHBA Executive Director George Moore says.

The NHBA extends its sincerest thanks to the sponsors, advertisers, and attendees who made this event possible and looks forward to seeing you in February at the Midyear Meeting in Manchester. In the following spread of pictures from the 2023 Annual Meeting, we intentionally omitted captions to fit in more photos. ■







triggering the Panic of 1873, which was the start of what was known as the Long Depression.

Interestingly, it was also the year that Levi Strauss and Company received their patent to use copper rivets to strengthen the pockets of denim work pants, which allowed them to start manufacturing their first line of blue jeans using fabric from the Amoskeag Manufacturing Company in Manchester, New Hampshire.

The world was a different place back then. A century and a half later, the Bar is much larger – with 8,678 members – and goes by a different name.

Looking Back

The Association's first president was Ira Perley, who had served as Chief Justice of the New Hampshire Supreme Court (NHSC) – then called the Superior Court of Judicature – from 1855 to 1859 and again from 1864 to 1869. He died in 1874, less than one year into his Bar presidency.

In 1967, the BASNH successfully petitioned the state legislature to amend the acts of incorporation to change the organization's name to the New Hampshire Bar Association. A year later, a majority of members voted in favor of unification and filed a petition of unification with the NHSC. On December 31, 1968, the Court ruled that it had jurisdiction to decide on the NHBA's request and ordered unification for a three-year trial period.

In 1972 – the same year the New Hampshire Public Defender was established – the NHSC ordered that Bar unification be "continued without limitations."

"Over the years, the Bar has seen many changes, particularly in size, gender, and becoming mandatory for members," NHBA President Paul Chant says. "50 years ago, only two women were admitted to the New Hampshire Bar. We now have 3,432. This is perhaps the biggest change over my 37 years as a lawyer."

Most of the increase in the number of women in the Bar has occurred within the past 30 to 40 years. Before that, the growth was logarithmic.

For example, even though Agnes Winifred McLaughlin was the first woman admitted to the New Hampshire Bar in 1917, it wasn't until 1977 (a full 60 years later), that the 100th woman lawyer, Nancy O. Dodge, was admitted.

In 1988, the *New Hampshire Bar Journal* published the first gender survey of the NHBA's membership and planted the seeds for what would become the NHBA Gender Equality Committee in 1994.

In 1998, the New Hampshire Women's

Bar Association (NHWBA) was formed by Maureen Raiche Manning, Jennifer Parent, Joy Riddell, Julie Introcaso, and Claudia Damon.

When asked about the differences in the Bar today as opposed to when she was admitted, Raiche Manning, the first president of the NHWBA, says it is larger and more diverse.

"I feel lucky that I was in the Bar at the time that I started because it was smaller and you knew more people," Raiche Manning says. "I served on the Bar Association Board of Governors early in my career and got to know people statewide. When it was smaller, it was easier to get to know people, and getting to know people meant you could build a network of mentors and resources. As we get bigger – which is just the natural order of things – it's a little less personal."

Jennifer Parent, who was the second president of the NHWBA, also served as the seventh woman president of the NHBA.

"I am honored to be the only person who has served as president of both the NHBA (2011-2012) and the NHWBA (2000-2002)," Parent says. "At the time, New Hampshire was well ahead of other states in having a number of women who had served as a bar leader for a state bar association. Following my tenure as president, New Hampshire has consistently voted in women lawyers to lead our bar association."

There are many other important milestones in the history of the NHBA, including the first African American judge (Ivory Cobb in 1964), the first female New Hampshire Superior Court Judge (Linda Dalianis in 1980), and the first NHSC Justice (Linda Dalianis in 2000), as well as the establishment of many wonderful and groundbreaking programs and committees, but there are too many to list in just one article. After all, it is 150 years of history.

Looking Ahead

"The Bar Association has never been stronger," NHBA Executive Director George Moore says. "It hosts dozens of member services, innovative CLEs, and soon a members-only area dedicated to working, relaxing, and catching up in a warm, friendly environment. We are dedicated to following closely our members' needs and adjusting our benefits and programs to be responsive to the ever-changing



In 1979, the New Hampshire Bar Foundation raised \$275,000 to purchase and renovate the first Bar Center, which opened the following year on 18 Centre Street in Concord.

ing environment of practicing law."

Jennifer Parent says as a Uniform Bar Examination state, and given the global world we live in today, she expects that membership will increase in the next five to ten years.

"Along with this, and given the DEI initiatives and efforts by the Bench and Bar to date, I also expect an increase in the diversity within our state's legal profession overall," she says. "I anticipate that the Bar will continue its commitment to provide steadfast and strong service to the public, the members, and the justice system as we move into the next decade."

One major consideration when looking ahead at the practice of law is the introduction of artificial intelligence over the last few years.

L. Jonathan Ross, who cofounded the national Bar Leaders for Preservation of Legal Services to the Poor in 1985, says the future of the Bar will depend in large measure on leadership.

"[It will depend on] who has the time, energy, and foresight to think about what's coming down," Ross says. "It also depends on the continued involvement of good lawyers in this process. Artificial intelligence is a new thing, but it's no different than computer research in terms of how you manage that. And I expect the Bar will deal with that as it has already begun to do in recent *Bar News* articles."

Paul Chant, who just became the NHBA's 124th president at the 2023 Annual Meeting, says he sees new challenges for Bar members in the future.

"Far in the past were the days where communications were done in writing and took days or longer to occur between counsel," Chant says. "Now, we are expected to immediately respond to client and opposition counsel requests. In the recent past, lawyers had access to information and case law better than members of the public. Now, chatbots and artificial intelligence

programs claim they can provide instant, accurate information to lawyers and to the public. We are also post-COVID, which brought with it so many changes. So, where are we going? No one really knows."

Chant continues: "Lawyers who are good listeners and good problem solvers will always have a place. It won't be just book knowledge and internet help, it will be their knowledge, their experience, their understanding of dynamics and leverage, and their ability to communicate that will keep the profession of law in good stead."

William Chapman, who filed *Petition of Chapman* in 1986, wherein the NHSC laid out a set of guidelines for permissible NHBA legislative activity, says he is reluctant to make predictions about the future of the Bar.

"I guess the only thing I could safely say is that I believe the Bar is going to continue," he says. "If for no other reason than like all other professions, there needs to be a regulatory body to make sure that lawyers conduct themselves in accordance with the rules of professional conduct and other civic norms that shape the way we interact with one another, represent our clients, and appear in court."

Raiche Manning says she hopes that more people become involved as time goes on.

"It's that involvement that made my ability to practice law and represent my clients better," she says. "It just seems like people have become less and less involved. And we know that from the numbers. Fewer people are doing things, attending events, and participating in discussions. I think we are not well served by that. This is a way to reach people to convince them that their involvement will help them, their clients, their business, and the community at large."

Much of the NHBA's early history can be found in a 1973 article by Richard F. Upton called "Centennial History of the New Hampshire Bar Association," which appeared in volume 15:35 of the *New Hampshire Bar Journal*.

An illustrated 150-year timeline of the New Hampshire Bar Association can be found on the following two pages (20-21) of this issue. Some NHBA milestones were omitted for space. ■

Endnotes

1. "Centennial History of the New Hampshire Bar Association," *New Hampshire Bar Journal*, Vol. 15:35 (1973) Richard F. Upton, p. 49-51.

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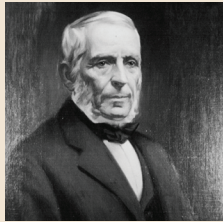
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A 150-Year History of the New

1873

On July 2, the Bar Association of the State of New Hampshire (BASNH) is established. New Hampshire becomes the first state to establish a "modern state bar association" with incorporation, by a special act of the state legislature, making it the oldest statewide bar organization in the United States. Ira Perley is the first Bar president.



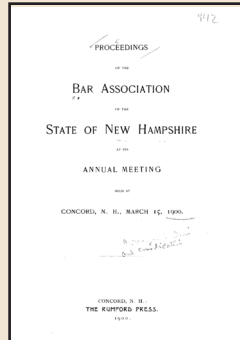
1890

Marilla M. Ricker (first woman to vote in NH) files *Petition of Ricker*, wherein the NHSC holds that women may be attorneys. Despite her success, Ricker never becomes a member of the NH Bar.



1900

The first Annual Meeting is held.



1917

Agnes Winifred McLaughlin becomes the first woman admitted to the NH Bar.



1930

The first Midwinter Meeting (now called Midyear Meeting) is held.

1935

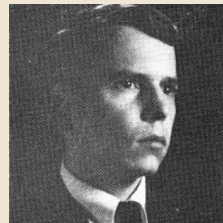
Idella B. Jenness becomes the first female municipal court judge.

1968

In April, a majority of members vote in favor of unification. In October, the NHBA files a Petition of Unification with the NHSC. On December 31, the Court rules that it has jurisdiction to decide on the NHBA's request and orders unification for a three-year trial period.

1969

The NHBA hires Joseph S. Hayden as its first full-time Executive Director.



1972

The NHSC orders that Bar unification be "continued without limitations." NH Public Defender is formed.



1973

The NHBA commemorates its 100-year anniversary. Bar membership grows to 920 members. Franklin Pierce Law Center establishes. Jean K. Burling becomes NH's first female district court judge.



1974

New Hampshire Law Weekly debuts as an official publication of the NHBA.



1976

The NHBA begins its involvement in judicial selection via an agreement with then Governor Meldrim Thomson. NHBA launches its Continuing Legal Education (CLE) Program and becomes the first less than 2,000-member association to hire a full-time CLE



1982

NH becomes the second state in the nation to establish an operational Interest on Lawyers Trust Accounts (IOLTA) Program. William L. Chapman is the first recipient of a President's Award at Midyear Meeting (for outstanding service to the NHBA).

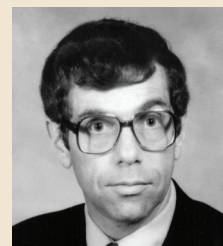


1985

The US Supreme Court affirms that NH's residency requirement for admission to the Bar violates the privileges and immunities clause of the US Constitution. The NHBA conducts and publishes the results of its first Economic Survey. The Reduced-Fee Referral Program is established (later becomes the Modest Means Program).

1985

Then-NHBA president L. Jonathan Ross co-founds the national "Bar Leaders for the Preservation of Legal Services to the Poor."



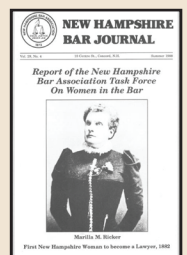
1986

The NHSC adopts new Rules of Professional Conduct. In *Petition of Chapman*, the NHSC lays out a set of guidelines for permissible NHBA legislative activity. The We the People: The Citizen and the Constitution educational program is established.



1988

The NHBA's LawLine debuts. The *New Hampshire Bar Journal* publishes the "Report of the NHBA Task Force on Women in the Bar" as the first gender survey of NHBA's membership.



1998

The NHSC adopts Rule 55, establishing a Public Protection Fund to provide reimbursement for losses resulting from attorney theft of client funds. The NHBA is asked by the NHSC to appoint an oversight committee and administer the rule. The NH Women's Bar Association is formed.



2000

Linda S. Dalianis becomes the first female NHSC justice; later becomes the first female Chief Justice in 2010.

2001

The NHBF awards a record \$1.3 million in IOLTA grants. The NHBA e-mails its first E-Bulletin to members.

2002

The NHSC approves Admission on Motion, to take effect on March 1, 2003.

2004

By a 3-1 majority, Bar members vote in favor of the continuation of the unified Bar. The NHSC rules that RSA 311:7g requiring a vote on unification every five years is unconstitutional, reaffirming that the NHSC has the authority to supervise the practice of law in the state.

2004

Kelly Ayotte becomes the first female Attorney General of NH.



2005

The Daniel Webster Scholar Honor Program is established at Franklin Pierce Center (now Franklin Pierce University) School of Law.



2020

The Annual Meeting is canceled due to the COVID-19 pandemic. The Bar Center closes, and staff works remotely from March until June, when hybrid work begins.

2021

The Midyear and Annual Meetings are held online due to the ongoing pandemic. CLE begins to offer substantially more robust online CLE programming.

2021

The NHBA's Pro Bono Program merges with Legal Advice and Referral Center to become 603 Legal Aid, a standalone non-profit organization, and moves to a separate location.



2022

The NHBF releases the results of its first Diversity and Inclusion survey. The NHBA establishes a Diversity, Equity, and Inclusion Standing Committee.

2023

UNH celebrates its 50th anniversary. Marcia Magidson becomes the first female justice on the New Hampshire Supreme Court.

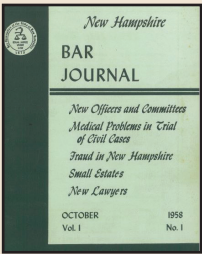
New Hampshire Bar Association

1946

The Law Related Education (LRE) program is established to educate youth on the legal system. A Junior Bar Program is inaugurated for younger lawyers.

1958

The first issue of *New Hampshire Bar Journal* is published.



1960

The Client Indemnity Fund establishes to help ensure client security. An attorney income survey is conducted: Average salary was \$12,261, with a high of \$41,166 and a low of \$800.

1964

The NH State Constitution is amended to require that counsel be provided at public expense for indigent persons accused of a crime punishable by any imprisonment. Ivory Cobb becomes the first African American to be appointed as a judge in NH.



1966

The BASNH establishes a policy waiving dues for newly admitted attorneys for their first year and exempting active-duty armed forces personnel from dues payment while in the service.

1967

The BASNH successfully petitions the NH legislature to amend the acts of incorporation to change the organization's name to New Hampshire Bar Association.



1977

The New Hampshire Bar Foundation (NHBF) is established as the charitable arm of the NHBA. Nancy O. Dodge becomes the 100th female lawyer admitted to the NH Bar.

1979

The NHBF launches a fund drive to provide money for the purchase of a Bar Center. NHBA establishes its Lawyer Referral Service (LRS).



1979

The NHBA becomes the first state bar association of its size to win the ABA Award of Merit for Overall Excellence. It also wins the ABA's Award of Merit for Single Project Excellence for its Pro Bono Referral System (Pro Bono Program).

1980

Linda S. Dalianis is nominated by Governor Hugh Gallen to become NH's first female Superior Court judge.



1980

Bar members vote for mandatory practical skills course. The first Bar Center opens at 18 Centre Street in Concord, centralizing several offices, including NHBA, NHBF, LRS, Pro Bono Program, and Elderly Legal Services Department.



1990

The *New Hampshire Bar News* debuts as a bi-weekly publication in newsletter format. *New Hampshire Law Weekly* ceases publication. NHBA moves its location to a larger facility at 112 Pleasant Street in Concord.



1992

The NHBA's Pro Bono Program establishes its domestic violence emergency (DOVE) Project to assist victims of domestic violence with protective orders. Patti Blanchette becomes the first female NHBA president.

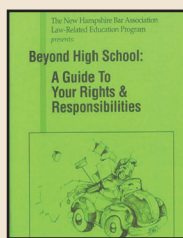


1994

The NHBA Gender Equality Committee is created.

1996

The NHBA adopts Rule 53 establishing a mandatory minimum CLE requirement. The NHBA's Law Related Education Program publishes the *Beyond High School: A Guide to Your Rights and Responsibilities* booklet.



1998

The NHBA launches its first website. *New Hampshire Bar News* wins the NABE Luminary Award for Excellence in Bar Association Publications.



2006

The NHBA and NHBF move the Bar Center to its current home, 2 Pillsbury Street in Concord. The first NHBA Member ID cards are issued.



2008

The *New Hampshire Bar News* moves to a monthly publication schedule.

2010

The NHBA launches the Leadership Academy to develop younger lawyers as future leaders of the NH Bar.



2012

The NHBA begins participation in and offering support with the nationwide SOLACE (Support of Lawyers/ Legal Personnel – All Concern Encouraged) Program to assist lawyers and legal staff in situations of grief.

2013

Landya B. McCafferty becomes the first female US District Court for the District of NH.



2017

The NHBA, NHBF, and NHWBA hold a Centennial Celebration Gala to honor 100 years of women lawyers in NH.



2023

Law celebrates its anniversary. NHWBA celebrates its 25th anniversary. Talesha Saint-John becomes the first black woman to serve as a federal district judge in NH.



2023

The NHBA celebrates its 150th anniversary. Bar membership hits 8,678 members.

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JULY 2023

THU, JUL 20 – 8:00 a.m. – 5:15 p.m.
CLE by the Sea: NE Solo & Small Firm Conference
• Up to 380 NHCLE min.
• Newburyport, MA – Blue Ocean Event Ctr.

SEPTEMBER 2023

THU, SEP 14 – Time TBD
Where Business & Your Practice Collide
• 180 NHCLE min.
• Concord – UNH Franklin Pierce School of Law

THU, SEP 21 – 9:00 a.m. – 4:30 p.m.
22nd Annual Labor & Employment Law Update
• 365 NHCLE min. incl. 60 ethics/prof.
• Concord – NHBA Seminar Room/Webcast

FRI, SEP 22 – 12:00 p.m. – 1:00 p.m.
Federal Research Grants & Agreements
• Webcast; 60 NHCLE min.

OCTOBER 2023

MON, OCT 16 – 12:00 p.m. – 1:00 p.m.
8 Reasons Movie Lawyers Would be Disciplined
• Webcast; 60 NHCLE min.

WED, OCT 18 – 12:00 p.m. – 1:00 p.m.
2023 Patent Law Update: Key Developments in Patent Litigation and Patent Prosecution
• Webcast; 60 NHCLE min.

THU, OCT 19 – Time TBD
Administrative Law
• Credits TBD
• Concord – NHBA Seminar Room/Webcast

MON, OCT 23 – 12:00 p.m. – 1:00 p.m.
Tik Tok, Twitter, Tech, and Ethics
• Webcast; 60 NHCLE min.

FRI, OCT 27 – 9:00 a.m. – 4:30 p.m.
Developments in the Law 2023
• 360 NHCLE min., incl. 60 ethics/prof.
• Manchester – DoubleTree by Hilton Downtown

MON, OCT 30 – 12:00 p.m. – 1:00 p.m.
From Bonnie and Clyde, to Bernie Madoff – What the Biggest Thieves in History Teach About Attorney Ethics
• Webcast; 60 NHCLE min.

NOVEMBER 2023

MON, NOV 6 – 12:00 p.m. – 1:00 p.m.
What my Facebook Posts Teach about Lawyer Mental Health
• Webcast; 60 NHCLE min.

DECEMBER 2023

TUE, DEC 5 – 8:30 a.m. – 4:45 p.m.
Practical Skills for New Admittees-Day 1
• Concord - Grappone Conference Center

WED, DEC 6 – 8:30 a.m. – 12:00 p.m.
Practical Skills for New Admittees-Day 2
• Concord - Grappone Conference Center

FEBRUARY 2024

FRI, FEB 9 – Time TBD
Midyear Meeting 2024
• Manchester – DoubleTree by Hilton

Federal Research Grants & Agreements



Friday, September 22, 2023

12:00 - 1:00 p.m.
60 NHCLE min.

This CLE will cover the basics of federal grants and agreements as they exist in the research space. Topics will include – what grants and other agreements are, what terms to look out for and know about when counseling a client whether to seek federal funding for research, and topics that are specifically applicable in the realm of research.

Who Should Attend this Program?

Lawyers who represent tech companies, start-ups, and those generally interested in the topic.

Faculty

Aaron Farides-Mitchell, Toohey Law Group, LLC, Manchester

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22nd Annual Labor & Employment Law Update

Thursday
Sept 21
9:00 a.m. – 4:30 p.m.
365 NHCLE min.
incl. 60 ethics/prof.



NHBA Seminar Room, Concord/Webcast

This full day seminar will address cutting edge developments in employment law over the past year focusing on recent agency and court decisions, new laws, Long COVID's impact on the workplace, ethical considerations around ChatGPT and more.

Faculty

Debra Dyleski-Najjar, Program Chair/CLE Committee Member, Najjar Employment Law Group, PC, N. Andover, MA
Heather M. Burns, Upton & Hatfield, Concord
Lauren Simon Irwin, Upton & Hatfield, Concord
Jennifer Shea Moeckel, Sheehan Phinney Bass & Green, Manchester
Julie A. Moore, CLE Committee Member, Employment Practices Group, Wellesley, MA
Jennifer L. Parent, McLane Middleton Professional Association, Manchester
Jeffrey Parsonnet, MD, Dartmouth Hitchcock Medical Center, Lebanon
James P. Reidy, Sheehan Phinney Bass & Green, Manchester
Nancy Richards-Stower, Merrimack
Cynthia Sharp, The Sharper Lawyer, Philadelphia, PA
Kevin W. Stuart, Bernard & Merrill, Manchester

2023 Patent Law Update: Key Developments in Patent Litigation and Patent Prosecution

Wednesday
Oct. 18
12:00 p.m. – 1:00 p.m.
60 NHCLE min.



The presentation will cover recent developments in patent law including the latest trends in patent litigation, new USPTO filing procedures, and important patent cases pending with the U.S. Supreme Court as well as Federal Circuit Court decisions. This presentation will also share insight on:

- Best practices for patent litigation, including venue changes
- Practical prosecution advice
- Recent trends and developments in Patent Trial and Appeals Board proceedings

Faculty

Lisa N. Thompson, CLE Committee Member, Sanborn Head Associates, Inc., Concord
Peter A. Nieves, Dunbarton
Kimberly A. Peaslee, KPIP, PLLC, Concord



Developments in the Law 2023

Friday
Oct. 27
9:00 a.m. - 4:30 p.m.
360 NHCLE min.
incl. 60 ethics/prof. min.



Manchester – DoubleTree by Hilton Downtown

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

Faculty

Corey M. Belobrow, Friedman & Feeney, PLLC (of counsel), Concord
Simon R. Brown, Preti Flaherty Beliveau & Pachios PLLP, Concord
Thomas M. Closson, Jackson Lewis, PC, Portsmouth
Tracey G. Cote, Shaheen & Gordon, PA, Concord
Alyssa Graham Garrigan, Ansell & Anderson, PA, Bedford
Christopher M. Johnson, NH Public Defender, Concord
Thomas J. Pappas, Primmer Piper Eggleston & Cramer, PC, Manchester
Laura Spector-Morgan, Mitchell Municipal Group, PA, Laconia
Roy W. Tilsley, Jr., Bernstein Shur Sawyer & Nelson, PA, Manchester

Monday “Fun-days” with Stuart Teicher

Don't miss Monday “Fun-days” with Stuart Teicher – the “CLE Performer” – and have a laugh at lunch!



8 Reasons Movie Lawyers Would be Disciplined

October 16, 2023 – 12:00 – 1:00 p.m.
60 NHCLE ethics min.

Tik Tok, Twitter, Tech, and Ethics

October 23, 2023 – 12:00 – 1:00 p.m.
60 NHCLE ethics min.

From Bonnie and Clyde to Bernie Madoff – What the Biggest Thieves in History Teach About Attorney Ethics

October 30, 2023 – 12:00 – 1:00 p.m.
60 NHCLE ethics min.

What my Facebook Posts Teach about Lawyer Mental Health

November 6, 2023 – 12:00 – 1:00 p.m.
60 NHCLE min.

DID YOU MISS THESE NHBA-CLE PROGRAMS? Now Available On-Demand

Bankruptcy Litigation

Original Program Date: May 22, 2023 – 360 NHCLE min., incl. 60 ethics/prof.

17th Annual Ethics CLE

Original Program Date: May 25, 2023 – 120 NHCLE ethics/prof. min.

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

Nathan Fink says, “The way that we get to lessening child abuse and neglect is to make sure that every family has what they need to be strong and resilient.”

NHCT recognizes five protective factors, which are characteristics of individuals, families, and communities that act to reduce the risk of child abuse and neglect. These factors include parental resilience, social connections, knowledge of parenting and child development, concrete support in times of need, and children’s social and emotional development.

“When you engage with a family positively in a strength-based way to make sure that the five protective factors are in that unit, incidences of child abuse and neglect plummet,” Fink says.

In 2021, Mark Knights, a partner at Nixon Peabody and vice chair of the NHCT Board, founded the Ride for Resilience, a 100-mile bike ride that physically connects family resource centers across the state and shines a light on the various ways New Hampshire’s support systems help build individual, family, and community resiliency.

“Resilience is the ability to, when faced with challenges, prevail in the face of those challenges – to pick yourself up, dust yourself off, and keep going,” Knights says.

Through his volunteer work with Court Appointed Special Advocates (CASA) legal proceedings, Knights was inspired to get involved with the NHCT after witnessing the severe damage that abuse and neglect have on children in the Granite State.

“CASA comes into the process after child abuse or neglect has already happened, so getting involved in the Children’s



Mark Knights biking during the first Ride for Resilience in 2021. Courtesy Photo

Trust was a way to try and fight that problem before it ever arises,” he states.

When the Ride for Resilience was first created in 2021, Knights was the sole participant. Due to the COVID-19 pandemic, the NHCT had limited fundraising opportunities.

Knights, who picked up cycling during the lockdown, thought to himself, “This is a way to combine two things that I love; The Children’s Trust and my passion for cycling.”

Thus, the Ride for Resilience was created.

This year, they are expecting ten to 15 riders who will help increase aware-

ness about the great work being done to put an end to child abuse and neglect. At each stop, the riders will tour the family resource centers, talk to the staff, and learn about the incredible work they do.

Fink, who will be riding along with them this year, says his favorite part of the event is watching resilience in action.

“Riding 100 miles is a physical demonstration of what resilience looks like,” he says.

Knights says his favorite part of the ride is feeling like a part of a larger community and seeing the public get energized by the event.

Beginning at Whole Family Village Resource Center in Plymouth, the ride will start at 7:00 am on Friday, October 13. From there, bikers will journey to Lakes Region Community Services in Laconia and the Archways (formerly known as Greater Tilton Area Family Resource Center) locations in Tilton and Franklin. The group will then bike back to Plymouth,

where there will be a celebration of their achievements at The Last Chair Brewery.

In the future, Knights and the team at the NHCT hope to expand the ride so that hundreds of people can bike along with them. They would also like to see individual communities host their own Rides for Resilience, which would allow for a larger number of family resource centers to be recognized and celebrated for their efforts.

“I can’t give the Children’s Trust enough credit for being great partners in the Ride for Resilience – Nathan in particular, who has been with me from the start,” Knights says. “We picked it up and ran with it, and I love where we’ve come with this.”

To get involved in this event, you can donate to the NHCT, the various family resource centers, or to individual riders. You can also volunteer to help with the event or even sign up to ride.

To learn more about the Ride for Resilience, visit: nhchildrenstrust.org/2023-ride-for-resilience. ■

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Mark Knights (center) with NH Children’s Trust staff members Rebecca Planchart and Nathan Fink after the first Ride for Resilience. Courtesy Photo

International Law

The Foreign Sovereign Immunities Act in the Criminal Context

By Naomi Kalies McNeill

Economic sanctions have long been a mechanism to rein in disfavored policies. Iran's theocratic regime and endeavors to become a nuclear power have subjected it to some form of economic sanctions since 1979. Violations of these sanctions are subject to criminal liability under numerous federal statutes. What happens, however, when the alleged violator is the instrumentality of a foreign sovereign? This is the issue recently addressed by the United States Supreme Court in *Türkiye Halk Bankası A.S. v. United States*, 143 S. Ct. 940 (2023).



In 2019, the US indicted Türkiye Halk Bankası (Halkbank), a bank owned by the Republic of Turkey, for conspiring to evade US economic sanctions against Iran. The US alleged that Halkbank engaged in a conspiracy to evade sanctions by laundering billions of dollars of Iranian oil and gas proceeds through the global financial system, including within the US. The indictment further claimed that Halkbank made false statements to the Treasury Department in an effort to hide the scheme.

Halkbank moved to dismiss the charges arguing that federal courts did not have jurisdiction and that it was immune from prosecution as a sovereign entity. Halkbank relied primarily on the Foreign Sovereign Immunities Act (FSIA), codified at 28 U.S.C. §§ 1330, 1602 *et seq.* Both the Southern District of New York and the Second Circuit applied the FSIA and found it did not grant immunity to Halkbank. The US Supreme Court, in a 7-2 decision authored by Justice Kavanaugh, held that the FSIA did not extend sovereign immunity to foreign states or their instrumentalities in criminal cases. *Türkiye Halk Bankası*, 143 S. Ct. at 947. The Court remanded to the Second Cir-



cuit to consider whether the common law confers immunity to foreign sovereigns and their instrumentalities for criminal cases. *Id.* at 951.

The Court began with Halkbank's challenge to US courts' subject matter jurisdiction. Applying 18 U.S.C. § 3231, the Court held that the statute's grant of jurisdiction was "sweeping." *Id.* at 944. The Court concluded that § 3231 "plainly encompassed" Halkbank's alleged criminal offenses since they were "against the laws of the United States." *Id.* at 944-45. The Court refused to require Congress to "clearly indicat[e] its intent" to include foreign states and their instrumentalities within § 3231's jurisdictional grant." *Id.* at 945.

Having rejected Halkbank's textual argument, the Court moved onto its historical argument. Halkbank claimed that laws drafted by the First Congress were proof that that Congress did not intend for federal courts to have jurisdiction over foreign sovereign entities because none did so expressly. Halkbank argued that Congress would have expressly referenced foreign states and their instrumentalities if Congress had intended to reach those entities in the Judiciary Act of

1789, a predecessor to § 3231. *Id.* Since Congress did not, the same was true for § 3231 today. *Id.* Once again, the Court refused to read the absence of textual references to foreign sovereign entities as an implied exception to the grant of jurisdiction based on sovereign immunity. *Id.*

Finally, the Court rejected the Bank's reliance on *Schooner Exchange v. McFaddon*, 7 Cranch 116, 3 L.Ed. 287 (1812). *Id.* The Bank had argued that a provision of the 1789 Judiciary Act granting district court's jurisdiction over "all civil causes of admiralty and maritime jurisdiction," was held not to confer jurisdiction over foreign state entities in *Schooner Exchange*, and therefore, the Court should not find jurisdiction in this case. *Id.* Justice Kavanaugh gave that argument short shrift since the Court in *Schooner Exchange* was not considering statutory subject matter jurisdiction, but jurisdictional principles developed in the common law. *Id.* at 945-46.

Finding subject matter jurisdiction under § 3231, the Court then addressed Halkbank's contention that the FSIA conferred immunity to Halkbank as a foreign sovereign entity. The Court analyzed the text of the FSIA and concluded that

the Act set forth a "carefully calibrated scheme" that relates only to civil cases and does not apply to criminal cases. *Id.* at 947. The Court pointed to the Act's repeated use of the phrase "civil action," detailed rules for service of process, filing an answer, and default judgment, the exclusion of liability for punitive damages, and the fact that the FSIA was codified in Title 28 (which mostly concerns civil procedure). *Id.* 947-48. The Court also noted that the FSIA was silent on the subject of criminal prosecution. *Id.*

Halkbank tried to rely on a single sentence in the FSIA, § 1604: "'Subject to existing international agreements,' a 'foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.'" *Id.* 948. The Court refused to accept that "Congress enacted a statute focused entirely on civil actions and then in one provision that [did] not mention criminal proceedings somehow stripped the Executive Branch of all power to bring domestic criminal prosecutions against instrumentalities of foreign states." *Id.* at 949.

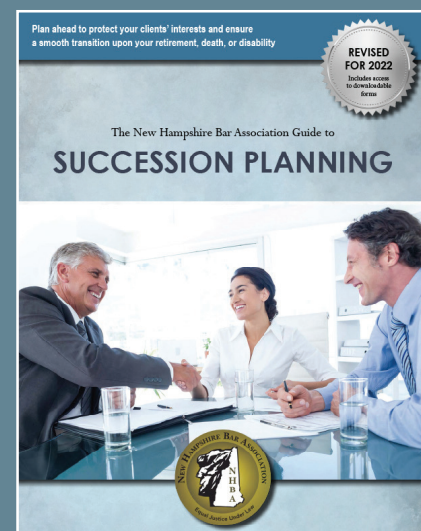
Justice Gorsuch's partial concurrence and dissent (joined by Justice Alito) criticized the majority for going too far in declaring all criminal cases as outside the FSIA when such a holding was unnecessary to resolve the case. Justice Gorsuch argued that the Court should have applied the FSIA, as the Second Circuit did, and found that the FSIA did not confer immunity under the plain language of the statute. *Id.* at 952-53. Justice Gorsuch also faulted the majority for remanding to the Second Circuit to determine if Halkbank was entitled to common law immunity instead of conducting that analysis itself. *Id.* at 954. ■

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Federal Practice and Bankruptcy

May I See Your Badge(s)? The Bankruptcy Trustee's Power to Avoid Fraudulent Transfers Made with Actual Intent

By Joseph A. Foster and
Sabrina C. Beavens



Foster



Beavens

Fraudulent transfer law has its roots in the *Statute of Elizabeth*, enacted in 1571, which voided any transfer made with the “intent to delay, hinder, or defraud creditors.” The statute served as the model for the Uniform Fraudulent Transfer Act (UFTA), which was adopted in New Hampshire in 1988. Actions to avoid fraudulent transfers involve relatively simple matters—the transfer of a home from husband to wife; and some of the most complex litigation bankruptcy courts adjudicate—the unwinding of a leveraged buy-out. They involve individuals with small amounts of debt and business entities with extremely complex credit facilities. Under the Bankruptcy Code, a trustee or debtor in possession has two statutory grounds to avoid a “fraudulent transfer”—Section 548 of the Bankruptcy Code and the UFTA using the powers granted under Section 544(b)(1), which permit the plaintiff to utilize state law to avoid certain transfers and obligations.

The Code and the UFTA provide two primary causes of action for a trustee to avoid transfers or obligations. The trustee must either prove that the debtor:

- (1) transferred property or incurred an obligation with the intent to hinder, delay or defraud its creditors; or
- (2) made a transfer or incurred an obligation for less than reasonably equivalent value and at the time such transfer was made, or obliga-



tion incurred: (i) was insolvent; (ii) had unreasonably small capital; or (iii) intended to incur debts beyond its ability to repay them.

The first cause of action is often referred to as “actual fraud” and the second as “constructive fraud.” This article focuses on actual fraud.

To establish an “actual fraud” claim, the trustee must prove the debtor incurred the obligation or made the challenged transfer with the actual intent to hinder, delay, or defraud its creditors. There is a heightened pleading standard for actual fraud claims. The trustee must state with particularity the circumstances constituting the alleged fraudulent transfer.

The burden of proof to establish actual intent to defraud is also high. Unlike most civil actions, which only require proof by a preponderance of the evidence, the plaintiff must prove its actual fraud case by clear and convincing evidence. *In re Jackson*, 318 B.R. 5 (Bankr. D. N.H. 2004).

While on occasion a debtor or his transferee will admit an intent to defraud, *In re Taylor*, 642 B.R. 912 (Bankr. W.D. Ark. 2022) – estranged ex-wife admits husband insolvent for 15 years and transferred property to her to keep it away

from his creditors – courts recognize that a debtor will rarely admit that the transfer was made with the intent to defraud. Therefore, they evaluate the transferor’s intent based on “the circumstances surrounding the transfer, taking particular note of certain recognized indicia or badges of fraud[.]” *In re Blais*, 2021 WL 4483099 (Bankr. D. N. H. 2021) (*quoting Max Sugarman Funeral Home, Inc. v. A.D.B. Investors*, 926 F.2d 1248, 1254 [1st 1991]).

In cases where there is no direct testimony to support a finding of actual fraud, the courts look to the UFTA which includes a non-exhaustive list of the so-called “badges of fraud” which includes:

- a. The transfer or obligation was to an insider;
- b. The debtor retained possession or control of the property transferred after the transfer;
- c. The transfer or obligation was disclosed or concealed;
- d. Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- e. The transfer was of substantially all the debtor’s assets;
- f. The debtor absconded;
- g. The debtor removed or concealed assets;
- h. The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- i. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- j. The transfer occurred shortly before or after a substantial debt was incurred; and
- k. The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. (N.H. RSA 545-A:4, II).

Case law generally provides that proof of a single badge of fraud is insufficient to establish an actual intent to defraud. On the other hand, the presence of several badges without strong countervailing evidence is generally found

to be sufficient. *See Max Sugarman*, 926 F.2d at 1254-55 (noting a “single badge of fraud may spur mere suspicion; the confluence of several can constitute conclusive evidence of an actual intent to defraud, absent significantly clear evidence of a legitimate supervening purpose.”); *Jackson*, 318 B.R. at 14 (“The law ... allows the badges to act as a substitute for direct proof of intent and permits, but does not require, the fact finder to draw inferences of bad intent from them. Any badge of fraud is potentially relevant to proving fraudulent intent, but no single badge alone creates a presumption of bad intent”).

Bankruptcy Judge Michael Fagone, sitting by designation in New Hampshire, said it well in a case involving the determination of actual fraud in connection with the dischargeability of a debt:

[T]he analysis of the badges is not a mathematical exercise in which the factfinder simply checks “yes” or “no” for each badge and then compares the results to produce a definitive answer. Instead, the badges of fraud are tools used by courts to help analyze the evidence presented to answer the ultimate question, namely, whether a specific transfer was made with intent to hinder, delay, or defraud creditors. The statutorily identified badges are not talismanic, and the court must resolve the factual question of intent based on its assessment of all the evidence.

In re Blais, 2021 WL 4483099 (Bankr. D. N. H. 2021).

Finally, it is important to remember that the actual fraud may be established if there is proof that the debtor made the transfer with the intent to: hinder, delay, or defraud. The statute is written in the disjunctive and proof of only one of the three is required. Hindering a creditor or delaying its recovery alone can be sufficient. ■

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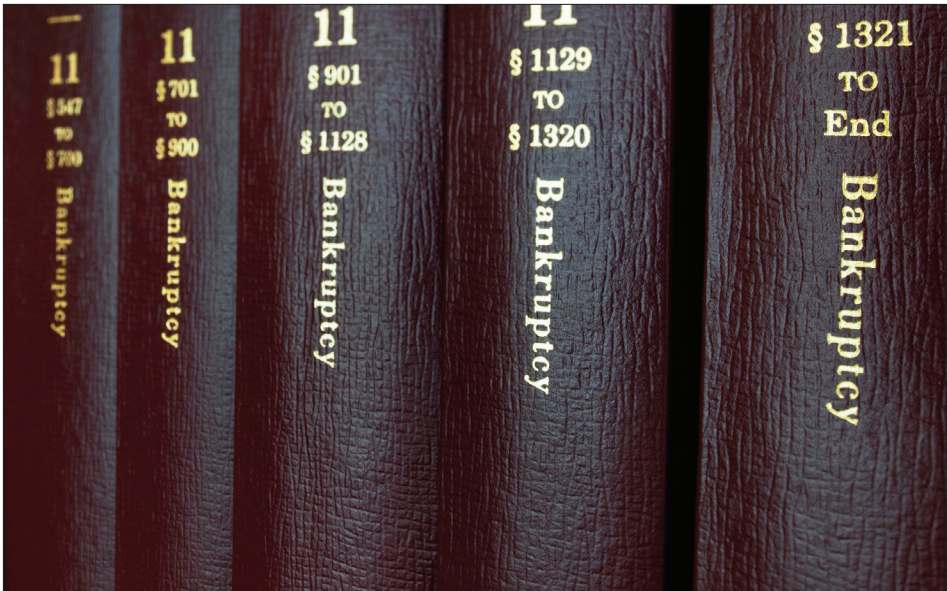
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Using Pre-Litigation Discovery in the Bankruptcy Court To Assess Claims and Potential Litigation

By James S. LaMontagne

Introduction

Discovery may be conducted by interested parties within the context of an adversary proceeding or a contested matter commenced within a bankruptcy case. This discovery, whether conducted within an adversary proceeding or a contested matter, is governed by Federal Bankruptcy Rules 7026 through and including 7037 and Local Bankruptcy Rule 7026-1. The Federal Bankruptcy Rules and the Local Bankruptcy Rule incorporate by reference, for the most part, the Federal Rules of Civil Procedure governing discovery. In this way, discovery practice within the bankruptcy court does not differ greatly than that in other federal courts. However, unlike other federal courts, the bankruptcy court affords interested parties the unique opportunity to conduct discovery prior to the commencement of litigation via the debtor’s creditors’ meeting and/or a bankruptcy rule 2004 exam. Both the creditors’ meeting and the bankruptcy rule 2004 exam provide interested parties with effective pre-litigation dis-



covery tools to better assess their claims and assist in determining whether to initiate litigation, such as a dischargeability action, against the debtor.

The 341 Meeting as a Discovery Tool

Every person, whether an individual or business, that files bankruptcy (the Debtor) must attend a creditors’ meeting pursuant to section 341 of the Bankruptcy Code (the 341 Meeting) and testify, under oath, about their financial affairs, among other things. *See* 11 U.S.C. §341. The 341 Meeting typically takes place

within 30 to 45 days after the Debtor’s bankruptcy petition date and is conducted primarily by a case trustee for those cases filed under chapter 7 or 13, or, for a case filed under chapter 11, by a trial attorney from the United States Trustee’s Office (collectively, the Trustee). The scope of the examination at the 341 Meeting is quite broad. Customarily, the Trustee will examine the Debtor on the Debtor’s financial affairs, assets, and liabilities as well as its business operations, and other related topics. The purposes of the 341 Meeting, are, among others, to make determinations on whether the Debtor has

concealed assets or improperly disposed of assets, if the Debtor has real prospects of reorganization, if there are grounds to object to the Debtor’s exemptions or the Debtor’s discharge or whether there are facts warranting a dismissal of the bankruptcy case. The Trustee’s examination of the Debtor may lead to information that cannot be gleaned from simply reviewing the Debtor’s statement of financial affairs and bankruptcy schedules, but which could prove useful to an interested party who may be pursuing a claim or contemplating litigation against the Debtor.

Once the Trustee has completed their examination of the Debtor, interested parties are then given an opportunity to examine the Debtor at the 341 Meeting. The scope of an interested party’s examination of the Debtor may be as broad as discussed above or as narrow as the specific facts relating to the interested party’s particular claim. Regardless, the 341 Meeting can be used as a simple and less expensive discovery tool for those parties pursuing claims against the Debtor or contemplating litigation against the Debtor.

Practice Pointer: The Trustee often has multiple 341 Meetings scheduled for the same time on a particular day as well as other 341 Meetings scheduled at sequential times during the same day, so

DISCOVERY continued on page 30

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The Rights of the Non- Owning Spouse: Is There a \$240,000 Homestead for Married Single Owner Debtors?

By Edmond Ford

The New Hampshire Supreme Court heard oral arguments on June 6, 2023, in *Brady v. Sumski*, 2023-023, which addressed whether a married debtor who is the sole owner of a home and their non-owner (non-debtor) spouse each may claim \$120,000 of homestead exemption or, instead, may only the “owner” claim the exemption. The Bankruptcy Court said no – only the owner can claim a \$120,000 exemption. In re *Brady*, 2022 BNH 003. The District Court certified the question to the New Hampshire Supreme Court. *Brady v. Sumski*, 2023 DNH 004.

We all think we know what a homestead is. “Homestead” means home place, or place of the home...” *Austin v. Stanley*, 46 N.H. 51, 52 (1865). Every lawyer (and certainly every bankruptcy lawyer) is familiar with the homestead exemption of N.H. Rev. Stat. Ann § 480:1: “Every person is entitled to \$120,000 worth of his or her homestead, or of his or her interest therein, as a homestead.”

But do we know anything from the



statute? The statute says (paraphrased) “every person is entitled to...his or her homestead ... as a homestead.” It is a tautology. The statute explains that “The homestead right is exempt from attachment during its continuance from levy or sale on execution...” N.H. Rev. Stat. Ann. § 480:4.

As for “its continuance” the statute describes its “duration” with this language that not only describes duration, but also seemingly grants rights to the non-owner spouse:

The owner and the husband or wife of the owner are entitled to occupy the homestead right during the owner’s lifetime. After the decease of the owner, the surviving wife or husband of the owner is entitled to the homestead right during the lifetime of such survivor.

N.H. Rev. Stat. Ann. § 480:3-a (LexisNexis) (Section 3-a)

The statute seems to say that the owner and their spouse are entitled to live at the homestead place during the life of the owner and that the non-owner surviving spouse has a continuing right to live there for the remainder of that person’s life, exempt from attachment.¹

The statute appears to grant the owner’s spouse a life estate exempt from creditors in property for which that spouse has never received a deed.

Because the statute grants the non-owner spouse an apparent life estate, is that life estate an “interest” in the homestead real estate such that the non-owner spouse may assert a separate homestead right under RSA 480:1? The non-owner spouse would read the statutory elements thus: The non-owner spouse is a person. The non-owner spouse has an “interest” in the property by virtue of section 3-a. The non-owner spouse therefore claims \$120,000 of his or her interest as homestead.

The bankruptcy trustee argues that the statute requires one to be an “owner” – that the “interest” referenced in RSA 480:1 means a traditional ownership interest such as the equity of redemption, or under a bond for deed, or a life estate.² The trustee argues that the New Hampshire Supreme Court cases have adopted the understanding that only “owners” who also occupy can claim a homestead. *Beland v. Goss*, 68 N.H. 257, 258, 44 A. 387, 387 (1894).

The trustee argues that the meaning is made clear by the second sentence of NH RSA 480:1 which explicitly requires both ownership and occupancy for a homestead in manufactured housing. That sentence says:

The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person but shall not exist in the land upon which

the manufactured housing is situated if that land is not also owned by the owner of the manufactured housing.

N.H. Rev. Stat. Ann. § 480:1 (LexisNexis)

The debtor argues that the words “owned and occupied” in the second sentence do not modify the homestead created by the first sentence in non-manufactured housing and that by adding those words to the creation of a homestead in manufactured housing, the legislature was expressing its understanding and desire that the ownership requirement applied only to manufactured housing, and not a traditional home.

The debtor points to the statute on sheriff’s sale, RSA 529:20-a which requires that before a sheriff may sell, a notice must be given:

You and/or your spouse may be entitled to a homestead exemption pursuant to RSA 480:1. This exempts \$120,000 for a single person and \$240,000 for a married couple.

N.H. Rev. Stat. Ann. § 529:20-a (LexisNexis)

The debtor says that the legislature has expressed its view that a married couple gets a \$240,000 exemption, without reference to ownership. The trustee responds that is a notice, not a grant of an exemption and as a notice, it is rationally calculated to cause debtors to investigate their rights because most married couples own their home jointly.

The debtor points to *Sabato v. Fed. Nat’l Mortg. Ass’n*, 172 N.H. 128, 210 A.3d 205 (2019) asserting that in *Sabato* the Supreme Court established that the non-owner spouse has their own separate homestead of \$120,000. The trustee responds that *Sabato* deals only with the failure to properly waive homestead rights, not whether there are two \$120,000 rights in property only owned by one of the spouses.

The practice in New Hampshire assumes that where two spouses jointly own the homestead (and therefore each qualifies as an owner), the two spouses together may claim homestead rights in the amount of \$240,000. *Sav. Bank v. French*, 105 N.H. 407, 200 A.2d 858 (1964). Whether that same \$240,000 may be claimed when only one of them holds title is now before the Supreme Court and we may expect an answer in the coming months. ■

Endnotes

1. After the death of both, the property is no longer exempt. *Cross v. Weare*, 62 N.H. 125 (1882)
2. *Libbey v. Davis*, 68 N.H. 355, 356, 34 A. 744, 745 (1895) (Bond for deed); *Sav. Bank v. French*, 105 N.H. 407, 200 A.2d 858 (1964) (equity of redemption); *Squire v. Mudgett*, 61 N.H. 149 (1881) (life estate)

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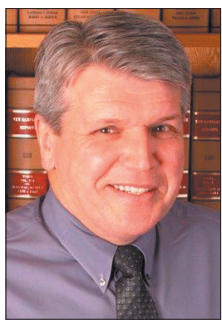
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A Seismic Change in Discharging Federal Student Loans in Bankruptcy

By Richard Gaudreau

The United States Department of Education's (DOE) promise of a kinder and gentler response to complaints to discharge federal student loans in bankruptcy has been long awaited and may have arrived. On November 17, 2022, DOE announced a radical departure in how it will analyze these types of cases. The new procedure can result in DOE agreeing to a stipulation to discharge of all or part of a debtor's federal student loan after consideration of an attestation form. Although an Adversary Proceeding still needs to be filed, the process – when it is successful – will avoid the time and expense of a trial. It's expected to open this process up to a whole new group of debtors who in the past believed they could not afford an undue hardship complaint.



No longer will the DOE tell its lawyers to oppose undue hardship complaints just because a debtor has the ability to fund an income-driven repayment plan (IDRP) on the theory that it could not possibly be an undue hardship if a reduced payment plan were possible. DOE's attempt to substitute one for the other has enmeshed many debtors in expensive litigation even

when there were sympathetic facts. One recent example out of Massachusetts Bankruptcy Court is *Carney v. Educational Credit Management Corp.*, AP 20-4039 (Mass. Bk Ct. March 23, 2023). There, the court considered a discharge for a debtor with more than \$200,000 in federal student loans with net monthly income of only \$2,000. These were Federal Family Education Loans (FFEL), which currently are not covered by the new attestation procedure. After DOE got debtor to admit the reduced IDRP payment was affordable, Judge Pamos held there was no undue hardship despite the fact the IDRP would take 25 years

to complete and could result in taxable forgiveness of debt. Since the ability to pay is a factual issue only resolvable at trial, DOE's resort to this argument has historically led to protracted litigation. This made the process so expensive that only the most desperate or highly motivated debtors had the temerity to take the plunge.

As of January 2023, there were 43.5 million student loan borrowers owing \$1.63 trillion in federal student loans, second only to mortgages as the largest consumer debt in America. Many economists believe the amount of student loan debt in this country has created a serious drag on

the economy, preventing many borrowers from purchasing a home or starting a business. One study found fewer than one percent of debtors eligible to file an undue hardship complaint actually did so. There is a perception that the debtors most likely to succeed are the ones least likely to be able to afford the process.

The early returns in New Hampshire are promising. In one 2022 case pending in New Hampshire Bankruptcy Court as of November 17, 2022, the DOE agreed that the debtor had met all the criteria required by the Attestation Form. The Attestation Form is basically a 15-page affidavit similar to an expanded tax return that also includes the disclosure of expenses and other facts such as age, disability, and unemployment history. These can create certain presumptions that will preclude a debtor from having to prove that present financial circumstances will persist into the future, so as to avoid the sort of crystal ball gazing that makes a trial on an undue hardship complaint a daunting task. In this case DOE stipulated to a complete discharge of all federal student loan debt. *Walsh v. Dept. of Educ.*, AP No. 22-01009, (NH Bk. Ct., final judgment entered 2/9/23). In another adversary proceeding, again filed prior to November 17, 2022, the DOE agreed to a partial discharge of federal student loan debt, based on the Attestation Form procedure. *Thompson v. US DOE*, AP No.

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20-01016 (N.H. Bk. Ct., agreement filed 3/16/23). These types of summary dispositions are encouraging that this process is working.

Adversary proceedings are still required for the DOE to consider an attestation request. Debtors with closed cases will not be able to re-open them in order to file adversary proceedings as these cases are not eligible. The cases need to be filed or pending as of November 17, 2022. As of the writing of this article, this procedure only applied to Direct federal student loans, and did not apply to FFEL loans. The inapplicability of this procedure to FFEL loans was exactly what led to the poor outcome in the *Carney* case. The debtor's payment under a standard repayment plan in *Carney* would have been \$1,500 per month, an amount the court acknowledged the debtor could not afford. It is very likely the debtor in this case would have qualified for the new the attestation procedure if it had applied to FFEL loans. Although Judge Panos left open the possibility of revisiting his decision, consolidating a FFEL loan into a Direct loan would not make this debtor eligible for the attestation procedure because the new loan would become a post-petition debt and not part of a debtor's bankruptcy.

The Attestation form tracks the Brunner test, first adopted by the Second Circuit, even though this test is not accepted in every circuit. Presumably, the DOE wanted a national form that did not vary from jurisdiction to jurisdiction. The First Circuit has not adopted the Brunner test or any other test for that matter. The trial courts here generally follow the totality of the circumstances test. The principal difference between the two is that the Brunner test requires a showing of good faith payments

while the totality of the circumstances test does not. If a debtor has made no payments, never applied for an income driven repayment plan, a forbearance, or a deferment, it may be difficult to demonstrate the good faith required by Brunner. If the failure to enroll in an IDR is due to misinformation or a concern over the tax consequences, it is an open question whether DOE will be flexible enough to relax this requirement. Beyond the good faith payment question, both tests focus on whether a debtor can show an inability to maintain a minimal standard of living if forced to repay the loan and that this problem is likely to persist over the life of the loan. Assets may be considered by the DOE and the exemption of those assets in a bankruptcy does not necessarily preclude them from being considered as part of the DOE's decision to offer a stipulated judgment.

One California bankruptcy judge in discharging a student loan, excoriated the Bench and the Bar for helping to create the hesitancy in pursuing undue hardship complaints, stating, "It is now time to demythologize unwarranted and fallacious dogmas and propaganda that have encrusted, ossified, neutralized, and transmogrified § 523(a)(8) analysis into a misconception that student loan debt is virtually impossible to discharge, even though the "undue hardship" standard of proof is preponderance of evidence, and the standard of appellate review is 'clear error.'" *Love v. Dept of Educ.*, 21-02045 (E.D. Cal. Bk Ct. April 5, 2023).

The new attestation procedure is a good first step towards changing this perception. ■

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a party's examination of the Debtor may be limited in time. Accordingly, be prepared and organized and get to your point and significant questions quickly.

Bankruptcy Rule 2004 Examination

A Bankruptcy Rule 2004 Examination (2004 Exam) is another pre-litigation discovery tool unique to bankruptcy cases and through which an interested party can obtain valuable information about the Debtor.

Bankruptcy Rule 2004 (Rule 2004) provides that upon motion of any party-in-interest, the court may order the examination of *any entity*. Rule 2004 further provides that the examination may relate to the acts, conduct, or property or to the liabilities and financial condition of the Debtor, or to any matter which may affect the administration of the Debtor's estate, or to the Debtor's right to a discharge. This scope of examination is expanded even further in an individual's chapter 13 case and in a reorganization case under chapter 11 where the scope of a 2004 Exam also includes the operations of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the Debtor for purposes of consummating a reorganization plan and any other matter relevant to the Debtor's bankruptcy-

cy case or to the formulation of a reorganization plan.

Clearly, the reach and scope of a 2004 Exam is extraordinary. In addition to examining the Debtor, a party-in-interest, upon appropriate request to the court, may examine any non-debtor person or entity that may have information that falls within the broad scope of Rule 2004. It's important to note again, that litigation need not be commenced or pending to conduct a 2004 Exam.

Furthermore, in addition to oral testimony, a party may also be compelled to produce documents as part of its 2004 Exam. *See Bankruptcy Rule 2004(c)*. This is particularly helpful in getting records from third parties such as financial institutions.

Commencing and prosecuting litigation is time consuming and expensive. Litigation takes on another significant risk when a bankrupt Debtor is the defendant. Using the 341 Meeting and/or a 2004 Exam as an effective pre-litigation

discovery tool may assist an interested party in assessing its claims and determining whether to initiate litigation against the Debtor. ■

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

...in addition to oral testimony, a party may also be compelled to produce documents as part of its 2004 Exam.

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Free Two-Day Training Offered by the NH Court Improvement Project for Attorneys Representing Parents in RSA 169-C Child Protection Cases

By Hon. Susan Ashley

The New Hampshire Court Improvement Project (CIP) is partnering with the National Association of Counsel for Children (NACC) to offer a free two-day webinar series specifically designed for New Hampshire attorneys representing parents in RSA 169-C child protection cases. The live series will address the nuts and bolts of handling abuse and neglect cases, fundamental skills, and best practices that constitute high-quality legal representation of parents. The webinars will cover the practical application of the provisions of RSA 169-C and New Hampshire case law, as well as the Circuit Court's Protocols Relative to Abuse and Neglect Cases and Permanency



Planning. The protocols can be accessed on the Judicial Branch's website.

This series was developed based on feedback the NACC received from focus groups with local parent attorneys and Circuit Court judges. Additionally, two New Hampshire attorneys, Cassandra Brown and Sarah Christie, are serving as consultants with NACC to ensure the training meets the interests identified by New Hampshire practitioners, including preparing for adjudication, concrete trial skills, and effective advocacy. Other training topics will include building the attorney-client relationship and engaging clients impacted by trauma, substance misuse, and mental health.

Kristen Pisani-Jacques, training director for the NACC shares, "Investing in attorney training and education is a key contributor to high-quality legal representation, and NACC is excited to partner with the New Hampshire Court Improvement Project to make this training accessible to all attorneys representing parents in

New Hampshire dependency cases." The CIP is funded by the US Department of Health and Human Services and overseen by the New Hampshire Circuit Court. The purpose of the project is to improve child welfare outcomes for children, youth, and families involved in child protection cases.

The two-part series will be offered on Friday, October 6, and Friday, December 1, from 10:00 am to 3:00 pm. To avoid scheduling conflicts, this training has been coordinated with judicial administrative days. The CIP is offering this training at no cost to registrants and believes the course, and its written materials, meet the requirements of New Hampshire Supreme Court Rule 53 and may qualify for up to eight hours of CLE credit. Current parent attorneys, including those relatively new to this work and those with experience, are invited to register for both days of this training. The deadline to register is Friday, September 1.

Attorneys who are not already taking these cases but interested in representing parents in RSA 169-C cases are encour-

aged to register for this training. Additionally, they should contact their local court clerks about being appointed in these cases. For the first time in more than 30 years, the hourly rate for court-appointed representation in RSA 169-C matters increased from \$60 to \$90 per hour.

Cassandra Brown, an experienced parent attorney, encourages others to register for this training and, if not already doing so, to accept these court appointed cases.

"Parent and family defense is an important practice area. Parents faced with state action to remove or possibly lose their rights to their children are vulnerable. Many of our clients have lived experience in the foster care system or have significant trauma in their lives, and they need the help of skilled practitioners to navigate the system with them and ensure their rights are preserved," she shares.

Anyone interested in registering for this training or learning more about the agenda, please contact Lyndsay Robinson at lnrobinson1889@gmail.com. ■

NH Supreme Court At-a-Glance

JUNE 2023

CIVIL LAW

Dan Hynes v. New Hampshire Democratic Party et. al.
No. 2021-0551
June 1, 2023

Affirmed in part, reversed in part, vacated in part and remanded, with a dissenting opinion from Justice Hicks.

- Whether the trial court erred in granting a motion to dismiss and a motion for summary judgment of claims for defamation per se, defamation per quod, libel, invasion of privacy-false light, and violation of NH RSA 651:5 (2016).

This matter concerns election material that was mailed to registered voters for the New Hampshire District 9 State Senate seat. The Defendant mailed an advertisement, attacking the Plaintiff for a prior conviction, which was later annulled, and alleging that he had been disbarred. The Plaintiff sued, alleging multiple claims relating to and involving defamation and libel.

In concluding that the trial court erred in granting the Defendants' motion to dismiss the defamation claims as it relates to the statement that the Plaintiff had been convicted, the Court engaged in a lengthy discussion and review of the State of New Hampshire annulment statute. Ultimately, the Court, in the majority, determined that the trial court had erred in determining that the Defendant had the available defense of truth as it related to the statements concerning the Plaintiff's prior conviction, since the Plaintiff successfully had the conviction annulled, and since the Defendants had not brought that fact to light in the publication.

In concluding that the trial court erred in granting the Defendants' motion for summary judgment, the Court found that issue of whether the word "disbarred" is substantially true is a question of fact that should be left up to a jury. The Court also agreed with the Plaintiff that there remained

a dispute of material fact as to whether the Defendants had acted with actual malice.

Dan Hynes on the brief for himself. William E. Christie on the brief from Shaheen & Gordon for the Defendants.

S.D. v. N.B.
No. 2022-0114
June 29, 2023
Affirmed.

- Whether the freedom of speech concerns place a limit on the scope of a protective order restricting a defendant's online activity.

This appeal followed a final order being issued against the Defendant in a stalking petition matter in District Court. The facts of the case involved the Defendant developing a fixation on the Plaintiff, and posting numerous comments online, including impersonating the Plaintiff. In his appeal, the Defendant claimed two issues, (1) sufficiency of the evidence, and (2) even assuming the evidence was sufficient to issue a final order, that the final order violated his freedom of speech by limiting what he can say and post online.

The Court addressed the first claim as to sufficiency by concluding that there was an assumption that the evidence was sufficient based on the failure of the Defendant to provide a copy of the trial transcript with his appeal.

The Court began its initial discussion of the freedom of speech issues by reciting broadly how First Amendment restrictions are generally treated, whether the restriction is content-based or content-neutral. The Court noted that the Defendant was being restricted from commenting online about the Plaintiff, including even writing her name on an online forum.

The Court, in the first instance, concluded that many of the Defendant's "postings" communicate a serious expression of an intent to commit an act of unlawful

At-a-Glance Contributor



Sam Harkinson

Sam practices at Seven Rivers Law Office, PLLC, in Barrington, NH.

violence' toward the plaintiff and that a restriction on these points would serve to protect the Plaintiff from the fear of violence and possibility that the threatened violence would occur." Citing and quoting: *Virginia*

v. Black, 538 U.S. 343, 359 (2003).

Moving to consider the additional restrictions that were placed on the Defendant from even mentioning the Plaintiff's name, the Court looked to how other jurisdictions had addressed this issue. The Court noted that different jurisdictions had concluded differently on whether such restrictions were content-neutral or content-based, affecting the level of scrutiny that was required to be applied by a reviewing court. However, the Court ultimately concluded that it, "need not decide today what level of scrutiny applies to orders prohibiting a defendant who has been found to have stalked or abused someone from posting that person's name or image anywhere on the internet because, given

AT-A-GLANCE continued on page 32

NH Circuit Court Judicial Evaluation Notice

In accordance with Supreme Court Rule 56 and RSA 490:32, the New Hampshire Judicial Branch Circuit Court Administrative Judge routinely conducts judicial evaluations and invites you to participate in this process. The following judges are presently being evaluated:

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Judge Michael Mace – Sixth Circuit Courts

Judge Erin McIntyre – Sixth and Ninth Circuit Courts

Judge Janet Subers – First Circuit Courts

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If you would prefer that a hard copy of the evaluation be mailed to you, please e-mail the Circuit Court Administrative Office at lcammatt@courts.state.nh.us or call (603) 271-6418. Please include the name of the judge(s) you would like to evaluate as well as your name and address. As stated above, while responses will be shared with the judges being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do **not** sign the completed evaluation. All evaluations must be completed online or be returned no later than August 21, 2023.

the facts of this case, [the court] conclude[d] that the order survives even strict scrutiny because it is narrowly tailored to serve a compelling state interest.” Citing: *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

Gilles Bissonnette and Henry R. Klementowicz, for American Civil Liberties Union of New Hampshire Foundation and Brian Hauss, Sandra S. Park, and Elizabeth Gyori for American Civil Liberties Union on the Joint memorandum of law as amici curiae. Dana Albrecht, by brief, as amicus curiae. Mary Krueger from New Hampshire Legal Assistance, on the brief, as amicus curiae. Joshua L. Gordon, from the Law Office of Joshua L. Gordon, on the brief, as amicus curiae.

CRIMINAL LAW

The State of New Hampshire v. Ian Boudreau
No. 2021-0350
June 7, 2023
Affirmed.

- Whether a trial court improperly responded to a question from the jury during deliberations, and whether evidence of a defendant’s prior-arrest, invocation of the right to remain silent was improperly introduced during the prosecution’s case-in-chief.

The Defendant was convicted of fourteen counts of aggravated felonious sexual assault. The Defendant’s appeal raised

two issues for the Court to consider. First, whether the trial court improperly responded to a question from the jury during its deliberations, and second, whether the trial court improperly admitted evidence in the State’s case-in-chief of the Defendant’s invocation of his right to remain silent.

During its deliberations, the jury sent the trial court two questions, both dealing with the burden of proof. The first question asked for further information on what “beyond a reasonable doubt” means. The trial court responded with the same definition that was included with the jury instructions in the first instance. The jury then asked a second question, asking, “[i]f you believe it’s more likely than [sic] not that the Defendant [sic] committed [sic] accused crimes, Is that worth of a Guilty verdict?” The Defendant requested a direct answer to the second question, however the trial court opted to respond that, “[t]he burden of proof in this case is proof beyond a reasonable doubt. I have provided you with that definition. You must apply that standard in reaching your verdict on each charge.”

On appeal, the Defendant argued that the trial court failed to answer the question. In rejecting the Defendant’s argument that the trial court failed to answer the question, the Court found that, “we conclude that a reasonable juror would have understood that reiterating the applicable standard, which did not include the term ‘more likely than not,’ meant that the ‘more likely than not’ standard was not to be considered in reaching a verdict.” The Court therefore concluded that the trial court sustainably exercised its discretion in responding to the jury’s question concerning the State’s burden of proof.

In considering the admission of the Defendant’s pre-arrest statements, the Court

concluded that the Defendant had invoked his right to remain silent, and that it was a violation of his Fifth Amendment rights to have the evidence of his invocation of the right to remain silent introduced in the State’s case-in-chief. However, the Court, after engaging in a totality of the circumstances analysis, determined that any error of the trial court in admitting this evidence was harmless error.

The Office of Attorney General John M. Formella, and the Office of Solicitor General Anthony Galdieri, Audriana Mekula, on the memorandum of law and orally for the State. The Office of Appellate Defender, Christopher M. Johnson, Chief Appellate Defender for the Defendant.

The State of New Hampshire v. Michael Jordan
No. 2021-0605
June 29, 2023
Affirmed.

- Whether the trial court erred in its application of NH RSA 651-A:22-a, in determining whether the Defendant was entitled to earned time credits.

The Defendant is currently serving a sentence following a guilty plea to eight counts of aggravated felonious sexual assault in April of 2014. Pursuant to the plea agreement, the Defendant was sentenced to a total of twenty to sixty years, with the further stipulation that the Defendant would not be eligible for “work, programs or supervision outside prison grounds until such time as he is deemed eligible for parole.”

In September of 2014, NH RSA 651-A:22-a, the earned time credits statute, became effective, which afforded prisoners the opportunity to receive reductions in their maximum and minimum sentences upon completion of certain approved programs. The Defendant successfully completed several of the prescribed programs, and in 2021 obtained the commissioner’s recommendation for application of the earned time credit statute.

The Defendant filed a motion to have the earned time credit statute applied to his case. The State filed an objection, citing the seriousness of the Defendant’s crimes, their lasting impact on the victims, and the victims’ opposition to approval. The trial court initially granted the Defendant’s motion, following its decision in a separate case, where it determined that, “...RSA 651-A:22-a prescribed no guidance regarding the court’s approval of earned time credits, thereby affording the court broad discretion, the statute demonstrated the legislature’s intent to ‘incentivize prisoners to

utilize their incarcerated time productively, as part of the rehabilitative goal of sentencing.”

The State moved for reconsideration, arguing that the court had overlooked the victims’ right to appear and be heard at the earned time credits hearing. The Court granted the State’s motion and held a hearing, at which time the State argued that “[t] here should not be any further reductions of things that didn’t exist at the time, or reductions that the family never could have been consulted about.” Additionally, victims were afforded the right to speak.

In reviewing and rejecting the Defendant’s arguments on appeal, the Court was unpersuaded by the Defendant’s three arguments that the trial court had erred in (1) interpreting the statute in a manner contrary to its statutory scheme; (2) speculating that the sentencing judge would not have made the defendant eligible for earned time credits, contrary to the plain language of the statute; and (3) denying the Defendant his constitutional right to equal protection.

The Office of Attorney General John M. Formella, and the Office of Solicitor General Anthony Galdieri, Elizabeth C. Woodcock, senior assistant attorney general, on the brief and orally for the State. Ricard E. Samdperil, from Samdperil & Welsh, PLLC, on the brief and orally for the Defendant.

FAMILY LAW

IN RE: E.R.; IN RE H.R.
No. 2022-0543; 2022-0546
June 29, 2023
Affirmed.

- Whether the trial court failed to apply the proper legal standard in determining the best interest of the children in the context of a petition brought by the Division for Children, Youth, and Families to terminate parenting rights of a parent.

This appeal followed the trial court’s denial of the Division for Children, Youth and Families (the Division) Petition to Terminate the parental rights of the mother of E.R. and H.R. Prior to the Division’s petition, the mother had been adjudicated to have neglected both E.R. and H.R. The trial court held multiple review hearings regarding the mother’s continued supervised care of her children. In October of 2021 a permanency hearing was held, at which point the Division and a GAL both were recommending that the children be formally adopted. The trial court then instructed the Division to file a petition to terminate the mother’s parental rights for the children.


At the hearing on the merits for the

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Division's petition to terminate the mother's parental rights, the trial court found beyond a reasonable doubt that it was not in the best interest of the children to terminate the mother's parental rights, and thus awarded the guardianship to the Department of Health and Human Services, and ordered that the mother pay for temporary child support. The Division appealed the order.

On appeal, the Division argued that the trial court failed to apply the proper legal standard, which should have required the trial court to consider which of the possible alternative disposition is the most desirable for the children. The Court, in rejecting the Division's argument, found that the remedy crafted by the trial court was supported by the statutory structure of NH RSA 170-C. The Court also reviewed the trial court's rationale in making its determination, and found that it was supported the conclusion that the trial court reached.

The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Laura E.B. Lombardi, senior assistant attorney general on the brief and orally for the New Hampshire Division of Children, Youth and Families. W. Daniel Deane and Erin S. Bucksbaum on the brief, and Erin S. Bucksbaum orally of Nixon Peabody, LLP, and Betsy Paine on the brief of CASA of New Hampshire on the brief for Court Appointed Special Advocates of New Hampshire. Evans Law Firm for the mother, no brief filed.

EMPLOYMENT LAW

City of Portsmouth, New Hampshire Police Commission/Police Department v. Portsmouth Ranking Officers Association,

NEPBA, Local 220

No. 2021-0511

June 7, 2023

Reversed in part, vacated, and remanded.

- Whether an arbitrator committed plain mistake in misapplying the after-acquired-evidence doctrine to the application for benefits following the termination of a police officer.

Following the termination of Aaron Goodwin from the City of Portsmouth as a police officer, his union filed a grievance, which triggered a requirement for the parties to arbitrate the matter of Goodwin's termination. Goodwin was terminated by the City of Portsmouth following the results of a task force that was created to investigate Goodwin's possible ethical violations relating to a relationship he had established with Geraldine Webber. The results of the task force lead to his termination from the City of Portsmouth.

Following his termination, and in a separate action in the Circuit Court relating to Ms. Webber's will, Goodwin was found to have exerted undue influence over Webber leading to the Circuit Court to invalidate her last will, which had named Goodwin as a benefactor of several of her assets.

The City of Portsmouth sought to introduce the decision from the Circuit Court in the arbitration relating to Goodwin's termination. Ultimately, the arbitrator determined that it would be admissible only in the remedy phase of arbitration. Following that determination, the arbitrator ultimately determined that the City of Portsmouth did not have just cause to terminate Goodwin, but, in applying the after-acquired-evidence doctrine, that given the determination of the Circuit

Court, that he could not be rehired. The arbitrator therefore awarded Goodwin his back pay for a full two years.

The Court ultimately agreed with the City of Portsmouth and found that the arbitrator had committed plain error in misconstruing how the after-acquired-evidence doctrine, as it relates to the determination of the Circuit Court, should have been applied to the remedy phase of the arbitration.

Thomas M. Closson of Jackson and Lewis, PC on the brief and orally for the plaintiff. Peter J. Perroni of Nolan Perroni, PC on the brief and orally for the defendant.

ADMINISTRATIVE LAW

Petition of M.P. (New Hampshire Department of Health and Human Services)

No. 2022-0181

June 7, 2023

Affirmed.

- Whether a Department of Health and Human Services Administrative Appeals Unit (AAU) decision on finding the petitioner ineligible to receive developmental disability services pursuant to NH RSA 171-A was supported by the evidence presented.

The Petitioner petitioned, by way of writ of certiorari, appealed the determination of the AAU that he was not entitled to developmental disability services pursuant to NH RSA 171-A. The Petitioner was adjudicated to be not guilty by reason of insanity, and was committed to the secure psychiatric unit, where he resided until he was stepped down to the New Hampshire Hospital.

Once relocated to the New Hampshire Hospital, the Petitioner petitioned for developmental disability services in 2020. In his application he listed that he was diagnosed as both schizophrenic, as well as having an autism spectrum disorder (ASD). The local area agency that provides developmental disability services denied his application, reasoning that the Petitioner did not qualify for services pursuant to NH RSA 171-A;2, V. The Petitioner then appealed this decision to the AAU.

After delays, due to the COVID-19 Pandemic, the hearing on the merits was scheduled for June 2021. The focus of the hearing dealt primarily with whether the Petitioner actually had ASD, or whether his symptoms were representative of someone with only schizophrenia. Following the hearing, the AAU found that the evidence presented did not establish the Petitioner had ASD.

In affirming the decision of the AAU, the Court reviewed the different statutory sections that provide for developmental disability services, and concluded that the AAU had correctly determined that the Petitioner did not otherwise qualify for services. The Court also reviewed the evidence that had been submitted at the final hearing, and concluded that the AAU had not impermissibly credited certain testimony without cause.

Sarah J. Jancarik on the brief and Mia A. Fry orally of the Disability Rights Center-NH, Inc. for the Petitioner. John D. MacIntosh on the brief and orally for the Respondent. Thomas G. Bunnell on the brief and orally for Community Services Network, Inc as amicus curiae.

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LD-2023-0008, *In the Matter of William C. Sheridan, Esquire*

On May 18, 2023, the Professional Conduct Committee (PCC) submitted a request from Attorney William C. Sheridan to resign from the bar in accordance with Rule 37(11), along with the PCC's recommendation that the resignation be accepted. The PCC's recommendation was accompanied by an affidavit of Attorney Sheridan, which satisfies the requirements of Rule 37(11). The PCC also recommended that Attorney Sheridan, in accordance with his signed agreement, be assessed the costs incurred in the investigation and prosecution of this matter (Sheridan, William C. advs. Attorney Discipline Office – #21-017).

The court has reviewed the affidavit of Attorney Sheridan and the recommendation of the PCC. In accordance with Rule 37(11), Attorney Sheridan's resignation from the bar is accepted. Attorney Sheridan shall reimburse the Attorney Discipline Office for the costs incurred by the attorney discipline system in the investigation and prosecution of this matter.

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

DATE: June 20, 2023

ATTEST: Timothy A. Gudas, Clerk



LD-2023-0007, *In the Matter of Carol L. Kunz, Esquire*

On April 27, 2023, the Professional Conduct Committee (PCC) filed a recommendation that Attorney Carol L. Kunz be suspended from the practice of law for a period of one year, with the suspension stayed for one year on the condition that Attorney Kunz comply with certain requirements. The PCC also recommended that Attorney Kunz be ordered to pay the costs associated with the investigation and enforcement of the disciplinary matter. The PCC's recommendation approved a stipulation signed by Attorney Kunz, her counsel, and the Attorney Discipline Office's assistant disciplinary counsel, in which Attorney Kunz agreed that she had violated several Rules of Professional Conduct and further agreed that the appropriate

sanction for these violations was a one-year suspension, with the suspension conditionally stayed for one year. Attorney Kunz expressly waived her right to a hearing before the court. In accordance with Rule 37(16), because this matter was resolved by a dispositive stipulation, the court may consider this matter without further notice and hearing.

Based on the parties' stipulation, the PCC found that Attorney Kunz violated the following Rules of Professional Conduct as a result of her failure to file a required answer in a superior court case and her failure to keep her client reasonably informed as to the status of the case, including the status of the required answer:

1. Rule 1.1, which requires a lawyer to provide competent representation to a client;

2. Rule 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client;

3. Rule 1.4, which requires a lawyer to keep a client reasonably informed about the status of the client's matter; and

4. Rule 8.4(a), which states that it is professional misconduct for a lawyer to violate the Rules of Professional Conduct.

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

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

(1) Attorney Carol L. Kunz is suspended from the practice of law in New Hampshire for a period of one year, with the suspension stayed for one year on the condition that Attorney Kunz comply with

the requirements set forth in the stipulation and the agreement to mandatory conditions; and

(2) Attorney Kunz is ordered to reimburse the Attorney Discipline Office for all costs and expenses incurred by the attorney discipline system in the investigation and prosecution of this matter.

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

DATE: June 21, 2023

ATTEST: Timothy A. Gudas, Clerk



LD-2023-0001, *In the Matter of Danilo J. Gomez, Esquire*

On January 12, 2023, the Attorney Discipline Office (ADO) filed a certified copy of the September 1, 2022 order of the Commonwealth of Massachusetts Supreme Judicial Court for Suffolk County (Supreme Judicial Court), which suspended the respondent, Attorney Danilo J. Gomez, from the practice of law in Massachusetts for a period of 30 days. The Supreme Judicial Court upheld findings that Attorney Gomez had offered an unlawful inducement to a witness in a Massachusetts criminal proceeding and had thereby exposed his client to adverse cross-examination and additional criminal liability. The Supreme Judicial Court ruled that Attorney Gomez had violated the following Massachusetts Rules of Professional Conduct, among others: Rule 1.1 (requiring lawyer to provide competent representation); Rule 1.2(a) (requiring lawyer to seek the lawful objectives of the client through reasonably available means permitted by law); Rule 1.7(a) (2) (prohibiting lawyer from representing a client if the representation involves a concurrent conflict of interest); and Rule 3.4(b) (prohibiting lawyer from, among other things, offering an inducement to a witness that is prohibited by law).

As to the appropriate sanction, the Supreme Judicial Court disagreed with the recommendation by the Massachusetts Board of Bar Overseers (BBO) that Attorney Gomez should be suspended for six months and one day. The BBO's recommendation followed a hearing committee's recommendation that Attorney Gomez

should be suspended for a period of four to six months.

Supreme Court Rule 37(12)(d) authorizes this court to impose final discipline identical or substantially similar to the discipline imposed by another jurisdiction unless the court finds, among other possible grounds, that the "misconduct established warrants substantially different discipline in this State." On January 24, 2023, this court issued an order in accordance with Rule 37(12)(d) providing Attorney Gomez and the ADO an opportunity to advise the court if they believed that the imposition of identical or substantially similar discipline would be unwarranted. In response, they each took the position that a 30-day suspension, retroactive to the period of Attorney Gomez's suspension in Massachusetts and his reciprocal "self-suspension" in New Hampshire from October 1, 2022, to October 30, 2022, was warranted.

On March 21, 2023, having reviewed the record of the Supreme Judicial Court, this court concluded that Attorney Gomez's misconduct would warrant substantially more serious discipline in New Hampshire. Accordingly, the matter was referred to the Professional Conduct Committee (PCC) for its recommendation regarding the discipline to be imposed. See Rule 37(12)(e).

On May 18, 2023, the PCC filed its recommendation that this court impose a 90-day suspension from the practice of law in New Hampshire, with Attorney Gomez receiving credit for 30 of the 90 days based upon his reciprocal self-suspension in New Hampshire.

After reviewing the PCC's recommendation and record, the court accepts the PCC's recommendation and orders that Attorney Danilo J. Gomez is suspended from the practice of law in New Hampshire for a period of 90 days, with Attorney Gomez receiving credit for 30 of the 90 days based upon his reciprocal self-suspension in New Hampshire from October 1, 2022, to October 30, 2022.

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

DATE: June 21, 2023

ATTEST: Timothy A. Gudas, Clerk

US District Court Decision Listing

May 2023

* Published

Competency & Speedy Trial Act

5/1/23 *United States v. Berard*
Case No. 22-cr-88-LM (D.N.H.), 23 NH 050P

David Berard faces a single count of making a false statement in connection with the attempted acquisition of a firearm in violation of 18 U.S.C. § 922(a). In November 2022, the court found him not competent to stand trial. In March 2023, Berard moved to dismiss the pending indictment, arguing that the government's delay in transporting him to a hospital for further evaluation following the court's November competency findings violated his rights under 18 U.S.C. § 3161(c)(1)

(the Speedy Trial Act) and 18 U.S.C. § 4241 (the competency statute). The court denied Berard's motion, holding that (1) the delay in transportation did not violate the Speedy Trial Act because § 3161(h) (4) stops the Act's clock after a finding of mental incompetence, and (2) even if the government violated the timeline set forth § 4241, dismissal of the indictment is not the appropriate remedy. 19 pages. Chief Judge Landya McCafferty

Insurance

5/22/2023 *Jespersen, et al. v. Colony Insurance Co.*
Civil Case No. 21-cv-846-JL, Opinion No. 2023 DNH 064

The plaintiffs in this insurance dispute obtained a default judgment in state court against a restaurant in Manchester, New Hampshire, after one of the

plaintiffs fell on the restaurant's premises. The restaurant did not notify its insurance carrier, the defendant, of the incident or the litigation. The defendant first received notice of these issues from plaintiffs' counsel roughly four months after the default judgment was entered. The plaintiffs subsequently filed suit in this court to collect the judgment from the defendant under the insurance policy that the restaurant held at the time of the plaintiff's fall. On cross-motions for summary judgment, the defendant contended that the restaurant's failure to notify it of the plaintiff's fall and the related litigation constituted a material breach of the insurance contract and relieved the defendant of any duty to pay. The plaintiffs, in turn, asserted that the compulsory insurance doctrine applied to nullify the notice defense. Where applicable, this doctrine compels an insurer to pay a judgment creditor notwithstanding any contract defenses it can assert against

the insured party. The court granted the defendant's summary judgment motion, upon finding that the restaurant was delayed in notifying its insurance carrier of the plaintiff's fall, the record indicated no justification for this delay, and the delay resulted in prejudice to the defendant. The court denied the plaintiffs' motion because New Hampshire courts apply the compulsory insurance doctrine only in narrow circumstances, which were not present in this case. 23 pages. Judge Joseph N. Laplante

Fourth Amendment

5/12/23 *Doe v. Commissioner, N.H. Dept. of Health and Human Services*
Case No. 18-cv-1039-LM (D.N.H.), 23 NH 058P

The plaintiffs class seeks prospective injunctive relief to require the Commis-

sioner to provide individuals experiencing mental health crises, who are certified as a danger to themselves or others and involuntarily admitted on an emergency basis to the state's mental health system, timely probable cause hearings with other due process protections. After the New Hampshire Supreme Court issued *Doe v. Commissioner*, 174 N.H. 239 (2021), in which the court construed RSA chapter 135-C to require probable cause hearings within three days after certification, the Commissioner along with the Administrative Judge of the New Hampshire Circuit Court, implemented a system to provide telephonic hearings. The Commissioner moved to dismiss the plaintiffs class's due process claim as moot, and the plaintiffs moved to amend their complaint. The court denied the motion to dismiss and allowed the plaintiffs to supplement their complaint, pursuant to Federal Rule of Civil Procedure 15(d), to add allegations pertaining to telephonic hearings, to add two named plaintiffs, and to add the Administrative Judge as a defendant. The court denied the motion to amend to add claims under the Americans with Disabilities Act and the Rehabilitation Act. 22 pages. Chief Judge Landya McCafferty.

Tax; Constitutional Law

5/26/23 *Harper v. IRS, et al.*
Case No. 20-cv-771-JL, Opinion No. 2023 DNH 066*

In a case involving the constitutionality of the IRS's utilization of its "John Doe" summons procedure to obtain a taxpayer's account information from a virtual currency exchange, the IRS moved to dismiss for failure to state a claim. The court found that the plaintiff did not have protectable Fourth or Fifth Amendment interests in the records produced by Coinbase in response to the John Doe summons. Even assuming that he did, the IRS's actions satisfied the Fourth Amendment's reasonableness requirement and provided him constitutionally adequate process under the Due Process Clause. Regarding the plaintiff's claim that the IRS violated 26 U.S.C. § 7609(f) in procuring the summons, the court found that the statute does not expressly or impliedly provide taxpayers with a private right to sue the IRS for purported statutory violations. But assuming that he had a private right to sue, a different court had already determined that the IRS satisfied the statutory requirements for a John Doe summons, and that determination was not subject to a later collateral attack. Finally, even if the court's decision was subject to collateral attack, the plaintiff's complaint failed to state a claim for a violation of § 7609(f) on the merits. 36 pages. Judge Joseph N. Laplante.

Defamation; First Amendment

5/9/23 *Lewis v. Abramson*
Case No. 22-cv-126-PB, Opinion No. 23 DNH 046

A journalist published a series of statements alleging that an organization and two of its members were right-wing extremists involved in the January 6 insurrection. The organization and its members sued for defamation, false light invasion of privacy, and conspiracy, challenging 41 different statements. The court dismissed the conspiracy claim, finding that the plaintiffs did not adequately allege

the existence of a tortious agreement. The court further dismissed the defamation and false light claims as they pertained to many of the challenged statements. The majority of the challenged statements were statements of opinion based on disclosed facts, and therefore protected by the First Amendment. Additionally, some of the statements were not adequately alleged to be false, and therefore could not support a claim under either theory. However, the court found that seven of the challenged statements could support a claim under defamation and false light, and allowed the claims to proceed to the extent they were based on those statements. 51 pages. Judge Paul J. Barbadoro.

Contracts; Employment Law

5/16/23 *Casey v. St. Mary's Bank*
Case No. 22-cv-252-PB, Opinion No. 23 DNH 063

The plaintiff, a member of the Massachusetts National Guard, sued his former employer for breach of contract after the employer allegedly failed to abide by two provisions in its handbook, one relating to non-discrimination and the other relating to pay for employees on military leave. The employer moved to dismiss, arguing that the handbook did not form a valid contract. The court concluded that the military leave policy did not constitute a contract because the handbook adequately disclaimed the creation of any contractual obligations related to "compensation." Furthermore, the non-discrimination policy did not constitute a contract because the policy could not reasonably be understood as an offer. Accordingly, the motion to dismiss was granted. 14 pages. Judge Paul J. Barbadoro.

Removal Jurisdiction

5/30/23 *Gray v. Gray*
Case No. 22-cv-560-LM (D.N.H.), 23 NH 067P

The Gray brothers have been engaged in litigation for several years about the management of their parents' trusts and their father's estate. This part of the litigation began when Evan Gray filed two petitions in the New Hampshire Probate Court, challenging Skip Gray's execution of his fiduciary duties as trustee of their father's trust. The petitions were consolidated for address by the Probate Court but retained separate case numbers and identities. Skip removed both petitions as a consolidated case to this court. Evan moved to remand the petitions to the Probate Court, arguing that they are separate cases. For purposes of subject matter jurisdiction, the court concluded that the two petitions remained separate and that the court lacked subject matter jurisdiction over the first-filed petition, which required remand of that petition. The court held that the forum defendant rule did not require remand of the second-filed petition, that Skip had not waived the right to remove, and that Burford abstention did not apply. The court remanded the first-filed petition, but the second-filed petition will proceed in this court. 14 pages. Chief Judge Landya McCafferty.

Classifieds

POSITIONS AVAILABLE

TRIAL ATTORNEY – The Department of Justice, U.S. Trustee Program is soliciting interested applicants to fill the positions of Trial Attorney in our Region 1 Boston, MA and Worcester, MA field offices. For additional information, qualification requirements, and application procedures go to <https://www.justice.gov/legal-careers/job/trial-attorney-668> and/or <https://www.justice.gov/legal-careers/job/trial-attorney-667>. Interested applicants should submit your resume no later than Friday, July 27, 2023, to the following email address ustp.employment@usdoj.gov, with the subject line **Trial Attorney-Boston-07-2023** and/or **Trial Attorney-Worcester-07-2023**.

ASSOCIATE ATTORNEY WANTED – Prefer admission to MA, NH & ME and prior courtroom experience as prosecutor or public defender; will consider recent graduates; fast paced trial practice concentrating on DUI Defense/Criminal Defense and Plaintiff's Personal Injury. 40-50 jury & bench trials each year in these areas; Excellent research/writing skills; Salary commensurate with experience; Email resume to moira@bowserlaw.com.

ASSOCIATE – Brennan, Lenehan, Iacopino & Hickey seeks a full-time associate with 2-5 years of experience and a NH license to join its dynamic law practice, including criminal defense, family law, estate planning, personal injury and general litigation. Strong writing skills, interpersonal skills and an ability to work in a fast-paced environment required. Must be comfortable working in a team setting and providing pre-trial litigation support and second chair trial support to start. Competitive wages, health insurance, retirement and payment of Bar dues and CLE credits. Please email resume to wquinn@brennanlenehan.com.

EXPERIENCED STAFF ATTORNEY. The Disability Rights Center – New Hampshire (DRC-NH) seeks an experienced attorney, full time or part time, to join DRC-NH in protecting and promoting the civil rights of people with disabilities. Attorneys with more than three years of civil and/or criminal litigation experience are encouraged to apply. For a complete job description, visit <https://drcnh.org/get-involved>. Please send cover letter; resume; and a writing sample/brief (not to exceed 30 pages) to hr@drcnh.org.

ATTORNEY – You are a motivated, creative, and experienced attorney looking to take on a challenge with colleagues who will help you grow your career, all in a great place to work. You have the ability to articulate yourself in challenging situations, and you do the same with your writing. You are a Vermont-licensed attorney looking to provide advice and counsel on municipal, employment, business, environmental issues and able to litigate disputes in courts across the State of Vermont. This is an opportunity to join Monaghan Safar PLLC as an associate attorney in our Burlington, Vermont office. The firm offers a competitive salary, 401(k) with employer match, health, dental, and vision insurances, paid leave, and the opportunity for a flexible working arrangement, all in a modern working environment. Interested candidates should send a cover letter, resume, and two writing samples to Margie Cain at mcain@msvtlaw.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.

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.

OFFICE SPACE

MANCHESTER: Desk space, solo or satellite professional space, furnishings, parking, utilities. rjj911@myfairpoint.net.

CHICHESTER – Two 800 +/- office suites, each with parking, bathroom, kitchenette on busy Rte 4 in Chichester. Can be rented separately or together. Contact: andruvolinsky@gmail.com.

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 \$93,328.95 (effective July 14, 2023), and a comprehensive benefits package. Benefits Summary ([nh.gov](#))

DCYF Attorney Duties include:

- Litigating 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: JD from an accredited law school, NH 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.

Litigation Associate

Laboe & Tasker, PLLC, a small boutique elder law, estate planning, and business planning firm with a state-wide practice located in Concord, NH, seeks an ambitious attorney looking to handle litigation matters. The firm litigates matters directly related to its areas of transactional practice.

The ideal candidate will have at least 2-5 years of experience in any area of civil litigation, and strong research, writing, and communication skills. Recent law school graduates with some prior law office experience will also be considered. Excellent interpersonal and time management skills required.

Contested probate matters will be the primary focus of this position but will not be the exclusive scope of litigation matters undertaken. Our firm environment is collaborative, collegial, and supportive. Competitive compensation and excellent benefits offered.

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



SEEKING NEW HAMPSHIRE COMMERCIAL ATTORNEY WILLING TO WORK A HYBRID POSITION

Alfano Law provides a variety of legal services to business and individual clients. Its major practice areas include roads and easements, commercial real estate, real estate litigation, tax law, estate planning, and probate. The firm has locations in Concord, Bedford, Keene, and Portsmouth, NH. We are currently looking to hire full-time for the following position:

- Commercial Real Estate Associate with 5+ years of experience. Ideally candidates would have experience with purchase and sales, leasing, zoning, titles, closings, and LLC's. Must be admitted to practice in New Hampshire.

Benefits include: • Health Insurance (Full-Time) • 401K (Full-Time) • Dental Benefits

Interested candidates may submit cover letter and resume to:
Deb Alfano at dalfano@alfanolaw.com



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.

We are a community-focused and team-based firm with an emphasis on the work/life balance that includes the opportunity for a flexible schedule and working remotely. We provide a collegial and upbeat work environment with many perks to be appreciated by a new member to our team. Salary is commensurate with experience and qualifications.

Please send your cover letter, resume and salary requirements to:
Employment@MorneauLaw.com

Probate & Trust Associate

Laboe & Tasker, PLLC, a small boutique elder law, estate planning, probate and trust administration firm with a state-wide practice located in Concord, NH, seeks an attorney to handle probate, trust, and guardianship administration.

The ideal candidate will have at least 2-5 years of experience in handling probate and trust matters, including appearances before the probate court, preparation of fiduciary accountings, and related tax matters. Recent law school graduates with some prior experience with accountings or administering estates will also be considered.

Our firm environment is collaborative, collegial, and supportive. Competitive compensation and excellent benefits offered.

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

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The Office of Public Guardian (OPG) invites interested candidates to apply for the opportunity to lead this highly regarded organization as its next Executive Director. The Executive Director will join a team of experienced and dedicated professionals to advance OPG's mission to protect the legal rights and civil liberties of all individuals it serves by exercising the highest ethical standards in advocacy and decision-making.

OPG has 45 years of experience providing guardianship and trustee services to legally incapacitated adults throughout the state. The Executive Director serves as the Chief Executive Officer and is responsible for the overall management of the organization, serving under the general oversight of its board of directors and collaborating closely with department directors to assure that its 1200 clients, 50+ employees and key stakeholders are well served and supported. Candidates should have a Juris Doctor or Master's Degree in a related field, 10+ years of leadership/organizational management experience and a working knowledge of guardianship practice in NH.

The Board of Directors is prepared to offer a competitive salary and benefits package to the highly qualified candidate. Please see full posting on the OPG website at <https://www.opgnh.org/about-us/executive-director-position/>. Applicants should send a detailed letter of interest along with resume by 8/1/23 to info@opgnh.org. All applications will remain confidential.

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. This is not a remote-work position. More information may be found at www.gencourt.state.nh.us. The application deadline is July 31, 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

NEW HAMPSHIRE JUDICIAL COUNCIL EXECUTIVE DIRECTOR

THE NEW HAMPSHIRE JUDICIAL COUNCIL seeks applications from persons interested in receiving an appointment to serve as its executive director. Since 1946, the Judicial Council has served as an institutional forum for the on-going and disinterested consideration of issues affecting the administration of justice (RSA 494:3). The executive director oversees an executive-branch agency responsible for managing the delivery of indigent defense services in criminal cases, guardian ad litem services in child protection cases, and carrying out other statutory duties. The executive director also represents the agency before the legislature and executive branch on funding matters and other matters relating to the administration of justice, and serves on designated boards.

The complete position description can be found on the homepage of the Judicial Council's website, www.judicialcouncil.nh.gov, or by contacting the Council directly. For information regarding salary and benefits, please contact the Council's Acting Executive Director. A cover letter and resume should be delivered via email to the attention of: Richard E. Samdperil, Acting Executive Director, New Hampshire Judicial Council, Richard.E.Samdperil@jc.nh.gov, 603-271-3592.

Applications will be reviewed when received. The last date for submission is July 31, 2023.

DEVINE MILLIMET WE ARE HIRING ATTORNEYS AT LAW

LITIGATION ATTORNEY

Admission to the NH Bar and 4-10 years experience required

Devine Millimet offers competitive salaries, a formal bonus program for associates, attractive growth opportunities, a comprehensive benefits package, and flexibility for a hybrid work schedule.

We are an equal opportunity employer.

If you are as passionate about service as we are, visit devinemillimet.com/careers/current-openings or scan the QR code to get started!



JOIN OUR TEAM. MAKE AN IMPACT.

MANCHESTER | CONCORD | PORTSMOUTH

Notice of Request for Proposals - Trial Skills Training

The State of New Hampshire, through the Judicial Council, is soliciting bids for an intensive trial skills training program. The Request for Proposals seeks bidders interested in, and capable of, providing quality criminal-defense training and mentoring to lawyers with less than 3 years of defense experience and to lawyers new to New Hampshire practice, who agree to accept indigent defense contracts or assigned counsel cases.

The RFP document may be obtained at www.nh.gov/judicialcouncil, on the Department of Administrative Services procurement website, or by contacting Richard E. Samdperil, Acting Executive Director, New Hampshire Judicial Council, State House Annex - Room 120, 25 Capitol Street, Concord, NH 03301; Richard.E.Samdperil@jc.nh.gov.

The deadline for receipt of proposals is August 1, 2023, at 4:00 p.m.

Hamblett & Kerrigan

ATTORNEYS AT LAW

Trust and Estates Laterals

Hamblett & Kerrigan, P.A. seeks a partner-level lateral attorney to join its busy trust and estates department at its Nashua office. We are interested in an attorney who has the skill and experience to immediately handle complex estate matters and values being part of a collegial, tight-knit team. The professionals at Hamblett & Kerrigan enjoy a healthy work-life balance, work collaboratively on case and management tasks, and are committed to a long-term presence in the Greater Nashua and southern New Hampshire region. Hamblett & Kerrigan provides its attorneys with excellent 401(k), health and dental benefits, as well as flexibility regarding remote and onsite hours. Interested candidates should contact Kim Childs at kchilds@hamker.com

Laterals and Experienced Solos

Are you an experienced attorney who is unhappy with your current work environment? Are you an experienced solo practitioner in Greater Nashua who is tired of handling all administrative tasks associated with your practice? Hamblett & Kerrigan, P.A. in Nashua seeks talented laterals and partner-level attorneys who value a healthy work-life balance, have capacity to take on additional work, and are committed to a long-term, professional presence in the Greater Nashua and southern New Hampshire region. The professionals at Hamblett & Kerrigan enjoy a collegial and informal workplace and work collaboratively on case and management tasks. Hamblett & Kerrigan provides its attorneys with excellent 401(k), health and dental benefits, as well as flexibility regarding remote and onsite hours. Interested candidates should contact Kim Childs at kchilds@hamker.com

nashualaw.com

Join our professional team!

Immigration Attorney

Looking for a change from the "firm" environment or tired of a long commute? GoffWilson is a regional and national immigration practice with a global presence and a substantial client base. We are seeking an Immigration Attorney with at least 5 years of immigration experience in a broad range of business immigration including; H, L, E, P, O Visas and PERM.

We offer an outstanding opportunity for a seasoned immigration practitioner wanting a quality work/life balance and long term security. Candidates should have a track record of exceptional client service. Compensation is based on experience and portfolio.

Paralegal

Immediate opening for an experienced paralegal. Role includes assisting clients with completion of applications for the immigration process. Our clients include employers and/or individuals seeking visas or permanent resident status. The candidate is responsible to maintain assigned cases by gathering information from clients, preparing petitions and managing immigration files. This position requires regular contact with clients and appropriate government agencies.

As a Paralegal, you must have an interest in immigration and stay current on immigration issues. A Bachelor's Degree in Paralegal studies is preferred or 3 years prior experience working as a paralegal. Some knowledge of immigration process is helpful but not required. No JDs, LLBs, LLMs, or current/matriculating law students please. This is a full time in office position. Ability to speak a second language is helpful.

If you want to practice immigration law with people passionate about what they do, please send resume and letter of interest in confidence to:

hiring@goffwilson.com

Competitive salary and generous benefits package is available.

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Immigration Law

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Our focus is immigration law 800.717.8472 goffwilson.com



ENERGY, ENVIRONMENTAL, AND TELECOMMUNICATIONS ATTORNEY

Downs Rachlin Martin PLLC (DRM) – one of Northern New England’s largest law firms - is seeking an energy law / public utility attorney with at least two years’ experience to join the firm’s Energy, Environment, and Telecommunications Industry Group in its Burlington, Vermont office. The ideal candidate will have experience in permitting and regulatory compliance, commercial energy transactions, and public utility regulation, including practice before or in connection with the public utility commissions of Vermont and New Hampshire, the New Hampshire Site Evaluation Committee, and/or municipal planning and zoning entities in either state. Work will include siting support for renewable energy and storage facilities, involvement with major regulatory proceedings, and transactional work on behalf of project sponsors, investors, and lenders.

This is a unique opportunity to join our team of industry-leading energy law and public utility professionals based in our Burlington and Lebanon, New Hampshire offices. Consistently ranked among the best places to live in the U.S. by numerous publications, Burlington provides a vibrant cultural environment, a thriving downtown, and a welcoming community, with easy access to mountains and lakes.

DRM offers excellent mentorship and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including paid parental leave and two generous retirement plans.

If these qualifications and skills match yours, we would like to hear from you.

Requirements

Research, analyze and understand specific areas of law. Excellent writing and verbal communication skills. Assist group attorneys in regulatory and siting permitting.

Minimum Qualifications

J.D. from an accredited law school.

Desired Qualifications

Experience or advanced degrees in environmental, energy or telecommunications.

Apply Here: https://www.appone.com/MainInfoReq.asp?R_ID=5589574

LABOR & EMPLOYMENT ASSOCIATE ATTORNEY

Downs Rachlin Martin PLLC (DRM) - one of New England’s largest law firms – has a great opportunity for an associate attorney to join its Labor & Employment Group in its Burlington, Vermont office.

Experience in representing clients before administrative agencies in employment-related claims, litigating on behalf of management, counseling on employment matters and representing management in traditional labor is preferred. The ideal candidate has relevant experience, including a clerkship, exceptional written and communication skills, and wants to be a part of a team of attorneys committed to delivering top-quality legal services to growing and successful businesses. This is a unique opportunity to work with and learn from a team of industry-leading labor & employment professionals in Burlington, a location which is consistently ranked among the best places to live in the U.S. by numerous publications. Burlington provides a vibrant cultural environment, a thriving downtown, a welcoming community, easy access to mountains and lakes, and short commutes.

DRM is committed to client service and investing in our attorneys’ professional growth and development, offering excellent mentorship and training, as well as leading technology, competitive salary, and a comprehensive benefits package, including paid parental leave and two generous retirement plans.

Apply here: https://www.appone.com/MainInfoReq.asp?R_ID=5508060

Staff Attorney City of Portsmouth

Overview: The Staff Attorney supports the Legal Department’s mission to provide quality, efficient, cost-effective legal services to the municipality. The City Legal Department advises and represents all the disparate elements of the City government, including the General Government, the School Department, the Police Department, the Fire Department and all the various boards, commissions, and committees. Incumbent will communicate effectively with the public and representatives of the municipality. Incumbent will, among other duties, review and prepare contracts, easements and respond to public records requests. Work will be completed both independently and collaboratively. May be required to work outside of normal working hours and/or weekends.

Qualifications: A candidate for this position must have a Juris Doctor Degree, two (2) to four (4) years of legal experience preferred; or any combination of education, training, and experience with provides the knowledge, skills and abilities required for the job. Admitted to the New Hampshire Bar or be eligible for immediate admissions by waiver. A valid driver’s license is required.

Salary range: \$75,629.86 - \$91,928.57

Please see full posting here: <https://www.cityofportsmouth.com/hr/work>



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: \$73,486.40 - \$102,876.80, 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 and drug testing for new hire. Criminal records check required.

Orr&Reno Litigation Attorney

Orr & Reno, PA seeks a mid-level (3-5 years) litigation attorney to join our firm and work on a wide variety of disputes in state and federal courts, administrative tribunals, and private mediations and arbitrations.

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

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

Please submit a cover letter, resume, transcript and writing sample to:

Orr & Reno, PA
Attention: HR Coordinator
PO Box 3550, Concord, NH 03302-3550
Fax: (603) 223-9060
Email: resumes@orr-reno.com (Word format)
No phone calls or agencies
EOE

City Prosecutor City of Concord, NH

A Unique Opportunity: The City of Concord is recruiting a City Prosecutor to supervise and lead the City Prosecutor's Office, consisting of 4 Assistant City Prosecutors and support staff. Candidates should be highly motivated & experienced in the prosecution of criminal complaints, have office management experience, and the ability to render advice on criminal law to the police department.

Minimum Qualifications: Juris doctorate, and, 5 years of experience as an attorney. Must be a member of the New Hampshire Bar Association.

Starting Salary Range: \$94,432.00-\$133,390.40, DOQ, with a competitive flexible benefits package.

Instructions for Applying: Submit cover letter and resume to the Human Resources Department via <https://www.governmentjobs.com/careers/concordnh>. The position will remain open until filled. For more information visit www.concordnh.gov or call (603) 225-8535, or TTY at 1-800-735-2964 or 7-1-1. "An Equal Opportunity Employer M/F/DP/V and LGBTQ"

Part-Time-Assistant City Prosecutor City of Concord, NH

The **City of Concord** is seeking an attorney with 3-5 years' experience to serve as a part-time **Assistant City Prosecutor** (up to 29 hours per week) to manage criminal cases in the City Prosecutor's Office.

Hourly wage range: \$37.26-\$53.96.

Submit cover letter and resume to the Human Resources Department via the **Application:** at <https://www.governmentjobs.com/careers/concordnh>. The position will remain open until filled. For more information visit www.concordnh.gov or call (603) 225-8535, or TTY at 1-800-735-2964 or 7-1-1. "An Equal Opportunity Employer M/F/DP/V and LGBTQ"

Assistant/Associate Professor Environmental Advocacy Clinic (EAC) Vermont Law and Graduate School Salary Description: \$85,000-\$100,000 Job Type: Contract

Position Summary:

The Environmental Advocacy Clinic at Vermont Law and Graduate School (VLGS) is hiring an Assistant/Associate Professor of Law to supervise and teach clinic students working on litigation and advocacy matters addressing important environmental and natural resources issues. An applicant should have an enthusiasm for working with law students who are eager to learn and practice skills.

For more information and to apply directly, please visit <https://www.vermontlaw.edu/community/about-vls/employment-opportunities>.

Assistant Corporation Counsel City of Nashua

DEPARTMENT: Legal

HOURS WORKED: Monday - Friday (8:00am to 5:00pm)

AFFILIATION: Unaffiliated

SALARY & GRADE: Grade 18, Salary not to exceed \$110,000

PRIMARY DUTIES

This position will assist the Corporation Counsel in fulfillment of duties as the chief legal officer of the city. The position acts in place of Corporation Counsel when advising city officials or representing the city to outside persons and organizations. Responsible for the satisfactory performance of all the legal work of the city and must keep current with respect to all laws and regulations affecting the city; requires admission to the bar and to practice in all New Hampshire state and federal courts.

QUALIFICATIONS

Minimum of three(3) years relevant work experience; must be proficient with computers and all software necessary to do this job; Juris Doctorate; combination of experience and education will be considered.

APPLICATION PROCEDURE

Submit cover letter, application, and resume, three professional/academic references and a writing sample at: <http://applitrack.com/nashua/onlineapp/>

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Recruiting practices shall be consistent with State and Federal Law (2/14/2023)



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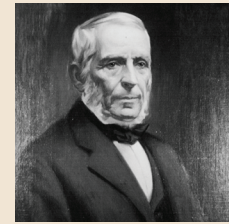
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A 150-Year History of the New Hampshire Bar Association

1873

On July 2, the Bar Association of the State of New Hampshire (BASNH) is established. New Hampshire becomes the first state to establish a "modern state bar association" with incorporation, by a special act of the state legislature, making it the oldest statewide bar organization in the United States. Ira Perley is the first Bar president.



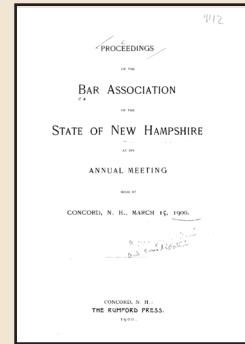
1890

Marilla M. Ricker (first woman to vote in NH) files *Petition of Ricker*, wherein the NHSC holds that women may be attorneys. Despite her success, Ricker never becomes a member of the NH Bar.



1900

The first Annual Meeting is held.



1917

Agnes Winifred McLaughlin becomes the first woman admitted to the NH Bar.



1930

The first Midwinter Meeting (now called Midyear Meeting) is held.

1935

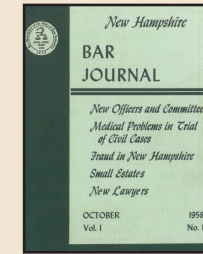
Idella B. Jenness becomes the first female municipal court judge.

1946

The Law Related Education (LRE) program is established to educate youth on the legal system. A Junior Bar Program is inaugurated for younger lawyers.

1958

The first issue of *New Hampshire Bar Journal* is published.



1960

The Client Indemnity Fund establishes to help ensure client security. An attorney income survey is conducted: Average salary was \$12,261, with a high of \$41,166 and a low of \$800.

1964

The NH State Constitution is amended to require that counsel be provided at public expense for indigent persons accused of a crime punishable by any imprisonment. Ivorey Cobb becomes the first African American to be appointed as a judge in NH.



1966

The BASNH establishes a policy waiving dues for newly admitted attorneys for their first year and exempting active-duty armed forces personnel from dues payment while in the service.

1967

The BASNH successfully petitions the NH legislature to amend the acts of incorporation to change the organization's name to New Hampshire Bar Association.

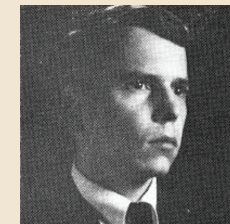


1968

In April, a majority of members vote in favor of unification. In October, the NHBA files a Petition of Unification with the NHSC. On December 31, the Court rules that it has jurisdiction to decide on the NHBA's request and orders unification for a three-year trial period.

1969

The NHBA hires Joseph S. Hayden as its first full-time Executive Director.



1972

The NHSC orders that Bar unification be "continued without limitations." NH Public Defender is formed.



1973

The NHBA commemorates its 100-year anniversary. Bar membership grows to 920 members. Franklin Pierce Law Center establishes. Jean K. Burling becomes NH's first female district court judge.



1974

New Hampshire Law Weekly debuts as an official publication of the NHBA.



1976

The NHBA begins its involvement with judicial selection via an agreement with then Governor Meldrim Thomson. The NHBA launches its Continuing Legal Education (CLE) Program and becomes the first less than 2,000-member state bar association to hire a full-time CLE director.



1977

The New Hampshire Bar Foundation (NHBF) is established as the charitable arm of the NHBA. Nancy O. Dodge becomes the 100th female lawyer admitted to the NH Bar.

1979

The NHBF launches a fund drive to provide money for the purchase of a Bar Center. NHBA establishes its Lawyer Referral Service (LRS).

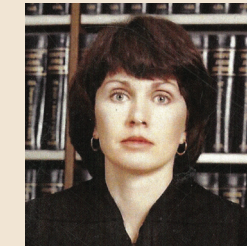


1979

The NHBA becomes the first state bar association of its size to win the ABA Award of Merit for Overall Excellence. It also wins the ABA's Award of Merit for Single Project Excellence for its Pro Bono Referral System (Pro Bono Program).

1980

Linda S. Dalianis is nominated by Governor Hugh Gallen to become NH's first female Superior Court judge.



1980

Bar members vote for mandatory practical skills course. The first Bar Center opens at 18 Centre Street in Concord, centralizing several offices, including NHBA, NHBF, LRS, Pro Bono Program, and Elderly Legal Services Department.



1982

NH becomes the second state in the nation to establish an operational Interest on Lawyers Trust Accounts (IOLTA) Program. William L. Chapman is the first recipient of a President's Award at Midyear Meeting (for outstanding service to the NHBA).

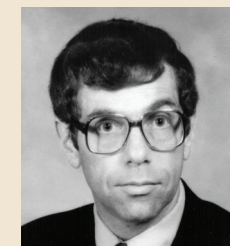


1985

The US Supreme Court affirms that NH's residency requirement for admission to the Bar violates the privileges and immunities clause of the US Constitution. The NHBA conducts and publishes the results of its first Economic Survey. The Reduced-Fee Referral Program is established (later becomes the Modest Means Program).

1985

Then-NHBA president L. Jonathan Ross co-founds the national "Bar Leaders for the Preservation of Legal Services to the Poor."



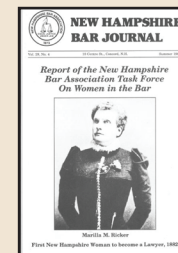
1986

The NHSC adopts new Rules of Professional Conduct. In *Petition of Chapman*, the NHSC lays out a set of guidelines for permissible NHBA legislative activity. The We the People: The Citizen and the Constitution educational program is established.



1988

The NHBA's LawLine debuts. The *New Hampshire Bar Journal* publishes the "Report of the NHBA Task Force on Women in the Bar" as the first gender survey of NHBA's membership.



1990

The *New Hampshire Bar News* debuts as a bi-weekly publication in newsletter format. New Hampshire Law Weekly ceases publication. NHBA moves its location to a larger facility at 112 Pleasant Street in Concord.



1992

The NHBA's Pro Bono Program establishes its domestic violence emergency (DOVE) Project to assist victims of domestic violence with protective orders. Patti Blanchette becomes the first female NHBA president.

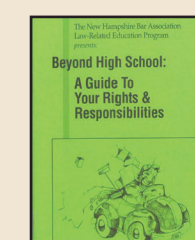


1994

The NHBA Gender Equality Committee is created.

1996

The NHSC adopts Rule 53 establishing a mandatory minimum CLE requirement. The NHBA's Law Related Education Program publishes the *Beyond High School: A Guide to Your Rights and Responsibilities* booklet.



1998

The NHBA launches its first website. *New Hampshire Bar News* wins the NABE Luminary Award for Excellence in Bar Association Publications.



1998

The NHSC adopts Rule 55, establishing a Public Protection Fund to provide reimbursement for losses resulting from attorney theft of client funds. The NHBA is asked by the NHSC to appoint an oversight committee and administer the rule. The NH Women's Bar Association is formed.



2000

Linda S. Dalianis becomes the first female NHSC justice; later becomes the first female Chief Justice in 2010.

2001

The NHBF awards a record \$1.3 million in IOLTA grants. The NHBA e-mails its first E-Bulletin to members.

2002

The NHSC approves Admission on Motion, to take effect on March 1, 2003.

2004

By a 3-1 majority, Bar members vote in favor of the continuation of the unified Bar. The NHSC rules that RSA 311:7g requiring a vote on unification every five years is unconstitutional, reaffirming that the NHSC has the authority to supervise the practice of law in the state.



2004

Kelly Ayotte becomes the first female Attorney General of NH.



2005

The Daniel Webster Scholar Honors Program is established at Franklin Pierce Law Center (now UNH Franklin Pierce School of Law or UNH Law).



2006

The NHBA and NHBF move the Bar Center to its current home, 2 Pillsbury Street in Concord. The first NHBA Member ID cards are issued.



2008

The *New Hampshire Bar News* moves to a monthly publication schedule.

2010

The NHBA launches the Leadership Academy to develop younger lawyers as future leaders of the NH Bar.



2012

The NHBA begins participation in and offering support with the nationwide SOLACE (Support of Lawyers/ Legal Personnel - All Concern Encouraged) Program to assist lawyers and legal staff in situations of grief.

2013

Landya B. McCafferty becomes the first female US District Court for the District of NH.



2017

The NHBA, NHBF, and NHWBA hold a Centennial Celebration Gala to honor 100 years of women lawyers in NH.



2020

The Annual Meeting is canceled due to the COVID-19 pandemic. The Bar Center closes, and staff works remotely from March until June, when hybrid work begins.

2021

The Midyear and Annual Meetings are held online due to the ongoing pandemic. CLE begins to offer substantially more robust online CLE programming.

2021

The NHBA's Pro Bono Program merges with Legal Advice and Referral Center to become 603 Legal Aid, a standalone non-profit organization, and moves to a separate location.



2022

The NHBF releases the results of its first Diversity and Inclusion survey. The NHBA establishes a Diversity, Equity, and Inclusion Standing Committee.

2023

UNH Law celebrates its 50th anniversary. NHWBA celebrates its 25th anniversary. Talesha Saint-Marc becomes the first black female to serve as a federal magistrate judge in NH.



2023

The NHBA celebrates its 150th anniversary. Bar membership hits 8,678 members.

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