Terrie Harman Makes Her First-Ever SCOTUS Appearance in Bankruptcy Case Involving Tribal Immunity

By Tom Jarvis

For Exeter attorney Terrie Harman, appearing before the US Supreme Court (SCOTUS) for the first time on April 24, 2023, was exhilarating. It’s a great privilege and a rare opportunity to appear before SCOTUS, and that is not lost on Harman. “It’s every lawyer’s dream to go to the US Supreme Court,” she says. “It was incredibly exciting. I can hardly believe that I went.”

Harman graduated from Franklin Pierce Law School in 1978 and began working at Pine Tree Legal Assistance in Bangor, Maine. There, she learned about bankruptcy law while representing indigents and developed a passion for the Bankruptcy Code. In the 1980s, she started her own firm, Harman Law Offices, where she was heavily involved in bankruptcy litigation and later became a Chapter 7 Bankruptcy Trustee.

Nowadays, her practice is mostly about bankruptcy law while representing clients around the country. Indeed, Harman represented a client named Brian Coughlin in a Chapter 13 bankruptcy case involving tribal immunity. Gottlieb was representing a client that would place her on a trajectory to the US Supreme Court, “It’s every lawyer’s dream to go to the US Supreme Court,” she says. “It was exhilarating. It’s a great privilege.”

When the Bar Association of New Hampshire – as it was then called – was established in 1873 as a philanthropic club of “like-minded attorneys,” it consisted of all men. It wasn’t until 1917, three years before congress ratified the right to vote for women, that Agnes Wimfird, “Winnie” McLaughlin became the first woman admitted as an attorney to the Bar. More than seven decades would pass from that time before the first woman would be named president of the Bar in 1992.

For nearly 100 years, the Bar Association resembled a “quasi social networking organization,” says NHBA Executive Director George Moore. “For a long time, the Bar existed mainly as a place for lawyers from around the state to trade information about how judges were ruling and to stay connected socially.”

In 1972, the Bar—which had about 1,600 attorneys at the time—became the New Hampshire Bar Association (NHBA) and took on the role of licensure from the courts, as well as professional development and pro bono services. Today, the NHBA serves nearly 4,000 lawyers, as well as judges, the courts, and the public through its various programs.

For more than 30 years, various individuals and organizations such as the New Hampshire Bar Foundation (NHBF), the New Hampshire Supreme Court Society (NHSCS), and the King Law Library, have been preserving state’s legal history for future generations. Their combined work—through archiving and video-interviews, publication of the Bar’s official history, and updates regarding real property law—through archiving and video-interviews, publication of the Bar’s official history, and updates regarding real property law—through archiving and video-interviews, publication of the Bar’s official history, and updates regarding real property law.
2023 NHBA Annual Meeting: Honoring the 2023 Award Recipients and Celebrating 150 Years of the Bar Association

By Jonathan Eck

On June 23, 2023, the New Hampshire Bar Association will hold its 2023 Annual Meeting at the AC Hotel in Portsmouth. The Annual Meeting represents the celebration of the work that the Association has done over the course of the year, as well as an opportunity to recognize this year’s recipients of three very important annual Bar Association awards.

This year, the NHBA recognizes three very distinguished and accomplished individuals. First, New Hampshire Superior Court Chief Justice Tina Nadeau will receive the Justice William A. Grimes Award for Judicial Professionalism. The Grimes Award is given each year to a judge who best reflects the highest standards of integrity, legal knowledge and ability, judicial temperament, diligence, and compassion. Chief Justice Nadeau was appointed as Chief Justice of the New Hampshire Superior Court in 2011, after serving there as an associate justice since 1996. Prior to her appointment, Chief Justice Nadeau was with the Criminal Justice Bureau of the Office of the Attorney General and, thereafter, was legal counsel to Governor Stephen Merrill. Chief Justice Nadeau has been praised for her distinguished tenure on the bench, and she has received awards and honors recognizing her leadership and achievement at both the state and national level on matters relating to drug courts.

Tom Quarles from Devine Millimet will also be recognized at the Annual Meeting. He will receive the Association’s Distinguished Service Award to the Legal Profession. Tom started as a member of the Association’s Client Indemnity Fund in 1990. That fund was an attempt by the Association to compensate victims of lawyer theft from a pool of voluntary contributions made by motivated lawyers. Eventually, the former Client Indemnity Fund transitioned into what is now the Public Protection Fund, which is funded through mandatory annual contributions from actively practicing Bar members. Tom has served on the Public Protection Fund for two and a half decades now, dating back to his appointment as a charter member of the first Public Protection Fund Committee when it began its work in 1998. Since 2013, Tom has served as Chair of that Committee. For over three decades now, dating back to 1990, Tom has been a stalwart through the Bar in helping the legal profession reimburse proven claims of lawyer theft, helping to uphold the profession’s promise of integrity to clients. At Devine Millimet, Tom maintains a general commercial litigation practice that includes, in part, land use and environmental matters, probate and trust litigation, Medicaid provider issues for social security agencies and long-term care facilities, and ski accident litigation.

The New Hampshire Bar Association is pleased to announce Caitlin Dow and Barbara Valenti as our newest staff members.

Caitlin Dow is the NHBA’s new MarComm Director and Accounts Receivable Administrator. In her new role, Dow will be responsible for developing and executing a strategic communications plan that supports our mission and ensures we are presenting a unified voice and brand. Dow possesses a bachelor’s degree in journalism from Penn State University and worked for more than five years at Page Street Publishing, where she was a Senior Non-Fiction Editor. In that position, she co-managed a staff of editors and editorial assistants. Prior to that, she worked as a publicity and events manager for a small press in Massachusetts.

“After more than 10 years in the publishing industry, I’m thrilled to put my communications and writing skills to work for the NHBA,” Dow says. “It’s an important organization with an admirable mission, and I look forward to working with my incredible team and the rest of the association in this new role.

Barbara Valenti is the new NHBA Accounts Receivable Administrator, responsible for invoicing and cash receipt functions for both the NHBA and the New Hampshire Bar Foundation, including annual membership license renewal processing and related member support.

Prior to joining the Bar Association, Valenti was a financial coordinator for Evergreen Management Group for 10 years. There, she prepared monthly financial reports to the board of directors for a portfolio of 57 associations consisting of both residential and business properties.

“I am excited to be a part of the New Hampshire Bar Association,” Valenti says. “I look forward to learning more about this industry and supporting our members.”

NHBA Welcomes New MarComm Director and Accounts Receivable Administrator

By Jonathan M. Eck

Orr & Reno
Concord, NH

President’s Perspective

The former Client Indemnity Fund transitioned into what is now the Public Protection Fund, which is funded through mandatory annual contributions from actively practicing Bar members. Tom has served on the Public Protection Fund for two and a half decades now, dating back to his appointment as a charter member of the first Public Protection Fund Committee when it began its work in 1998. Since 2013, Tom has served as Chair of that Committee. For over three decades now, dating back to 1990, Tom has been a stalwart through the Bar in helping the legal profession reimburse proven claims of lawyer theft, helping to uphold the profession’s promise of integrity to clients. At Devine Millimet, Tom maintains a general commercial litigation practice that includes, in part, land use and environmental matters, probate and trust litigation, Medicaid provider issues for social security agencies and long-term care facilities, and ski accident litigation.

PERSPECTIVE continued on page 7
The DOVE Project began in the early 1990s as an initiative of the Pro Bono Program, in a collaborative effort with the crisis centers and volunteer attorneys throughout the state, to provide victims of domestic violence (DV) with civil emergency legal services at their final protective order hearing. It has since grown to include assistance with stalking, as well.

In 2021, the DOVE Project moved from Pro Bono to 603 Legal Aid (603LA) after Pro Bono and the Legal Advice and Referral Center merged. "This collaboration with crisis center advocates, volunteer lawyers, DOVE staff, and other community stakeholders – we couldn’t survive without it," Dodge says. "The impact it has on people is like a ripple effect. We help so many people, but it’s not just that one person. It’s their kids, their parents, their friends. So, when you help that one person, you’re really helping a community. It’s kind of generational. As a survivor, if you can get yourself independent and away from the abuse, what it does for your children – that generational ripple is huge."

603LA Deputy Director Emma Sisti says they are now hiring for what they are calling Dodge’s successor, not replacement, because Dodge cannot be replaced. "Pam is the most committed and devoted person to a project that I have seen in a long time," Sisti says. “She lives and breathes the DOVE Project in a way that only a person who was at the inception of a project like this can do. Without her, this project would not be where it is now. It’s a real testament to her dedication, loyalty, and commitment that she’s been with it for as long as she has, and we are going to miss her so much." 603LA Interim Executive Director Steven Scudder echoes that sentiment. “We were really lucky to have someone so remarkable, who could be a leader in the community to advocate for the program and its services,” Scudder says. “The clients who have benefited from the services DOVE has provided owe her thanks. And frankly, the lawyers who have been trained and have had the honor of representing those clients should be grateful for all she has done to make the program as effective, efficient, and successful as it has been.”

Dodge says she has many fond memories over the years at both the NHBA and 603LA, but one of the early remembrances that sticks out is the We Want You! advertising campaign in 2002. A brainchild of former NHBA President Dave Nixon (1980-1981), the promotion aimed to recruit DOVE volunteers and entailed several DOVE attorneys, along with then-NHBA President Martha Van Oot (2002-2003), dressing up in an Uncle Sam costume and pointing at the camera. The headline of each ad read, “WE WANT YOU!” and the copy called on attorneys to “implement the idealism that induced you to do the work.”

"So, the whole program now is Scholars teaching Scholars, learning more Scholars to do the work.” Attorney John Garvey, founding director of the DWS Program, says it’s hard to get Dodge to take credit for anything. "She was the person who took [the collaboration between DOVE and DWS] by the horns," Garvey says. “I asked her for what I thought was a favor, and she took it on as an inspired project. It’s important as part of the program for students to understand that they have an obligation – and we hope, a built-in desire – to help others who can’t afford it. Pam put in many, many hours organizing, creating the curriculum, and getting people to show up. She is marvelous.”
Beginning June 1, 2023, the “My NHBAR” Member Portal, found on the New Hampshire Bar Association’s website at nhbar.org, will be open for Annual License Renewal. The completely online process is governed by a single deadline. A personalized web page enables attorneys to access forms and monitor their compliance with just a few clicks.

**DEADLINE:** The deadline for all licensure obligations is July 1, 2023. Delinquency fees for any license renewal obligations not met will be assessed after August 1, 2023, and are as follows:

- Nonpayment of NHBA dues/NH Supreme Court fees: $100
- Not filing the Trust Account Compliance Form: $300
- Not filing the NHMCLE Affidavit: $300

### 1. ART Appreciation

The Attorney Reporting Tool (ART), found at the My NHBAR Member Portal or at nhmcle.org, enables Bar members to track their legal education minutes. Minutes from NHBA CLE programs are automatically loaded in ART; non-NHBA lawyers at the firm are requested to access forms and monitor their compliance.

- • Not filing the NHMCLE Affidavit: $300
- • Not filing the Trust Account Compliance Form: $300
- • Nonpayment of NHBA dues/NH Supreme Court fees: $100

### 2. Make Way for Email

On Thursday, June 1, 2023, watch for an email from billing@nhbar.org. Designate billing@nhbar.org as a safe sender, to ensure that important updates regarding Annual License Renewal will be received in the email inbox you designated for communication with the NHBA.

### 3. Payment Made Easy

The June 1 email from billing@nhbar.org will contain a link to an online invoice with online payment functionality. We’ve made it easy to pay NH Supreme Court fees, NHBA dues, and NHBA Section dues with a credit card. No credit card? Pay by check made payable to New Hampshire Bar Association and send via US mail to Account Receivable, NHBA, 2 Pillsbury Street, Suite 300, Concord, NH 03301-3502. Payments received via US Mail will be considered on time if postmarked on or before July 1, 2023.

### 4. Check the Box to Donate to 603 Legal Aid Pro Bono Program

The 603 Legal Aid Pro Bono Program – formerly NHBA’s Pro Bono Referral Program – needs contributions now more than ever. Don’t forget that Pro Bono donations are tax-deductible.

### 5. Check the Box to Volunteer for Vital Legal Services Programs

Recently, many civic legal aid programs are struggling to recruit panelists. For members interested in contributing their time and talents in volunteering for 603 Legal Aid Pro Bono Program, NHBA Modest Means Program, NHBA LawLine, or ABA’s Free Legal Answers, please check the box to volunteer. By checking the box to volunteer, members will receive email correspondence regarding volunteer opportunities and how to take the next steps to enroll, share talents, and give back to the community.

### 6. Assume the Trust Account Compliance (TAC) Form Is Required

Most active-status Bar members must e-file a Trust Account Compliance form, even if not actively practicing or holding trust accounts. The online form asks eligibility questions and requires members to fill in the necessary answers for their membership situation.

### 7. Be Prepared to file the TAC Form

Make sure to have all IOLTA bank account information handy before starting the online Trust Account Compliance form. The online filing system does not save information if a member stops or exits before completing the form. Therefore, set some time aside to fully complete the form.

### 8. Help Is Available

For questions about NHBA dues, NHSC fees, whether forms were completed correctly, or about NHMCLE reporting, the NHBA Renewal Team is here to help. Look first to the Bar’s website at nhbar.org to see what resources are available for members’ questions. License renewal information can be found under the header “Resources” just above the dark green line at the top of the NHBA home page.

### 9. Go for Green by July 1

Log into the compliance portion of the My NHBAR Member Portal. Members will see colored bars in the middle of the page for NHMCLE, Trust Account Compliance, and Annual NHBA Dues and NH Supreme Court fees. Each box will be RED until payments or forms are processed. Three GREEN boxes mean that all necessary licensure renewal steps have been completed.

### 10. Track It

The My NHBAR Annual Compliance Dashboard will be available for license renewal beginning Thursday, June 1, 2023. Visit the dashboard on the My NHBAR Member Portal regularly to confirm license renewal completion.

### 11. Update Your Member Info

NHBA encourages all members to check the accuracy of their contact information on the NHBA Member Directory or Profile page in the My NHBAR Portal. In doing so, please pay particular attention to email addresses on file as renewal notices are delivered to the primary email in the NHBA database.

### Tip:

- Members may also contact the NHBA Member Hotline at (603) 715-3279 or email billing@nhbar.org. We appreciate our members’ patience as all 8,600 + NH Bar members renew their license during this time. Questions via telephone or email are answered in the order they are received.

### Tip:

- Submissions will be acknowledged on-screen or via email at the time of submission or payment. It may take up to 48 hours for the Member Portal to display color updates on the bars.

### Tip:

- NHBA encourages all members to review ABA’s Free Legal Answers, please check the box to volunteer. By checking the box to volunteer, members will receive email correspondence regarding volunteer opportunities and how to take the next steps to enroll, share talents, and give back to the community.

### Tip:

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# 2023 NHBA Board of Governors Election Results

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<thead>
<tr>
<th>Position</th>
<th>Candidate Name</th>
<th>County</th>
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<tbody>
<tr>
<td>President-Elect</td>
<td>Kate Mahan</td>
<td>Grafton County</td>
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<tr>
<td>Vice President</td>
<td>Derek Lick</td>
<td>Hillsborough</td>
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<tr>
<td>Governor-at-Large</td>
<td>Kristin G. Fields</td>
<td>Merrimack County</td>
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<tr>
<td>Governor-at-Large</td>
<td>James A. Shepard</td>
<td>Rockingham County</td>
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<td>Governor-at-Large</td>
<td>Robert R. Lucic</td>
<td>Stafford County</td>
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<tr>
<td>Governor-at-Large</td>
<td>Monique M. Schmidt</td>
<td>ABA Association</td>
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<tr>
<td>Governor-at-Large</td>
<td>Leonard Harden</td>
<td>Coos County</td>
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<td>Governor</td>
<td>Barry C. Schuster</td>
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<td>Governor</td>
<td>Anthony Naro</td>
<td>South Governor</td>
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## Member Services

### NHBA Membership Provides Valuable Benefits

By Misty Griffith

Members have access to a host of free benefits, member discounts, and NHBA services. Each of these benefits are designed to enhance the practice of law.

To help with your legal research needs, NHBA membership provides **FREE access to Fastcase**, a $995 value. Fastcase is a comprehensive legal intelligence company partnering with the bar associations of all 50 states and the District of Columbia. Fastcase provides an innovative research suite of primary law, dockets, treatises, and law practice management software providers offer discounts to NHBA members.

Many legal technology and service providers offer discounts to NHBA members. To access these discounts, visit [nhbar.org/resources/member-service-benefits](http://nhbar.org/resources/member-service-benefits).

**LawPay** guarantees your firm accepts payments in compliance with ABA and IOLTA guidelines. Designed specifically for the legal industry, LawPay provides attorneys with a simple, secure way to accept credit card, debit card, and eCheck payments from clients. LawPay is offering a promotion; new accounts opened by May 31 pay no monthly fee for six months.

Using law practice management software can increase your firm’s efficiency by organizing client information, documents, and case files, as well as, streamlining calendaring, time tracking, and billing. The NHBA offers members a discount on three of the practice management software providers that are most highly rated by Capital Clio, Smokeball, and MyCase. We have had positive feedback about each of these LPM providers from members. Each of these providers offer a 10 percent discount to NHBA members who sign up through our website. Taking advantage of a free TechConnect consultation is the best way to determine which LPM software would best suit your practice needs.

**Smith.ai** offers a practical solution to provide phone coverage so that you do not miss important calls. Smith.ai receptionists are available 24 hours a day to answer calls, screen leads, and schedule appointments. The round the clock availability of their receptionists is a cost-effective way to capture leads on potential new clients since you only pay for calls received. Smith.ai charges per call with no charge for spam, telemarketers, or wrong numbers. This eliminates money wasted paying...
NEW HAMPSHIRE BAR ASSOCIATION
2023 Annual Business Meeting
June 22, 2023 – 3:00 pm
REMOTE MEETING
Please contact Debbie Hawkins for more information
dhawkins@nhbar.org
AGENDA
President Jonathan Eck – Presiding
1. Call to order.
2. Secretary’s Report – Draft minutes of the 2023 Midyear Membership Business Meeting for approval.
3. Old business.
4. New Business – Vote on proposed NHBA Bylaws change.
   a. Vote on change to Article VI – Section 1.
      This revision addresses the problem in the less populous counties, namely Coos, whereby those wishing to submit a petition to run for the County Governor Seat are unable to obtain 10 signatures due to lack of active attorneys practicing in that county.

   ARTICLE VI
   Nomination and Election of Governors and Officers
   Section 1. Governors Representing Counties. Nominations for Governors representing counties or divisions shall be made by petition signed by at least ten (10) active members or 20 percent of the active membership of the county, whichever is less, having their principal offices in the county or division concerned and filed with the Association not later than March 1. Any nominee for county governor shall have Active membership status in the Association. No member may sign more than one such petition.
5. Adjournment.

THE BEST LAWYERS – YEAR AFTER YEAR

MARK A. ABRAMSON
Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs
NICK ABRAMSON
Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs
EVA H. BLEICH
Medical Malpractice Law - Plaintiffs
KEVIN F. DUGAN
Medical Malpractice Law - Plaintiffs – Personal Injury litigation – Plaintiffs
JARED R. GREEN
Personal Injury Litigation – Plaintiffs and Product Liability Litigation – Plaintiffs

HOLLY B. HAINES
Medical Malpractice Law – Plaintiffs and Personal Injury Litigation – Plaintiffs
。“2023 Lawyer of the Year – Personal Injury– Plaintiffs – Manchester, NH”

ELIE MAALOUF
Medical Malpractice Law — Plaintiffs and Personal Injury Litigation – Plaintiffs
“The Ones to Watch”

We honor referral fees. Let’s work together for your clients’ Personal Injury and Medical Malpractice claims.

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NHBA Committee Members Sought

Watch for form coming soon by email - reply by May 31

Our 2023-24 committee appointment process begins soon and we are looking for people like you to get involved. Together, we can help the NHBA remain valuable, practical, and responsive to the diverse needs of our membership and constituencies. You’ll also have an opportunity to network with colleagues from around the state.

NHBA Committees

- Committee on Cooperation with the Courts
- Continuing Legal Education (CLE)
- Dispute Resolution
- Ethics
- Finance
- Gender Equality
- Lawyer Referral Service
- Law Related Education
- Leadership Academy
- Legislation
- New Lawyers

Learn more at nhbar.org/nhba-committees
Questions? Contact Debbie Hawkins at dhawkins@nhbar.org or (603) 715-3269

The final recipient of an award at the Annual Meeting is Russ Hilliard from Upton & Hatfield. Russ is receiving the 2023 E. Donald Dufresne Award for Outstanding Professionalism. The Dufresne Award is presented to an attorney who bests fits the following: “A professional lawyer is an expert in law, pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.” Russ is a well-known and broadly admired attorney. One of his nominators recognized him as “a lawyer’s lawyer” and “the ‘go-to’ person in New Hampshire when there is a difficult or ethical issue facing an attorney.” Russ’s practice involves commercial and insurance litigation, professional discipline, and alternative dispute resolution. He is a Fellow of the American College of Trial Lawyers.

Other events at the Annual Meeting include a morning CLE titled, “Weathering the Storms, Seeking New Horizons.” The CLE will focus on the importance of building a supportive and inclusive workplace culture, and will explore ways to do that. The CLE will have a particular emphasis on diversity, equity, and inclusion in relationship to the practice of law in New Hampshire, and reflect on the progress made by the Association over its past 150 years. A focal point will be learning to identify inequities faced by underrepresented groups and exploring strategies and methods to foster belonging and grow a culture of inclusion within the workplace and in the legal profession in New Hampshire.

I can think of few better places to spend a Friday in late June than in Portsmouth. Gathering for the reception and dinner will provide you with a wonderful opportunity to reconnect with several of our friends and colleagues in the Bar. I encourage you to mark the date on your calendar and attend this important celebration.

THE BAR DISCOURSE
An NHBA Podcast

New episodes streaming monthly on Soundcloud at soundcloud.com/thebardiscourse

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C. Kevin Leonard
Benjamin T. King
Samantha J.M. Heuring

New Hampshire Trial Lawyers
Employment Lawyers for Employees
Who is Your Favorite Fictional Lawyer? The Bar President Edition, Part Two

By Tom Jarvis

In last month’s issue, five past NHBA presidents were featured in this column in honor of the Bar Association’s 150th anniversary year celebration. This month, six more past presidents gave their answers regarding their favorite fictional lawyers in continued commemoration.

As an aside, while I was recently looking for a new show to watch, I discovered that two classic legal shows have been revived. The first is NBC’s Night Court, a legal sitcom that aired from 1984 to 1992, centering around a second-shift court presided over by the unconventional Judge Harry Stone. The Night Court reboot features Stone’s daughter, Judge Abby Stone, and includes John Larroquette reprising his role as Dan Fielding (who made the switch from assistant district attorney to public defender). You may also remember Larroquette from another classic, Boston Legal.

The second legal reboot, The Defenders, starring Matthew Rhys, John Lithgow, and Tatiana Maslany (who also stars in her own legal show, Marvel’s She-Hulk: Attorney at Law), focuses on the origins of Perry Mason in the 1930s. Just when I thought my watchlist was shrinking!

Back on point, here’s what six past NHBA presidents had to say about their favorite fictional lawyers:

Jack Crisp, The Crisp Law Firm
NHBA President from 1994 to 1995

“While there are many fictional attorneys I consider favorites, at the top of the list is Paul Newman’s portrayal of Frank Galvin in the movie The Verdict. Galvin was at one time a leading Boston trial lawyer who was spiraling down into alcoholism. Galvin had been going to the funerals of strangers, looking for potential cases, usually after fortifying himself with whiskey.

A friend and mentor, Mickey Morrissey, portrayed by Jack Warden, brought him a medical malpractice case against the local diocese with a low six-figure offer on the table. It was the only case Galvin had. Galvin did not believe the offer was adequate or just. Throughout the trial, the diocese’s attorney, portrayed by James Mason, found ways to block Galvin from having the evidence he needed. His Harvard expert suddenly disappeared and a photocopy of a medical record establishing negligence was rejected by the court because it was not an original.

What most impressed me about Newman’s portrayal was Galvin’s impassioned summation to the jury in which he talked about faith in the justice system while seeming to reclaim faith in himself. He told the jury how so often we feel lost and like victims, how the poor feel powerless and become tired of hearing so many lies, but on that day, they were the law. He said, ‘If we are to have faith in justice, we need only to believe in ourselves and act with justice. I believe there is justice in our hearts.’ The verdict was greater than what had been requested. I believe such an argument, if made in the context of the right facts and expressed with sincerity, would be effective today as it was for Galvin in 1982.”

Patrick Hayes, Baker & Hayes
NHBA President from 1997 to 1998

“An interesting attorney from fiction is Mr. Tulking-horn of [the novel] Bleak House. [He’s] an extremely capable attorney caught in the clutches of the interminable chancery court pro-cesses that seemed to envelope us all from time to time. The patience shown by all involved in Jarndyce v. Jarndyce would not be countenance or re-warded in today’s high-tech, e-filed court system, where brevity and more expedi-tious results are favored.”

George Moore, New Hampshire Bar Association
NHBA President from 1999 to 2000

For me, it is Atticus Finch. This is a rather obvious choice, but what stands out is his moral courage and the strength of his beliefs. Many of us went to law school because we believed in certain things and felt through the use of our intellect, we could bend events to our principles. Atticus never wavers or has second doubts, even when his views are wildly unpopu-lar. He would be just as successful in to-day’s courts, as his calm professionalism never goes out of style with juries.”

Greg Robbins, Hoeffe, Phoenix, Gormley & Roberts, PLLC
NHBA President from 2000 to 2001

“Lawrence Preston (played by E.G. Marshall) from the old TV show The Defenders. It showed the legal profession at its best and took on serious topics. In one episode, the protagonists defended a neo-fascist hate speaker’s right to make a scheduled speech before a large audience, won, and then peacefully pick-eted the event. In another, they defended a serial killer with an insanity defense. If I recall correctly, they lost, and the defend-ant was executed. I hope [Preston would do] well [in an NH courtroom]. In fact, the show is one of the reasons I decided to be-come a lawyer myself (although some may question whether that was a good thing).”

Larry Vogelman, Shaheen & Gordon
NHBA President from 2012 to 2013

“Vinny Gumbi-ni from My Cousin Vinny. I have used the movie to teach techniques in trial advocacy to high-school-age students. His cross examinations, in addition to their comedic value, are also wonderful models. I may be prejudiced however, being a kid from Brooklyn myself. My guess is that despite obstacles, he would do okay in New Hampshire. When you get right down to it, his storytelling is very compelling.”

Scott Harris, McLane Middleton
NHBA President from 2017 to 2018

“The lawyers of Donnell, Young, Dole, and Frutt [from the TV show The Practice], They represent their clients with passion, struggle with life/ work balance, and tackle moral and ethical issues in an authentic manner. [In a present-day New Hampshire courtroom, they would fare] just about the same as the rest of us.”

Want to tell us your favorite? Please contact NHBA Publications Editor Tom Jarvis at tj Jarvis@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.

Give Us Your Worst

In an upcoming issue, the Fictional Lawyers column will explore who the worst, most cringeworthy fictional lawyers are. Is there a fictional lawyer that makes you change the channel? Is there a courtroom drama that gets you so upset you can’t help but shake your head?

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We the People State Champions Milford High School Participate in First In-Person National Finals Since 2019

By Tom Jarvis

On the weekend of April 21-24, 2023, students from Milford High School represented New Hampshire in the We the People National Finals at the National Conference Center in Leesburg, Virginia, where they placed 29 out of 48 participating schools. The school that won first place was Maggie L. Walker Governor’s School from Richmond, Virginia.

Approximately 1,000 students participated in 576 half-hour hearings. This was the first in-person event of its kind since before the pandemic in 2019.

Participating students from Milford High School were Robert Anderson, Madelyn Bergen, Charles Cesavo, Carla Costas, Ziera Dodson, Eden Leak, Morgan Peterson, Olivia Rolanti, Troy Williams, and Nikol Zyzen.

In 1987, the Center for Civic Education developed the innovative program called We the People: The Citizen and the Constitution (WTP). Brought to schools by the National Association of Bar Exhibitors, Inc. (NABE), WTP is a nationally acclaimed civic education program that enhances students’ understanding of the Constitution and Bill of Rights and allows them to discover its contemporary relevance.

The program’s culminating activities are simulated congressional hearings, where students evaluate, take, and defend positions on six units of constitutional law principles before a panel of judges made up of NHBA members and other Civics leaders in the community. District hearings occur in December of each year and the State Finals take place in January. The top performing class then earns the opportunity to represent New Hampshire in the National Finals in or around Washington, D.C.

Thomas Lundstedt, Milford’s teacher of the program and a recent recipient of the James Madison Fellowship, is an alum of both Milford High School and WTP. This is his second year of teaching.

“The trip went really well,” Lundstedt says. “The kids were excited even though they were tired getting to the airport at 3:00 a.m. I think they really appreciated the camaraderie with one another. That’s something I picked up on over the course of the trip. And there was definite improvement across the board. There are a couple kids that I was particularly proud of, who didn’t necessarily have strong public speaking skills at the beginning, but I saw a huge improvement over the course of the year. So, I consider that to be a personal victory.”

Lundstedt says he is pleased with the amount of effort his students put into the program. “My class ends in January. So, they are doing this on their own time, on top of all their regular classes,” he says. “I think that alone is a testament to how motivated they were and how hard they worked.” When they weren’t participating in the hearings, the students were able to tour nearby Washington, D.C.

“We studied on the National Mall for a little bit, and we went to most of the monuments. Some of the kids were seeing them for the first time,” Lundstedt says. “We also went to the Capitol Building, the Museum of African American History, the Holocaust Museum, Mount Vernon, and the Museum of American History. And the kids got to meet both of our New Hampshire senators, which they thought was really cool.”

The students also visited the United States Supreme Court, where they viewed all the exhibits and attended a courtroom lecture.

To pay for the trip, Milford needed to raise $13,000. The students sold 700 boxes of Krispy Kreme doughnuts during the November Midterm Election, sold other baked goods during the deliberative session and town voting, and hosted school bake sales—all on their own time. Through those efforts, plus a one-time Milford Community donation and a donation from the Center for Civics Education, Milford was able to raise $9,900.

The remaining $3,000 was donated to them from the New Hampshire Bar Foundation’s Advancement of Justice Fund, Frederick K. Upton Fund, and the Advancement of Justice Restricted Fund.

“We are super grateful and appreciative of the Justice Restricted Fund. Eric K. Upton Fund, and the Advancement of JusticeRestricted Fund.

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Post-surgical infection verdict $10,700,000.00
Product liability settlement $8,900,000.00
Birth injury settlement $7,500,000.00
Construction accident settlement $7,000,000.00
Surgical error settlement $5,100,000.00
Prostate cancer settlement $4,500,000.00

* Verdict settled on appeal
FDIC Insurance and IOLTA: Are the Client Funds Covered?

By Mystyna Shappy

With the recent bank closures in the news, the New Hampshire Bar Foundation (NHBF) has received several inquiries from attorneys and firms expressing concern about the vulnerability of client funds being held in their Interest on Lawyers’ Trust Accounts (IOLTAs). NH Supreme Court Rule 50 states that “a member of the New Hampshire Bar who is not exempt from this requirement pursuant to Rule 50(1)(F) shall create or maintain a pooled, interest-bearing trust account” and that the account “shall be established with any bank or savings and loan association authorized by federal or State law to do business in New Hampshire and insured by the Federal Deposit Insurance Corporation or other financial institution with adequate federal insurance covering client funds (financial institution).”

Given that many IOLTAs contain large balances in excess of the insurance limit of $250,000, it begs the question, “Are the client funds in IOLTAs covered by FDIC insurance?”

The answer is a bit more nuanced than a simple yes or no. The FDIC is an independent agency of the United States government that protects against the loss of insured deposits if an FDIC-insured bank or savings association fails and is backed by the full faith and credit of the government. As stated on its website, “FDIC insurance covers depositors’ accounts at each insured bank, dollar-for-dollar, including principal and any accrued interest through the date of the insured bank’s closing, up to the insurance limit.”

An important component of FDIC insurance is that IOLTAs are treated as fiduciary accounts, therefore qualifying for pass-through coverage to owners of the funds, in this case, clients, assuming proper titling on the account and the ability of the attorney to provide a proper accounting of the funds in the IOLTA. This means that each client in an IOLTA is afforded the $250,000 maximum insurance coverage (for all funds they have at that institution, whether in an IOLTA or other account), regardless of the balance in the account. “Client” may mean an individual, a business, or funds held in joint or multiple ownership categories, as defined by the FDIC.

For an IOLTA to be eligible for increased FDIC coverage, the account must be properly designated as a trust account, with the title on the account including “IOLTA,” “Clients’ Funds,” “Trust Account,” etc. Additionally, for increased FDIC coverage to be applied in the case of a bank closure, a thorough accounting of the funds in the IOLTA must be up-to-date and properly reconciled. If there is a dispute surrounding an FDIC insurance claim, the agency might review your engagement agreement with the client and the source of funds.

There are no disciplinary cases in which a lawyer has been held liable to a client for uninsured losses in the event of a bank failure. In New York, this issue was under consideration in one malpractice case, Bazinet v. Kluge, 14 A.D.3d 324, 788 N.Y.S.2d 77 (2003). The case involved a situation in which an attorney made two deposits related to real estate transactions of over $1 million each into a client trust account at a bank that failed after the deposits. The appellate court held: “There is no requirement imposed by law that an attorney-escrow agent place escrow funds in an account fully insured by the FDIC, and there are no allegations that [the attorney] knew that [the bank] was in danger of closing.” The proximate cause of the depositors’ injury, if any, was “[the bank’s] unforeseen demise.” Id. at 325, 788 N.Y.S.2d at 78.

While there is no requirement for attorneys to ensure that their clients’ funds are fully insured, mitigating the risk of a loss of funds is best practice. While often not convenient, a quick and effective way to increase FDIC insurance is to use multiple banking institutions. Because FDIC coverage is applied per institution, maintaining accounts at multiple institutions, where feasible, will leverage the available coverage. Credit Unions also provide $250,000 of coverage per client in an IOLTA, identical to the FDIC coverage, through the National Credit Union Administration (NCUA). The NCUA Share Insurance Fund is backed by the full faith and credit of the United States, like the FDIC.

Another good practice is to advise clients of the institution where their funds will be held in trust. This will enable clients to determine if they might exceed insurance limits based on other accounts that they may have at the same institution.

All banking institutions that participate in the IOLTA program are required to be FDIC or NCUA, and a full list of eligible institutions can be found at the NHBF website. For guidance on opening an IOLTA, please contact NHBF Associate Executive Director Mysty Shappy at (603) 715-3210. ■
Section Connection

NHBA Real Property Law Section

By Michelle Radie-Coffin, Chair and Laura B. Dodge

On April 11, 2023, officers and members of the Real Property Section of the New Hampshire Bar Association met at the Common Man in Concord. The agenda for the meeting was an opportunity to socialize and bring members together to discuss and brainstorm ideas for proposed legislation to address old and obsolete mortgages. Members enjoyed dinner and drinks, while working collaboratively on suggested language for the proposed legislation.

New Hampshire is the only New England state without a statute that operates to discharge institutional mortgages after a certain period of time. The Section members discussed and drafted language for the proposed legislation. After further input from members, the Section officers intend to work internally with the Legislation Committee of the New Hampshire Bar Association to review the proposed legislation.

The Real Property Section is made up of over 300 members and provides a variety of opportunities for members to improve their professional knowledge and skills in relation to this area of the law. The Section’s objectives include providing a forum for questions relative to title related matters, as well as idea exchanges among members on emerging real property law issues, such as the proposed legislation addressing obsolete mortgages. The Section, through its Title Standards Committee, also updates the Title Examination Standards which were first adopted in 1954. Section Officers for the June 1, 2023 – May 31, 2024 member year are Michelle Radie-Coffin, Chair; Laura B. Dodge, Vice Chair, and Elaina L. Hopkner, Clerk.

The Real Property Section of the New Hampshire Bar Association would like to give credit to the Legislator Lazaro Laserna for all of his work for the Real Property Section. On behalf of the Real Property Section of the New Hampshire Bar Association, we would like to thank NHBA Sections Coordinator, Anna Winiarz, at awiniarz@nhbar.org for all of her work and support in planning and carrying out these events.

LawLine

The NH Bar Association would like to give a well-deserved thank you to Morneau Law and Douglas, Leonard & Garvey for a hugely successful LawLine event held on April 12, 2023. More than 80 callers were assisted from counties all over New Hampshire on various topics, including probate disputes, landlord/tenant matters, family law, consumer law, and medical malpractice. Thank you again to all our volunteers for participating once again in this valuable public service. Your enthusiasm is an inspiration to others seeking to serve their community.

Morneau Law staff from left to right: Attorney Ryan Correia, Attorney Kate Moreau, Paralegal Alycia Gelin, Attorney Amanda Steenhuis, and Paralegal Abbey Reville.

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 need volunteers for the following 2023 dates: July 12, August 9, September 13, October 11, November 8, and December 13.

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

In Memoriam

Paul M. Colella

Attorney Paul M. Colella lost his courageous battle with acute myeloid leukemia on April 15, 2023, surrounded by his loving family. He is survived by his loving wife of 54 years Patricia (Sheehy) Colella and his children, Laura and her husband J. Mark Dickison of Winchester; Sarah and her husband Joseph Daly of Winchester; Luke and his wife Margaret (Molloy) of Winchester; and Justin and his wife Susan (Ferguson) of Reading. He leaves his most beloved grandchildren: Alexander and Elena Dickison, Lila and Patrick Daly, Charlotte and Dylan Colella, and Josephine and Lucille Colella. Son of the late Pasquale and the late Mary Ann (Oliver) Colella of Winchester, brother of the late Brian Colella of Winchester, Mary Faith Murphy and her husband the late John Murphy of Fallmouth, and Stephen F. Colella and his wife Mary (Freeman) of Wakefield.

Paul was a lifelong resident of Winchester, where he practiced law for 50 years. He started his education at St. Mary’s School, then attended the Noonan School and Junior High School. He attended high school at Keiath Academy in Lowell, after which he traveled to Quan tico, VA, for OSC training in the United States Marine Corps. He earned a bachelor’s degree from Lowell State College, a master’s degree from Northeastern University, and his juris doctorate degree from Suffolk University Law School. Paul was a fifty-year member of the Massachusetts and New Hampshire bars and operated a general practice law firm where he handled real estate transactions, estate planning, civil and criminal matters. He also taught criminal justice at Massasoit Community College and Bunker Hill Community College.

A member of numerous organizations over the years, including the Massachusetts Trial Lawyers Association, Middlesex County Bar Association, Woburn Bar Association, Justinian Law Society, Winchester Rotary, and Knights of Columbus. Paul was most proud of his lengthy service as a member of the Ancient and Honorable Artillery Company of Massachusetts. He presided as its 304th Captain Commanding in 2012-2013, taking the Company on its 375th Fall Field Day Tour of Duty to Moscow and St. Petersburg, Russia. As an active AHAC member he participated in many other Tours of Duty to destinations worldwide, including Spain, China, Romania, Thailand, Finland—to name a few. Paul will be remembered for his relentless drive, work ethic, organizational skills, generosity, and his wonderful sense of humor which he displayed through a variety of pranks. He was an able raconteur who enjoyed socializing and turned strangers into friends wherever he went.

Donations in Paul’s name may be sent to Caring for A Cure, Massachusetts General Hospital Development Office, Attn: Caring for A Cure, 125 Nashua Street, Boston, MA 02114, caringforacure.org.

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Flying Solo

By Misty Griffith

This series profiles some of the numerous 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. We look forward to sharing advice from others in the coming months. Solo practitioners who are willing to share your advice and experience, please contact Member Services Supervisor Misty Griffith at mgriffith@nhbar.org.

Melanie Chaput, Chaput Law Office
20 years in practice, 15 years as a solo

What inspired you to become a solo? My friends had an extra office, and after my maternity leave, I decided to join them. They loved the flexibility of solo practice with young children, and so I thought I would try it, too.

Best thing about solo practice: Flexibility of your schedule and knowing that you are responsible for the success of your clients’ cases and the firm. Only having to attend meetings that you think are important and from which you get value!

Hardest thing about solo practice: Having to work while you are on vacation because there is no one covering for you when you are gone. Being completely responsible for all your client’s cases and the firm’s successes and failures.

Memorable solo experience: When I answered my own phone and clients would be shocked it was me on the phone and get a bit flustered expecting my secretary to answer.

Advice for new solo: Have mentors that you can learn from in the beginning and rely on as you practice. Renting space with other attorneys is also helpful and gives you a sense of comradery that you might miss from larger practice settings. Stay in touch with your colleagues. The pandemic made us all feel a little isolated but reach out to other attorneys to meet for lunch so you can exchange ideas and commiserate. Use technology to help your solo practice manage large case volumes.

Would you advise anyone else to go it alone? Yes, but you need to have a tolerance for not being sure when your next paycheck is coming in, especially in the beginning!

Janine Gawryl, Gawryl MacAllister
45 years in practice, less than one year as a solo

What inspired you to become a solo? It is a good way to wind down practicing law when you have practicing law in your blood.

Best thing about solo practice: Self-direction; picking and choosing only the cases you want to handle.

Hardest thing about solo practice: Covering deadlines and putting out fires when on vacation, but it can be done. Also, lack of a person to always cover your back.

Memorable solo experience: Getting hugged for saving a person from becoming homeless.

Advice for new solo: Embrace technology because it is a good friend – it could be your best friend in allowing you to continue to work solo.

Would you advise anyone else to go it alone? Going it alone requires a lot of self-discipline, self-direction, planning, organization, and setting up supports when things go wrong. I do not believe that everyone has the capacity to do it.

Leonard Harden, Harden Law Offices
30 years in practice, 20 years as a solo

What inspired you to become a solo? Helping people get through difficult times.

Best thing about solo practice: You are able to make time for family and personal endeavors, or at least have the illusion of control over your time.

Hardest thing about solo practice: Being isolated and having to make tough decisions without input from others.

Memorable solo experience: Having to remove a prosecutor from my office physically when he refused to leave.

Advice for new solo: Join national and state bar and educational organizations, NACDL, NHACDL, NCDD, DUIDLA and get involved.

Would you advise anyone else to go it alone? Absolutely, but not without some experience and a supportive family.

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PROFESSIONAL ANNOUNCEMENTS

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Welcome!

Mark A. Perkins
Of Counsel
603.695.8725
MPerkins@DevineMillimet.com
www.DevineMillimet.com

Devine Millimet is pleased to welcome Mark Perkins to the firm. Located in our Downtown Manchester office, Mark is a graduate of Quinnipiac University School of Law, with 20+ years experience.

As an Of Counsel member of the Devine Millimet Litigation team, he will work on a variety of matters within the Insurance, Personal Injury, and Real Estate Litigation practice areas.

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NEW HAMPSHIRE BAR NEWS
Orr & Reno Welcomes Our Newest Shareholders

Derek Lick, with more than 20 years of experience, represents clients in complex legal matters, including business, real estate, construction, and property tax disputes, and suits involving personal injury and product liability claims.

Kelly Ovitt Puc, with 15 years of experience, concentrates her practice on real estate transactions, commercial financing, hospitality transactions, general business representation, and creditor/debtor relations.

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Welcome, Attorney Baker!

Attorney William Baker
William Baker has joined the firm’s Business and Civil Litigation Groups. He has over a decade of experience representing a diverse cross-section of individuals and businesses throughout New Hampshire, New York, and Colorado. Will spent his first 10 years practicing in Colorado, where he founded a successful firm built on a client-driven approach. In addition to his legal experience, Will holds an MBA and brings these added skills to his business practice.

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Welcome to our Team

Associate Attorney
Melissa A. Kowalewski

SekellaLaw, PLLC is excited to announce that Attorney Melissa A. Kowalewski is joining our Firm as an Associate Attorney. She is returning to family law after serving our state as a prosecutor. Attorney Kowalewski has over 15 years of experience and her practice has consisted of family law, domestic violence and criminal law. Melissa has maintained a reputation of excellence not only with her clients and peers, but with colleagues and the Court.
Resiliency in the Ruts – Treating Mental Health with Motocross

By Major Jason Hebert

There’s a lot that goes into negotiating a turn in motocross. It’s important to apply pressure to your brakes as you approach the corner, let off as you enter the “rut.” While in the rut, maintain your speed, lean into the corner, and keep your head up, with your eyes looking towards the end of the rut.

This knowledge, as well as my growing passion for motocross, has provided key lessons in helping me navigate some ruts in my personal life and professional career as an attorney. Let me explain.

In May 2020, I was living in Italy and was at the end of a five-year litigation assignment where I’d worked as a prosecutor and victim’s counsel for the United States Air Force. I lived with my wife and three young children in the town of Sacile, which is located about an hour from Venice. By this point in my career, I was already emotionally exhausted, having spent the entirety of my time in the Air Force reviewing and litigating sex crimes; specifically, crimes against children, sex assault, and rape cases. I’d represented countless clients, both service members and foreign nationals, who were entangled in the legal process after undergoing the trauma associated with being the victim of a crime.

Issues in my personal life compounded my exhaustion. Aside from the challenges of COVID, during which Italy suffered significant losses, we were awaiting biopsy results from a lump discovered in my wife’s breast. The news we received was devastating. My 35-year-old wife had stage-four terminal cancer. I’ll never forget the feeling of loss and hopelessness when I got off the phone with her. I had tears streaming down my face and I knew that any added benefit I could provide wouldn’t solve his actual problem – the cancer. Since then, I have represented numerous cancer clients as they fight for treatment, benefits, and dependent entitlements. As lawyers, we are told to “care” for our clients but don’t care “too much,” because it could lead to compassion fatigue. No one teaches you how to manage emotional boundaries when you’re dealing with victims of sex crimes and clients with cancer.

None of this is to say that military disability law wasn’t extremely rewarding. But I was still reeling from the stress of my prior litigation position, where I experienced things that I couldn’t unsee or unhear. My nerves were on edge, I wasn’t sleeping, and I was becoming further withdrawn socially. I was buckling under the effects of vicarious trauma and burnout, my stress further compounded by having to watch my wife undergo a double mastectomy and chemotherapy.

I had been trained to help people solve their problems – but who was going to help me solve mine?

Before my wife started her first treatment, she told me to focus on the kids and occupy their time with fun activities. She didn’t want them to worry about what Mom was going through. This made my priority clear. If the kids were happy, then Mom could focus. But being raised on the back roads of New Hampshire, I didn’t really know what to do with my kids in a large, congested city. Then, a memory sparked an idea. Remembered how much I had loved it when my dad would take me to ride my Honda CR80R dirt bike around the Rochester farmyards. I thought dirt bikes might be the ideal diversion for my son. A few weeks later, my oldest son and I were picking up three brand-new dirt bikes.

The first few times we went to the motocross track, my boys were uneasy. They were afraid to fall. They didn’t know how to start, stop, or handle the bike. To make things worse, I had difficulty teaching them, since I hadn’t ridden a dirt bike in 25 years. This forced me to ride and learn with them every chance I got, doing my best to lead by example. We trained, practiced, and measured our progress with every lap. Hours of training turned into blisters that lasted for weeks. We even traveled to train with experts like Kyle Swanson, A.J. Catanzaro, and Austin Forkner.

When we were riding and racing our dirt bikes, we were focused on staying upright, there was no space for anything else in our minds. They didn’t lie awake at night with anxiety. Instead, sleep came quickly and easily for them – for me, as well. We made new friends and learned new skills, changing tires, oil, and clutch-es. It was a boyhood dream playing out in a world of worry, fear, anxiety, and pain.

Whether it’s an unwanted outcome in litigation, unchecked boundaries, or indirect exposure to a traumatic event through a first-hand account or news, legal practitioners are exposed to high amounts of secondary trauma. Riding a dirt bike didn’t solve my problems. But it did provide me with an outlet to focus on outside of the daily grind, a concept that can be applied to other legal practitioners: 1. Find something you enjoy doing and be passionate about it; 2. Bring your family and friends into the activity; 3. Dedicate time to practicing it every week; 4. Fill your empty space with it (don’t allow your mind to concentrate on the trauma).

We all recognize that you can’t pour from an empty glass. The same principle applies to lawyers. We can’t show our clients empathy when we’re emotionally depleted.

As legal practitioners in a demanding and results-driven career field, we need to come to terms with the fact that our due diligence and best efforts are enough. The services we provide to our clients are critical to their well-being, but we also need to prioritize managing our own well-being.

Motocross with my boys has provided a necessary emotional break over the past three years, and has replenished my reserves when times were tough, equipping me to support my family and my clients. Thankfully, this habit has become more manageable recently. My wife is now in remission, although we still have our occasional scares. I’ve also found my stride with clients, even though my caseload hasn’t decreased. I know things won’t always be easy – that’s just the nature of life. But I’m now in a better position to emotionally manage the hard parts – the ruts.

While the struggles of our profession may never end, prioritizing and enforcing your commitment to personal health, mental well-being, and relationships should be a necessary part of the process. If you have concerns about seeking mental health assistance, due to professional responsibility or bar licensing, reach out to your state bar and educate yourself on the boundaries of seeking professional help. Most state Bar Associations have Lawyer Assistance Programs (Editor’s Note: call the NH Lawyers Assistance Program at (603) 491-0282) to provide guidance for practitioners struggling with vicarious trauma, compassion fatigue, and burnout. Remember, in life, there will be ruts but keep your head up and look through to the end of the rut. Try not to fall, but if you do, don’t allow your self to stay down.

Disclosure: The views expressed in this article are solely those of the author and do not reflect the official policy or position of the Judge Advocate General’s Corps, the Department of the Air Force, the Department of Defense, or the United States Government.

Major Jason Hebert is an attorney admitted to practice law before the Supreme Courts of New Hampshire and Texas, the Air Force Court of Criminal Appeals, and the US Court of Appeals for the Armed Forces. He may be reached at jasonhebert605@gmail.com.

The ruts on a dirt bike track. Photo by Jason Hebert

The runs a dirt bike track. Photo by Jason Hebert

Jason and Jace Hebert training in Texas. Courtesy Photo
2023 Annual Meeting

Change Makers: 150 Years of Navigating Uncharted Waters

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E. Donald Dufresne Award for Outstanding Professionalism

Chief Justice Tina Nadeau
Justice William A. Grimes Award for Judicial Professionalism
Buying Silence: “Non-Cooperation” Clauses in Settlement Agreements

Dear Ethics Committee:

I represent the defendant in a sexual harassment lawsuit. We are close to a settlement, but my client has asked to include a clause in the settlement agreement that prevents the plaintiff from providing information and assistance to a plaintiff in a nearly identical lawsuit that was recently filed against my client. Something about this doesn’t sit right with me. What are my obligations under the Rules of Professional Conduct?

You are right to be concerned. New Hampshire Rule of Professional Conduct 3.4(f) provides that as a general matter, “[a] lawyer shall not . . . request a person other than a client to refrain from voluntarily giving relevant information to another party . . . .” While the rule does not expressly address “non-cooperation” clauses of the sort you’ve described, it is not difficult to see how such clauses could fall within its scope. If you follow through on your client’s proposal, you will be requesting that the counterparty— “a person other than [your] client”— “refrain from voluntarily giving relevant information to another party” to currently pending litigation, i.e., the plaintiff in the other case.

Other jurisdictions that have addressed this issue have concluded that Rule 3.4(f) prohibits an attorney from requesting, during settlement negotiations, that the other party agree not to provide information to an opponent who is adverse to their client— “a person other than [the client’s] agreement to withdraw her bar complaint and to refuse to cooperate voluntarily with the [Kentucky Bar Association]”; In re Walsh, 182 P.3d 1218, 1230 (Kan. 2008) (finding Rule 3.4(f) violation where attorney conditioned settlement with individuals who brought claims against him upon their agreement to refrain from voluntarily providing testimony in disciplinary hearing).

Somewhat ironically, those decisions primarily have arisen adjacent to attorney disciplinary proceedings. There is undoubtedly a distinction to be drawn between requesting that the counterparty not cooperate with bar disciplinary proceedings and requesting that the counterparty not cooperate in ordinary civil litigation—as the Supreme Court of Kentucky put it in the Unnamed Attorney case, the attorney’s conduct there represented nothing less than an “attempt to obstruct the disciplinary process.” 414 S.W.3d at 419. But there is no reason to believe that distinction makes a difference.

Rule 3.4, by its title, is intended to promote “Faithfulness to [the] Opposing Party,” and ABA Comment [1] to Model Rule 3.4 explains that the prohibitions of the rule, including Rule 3.4(f), secure “fair competition in the adversary system.” Asking a counterparty not to provide information that is potentially relevant to other litigation in which your client is involved may be construed as undermining “fair competition.”

The ethics committees of at least two other bar associations have concluded that a lawyer who asks for a settlement clause that would prevent a party— “from voluntarily giving evidence to a party to litigation or a person otherwise seeking to investigate or assert a claim or defense” violates Rule 3.4(f), in the absence of a protective order or other valid confidentiality obligation. Ind. St. Bar Ass’n Legal Ethics Comm., Op. No. 1 of 2014, published in Res Gestae (July/Aug. 2014), available on Westlaw at 58-AUG RESG 18; see also IL Adv. Op. 12-10 (Ill. St. Bar Ass’n), 2013 WL 683530, *1 (citing S.C. Ethics Advisory Comm. Op. 93-20 (1993)) (“When negotiating a settlement agreement, a lawyer cannot ethically request that the opposing party agree that it will not disclose potentially relevant information to another party.”). Scholars likewise have warned about the practice, with several concluding that a lawyer can violate Rule 3.4(f) by drafting or recommending a settlement agreement that prohibits the plaintiff from sharing information with litigants in separate litigation. See Jon Bauer, Buying Witness Silence: Evidence-Suppressing Settlements and Lawyers’ Ethics, 87 Or. L. Rev. 481 (2008); see also Stephen Gillers, Speak No Evil: Settlement Agreements Condoned on Noncooperation are Unlawful and Unethical, 31 Hofstra L. Rev. 1, 15 (2002) (noting that “[n]oncooperation promises are . . . problematic under the profession’s ethics rules” and that “it would seem that a lawyer who assists a client in securing the noncooperation promise will violate Rule 3.4(f).”

At least one justice on the Kentucky Supreme Court disagreed with the mounting consensus described above. Justice Scott noted that “confidentiality and non-cooperation provisions are customary in settlement agreements, [and] applying this rule to those agreements . . . will have unintended effects, and that the Rule as written “was not intended to apply to confidentiality and non-cooperation provisions in the context of settlement agreements.” Unnamed Attorney, 414 S.W.3d at 420 (Scott, J., concurring in part and dissenting in part). In addition, the plain language of Rule 3.4(f), which expressly require the existence of pending litigation in which the client is but one of two or more parties. See Conn. Bar Ass’n, Informal Op. 2011-1 (Jan. 19, 2011) (“In the context of the rule, which distinguishes between ‘person’ and ‘party,’ ‘another party’ refers to a party to the litigation . . . which includes other plaintiffs and defendants to the litigation . . .”). Accordingly, had your client not yet been named as a defendant in another lawsuit, it is not evident to the Committee that the Rule would be implicated. In that context, a broad and non-specific non-cooperation or confidentiality clause likely would pass muster under the Rule.

As yet, there have been no New Hampshire disciplinary decisions to directly address this issue. However, in the specific situation you have described, your client has already been named as a defendant in the other lawsuit. Proceeding as your client has requested could be fraught with ethical risk, should the New Hampshire Supreme Court interpret Rule 3.4(f) consistent with the conclusions described above. The risk-averse lawyer will exercise extreme caution before following through on that request.

Endnote
1. There is a single limited exception to this prohibition where: (1) “the person is a relative or an employee or agent of a client” and (2) “the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.” N.H. R. Prof. Conduct 3.4(f)(1)-2. Comment [4] to the ABA Model Rule explains that “[p]aragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests in conflict with those of the client.”

This Ethics Corner Article was submitted for publication to the NHBA Board of Governors at its April 26, 2023 Meeting. The Ethics Committee provides general guidance on the New Hampshire Rules of Professional Conduct and publishes brief commentaries in the Bar News and other NHBA media outlets. New Hampshire lawyers may contact the Committee for confidential and informal guidance on their own prospective courses of action to suggest topics for Ethics Corner commentaries by emailing: Robin E. Knippers at reknippers@nhbar.org
First-Years Go to Moot Court in the Case of State v. Johnson

By Alex Attilli

Raj Johnson, a young man from Portsmouth with a passion for basketball, was unjustly interrogated in police custody without his Miranda warnings after his friend tragically collapsed at lunch— at least, that's what any 1L at UNH Franklin Pierce School of Law would tell you.

During the week of March 27, the class of 2025 gave their very first oral arguments in the case of State v. Johnson. Through mock police reports and transcripts, the students gathered facts about Johnson’s situation and researched what scripts, the students gathered facts about Johnson’s situation and researched what Johnson’s statements best apply to the statements he made at hospital—tragically collapsed at lunch—at least, that’s what any 1L at UNH Franklin Pierce School of Law would tell you.

During the week of March 27, the class of 2025 gave their very first oral arguments in the case of State v. Johnson. Through mock police reports and transcripts, the students gathered facts about Johnson’s situation and researched what cases best apply to the statements he made at both a hospital and a police station. Each student then wrote a Memorandum in Support of Defendant’s Motion to Suppress and turned it in to judges across the state.

Superior Court Judge Amy Messer said that she was “amazed” with the thoughtful and well-crafted briefs, the 1Ls turned in. Judge Messer has listened to oral arguments for several years now and plans to continue with future classes.

“It’s nice to have an opportunity to give feedback to students,” Judge Messer said. “It’s really their first time working with the law in this way. You do a lot of writing and thinking in law school, but not this kind of real-life simulation.”

Sarah Viders, 1L, and president of the Jewish Law Student Association, said that while she’s not fond of public speaking, “it was honestly one of the most empowering experiences (she’s) had so far in law school.” Viders recalled the experience as daunting, but she prepared herself well by reading the cases and practicing her argument until it was ingrained in her mind.

“I feel like I have this newly sprouted assurance in myself because I did something so powerful and scary,” Viders said. “It makes me feel less scared of doing litigation one day.”

Garret Allen, 1L, similarly called the experience “very rewarding,” but stressful. He noted that while moving to suppress the statements at the hospital felt like a “losing battle,” it was still good practice. Allen noted that Judge James Carroll gave him feedback on his argument.

“He asked me why I was arguing to suppress the statements at the hospital,” Allen said. “I told him that I have a responsibility to promote my client’s interests and that it was ultimately up to him to decide the validity of my arguments. At the end, he referred to me as a ‘Pitbull’ and said I have a bright future ahead of me.”

The writing professors wanted students to have an experience with both weak and strong arguments. Facially, students had an iron-clad case to suppress Johnson’s statements at the police station—he was kept in a locked interrogation room for nearly five hours. However, his only interaction with police at the hospital was when an officer asked if he was okay. Viders said, “it was definitely the harder argument. I felt like I had to pull a rabbit out of a hat.”

Judge Messer agreed. “[The hospital] was clearly the hardest part, which is why that becomes the area we focus on. Not because we want to trip you up, but because it gets the juices flowing. What’s important is finding the best argument you can with the facts and law in front of you.”

While both Viders and Allen said they would do oral arguments again, not all students felt the same. 1L Chloe Dorst mentioned that she “might do an oral argument again…but the experience was very stressful.” Her judge praised her command over the law and facts,” even while he asked tough questions.

“I came to law school knowing that I was interested in patent prosecution, and I was curious about litigation,” Dorst said. “This experience was stressful, and I’m having a hard time knowing how much of that was just how I feel about oral arguments in general, or because this felt like a particularly difficult argument.”

She mentioned that although the overall experience was informative, having to argue in favor of suppressing the hospital statements in front of a judge added a lot of pressure.

Judge Messer wants students to know “it gets easier,” ever time and “increasingly more interesting.” She urges students to “try out as much as [they] can,” while they’re still in school.

“Some people prefer not to be in court and others thrive on it, but there’s no right or wrong,” Judge Messer said. “It’s good to do this so early on because it helps you learn what you want to do!”

Ultimately, students “won” on their motion to suppress the statements at the police station— but not at the hospital.

Alex Attilli is a first-year law student at UNH Franklin Pierce School of Law. She graduated in Political Science from Hofstra University in Hempstead, New York. Alex will be working with the New Hampshire Commission for Human Rights this summer and ultimately hopes to pursue a career in civil legal aid.

From the Law School

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* The National Academy of Distinguished Neutrals (www.NADN.org) is an invitation-only professional association of over 1000 litigator-rated mediators & arbitrators throughout the US and a proud partner of the AAJ and DRI. For more info, please visit www.NADN.org/about
as among her forebears.

While a student at Rochester High School, she attended Girls State, the American Legion Auxiliary program meant to teach young women responsible citizen-ship. One of the speakers was the state’s first female Superior Court judge, Linda Dalianis, later to become first female Chief Justice of the New Hampshire Supreme Court.

A light bulb turned on for Brown. “I saw that you could go into law and do something other than be a stay-at-home mom or a bank teller or cashier,” she says. “Seeing Judge Dalianis, that there was a profession where women were accepted, that crystallized it for me. And you could earn a decent salary.”

But her route to her juris doctor was circuitous.

After graduating from the University of New Hampshire with a bachelor’s degree in English, she worked as a paralegal at Sheehan Phinney trying to figure out which area of law she might prefer. “I’m a tree hugger. I should have just gone to law school and graduate school,” she says, looking back. “It took me 12 years to work my way to the New Hampshire legal community and/or launch my own firm.”

After trying environmental law, she went into administrative law, that would eventually include three daughters, Marcia as she is always pleasant, very thorough and being as close to nature as I can, the rhythm . . . the almost magical blues of the ocean.”

A sailor since her college days, she loves the boat life for “its simplicity and being as close to nature as I can, the rhythm . . . the almost magical blues of the ocean.”

She credits other Bar members, particularly members of the New Hampshire Women’s Bar, with helping her get the sea legs to start that solo practice.

She has also been a strong voice for the state’s injured workers and has been a leader in the legal profession as the chair of the New Hampshire Bar Association’s Workers’ Compensation Section, a board member of the American Bar Association’s Section on Labor and Employment Law, and as an officer of the New Hampshire Bar Foundation and as a member of the New Hampshire State Bar’s Executive Committee.

Brown has been a member of the New Hampshire Women’s Bar Association and the New Hampshire Women’s Bar Association’s Labor and Employment Law Section.

She is likewise proud of her work proving federal consistency again provided for balancing the preservation of critical habitat with development demands.

Brown also spent four years as a member of both the state Department of Environmental Services Wetlands Appeals Council and the Coastal States Organization Legal Counsel, worked briefly as an assistant consumer advocate for the state, and was an attorney for the New Hampshire Public Utilities Commission for 13 years.

But one of her most memorable cases came when she “got totally out of my comfort zone” and defended a sex offender registry case before the New Hampshire Supreme Court.

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At one Women’s Bar continuing education event, after everyone had finished their work, “my women colleagues sat and gave me a pep talk for an hour and a half, saying ‘you can do this,’ because when you’re going out solo, it’s scary,” Brown recounts.

She has returned the kindness. Brown has been secretary of the New Hampshire Women’s Bar Association and spent 14 years on the NHGBA Gender Equality Committee, where she has served as chair.

Attorney Lyndsay Robinson of Shaheen & Gordon says she started attending Gender Equality Committee meetings while still a student and was, “always amazed by Marcia and her commitment to fight for gender equality in New Hampshire.”

Now chair of the committee, Robinson adds that Brown “was a true leader and it was an honor to learn from her, including watching her leadership style.”

Brown formed NH Brown Law in 2013 and offers services to clients facing state and federal regulatory bodies ranging from the state Public Utilities Commission to the federal Environmental Protection Agency, to the New Hampshire Wetlands Council. Typical clients include municipalities with water systems, private water utilities, some homeowner associations, and charities.

When not on her boat, she and her husband, Rob Desmarais, whom she married in 2018, live in Somersworth.

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The FTC Commeth – Deadline Fast Approaching for its Updated Safeguards Rule

By Ande Smith

If variety is the spice of life, then we’re all in luck as there always seems to be a new set of cyber rules on the horizon. June 9 marks the revised deadline for implementation of the Federal Trade Commission’s (FTC’s) “new” Standards for Safeguarding Customer Information (the Safeguards Rule or the Rule), that was published in December 2021. As is often the case with new cybersecurity rules, this one contains the familiar, but also comes with several very specific prescriptions that need to be addressed by regulated organizations – some of which were newly swept under the FTC’s watchful eye.

What Was that Rule Again?
The FTC issued updates to its Safeguards Rule, found at 16 C.F.R Part 314 in December 2021. The effective date of the Rule was January 10, 2022, but the bulk of its new provisions were deferred to December 9, 2022. In consideration of the impacts of COVID, implementation was further delayed until June 9, 2023. The FTC’s authority finds its provenance in the Gramm-Leach-Bliley Act of 1999 (GLB). GLB’s focus is on the privacy and security regulation of financial institutions. As such, GLB is the source of statutory authority for regulation over banking institutions by a patchwork of federal agencies, depending on the size of the financial institution. These regulators aligned their implementation standards through an interagency group known as the Federal Financial Institutions Examination Council (FFIEC), but the FTC has gone it alone in its regulation of a bevy of non-banking organizations that are on the margin of what one might expect to be considered “financial institutions.”

What’s New?
The Safeguards Rule establishes some very specific requirements. Key items include:

- A comprehensive written information security program (WISP), managed by a “qualified” individual.
- Written risk assessments that meet specific requirements and include mitigation or risk acceptance processes.
- Designation of a “qualified” individual to oversee the organization’s program.
- Either (1) an annual penetration test with semi-annual vulnerability assessments, or (2) implementation of “continuous monitoring” of the in-scope environment.
- Encryption of customer information in transit over external systems and at rest.
- Use of a vendor management program to address the risks associated with third-party vendors.
- Use of multifactor authentication.
- Reports to governing bodies, like boards of directors.
- Processes for logging/disposing of customer information.
- Controls to detect unauthorized access to, use of, or tampering with regulated information.
- Reporting to the FTC and state attorneys general.
- Use of continuous monitoring.
- Use of encryption for customer information.
- Use of multifactor authentication.
- Use of reports to governing bodies.
- Use of processes for logging and disposing of customer information.
- Use of controls to detect unauthorized access to, use of, or tampering with regulated information.

Who’s Covered?
The applicability of the FTC’s Safeguards Rule has had an interesting run over the years. At one point, the FTC attempted to sweep in supermarkets as financial institutions, because cashing a check or getting cash back at checkout, it analogized, was like a service at a bank. Until the new Rule, the battle lines had largely settled around a bevy of non-banking organizations that are on the margin of what one might expect to be considered “financial institutions.”

Compliance Strategies
As we have reviewed the new Rule with clients, there are a couple of opportunities to meet the Rule’s objectives, which should be considered:

- Fractional Security Officer. Outsourcing the “responsible” individual to a security firm provides an answer to the requisite skills intended by the rule, without needing to hire those skills full-time. Fractional or “VCISO” engagements can be adapted to the needs and budgets of organizations. Such an individual can craft and perform the requisite elements, including risk assessment, vendor management, WISP management, reporting, etc. While some of that work can be supported by traditional audit firms, they tend not to provide the hands-on components needed by the rule. In addition, this individual should be separated from managed service providers who otherwise perform core operational IT services to maintain a separation of duties.

Penetration testing and vulnerability scanning are probably preferable to “continuous monitoring.” The former is discrete and well understood use of security tools and processes. The latter is ill-defined in the rule, especially as to the scope and type of monitoring that would be considered sufficient. It’s reasonable to assume, based on FTC enforcement practices, that such sufficiency will be defined ad hoc through findings of inadequacy following a breach or cyber incident. Also, organizations should be judicious in their selection of penetration testing services, as many cheaper, commodity “pentests” are largely indistinguishable from vulnerability scans.

There is still time for organizations to rally to the new FTC requirements, though the window is closing! With an activist bent in the current FTC leadership, staying ahead of these new rules is important for all regulated organizations – new and old.

A member of the NH and Maine bars, Ande Smith is President and founder of Deer Brook, an IT and cybersecurity consultancy. Deer Brook provides a range of cybersecurity services, including penetration testing and security program management, to many sectors of the SMB market. It can be found at deer-brook.com and Ande can be reached at asmith@deer-brook.com.

Membership Status Changes
Presented to the Board of Governors April 20, 2023

Active to INACTIVE:
- Nigro, Laura, Pompano Beach, FL (Effective February 25, 2023)
- Bright, Joel, Huntersville, NC (Effective March 10, 2023)
- 2Eds, Dana, Hopkins, MN (Effective March 14, 2023)
- Hirsch, Victoria, Concord, NH (Effective March 14, 2023)
- Joyce, Debra, Amherst, MA (Effective March 31, 2023)
- Ramdsell, Michael, Williamsburg, VA (Effective March 1, 2023)
- Active to FULL-TIME JUDICIAL:
- Manchester, Amy, Hudson, NH (Effective March 10, 2023)
- Active to LIMITED ACTIVE:
- Frydman, David, Hallowell, ME (Effective April 5, 2023)
- Active to SUSPENDED:
- Marchosky, Rosana, Windham, NH (Effective April 3, 2023)
- Inactive to ACTIVE:
- Angwin, David, Linden, VA (Effective March 9, 2023)
- Kamorowski, Jennifer, Alexandria, VA (Effective March 10, 2023)
- Karouni, Kara, Rye, NH (Effective March 13, 2023)
- Schlesinger, Thomas, Rye, NH (Effective March 21, 2023)
- Lavallee, Gena, Hollis, NH (Effective March 30, 2023)
- Inactive to INACTIVE RETIRED:
- Nelson, Richard, Savannah, GA (Effective March 1, 2023)
- Inactive to INACTIVE:
- Samson, Jo-Ann, Concord, NH (Effective March 24, 2023)
- Suspended to ACTIVE:
- Macchione, Andrew, Lisbon, NH (Effective March 16, 2023)
- Resigned to DECEASED:
- Dabuliewicz, John, Warner, NH (Effective April 8, 2023)
- Military Active to ACTIVE:
- Ollis, Ryan, Merrimack, NH (Effective March 11, 2023)
The Confidential Mediation Statement: An Overlooked Tool for More Productive and Successful Family Law Mediations

By Heather Krans and Ashley Taylor

There are many factors that can contribute to the productivity (or lack thereof) in a family law mediation: case complexity, how entrenched or reasonable each party is, and the parties’ respective motivations to settle, just to name a few. However, mediation statements are one tool that family law practitioners may overlook in preparing for mediations. According to a leading New Hampshire family law mediator, approximately 62 percent of lawyers do not submit a mediation statement prior to mediation.

When the mediator has a more complete understanding of how both parties view the primary issues in these often-emotional cases in advance of the mediation, the mediator can focus his or her time during the mediation on nudging the parties to a resolution. In contrast, without a mediation statement, the mediator must spend valuable (and, for clients, expensive) time during the mediation slowly learning these crucial details.

Mediation statements need not be long and complicated, but rather tailored to provide the mediator only the most necessary details. In our practice, we often take a somewhat formulaic approach to mediation statements, which also has the benefit of being familiar and easy to review for mediators we use often. Since facilitating efficient mediations benefits everyone, a summary of our approximate “formula” for mediation statements follows.

Intro: This is the most consistent part of the mediation statement, the point of which is to remind the mediator when your mediation is and, for clients, preferable (including whether they prefer to be addressed by a nickname), and who represents the opposing party. While we also watermark our mediation statements with a “CONFIDENTIAL” stamp, it is also helpful to indicate in the first paragraph that you intend for the mediation statement and its contents to be confidential.

By keeping the mediation statement confidential (in contrast to typical practice in many civil litigation cases), you can be more candid about what your client is hoping to achieve in the mediation and whether there are any dealbreakers in terms of proposals that the opposing party might make.

“I am writing with regard to the [mediation date] mediation in the above-referenced matter, in which you have agreed to serve as mediator. As you may recall, this firm represents Catherine (“Cat”)’s Client. [OPPOSING COUNSEL] represents Cat’s husband, Patrick (“Pat”)’s Party. Please consider this Cat’s confidential mediation summary.”

Procedural History: Here, we summarize the procedural posture of the case. For example, has there been a petition filed yet? If so; by whom and when? Is there a temporary hearing scheduled, and if so, when is it? Are there any orders already in effect? Have the parties already attended mediation with a court-appointed mediator? Are there any pending motions or other upcoming hearings? We typically limit this section to one or two paragraphs—the goal is to summarize in a high-level manner, rather than provide the mediator with a blow-by-blow of all case activity.

Status of Discovery: In the first part of this section, we tell the mediator whether the parties have exchanged 1.25-A disclosures yet, including whether there have been any notable deficiencies or delays in this process. In the second part, we describe whether either party has proposed discovery requests on the other, and the status of responding to those requests.

Enclosed Documents: Next, we include a bulleted list of any documents we are enclosing with our mediation statement for the mediator’s review, including the dates of such documents. These typically include any proposed orders we hope to address at mediation, the parties’ most recent financial affidavits, any relevant recent pleadings (e.g. a motion to compel), and any other documents that we believe may be helpful for the mediator to review. For example, if the opposing party has a habit of sending your client demeaning emails insulting his parentings skills and telling him that he’ll never see the children again, consider including copies of one or two of the most egregious examples of such emails. Additionally, consider enclosing copies of any valuation reports (i.e. home appraisal, pension valuations, valuations of a party’s business interests, etc.) if the values may be in dispute or are relevant to resolution.

Family Description: How old are the parties and how long have they been married (if a divorce) or in a relationship (if a parenting action)? Is it their first marriage? If there are children, what are the children’s names and ages? And where do the parties currently live?

“Cat is 42 years old; Pat is 45 years old. The parties have been married for approximately 21 years. It is Cat’s first marriage and Pat’s second. Cat and Pat have three children together: Tweedle (age 20), Dee (age 18), and Dominic (‘Dom,’ age 10). Pat also has a daughter, Patricia (age 24), from his first marriage. Pursuant to the Temporary Decree, Pat continues to reside in the marital home on Old Town Road in Pittsfield, NH. Cat resides in a nearby 2-bedroom apartment in Concord, NH.”

Education and Employment: This section should include details about the parties’ educational backgrounds, current employers and employment history, and income from employment and any other source (including a source for these numbers such as the party’s financial affidavit or parties’ last tax return). Especially in a case where child support or alimony might be requested, this section offers a concise way to give the mediator a glimpse of any potential issues related to ability to obtain employment or earning capacity.

Desired Outcome(s) and Why: What is the ideal goal of the mediation? Would your client be happy if the parties could agree on a temporary parenting plan? Or is the hope to reach a global resolution of the entire case? Where possible, we also like to describe our client’s motivation behind the resolution they are seeking.

“The primary issues in this case are the timing of payment of Cat’s equitable share of the marital estate and parenting time. Currently, Cat’s Concord apartment does not have enough space for Dee, a high school senior, and Dom, in fourth grade, to have their own bedrooms. As a result, Cat agreed, on a temporary basis, to limit her parenting time to Friday through Sunday nights, so that Dee and Dom can be in their regular bedrooms during the school week. She would like to purchase a larger home in Pittsfield and move to a 50-50 allocation of parenting time (ideally allowing the parties to alternate weekends) but cannot afford to do so until Pat pays her equitable share of the marital estate.”

Potential Quagmires and Primary Disputes: Now that the mediator has a sense of where we are asking for and why, we briefly detail what might stand in the way of resolving these issues in our client’s favor. This is an opportunity to share what you understand to be the opposing party’s position on the primary case issues and articulate your client’s counterargument. For example, perhaps one party is insistent on an upward deviation from the child support guidelines but lists several questionable or inflated monthly expenses on their financial affidavit. This section is also an opportune place to consider whether either your client has any dealbreakers (i.e., “Cat will not enter into any settlement that requires her to pay Pat alimony, especially if he retains full possession of the marital home.”)

Status of Negotiations: To the extent that the parties, including through counsel, have previously attempted to negotiate, describe them towards the end of the mediation statement. Were any proposals exchanged? When? Did either party provide feedback on any such proposals? Why or why not? Enclosing a copy of the mediation statement off of this note gives the mediator a clear idea of the status quo of any prior attempts at ADR, setting the stage for the next meeting.

Finally, we end our mediation statement with a standard request to contact us with any questions.

In terms of timing, the mediation statement is best sent at least a full business day prior to the mediation so that the mediator has an adequate opportunity to review and digest it. The more enclosures you include, the more time you should allow for review. As a bonus tip, we also either preface or follow up the mediation statement with a phone call to the mediator, to candidly go over any issues that may have been too sensitive or nuanced for the mediation statement.

Taking an hour or two to draft a comprehensive yet concise mediation statement is a worthwhile investment in the future productivity of the mediation. When mediators need to learn on the job, so to speak, clients are paying twice (attorney’s fees and mediator fees). Additionally, the time each party must spend educating the mediator with all the facts in the case and parties’ respective motivations (including a party’s perceptions of the opposing party’s motivations) during the mediation slow the mediator’s ability to begin facilitating resolution of the case.

Heather E. Krans, a founding partner of Pastori | Krans in Concord, NH, is a nationally recognized family law attorney with over 20 years of experience in the practice of family law. Ashley D. Taylor is an associate at Pastori | Krans with a diverse range of practice areas that includes family law, employment law, and general litigation. Both Heather and Ashley are members of the Bar’s Family Law Section.
Updated Treatise for the Federal Court Litigator Does Not Disappoint

By Jennifer L. Parent

In my role at McLane Middleton, I am continuously intent on finding publications and resources geared to the trial lawyer. Recently, I took the time to review Business and Commercial Litigation in Federal Courts, Fifth Edition. It is the perfect treatise for any commercial litigator. The 16-volume work is available in a hardbound set of books or as a ProView eBook. While I often prefer flipping through the pages of a hardbound book, particularly when researching statutes, I recognize the changing look of our law libraries today and the continuing need to access legal resources from various remote locations. With this in mind, I chose to review this treatise electronically. The ProView eBook was easy-to-use as it allowed me finger-tip access from my desktop to a treasure trove of topics throughout the life cycle of a commercial case.

The Fifth Edition contains 26 new chapters on emerging and cutting-edge topics in the corporate litigation world, as well as expands on the prior sections. Some of the additional subject areas include the intriguing topics of artificial intelligence, shareholder activism, space law, and virtual currencies. The revisions from the Fourth Edition also cover the procedural and practice changes we have seen in litigation over the last several years. Now encompassing a total of 180 chapters, the relevant topics and practical litigation tools accessible to the business law trial lawyer remain comprehensive and impressive.

Robert L. Haig does another excellent job as Editor-in-Chief of embracing this publication embraces. The volumes offer practical advice many of us would find handy in any commercial litigation case. For example, Chapter 52 on Trial Evidence presents guidance on trial preparation and what legal analysis lawyers should consider before offering evidence through trial witnesses or exhibits. The chapter further includes specification on how to admit exhibits into evidence and techniques on how best to present evidence to the trier of fact. Examples of demonstrative and illustrative exhibits complete the section.

For those practitioners headed into trial, Chapters 48 and 53 cover openings and closing arguments, respectively. Chapter 44, new to the Fifth Edition, addresses consideration of the Use of Jury Consultants both pre-and-post jury selection. These chapters cover a variety of commercial litigation contexts, and the authors include helpful checklists for each section.

On the mind of many law firm leaders and legal organizations today, Chapter 83 covers the teaching of litigation skills to newer lawyers. The chapter includes guidance on how to train in oral advocacy and written advocacy as well as reaching high level emotional and social intelligence and recognizing and controlling non-verbal communication skills.

In sum, the ABA Section of Litigation has another winner in this publication. The Fifth Edition is a good purchase for any commercial litigator practicing in federal court today. Make sure you consider this treatise for your library of resources.

Jennifer L. Parent is a director and chair of the commercial litigation practice at McLane Middleton, Professional Association, and NH’s State Delegate to the ABA, and a past president of NHBA.

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### MAY 2023

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

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

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

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

### JUNE 2023

- **THU, JUN 8 – 12:00 p.m. – 2:00 p.m.**
  - Survey Says: The Top 5 Drafting Errors in Ambiguous Contract Cases w/Lenne Espenchied
    - Webcast; 180 NHMCLE min.

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

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

- **TUE, JUN 20 – 12:00 p.m. – 1:00 p.m.**
  - 7 Questionable Associations that Cause Contract Litigation and How to Avoid Them
    - Webcast; 60 NHMCLE min.

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

### JULY 2023

- **THU, JUL 20 – 8:00 a.m. – 5:15 p.m.**
  - CLE by the Sea: NE Solo & Small Firm Conference
    - Up to 360 NHMCLE min.
    - Newburyport, MA – Blue Ocean Event Ctr.

### SEPTEMBER 2023

- **THU, SEP 14 – 9:00 a.m. – 1:00 p.m.**
  - 22nd Annual Labor & Employment Law Update
    - 360 NHMCLE min./ethics TBD
    - Concord – NHBA Seminar Room/Webcast

### OCTOBER 2023

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

### Breakfast Forum

**17th Annual Ethics CLE**

- **Thursday, May 25, 2023**
  - 8:30 a.m. – 10:30 a.m.
  - 120 NHMCLE ethics/prof. min

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

**Topics to be covered include:**
- Common Ethical Issues in Litigation
- Updates on Recent Ethics Committee Opinions
- Refreshers on Trust Account Obligations
- Ethics and Pro Bono Legal Services

**Faculty**
- Hon. Andrew R. Schulman, New Hampshire Superior Court, Concord
- Stephanie K. Burnham, Burnham Legal PLLC, Manchester
- Mark P. Cornell, NH Supreme Court Attorney Discipline Office, Concord
- Elizabeth M. Murphy, NH Supreme Court Attorney Discipline Office, Concord
- Emma M. Sisti, 603 Legal Aid, Concord
- Richard Guerriero, Program Chair, Lothstein & Guerriero, Keene

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

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**SAVE THE DATE**

**22nd Labor & Employment Law Update**

**Sept. 21, 2023**

**FRI-SAT, JUN 23-24**

**Annual Meeting 2023**

- **150 NHMCLE min., incl. 30 ethics/prof.
- Portsmouth • AC Marriott**

**THU, JUN 29 – 12:00 p.m. – 1:00 p.m.**

- **Fast Track Memo Writing for New Deal Lawyers w/Lenne Espenchied**
  - Webcast; 60 NHMCLE min.

**WED, JUN 21 – 9:00 a.m. – 2:40 p.m.**

- **Liability for Directors & Owners**
  - 280 NHMCLE min., incl. 30 ethics/prof.
  - Concord • NHBA Seminar Room/Webcast

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Illogic and Ethics
May 18, 2023 – 12:00 - 1:00 p.m.
60 NHMCLE ethics min.

Survey Says: The Top 5 Drafting Errors in Ambiguous Contract Cases
June 8, 2023 – 12:00 - 2:00 p.m.
120 NHMCLE min.

7 Questionable Associations that Cause Contract Litigation, and How to Avoid Them
June 20, 2023 – 12:00 - 1:00 p.m.
60 NHMCLE min.

Quick Start Guide: 10 Drafting Dos and Don’ts Every Lawyer Should Know about Drafting Contracts
June 22, 2023 – 12:00 - 1:00 p.m.
60 NHMCLE min.

Fast Track Memo Writing for New Deal Lawyers
June 29, 2023 – 12:00 - 1:00 p.m.
60 NHMCLE min.

Navigating the Health Care World

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

NHBA Seminar Room/Live Webcast

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

Faculty
Debra Dyleski-Najjar, CLE Committee Member/Program Chair, Najjar Employment Law Group, PC, Andover, MA
Judith F. Albright, Rath, Young & Pignatelli, PC, Concord
Kenneth C. Bartholomew, Rath, Young & Pignatelli, PC, Concord
David R. Craig, David R. Craig & Associates, New Boston
Andrew B. Eills, Sheehan Phinney Bass & Green, PA, Manchester
Mary Goreham, US Department of Labor, Boston, MA
Lucy C. Hodder, UNH Franklin Pierce School of Law, Concord
Melissa E. Najjar, McDermott, Will & Emery, LLP, Boston, MA
Maria M. Proulx, Anthem Blue Cross & Blue Shield of NH, Manchester
Christine Tang-Chin, US Department of Labor, Boston, MA
Lawrence W. Vernaglia, Foley & Lardner, LLP, Boston, MA
Thomas Wright, Turning 65 Workshop, Portland, ME

Bankruptcy Litigation

Monday 9:00 a.m. - 4:30 p.m.
May 22
360 NHMCLE min.
incl. 60 ethics/prof. min.

Live Webcast

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

Faculty
Edmond J. Ford, Program Chair/CLE Committee Member, Ford, McDonald, McPartlin & Borden, PA, Portsmouth
Kimberly Bacher, Office of the US Trustee, Concord
Ryan M. Borden, Ford, McDonald, McPartlin & Borden, PA, Portsmouth
Hon. Peter G. Cary, US Bankruptcy Court-District of Maine, Portland, ME
Eleanor Wm. Dahar, Dahar Law Firm, Manchester
Joseph A. Foster, McLane Middleton, Professional Association, Manchester
William S. Gannon, Attorney at Law, Manchester
Jonathan M. Horne, Murtha Cullina, LLP, Boston, MA
James S. LaMontagne, Sheehan Phinney Bass & Green, PA, Portsmouth

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

Wednesday 9:00 a.m. - 2:40 p.m.
June 21
280 NHMCLE min.
incl. 30 ethics/prof. min.

Live Webcast

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

Faculty
Arnie Rosenblatt, Program Chair/CLE Committee Member, Hinckley, Allen & Snyder, LLP, Manchester
Peter G. Callaghan, Preti Flaherty Beliveau & Pachios, PLLP, Concord
Nicole Fontaine Dooley, Welts, White & Fontaine, PC, Nashua
Kathleen M. Mahan, Hinckley, Allen & Snyder, LLP, Manchester
Jennifer S. Moeckel, Sheehan Phinney Bass & Green, Manchester
Edward J. Sackman, Bernstein, Shur, Sawyer & Nelson, PA, Manchester
Michael B. Tule, McLane Middleton, Professional Association, Manchester

For more information or to register, visit https://nhbar.inreachce.com
Developments in the Law 2023

Friday 9:00 a.m. - 4:30 p.m.
Oct. 27
360 NHMCLE 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. Belowbrow, Friedman & Feeney, PLLC (of counsel), Concord
Thomas M. Closson, Jackson Lewis, PC, Portsmouth
Tracey G. Cote, Shaheen & Gordon, PA, Concord
Alyssa Graham Garrigan, Ansell & Anderson, PA, Bedford
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

On-Demand Programs from our Partners in the Sharing Network

A Litigator’s Guide to Financial Data
From the Bar Association of San Francisco
Original Program Date: December 6, 2022
80 NHMCLE min.

Avoiding Legal Risk in Diversity, Equity, and Inclusion Programs
From the Bar Association of San Francisco
Original Program Date: November 16, 2022
60 NHMCLE min.

BLM’s New Oil and Gas IM’s: Refining the Federal Leasing Process and More
From the Rocky Mountain Mineral Law Foundation
Original Program Date: April 26, 2023
60 NHMCLE min.

Board Governance Update 2023
From the Bar Association of San Francisco
Original Program Date: February 16, 2023
60 NHMCLE min.

Building the Case for Inclusive & Accessible Communications in the Legal Profession
From the Wyoming State Bar’s Diversity, Equity & Inclusion Section
Original Program Date: December 9, 2022
60 NHMCLE min.

Sixth Annual CLE by the Sea
NH Solo and Small Law Firm Conference
Thursday 8:00 a.m. – 5:15 p.m.
July 20
Blue Ocean Event Center, Salisbury Beach, Salisbury, Massachusetts

Topics will include (with faculty from Maine, New Hampshire and Massachusetts):
• Teens in the Digital World – What You Need to Know…
• Wire Fraud Prevention Tactics for Your Office
• Alcohol Use Disorder in Family Law Cases
• Evolving Judicial Attitudes Toward Racial Stereotypes
• A Deeper Dive into the Income and Market Approach of Valuation: What Attorneys Need to Know
• Ethical Issues Arising from Lawyers and the Internet: Marketing or Mistake?
• Pitfalls in Real Estate Title Practice
• Trauma Informed Lawyering
• Unconscious Bias & The Importance of Diversity & Inclusion
• Navigating the Intersection of Family & Immigration Law

For more information and to register: https://gnba.ticketbud.com/sixth-annual-cle-by-the-sea-conference-for-solos-and-small-law-firms

DID YOU MISS THESE NHBA-CLE LEARN@LUNCH PROGRAMS?
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Modification of Parenting Plans
Original Program Date: April 3, 2023 – 60 NHMCLE min.
This program provides an overview and review of case law and statutory requirements necessary for modification of parenting plans, along with one court’s unique interpretation of RSA 461-A:11 that led to modification.

Employee Misclassification: Independent Contractor vs. Employee; Exempt vs. Non-Exempt
Original Program Date: April 4, 2023 – 90 NHMCLE min.
This lunch and learn webinar addresses the perils of misclassifying workers as contractors or salaried exempt, as well as the laws governing each of these classifications and what steps businesses can take to ensure compliance and avoid potentially costly litigation costs.

Better Legal Writing
Original Program Date: April 5, 2023 – 180 NHMCLE min.
A well-written legal document can distinguish an outstanding attorney from an average one. Judges base their decisions on many factors; how well you’ve thought out and presented your argument on paper is just one of them. Learn techniques that can help give you the edge when it matters most. This CLE is appropriate for any attorney, in any jurisdiction, at any state of their legal career.

Intellectual Property Case Law Update
Original Program Date: April 6, 2023 – 90 NHMCLE min.
The course covers recent developments and key cases to watch in the fields of trademark and copyright law. We discuss important trademark and copyright cases pending with the U.S. Supreme Court as well as lower federal court decisions, and Trademark Trial and Appeal Board (TTAB) proceedings are covered during the trademark review.

For more information or to register, visit https://nhbar.inreachce.com
By Michael S. Lewis

In Petition of New Hampshire Di-
vision for Children, Youth and Families, No. 2021-0563 (Feb.
8, 2023) (Petition of DCYF), the New
Hampshire Supreme Court imposed
heightened scrutiny upon statutes depriv-
ing children of the
equal protection of our laws. While the deci-
sion focused on the State’s effort to impose
unequal status on children through its inter-
pretation of the applicable statute of limita-
tions, its outcome has broader implications.
Among other things, it places the State’s rel-
iance on statutory caps to liability in peril.

The decision reached the New Hamp-
shire Supreme Court from the State’s appeal
of a lower court decision. In that decision,
the trial court, in C.M. v. DHHS, No. 217-
2019-CN-00577 (Aug. 27, 2021), denied
the State’s motion to dismiss a tort action
brought by children seeking relief from the
State.

The facts of the case are harrowing.
“DCYF received many complaints that the
children were being abused and neglected.”
Id. slip. op. at 2. In 2014, after having first
been removed from the home of the abu-
seful parent, DCYF returned the children to
her home. DCYF then learned of additional
instances of violent child abuse from law
enforcement and a physician. Id. at 4. One
detected note that DCYF failed to respond
to her repeated entreaties to protect them for
weeks. Id. In November of the same year, the
abuseful parent killed one of the siblings of
the children under its supervision. The
State successfully prosecuted her for sec-
ond degree murder. Id.

The surviving siblings sued the State for
negligence arising from the State’s failure
to protect them. The State moved to dismiss
on multiple grounds. The State argued that the
children failed to state a claim because the
State had done everything it could do to
protect the children. The trial court, in C.M.
v. DHHS, No. 217-2019-CN-00577 (Aug. 27,
2021), denied the State’s motion to dismiss
the complaint.

In affirming the trial court, the New
Hampshire Supreme Court went even fur-
ther. It noted that the statute of limitations
the State relied upon arose out of, and was
permitted within, 1985 legislation that
stated that all claims “arising out of, and in
connection with, the duties of the State in
the performance of its duties of equal protec-
tion guaranteed by the New Hampshire
Constitution.” Id. at 4. It further observed
that “the right to bring a tort action is an
‘important right,’ and that State bears the
burden of justifying unequal treatment by
demonstrating that the challenged legislation
is substantially related to an important gov-
ernmental interest.” Id. at 5. The State’s effort
to create two classes of children, those who
are subjected to the State’s scrutiny and all
other entities, failed this test.

The Court ruled that the purpose of the
statute at issue, RSA 541-B, was to waive
equal protection immunity and to permit tort
courts to recover against the State. Id. at 5.
The State’s interest in protecting children
against the right to bring a right of action
“injured by the State who do not have . . .
a parent or next friend willing to bring suit
on their behalf” is outweighed by the interest
of those children “persecuted by the State”
and those who are subjected to the State’s
scrutiny.

In the case, the Court ruled that the State
had not met its burden of justifying unequal
interests favoring the differential treatment
of children under State equal protection law.
Unlike rational basis review, the State can-
not rely on post hoc or hypothesized justifi-
cations for its positions. It must identify the
actual justification for treating abused and
disregarded children worse than the popula-
tion, generally. See Lemaire v. Oak Point,

This ruling has serious implications for
defenses the State relies upon in civil
litigation. RSA 541-B:14, for instance, lim-
its recovery to $475,000 per claimant and
$3,750,000 per any single incident. RSA 541-
B, I. The legislature has not updated those
limits since 2007. The amount of $470,000 in
2007 is worth nearly $700,000 in 2023, and
$3,750,000 in 2007 is worth over $5.5 mil-
lion in 2023. Because the same limits place
litigants, including child litigants, in a worse
position than the child population, generally,
the State’s unequal treatment should demand
the same equal protection scrutiny set forth
under Petition of DCYF.

The State will face difficulty offering
an important justification for failing to up-
date laws where the statute’s purpose was
to permit relief. Inflation is a predictable
occurrence in the US. The difficulty will be
exacerbated by public instances in which the
State has acknowledged that the damages it
has caused to children far exceeds the statu-
tory cap. See Kristen Caroaa, Nearly $7M
settlement reached with girls sexually abused
while under DCYF care, WMUR.com (May
3, 2018). “New Hampshire has agreed to pay
millions of dollars to two girls who were
abused by their parents while the Division of
Children, Youth and Families was overseeing
them.”

The State also will have to contend with
the demands of State constitutional provi-
sions not discussed in Petition of DCYF.
Part I, Article 14, for instance, provides that
ev
every subject of this State is entitled to a certain
remedy . . . completely.” It does not carve out
an exception for the State. Part I, Article 8
demands accountability and legality from the
State. See Michael Lewis and Craig McMa-
non, The End of Governmental Exceptional-
ism, NH Bar News 4 (Jan. 16, 2019).

Can accountability and legality, when proven,
counteract an incomplete reme-
ed against a State with a record as bad as
DCYF’s when it comes to protecting children
in the face of mandatory duties? When think-
ing about this question, consider the outgoing
director’s implicit condemnation of the State
in his interview with NHPHR. Julie Furukawa,
Mary McIntyre, NH’s DCYF direct is leav-
ing. What work remains to improve the child
welfare system? NHPHR.org (Apr. 24, 2023)
(“Not every kid is getting access to every-
thing that they need. So, there’s still plenty of
work to be done.”)

Petition of DCYF suggests the answer
should be no when it comes to determining
civil litigation against the State for failing to
protect our kids. These issues should and
will be resolved by our courts as cases develop
in this area, as news suggests they will. See
Tim Cellery, Report prompts changes after
Harmon Montgomery’s death, but same say
more must be done. Several New Hampshire
children have died while under DCYF care,
WMUR.com (Apr. 11, 2023) (describing se-
rious DCYF dysfunction in relation to deaths
of NH children.)

Michael S. Lewis is a senior litigation share-
lholder at Rath, Young and Pignatelli, PC. He
has been an adjunct professor at UNH and
Vermont Law Schools. He has also written
extensively on the State’s failure to protect
children in New Hampshire.

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NEW HAMPSHIRE BAR NEWS

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views — continues to tell the stories and preserve the work of the judges and lawyers who have shaped New Hampshire’s legal landscape for over two centuries.

The Bar Emerged Along with New Approaches to Law

The formation of the Bar Association of New Hampshire came at a time when significant changes were occurring in American culture and in the way American law was approached. By 1873, one change affecting the practice of law was the so-called Langdell Revolution, named after Harvard law professor Christopher Columbus Langdell. This approach, which acknowledged the increasing complexity of the law, led to a shift in the law school method of study focusing on finding precedents that is still used today, in combination with the Socratic method and other forms of instruction.

By the time Winnie McLaughlin, who would go on to work for 25 years in the estate planning division for an insurance company in Manhattan, was barred in New Hampshire in 1917, another approach to law was emerging. The realist approach, as it was called, happened alongside cultural and social changes, which led to the demand for a growing specialization in law. This approach, which continued to utilize the casebook method and a body of oracles, was also concerned with the “social ends” of law and was “more problem-focused…particularly on problems as they are encountered by the lawyer in his office,” according to a 1967 Marquette Law Review paper titled Lawyers in American Society: 1760-1966, by John Willard Hurst.

Telling the Story of New Hampshire’s Legal History

Maureen Raiche Manning, a founding member of the New Hampshire Women’s Bar Association established in 1998, became involved in preserving the bar’s history in the early 1990s. Her work began after seeing an advertisement from the NHBF around 1991 calling for the formation of a Legal History Project. By May 1993, Raiche Manning—then a lawyer in the firm of Upton, Lewis—chairs the committee—and a group of several others had completed guidelines for their interviews and soon hired a professional archivist.

Rachie Manning comments on her ascension to the Bar presidency.

The cost of each interview at the time was $500. While the original committee for the project held some of its last events and interviews in Manhattan, they had collected—which involved hundreds of hours of interviews and editing—paint ed a picture from the perspective of New Hampshire lawyers and judges dating as far back as the 1930s. These interviews, some of which are housed on the NHSCS website today, along with others done before and since the project, are part of the NHSCS’s Oral History Project.

Gregory Smith, former state Attorney General, and member of the NHSCS Board of Trustees, notes that Gregory Smith is honored in the 50-Year Member Supplement contained in the center of this issue), says the process that Raiche Manning and the Bar Legal History Project established in the early 1990s continues to be utilized today, noting that the quality of the recordings has improved over the years.

You can tell when you look at the libraries which one were recorded in high definition and which were recorded earlier on VHS,” he says, explaining that the early tapes were converted to a digital file to publish them. “A lot of the work being conducted with the support of the New Hampshire Supreme Court Society and the N.H. Bar Foundation.”

When getting started with the project, Raiche Manning says she began by asking a list of all the members who had entered the Bar starting around 1950, and later the group began going back further. “We ended up breaking down who had been interviewed already and then we started breaking up the transcripts,” she says, explaining the committee was looking to tell interesting stories that would provide a snapshot of people’s experiences practicing law.

For the project, Raiche Manning interviewed former NHBA President Fredrick K. Chapman and Associate Justice William Lewis, who has been on the NHSC at least since 1973. She learned that after leaving Harvard Law School in 1942, Upton had served in the Navy for two and half years, and upon his return was swayed to enter the bar by his friend and fellow associate judge noted. Chapman is one of the many who have had an impact on the law, Justice Bassett says.

Chapman, who has argued 43 cases in front of the NHSC, focuses his practice on media law, appellate practice, and businesses seeking tax exemption. The case that went to the Supreme Court that has had the strongest impact on how the unified Granite State operates came in 1987. The Court’s decision in Petition of William L. Chapman, who was against the Bar’s opposition to tort reform legislation, essentially permits to the political activities the NHBA could engage in. It also found there were cases where such activities were permissible, including responding to legislation that affected the legal profession as a whole.

Through his work on the State House Bicentennial Commission in 2019, Justice Bassett wrote an article for the New Hampshire Historical Society about the statehouse in the 1800s.

“Most people didn’t know the state’s Supreme Court sat where the House of Representatives sat and arguments there in 1824, then moved into the Senate Chamber across the hall in 1843.” She says she found an exhibit of the late Sen. William Chapman, who was a nun and that a nun would never represent a nun, illustrating her own experience.

In 1977, Green was defending a client in a jury trial where the prosecutor continued to refer to her as “sister” in the courtroom. “She didn’t push back I guess,” Raiche Manning says, explaining that when the jury came back and let [Green’s] client off, she had recalled she was in storage. A couple of months later, Green recounted in the interview that she ran into one of the jurors from the case in a grocery store who told her he had thought she was a nun and that a nun would never represent someone who was guilty.

Justice Bassett’s Work Preserving New Hampshire’s Legal History

In 2018, New Hampshire Supreme Court (NHSC) Justice James Bassett interviewed Justice William Chapman, who he has known for 35 years, for the NHSC’s Oral History Project. Chapman, he says, was a mentor during his practice as an attorney at Orr & Reno.

“He is a great example of someone who has had an interest in the bar and who has had an impact on the law,” Justice Bassett says.

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“The 2019 commemoration was a great experience for us,” Justice Bassett says.

Bassett, who joined the Court in 2012, says preserving history is important and that the Court frequently uncover historical documents that are in storage. “We have a responsibility to preserve and present the history of the Court and the leaders of the Bar,” he says.

Preserving New Hampshire Court Cases

A NHSC project to archive and digitize old cases has recently completed the first seven volumes dating back to the 1800s. The project, which started nearly five years ago, is headed by the NHSC’s Library Director Anna Barbara Hantz Marconi, and Mary Searle, law librarian.

John W. King New Hampshire Law Library, Northeast Document Conservation Center which specializes in treating and digitizing collections made of paper or parchment, has been contracted to do the work, which will include conserving and archiving 600 volumes of cases, starting with the oldest. The total price tag of at least $2 million will be paid for by contributions from the state legislature, as well as COVID grant funds, according to Searle.

In her presentation of the old cases, Searle says she found an exhibit of the late Justice Robert Peaslee’s doxillas, as well as a lured story relating to her own family history.

“It was a divorce case from the 1800s, and I was asked to track down some information for a family genealogy,” she says, explaining that a friend of her father, former US Senator Robert W. Up tton, who died in 2013. She learned that the early tapes were converted to a digital file to preserve the work of the judges and lawyers who were, and what the issues were about at the time.

She says the second and final phase of the archiving process will be to find a place to house the preserved archival materials.

“We’re currently in the process of designing a vault, if you will, that could go in the Supreme Court basement where archival cases would be stored,” Justice Hantz Marconi says. “And it just happens to dovetail with the rehabilitating of our HVAC system, so we may be able to piggyback on that.

Reflecting on how the function of the bar has changed since 1972—the year it was unified—NHBA Executive Director George Moore recalls recently finding correspondence from NHBA Executive Director Joseph Hayden and NHBA President John Pendleton dealing with budgets from that year. After unification, tax returns were needed to document sales of the New Hampshire Bar Journal and other physical assets.

“They were making lists and [likely] trying to figure out how to not get in trouble,” Moore says. “And it just happens to dovetail with the rehabilitating of our HVAC system, so we may be able to piggyback on that.

Scott Merritt is a staff writer for Business NH Magazine and former editor of the Bar News.
Realizing his client, Coughlin, had a similar legal issue to Duby – with respect to emotional distress damages – Gottlieb asked Harman to get involved.

“What’s more emotionally distressing than trying to take your own life?” Harman asks rhetorically.

In Coughlin’s case, Lendgreen filed a motion to dismiss, citing tribal immunity because they are a subsidiary of Lac Du Flambeau Band of Lake Superior Chippewa Indians (the Tribe), a federally recognized Native American tribe. The Bankruptcy Court agreed with Lendgreen and the Tribe and dismissed the case, favoring a Sixth Circuit decision on the issue.

“We were successful in leapfrogging over the next appellate court and got ourselves handily into the First Circuit Court of Appeals,” Harman says. “I’ve been in the First Circuit more than once, but I knew this case had huge ramifications, and it deserved to be heard by the court of last resort.”

Just as Gottlieb found Harman in connection with Duby, Harman found Rapawy due to his work on another bankruptcy case called Greek Town, which also involved the issue of abrogation of tribal immunity under the Bankruptcy Code. The Sixth Circuit had decided against Rapawy’s client, so he sought certiorari from SCOTUS, but the case settled while it was pending.

“Once Terrie realized she had this same issue, she called me up to ask if I had any thoughts,” Rapawy says. “I told her that if she was interested, I would be willing to participate in the First Circuit appeal. Obviously, we didn’t know at the time that it was going to the Supreme Court.”

The First Circuit reversed the Bankruptcy Court, siding with the Ninth Circuit’s conclusion that the Bankruptcy Code distinctly abrogates tribal sovereign immunity. The Tribe then filed a petition for a writ of certiorari from SCOTUS, but the case settled while it was pending.

On April 24, 2023, the morning of her first-ever SCOTUS appearance, Harman went for a jog and discovered a back door into the building.

“There I was in my running clothes, sneakers, and baseball cap, and I spoke to a security guard there and told him I’m part of the arguing counsel team. I asked if it would be okay to come in this back door later,” Harman says. “He said, ‘oh sure, come on in the back door.’ So, I was glad to be able to avoid lines before front. I felt like a real Washington insider because I got to go in the back door with special arrangements by the nice security guard.”

Harman and Rapawy expect to hear the Court’s decision by the end of June.

Harman continues: “Here’s me, a bankruptcy code and probate lawyer from Exeter, now wrestling with tribal immunity. It’s been an interesting new area to learn about. I’ll tell you, the humility – I’m humble pie. I thought I knew my way around a lot, but there’s a lot that I didn’t know and had to learn.”

When asked about how she feels now that she’s returned from Washington, DC, Harman says she has a lot of work to catch up on.

“I’m happy and proud of my other clients for being so supportive,” Harman says. “It’s been a team effort with a lot of people: my husband, the other lawyers – even my hairdresser. It’s still so surreal. I think everybody was so affected by the enormity of what we just did. I’m exhaused from the whole thing.”

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and truly selfless. She does her work out of what is so clearly a commitment to help the people who need it.”

Dodge says that she has been trying to retire for several years, but the pieces never fell into place for a proper succession.

“In 2016 or 2017, I started thinking about a succession plan because it was really important to me to have the right person doing this work,” Dodge says. “Kerstin Cornell, who was part-time Assistant DOVE Coordinator, was my first attempt at building somebody into this position. Our focus was originally on intimate partner violence, and we decided to make that leap to include stalking. Kerstin helped me roll out the training for that. It’s a whole different statute, but the relief is the same.”

Cornell later departed the NHBA to become a staff attorney at New Hampshire Legal Assistance (NHLA), but she and Dodge remain good friends. Soon after, Attorney Angelika Wilkerson-Martin took the position.

“I thought Angelika was the perfect fit to succeed me as the DOVE Coordinator,” Dodge says. “She took over the stalking thing and did a fantastic job. She became our resource with the DOVE attorneys who were calling with just a quick legal question.”

However, when the 603LA merger took place, Wilkerson-Martin assumed the role as their new DV Specialist Staff Attorney. Dodge says that DOVE and Wilkerson-Martin’s team still work very closely together.

“So, it’s been a long road toward retirement,” Dodge says. “I had hoped that I would have somebody in and trained and familiar with the attorneys, so it would be a seamless transition when I left. But if I’ve learned anything, it’s that you can’t micro-manage life.”

Mary Krueger, NHLA staff attorney for the Domestic Violence Advocacy Project and member of the Task Force on Domestic Violence Cases in the New Hampshire Judicial System, says she has always valued the partnership between DOVE and the DV Advocacy Project.

“Pam has been steadfast in her commitment to ensuring that survivors of domestic violence, sexual assault, and stalking can flee violence safely,” Krueger says. “It’s a legacy she will be able to carry with her. It’s going to be a huge loss, but a well-deserved retirement.”

Dodge plans to do take some time to travel with her husband of 40 years before settling back down again. Whatever she does going forward, Dodge can rest easy knowing that during her career, she has helped thousands of domestic violence survivors and saved many lives and families in the process.

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It's Time to Amend the New Hampshire LLC Act

By John Cunningham

As many New Hampshire business lawyers will know:

• In August 1993, the New Hampshire legislature enacted the original version of the New Hampshire LLC Act (the Act);
• In July 1997, the legislature amended the Act to take account of certain major federal tax developments and;
• In 2012, at the request of the New Hampshire Business and Industry Association, I formed and chaired a committee of New Hampshire lawyers with LLC expertise to make a comprehensive revision of the Act.

The revision, which was massive, became effective for new LLCs on January 1, 2013, and for existing LLCs on January 1, 2014. However:

• Since 2013, the Act has been amended only once—namely, to add “do-

mestication” provisions; and
• During the past ten years, many developments have occurred nationwide in LLC legislation and practice.

Thus, in my view, and that of other members of our 2012 committee, it is time for a new committee of New Hampshire LLC lawyers to update the Act to take account of those developments. The BIA has kindly agreed to support this update in the legislature if, in its view, the proposed updates are likely to be useful to New Hampshire businesses; the Bar may present a webinar on the update project later this year, and three members of our 2012 committee have already agreed to serve on the update committee.

However, we’re looking for three or four additional New Hampshire lawyers with LLC expertise to join our committee. If you’d be interested in joining it, please give me a call at (603) 856-7172 or e-mail me at lawjmcc@comcast.net.

Benefits from page 5

It's great to see so many young individuals who are knowledgeable in civics and can communicate effectively,” Tanguay says. “Even if they don’t go into government or politics or something related, they have that civic knowledge to them to make their decisions at the voting booth. And they also have the public speaking and analytical writing skills that they’ve improved upon. These are all skills that transfer for the rest of their lives, no matter what career path they choose.”

Al response to a lot of difficult questions that...
What Do Pre-COVID Leases Look Like Post-COVID?

By John Weaver

The two years before COVID – before quarantine, before widespread work from home policies – represented the peak of the leasing market for office space. With a strong economy and high demand, landlords were generally able to negotiate favorable rents and terms. As we know, the state of office space has shifted since then. Similarly, post-COVID leases for other types of spaces – retail, industrial, etc. – have looked very different than their pre-COVID versions, as the behaviors of tenants, consumers, and employees have changed. With many leases that were signed from 2018 through the beginning of 2020 set to expire soon (particularly in the office space market), here are some key issues to consider when drafting and negotiating post-COVID leases.

Leases for Office Space

In a recent episode of the podcast, Plain English, host Derek Thompson, a writer for The Atlantic, and guest, Dror Poleg, an economic historian, discussed how most COVID-era market trends – e-commerce, interest rates, etc. – returned to their pre-COVID trends. However, remote work is an exception to this trend. Research from Stanford economist Nicholas Bloom shows that before the pandemic, about five percent of US workers worked from home. That number shot up to 61.5 percent at the beginning of Q4 2022.

While these terms and benefits may have suited companies: the tenants are able to offer the perks may be built into leases, or the tenant could incentivize time in the office. Buildings or nearby developments, as employers try to incentivize time in the office. Buildings with or near amenities like gyms and cafes, where tenants may seek special perks from those neighbors, are appealing. These perks may be built into leases, or the tenants may seek separate, mutually beneficial contractual partnerships with those companies. The tenants are able to offer the services to their employees and the other companies obtain steady cash flow.

While these terms and benefits may be welcomed news to tenants, they put more pressure on landlords. As Dror Poleg put it, “the quality of commitments that landlords get from the customers are going down” as office space is “going to become a much more dynamic market.” Depending on the state of their financing, some landlords may feel tension between the demands of their lenders and the demands of their tenants. Although this is hardly the best time to refinance, landlords that have pre-COVID leases expiring in the near future should begin discussions with both their tenants and lenders to give themselves plenty of time to balance their rent streams with their loan payments. In addition to new lease agreements and amendments, some landlords will need to negotiate refinancing, loan amendments, or workout agreements.

Leases for Retail Space

The impact of e-commerce on brick-and-mortar retail is well documented, but retail spaces are not going away. The needs of those tenants, however, are much different than they were a few years ago. As demonstrated by Bed, Bath & Beyond’s recent bankruptcy filing, larger retail spaces are disfavored. Per a JLL report, in 2022 retail tenants absorbed more square feet of space than in any year since 2017, but that same report stated that the square footage of new retail leases continues to decline, with the average size being 3,185 square feet in Q4 2022.

The peak hours for retail have changed too. As more people work from home, retail and recreational visits that were isolated to weekends and out-of-work weekday hours (e.g., golf, hairdresser, gyms, etc.) now occur more broadly. For restaurants and bars in certain areas, the shift to remote work has meant that their busiest shifts are different: Friday happy hours and work lunches might see fewer customers, but the opposite can be true for Tuesday through Thursday nights. On top of this, employment trends continue to make it difficult for many service establishments to hire enough help.

These conditions can be reflected in post-COVID leases with smaller premises with expansion options, shorter terms with multiple renewal options, and more flexible operating hours where landlords impose requirements.

Leases for Industrial Space

Although the industrial lease market was robust pre-COVID, consumer demand during the pandemic combined with ongoing supply chain concerns have made industrial spaces even more desirable in New Hampshire. Vacancies can be hard to find. Tenants that were lucky enough to enter into industrial leases immediately before COVID are likely seeking to rescind their extension options, rather than terminating or renegotiating. To the extent that landlords and tenants seeking to amend existing leases or enter into new agreements, a key issue is rent escalation. Before the pandemic, landlords were more likely to accept a flat rate for annual increases rather than tying those to cost of living indexes, as inflation had been stable for some time. With inflation more of a worrying variable, landlords are less likely accept defined escalator clauses. A possible compromise is setting a cap and floor on annual increases in the lease, providing some protection for both landlords and tenants.

John Weaver is the chair of McLane Middleton’s Real Estate Practice Group, chair of the firm’s Artificial Intelligence Practice, and a member of the Cybersecurity and Privacy Group. John serves as outside real estate counsel to regional and national companies, overseeing the management, financing, and expansion of their real estate holdings.

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By Jack D. Hepburn and Thomas N. Masland

Each April, a throng of like-minded New Hampshirites (including some lawyers) convene at a conference called “Saving Special Places.” As the name suggests, attendees discuss ways to keep New Hampshire special; particularly, by conserving its natural environment. The conveyance of conservation easements is one of the most effective methods of accomplishing this goal.

Conservation Easement Basics
A conservation easement is a permanent, self-imposed prohibition on certain activities (often commercial or residential development) on a parcel of land. In a conservation easement transaction, a landowner (the grantor) places permanent conservation restrictions on its property. The easement is conveyed to a qualified holder (the grantee or easement holder), typically a conservation organization or a municipality, who assumes the obligation of monitoring and enforcing the conservation restrictions. Because a conservation easement is an easement in gross, not recognized at common law, conservation easements in New Hampshire are enabled by RSA 477:45-47.

Conservation easements prohibit activities that undermine the conservation attributes of the protected land. These “use limitations” are spelled out in the easement deed, run with the land in perpetuity, and are legally enforceable against all future landowners by the easement holder. Grantors typically reserve certain rights that are permissible on the property, such as non-commercial agriculture and forestry.

Economic Incentives
Conservation easement transactions take many forms. Sometimes land trusts (through fundraising efforts, grants, etc.) raise the funds necessary to purchase a conservation easement for its fair market value. While conservation easement appraisals are beyond the scope of this article, the value of a conservation easement is determined by calculating the difference in value of the property before and after the conservation restrictions are put in place.

A landowner who donates an easement, or a portion of the value in a “bargain sale,” may qualify for a federal income tax deduction, so long as the Internal Revenue Code and Treasury Regulations pertaining to donated conservation easements are complied with. See, IRC § 170(h); 26 CFR § 1.170A-14. Conservation easement deeds in which the landowner is seeking a federal tax deduction are significantly more complex than those where no deduction is sought, and the IRS scrutinizes easement transactions carefully. Before assisting a client with an easement transaction involving a tax deduction, one should consult a conservation easement tax expert.

Amending Conservation Easements
While conservation easements are intended to be perpetual, there are times, especially with older easements, where adding more restrictions, allowing certain uses that are not detrimental to the conservation purposes, or shifting the location of allowed structures, is agreeable to both the landowner and easement holder. In such a case, an amendment to the easement may be sought. Keep in mind, however, that amendments are not encouraged and are scrutinized carefully, and therefore should be treated with caution. Many easement deeds now contain amendment clauses that narrowly define the circumstances where amendments can be considered.

Under New Hampshire law, conservation easements constitute charitable trusts. Accordingly, they fall under the jurisdiction of the Director of Charitable Trusts (CTU). Any amendment of a conservation easement would be protected by the provisions of the CTU.

EASEMENTS continued on page 34
Real Property Law

Amendments Versus Variances: Selecting Pathways of Lesser Resistance

By Rowan D. Ferrier and Ari B. Pollack

Developers often face a permitting choice when considering a new development project. In deciding whether to pursue a new project, identifying areas of necessary relief from a local zoning ordinance is both typical and critical. Once identified, however, deciding how best to pursue relief is equally important and involves strategic thinking. The choice involves pursuit of variances to allow something otherwise prohibited, versus efforts to amend a zoning ordinance to allow a use or activity that is otherwise not allowed. Making this choice depends on an understanding of each process and the factors applied by the governing body.

Any one of three local governmental systems may adjudicate proposed changes to an existing ordinance; the town meeting system, town council system, and the SB2 form of municipal government. Under the town meeting system, most proposed amendments are reviewed and put forward for public hearing by the local planning board. These measures are then voted on by official ballot at the town meeting. Under the town/city council system, the mayor and board of aldermen, or town/city council, determine the process for amending zoning ordinances, which creates variation in the procedures for adoption. Council forms of government, however, vest a governing body with the authority to amend or adopt zoning ordinances without having to wait through the annual town meeting cycle. The SB2 system operates similarly to the town meeting system, with the only notable differences for zoning purposes being when deliberation on proposed ordinances can take place. Being familiar with local government processes for zoning amendments is critical to deciding whether to seek an amendment or a variance.

Regardless of the municipal process for zoning amendments, a few universal considerations will apply within the context of a very political decision. Is the proposed development or use likely to be popular in the host community? Does it address an underserved need in the market or host community? Will the use generate impacts for the host community, and can these impacts be effectively mitigated? An honest assessment of these questions will assist the savvy developer in weighing chances of success in proposed zoning amendments.

Rather than amend the ordinance, a developer may instead seek a variance to resolve proposed nonconformities. In order to meet the statutory requirements for a variance, applicants must satisfy the following five elements found in NH RSA 674:33.

1. The variance is not contrary to the public interest. The New Hampshire Supreme Court has held that a variance is contrary to the public interest if it “unduly and in a marked degree” conflicts with the zoning ordinance, such that it violates the ordinance’s “basic zoning objectives.” There are two questions used to determine whether the ordinance’s basic zoning objectives are violated: First, would granting the ordinance alter the essential character of the neighborhood? Or second, would granting the variance threaten the public health, safety, or welfare?

2. The spirit of the ordinance is observed. This provision will require decision makers to understand the rationale behind the ordinance. They must analyze whether the outcomes produced by granting the variance are in sync with the goals that the enacting body had at the time that they adopted the relevant portions of the ordinance.

3. Substantial justice is done. This element is highly nebulous and difficult to pin down. Generally, decision makers will com-
The past year has seen significant changes to New Hampshire land use law as a result of House Bill 1661’s passage in 2022. Most of these changes impart heightened levels of accountability to local planning boards and ZBAs; but no land use legislation is complete without addressing the political issue of housing. Those changes to housing regulation are not the subject of this article and its word-count constraints.

A significant change to board accountability comes from RSA 676:3, I, which, as of August 23, 2022, requires local land use boards to state written reasons for their findings of denial and approval of a given application. The statute is new, the law is not. In 1974, the NH Supreme Court in Alcorn v. Rochester found that a board’s failure to provide reasons for its decision denied any potential appellant meaningful judicial review. Yet, despite nearly 50-year-old case law and recent statutory law, municipal boards in NH as recently as April 2023 still fail to articulate written reasons for their decisions.

Education opportunities for board members are also expanded under RSA 673:3-a. Prior to HB 1661’s passage, the statute only provided training opportunities for new members, with courses and materials allowed to be provided by the NH Office of Planning and Development (OPD). The amended statute now mandates that OPD provide these education opportunities to all board members (not just new members) and requires that they be available free of charge.

A more practical accountability feature of HB 1661’s passage comes with RSA 673:16, III, imposing a new requirement for municipalities to publicly post all application fees charged to applicants. While the new regulation may seem less significant in comparison to the other changes discussed in this article, the practical benefits are tangible. Many practitioners found themselves scrambling to make an application deadline, only to find that some additional unpublished fee had to be paid, and that the person physically filing the application did not have a check to cover those costs (many municipalities only take payment by check or cash). The new regulation waives any fees not published.

Most land use practitioners can appreciate that many development cases are greatly impacted by both time and money. The next two regulations discussed below are designed to address both.

Regarding money, HB 1661’s amendments to RSA 677:20 now provide two distinct financial accountability measures that should have the effect of easing impediments to development. The first, Subsection I, provides that the superior court can require the appellant of an approval to file a bond or surety to indemnify the prevailing party from costs and damages if the land use approval is affirmed. Subsection II codifies common law by authorizing the court to award attorneys’ fees and costs to a prevailing party in an appeal, if the prevailing party can show bad faith, malice, or gross negligence (the latter gross negligence only being applicable to municipalities). Both provisions are likely to have a significant impact in thwarting less meritorious appeals, many of which cause expenses and delays that ultimately end a proposed development before it starts.

Regarding time, HB 1661’s amendments change the deadlines for boards under RSA 674:31 VI now gives ZBAs a 90-day shot clock to decide applications. Changes to RSA 676:4, I (c) streamline the Planning Board process by keeping the 65-day decision deadline intact, but streamlining the applicant’s relief if the planning board fails to meet the deadline. Previously, when a planning board delayed longer than 65 days, an applicant had to petition the selectmen or council, who could then order the Planning Board...
Easements from page 31 require review by the CTU. As discussed above, an important incentive for the donation of conservation easements is the potential for a federal income tax deduction. This raises a critical question: Does this conflict with the IRS requirement that the conservation protections be granted in perpetuity to qualify for an income tax deduction? This question was answered by the 11th Circuit in the case of Pine Mountain Preserve, LLLP v. Commissioner, 97 F.3d 1200 (11th Cir. 2020). In Pine Mountain, the 11th Circuit, reversing a Tax Court opinion, held that the existence of an amendment clause in a conservation easement deed does not violate the IRS requirement that property be protected in perpetuity in order to be eligible for a tax deduction.

Despite this decision, the IRS continues to challenge easements based on the presence of amendment clauses. Accordingly, practitioners should be aware of the do’s and don’ts of amending easements. The CTU has published guidelines for amending or terminating conservation easements, entitled, “Amending or Terminating Conservation Easements: Conforming to State Charitable Trust Requirements” (the Guidelines). Though not binding, the Guidelines are generally followed by easement holders, and are a helpful tool when analyzing the advisability and process of amending or terminating conservation easements.

After reviewing the amendment provision in the easement deed, the next step is to consult the Guidelines. First, one should review the Guidelines’ “Seven Principles.” An easement complies with the Seven Principles if it: 1) clearly serves the public interest and is consistent with the easement holder’s mission; 2) complies with all applicable federal, state, and local laws; 3) does not jeopardize the holder’s tax exempt status; 4) does not result in private inurement or confer impermissible private benefit; 5) is consistent with the conservation purposes and intent of the easement; 6) is consistent with the intent of the grantor and any funding source; and 7) has a net beneficial or neutral effect on the conservation values protected by the easement.

The Guidelines set up three categories of conservation easement amendments characterized by their level of risk: “low risk” amendments unequivocally comply with the Seven Principles while “more risk” and “high risk” amendments may not. If you are presented with a proposed amendment and are unsure under what risk category it falls, consult the Guidelines.

While low risk and more risk amendments require review from the CTU, high risk amendments almost always require review and approval by the probate court, usually under the doctrine of cy pres. High risk amendments typically involve complex issues, such as possible harm to the conservation purposes of the easement or removal of more than a de minimis portion of land from the easement’s restrictions. The termination of a conservation easement, whether in whole or in part, will always require court approval in a cy pres proceeding.

In addition to the Guidelines, the newly adopted CTU regulations (specifically Jus 416) shed further light on amending conservation easements.

Land Use from page 33 to issue the approval at its next meeting. That process could easily add two to four months to an application (meetings are monthly or bi-monthly at best), evincing the intent of the statute. The current statute requires the selectmen or council to approve the application as submitted and issue the permit sought, eliminating the subsequent planning board step. Further, if the selectmen or council fail to issue the permit, RSA 676:4, I (c) requires the superior court to issue the permit sought within 30 days.

The Planning Board application will be deemed approved as submitted, eliminating the municipality’s opportunity to require modifications or impose conditions. This is a major incentive for the municipal

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in the area, then demonstrating a reasonable use is all that remains. The simple fact that a landowner’s intended use is reasonable is not itself sufficient to satisfy this element. The property must be unique in a way that prohibits a reasonable use without relief. This means that a property may not be itself unique compared to other surrounding properties, but may still be entitled to a variance if it is unique in its inability to host a reasonable use while complying with the existing ordinance.

Any decision to pursue a zoning amendment versus a variance comes with consequences, mostly relating to time, money and chances of success. Would the municipal legislative body be more receptive to popular and political arguments than the zoning board may be to legal and hardship evidence? Would abutters to the development site also benefit from a more widely applied zoning change, whereas the variance would only apply to a subject property?

Delays in the approval process can kill deals as markets shift. Making an objective decision as to permitting pathways is critical to identifying the path of lesser resistance. Rowan Ferrier is a member of Gallagher Callahan & Garrett, P.C.’s transactional team. Rowan’s practice focuses on helping businesses to form, obtain commercial financing, expand, transfer ownership, and sell. Additionally, Rowan works with clients on real estate development, corporate compliance, banking, securities, and regulatory matters. Rowan also advises clients on relevant developments in the New Hampshire Legislature. New Hampshire bar admission pending.

Ari Pollack is an attorney and shareholder at Gallagher, Callahan & Garret, P.C. in Concord, NH, and represents business, construction, land use development, and environmental clients on a variety of land use permitting, development, environmental, and litigation matters. Ari continues to be selected by his peers for inclusion in The Best Lawyers in America® for Concord, NH for Real Estate and Land Use and Zoning Law and Litigation. He has also been listed in Concord, NH by Super Lawyers® for Land Use/Zoning since 2016.

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Attorneys at Law
By Brian R. Moushegian

Laws play a critical role in reducing the cycle of domestic violence. However, some lawyers may be hesitant to represent clients in domestic violence cases because of the lawyer’s unfamiliarity with the area of law; the potential difficulty in proving allegations of abuse; and, for some, concern about the professional responsibility issues present in such matters. This article is intended to provide lawyers with tips which will enable them to confidently and ethically represent clients in intimate partner violence (IPV) and domestic violence matters.

Tip 1: Know the Scope!

In all matters, including domestic violence/IPV cases, a lawyer must know and explain to the client the scope of the lawyer’s representation. This often avoids misunderstandings between a lawyer and a client – a common basis for grievances filed with the Attorney Discipline Office. Pursuant to Rule of Professional Conduct 1.2(a), a lawyer may agree to limit the scope of the lawyer’s representation of a client in a matter. Rule 1.2(g)(1) states that “a lawyer may provide limited representa- tion to a client who is or may become involved in a proceeding before a tribunal [], provided that the limitations are fully disclosed and explained, and the client gives informed consent to the limited representation.” (Emphasis added.) Importantly, Rule 1.2 provides a sample “Consent to Limited Representation” form which lawyers should review before entering such an agreement with a client. Such agreements should be in writing, include the client’s consent to the limited representation, and describe in detail the specific scope of the lawyer’s representation.

Tip 2: Be Competent!

Rule 1.1 (Competence) requires that a lawyer competently represent a client. To competently represent a client in IPV and domestic violence matters, a lawyer must first know the relevant law. This means that the lawyer knows and understands the relevant civil and criminal statutes most commonly involved in such matters: RSA 173-B (Protection of Persons from Domestic Violence); NH RSA 631:2-b (Domestic Violence); and NH RSA 633:3-a (Stalking). The lawyer also must know how the law is applied. For example, a lawyer must review NH RSA 173-B:1, et al, to know if their client is a protected person under the statute, what the statutory definition of “abuse” is, in what jurisdiction/venue to bring the action, how to initiate the action, what type of relief may be obtained, and what duties and/or obligations are the lawyer and/or lawyer’s client subject to if relief is obtained.

A lawyer must also be competent regarding IPV/domestic violence and its impact. To develop such competence, the ABA Standards of Practice encourages lawyers to “understand the potential risk of escalated violence due to litigation, and how the experience of domestic violence, sexual assault and/or stalking may affect the client-lawyer relationship, including the development of establishing support and gathering information, evidence and case direction from the client.” Among other things, a lawyer should be aware of the factors in the prevalence of domestic violence, common characteristics and indicators of abusive relationships, and the effects of domestic violence on victims and their families.

Before representing a client in a domestic violence action, a lawyer should be aware of the full legal impact of bringing such a action. That means knowing all the collateral legal issues that may or will arise. For example, if the plaintiff and the defendant are married, issues involving divorce or separation could arise. If the plaintiff and defendant have children together, issues involving child custody and visitation will also arise. If the lawyer represents a defendant who owns firearms in an IPV action, the defendant’s continued possession of firearms must be addressed. In summary, a lawyer must be familiar with (and discuss with the client) not only the applicable law in the pending domestic violence, but all the other legal issues potentially implicated in an IPV action. If necessary, a lawyer must also be prepared to associate with other counsel or advise that the client obtain legal advice from other counsel on issues outside the scope of representation.

Tip 3: Be Diligent!

Rule 1.3 (Diligence) requires that a “lawyer… act with reasonable diligence and promptness in representing a client.” A lawyer’s need to act diligently on behalf of a client in a IPV matter is self-evident. In IPV cases, diligence means adequately screening your client at the start of representation to identify the potential existence of IPV. If IPV is confirmed, a lawyer should be prepared to advise the client of the potential legal and non-legal consequences of action that can take to prevent future abuse, as well as collateral legal issues. Acting diligently may also require a lawyer to have a reasonable basis for concern that the client may be the victim of IPV. If so, the lawyer should act as a gatekeeper by report incidents of IPV to police, and/or identify a shelter or place for a client to reside during the case. Lastly, diligence requires a lawyer to identify and preserve all potential probative evidence (take pictures of injuries, print emails, texts or writing evidencing threats, identify and contact potential witnesses). Due to the time-sensitive nature of IPV matters, once you have agreed to take on a case, you must diligently work to protect the health and safety of your client.

Tip 4: Know How to Communicate!

When representing a client, especially in IPV cases, “communication is key.” In domestic violence matters, compliance with Rule 1.4 (Client Communications) requires open and honest communications between the lawyer and their client regarding domestic violence. To improve communications with IPV clients, a lawyer should have complete written screening questionnaires at the beginning of representation; express empathy and concern in communication with clients; avoid being judgmental of clients; not being afraid to ask client direct questions about potential domestic abuse; and, to facilitate discussion, explain to clients the attorney-client privilege.

Tip 5: Keep it Confidential!

Rule 1.6 sets forth the duty of the lawyer to protect the confidential communications and information shared between the lawyer and the client. As noted herein above, it is important to explain confidentiality with your client to ensure open and honest communications. Furthermore, a client should understand that absent exceptions only the client has the right to waive confidentiality. In IPV cases, confidentiality can mean not revealing a client’s name, address, or location in order to protect the client (as well as informing others not to reveal confidential information).

Tip 6: Know How to Talk to Others!

Victims of IPV often appear pro se. In any matter involving a pro se party (plaintiff or defendant), a lawyer must consider Rule 1.5 (Communicating with Unrepresented Person), which sets forth the requirements for (and limitations on) a lawyer’s communications with an unrepresented party. Accordingly, a lawyer representing a defendant in an IPV case should be familiar with, not only Rule 4.3, but also New Hampshire RSA 173-B:5-a (Permis- sible Contact), which sets forth the requirements that a lawyer must follow if they seek to communicate with an unrepresented party that obtained a protective order.

For additional information or questions concerning a lawyer’s ethical duties in representing clients in domestic violence and IPV matters, please contact the Attorney Discipline Office at (603) 224-5828.

NH Supreme Court At-a-Glance

At-a-Glance Contributor

Christopher Walsh

is an associate in the Litigation Department of McNamara McDonald, Manchester, NH

Criminal Law

April 26, 2023

Affirmed

• Whether the trial court erred in excluding evidence of a prior sexual image of the victim as irrelevant to the question of whether the victim consented to the dissemination of a subsequent sexual video with the defendant.

The defendant was charged with four counts of nonconsensual dissemination of private sexual images and one count of attempted sexual assault after he sent a video to four individuals depicting the victim fully naked and about to engage in sexual activity with him. The defendant and victim had previously been in a three-year romantic relationship, but the relationship had ended when the defendant found out that the victim was in a relationship with another man. The defendant claimed that the victim had consented to creating the video and that she had signed an agreement that if the victim did not break up with her new boyfriend or if she did not get help for her depression as the defendant suggested, the defendant could send the video to her whenever he wished.” In support of his argument that he reasonably believed the victim would enter into such an “agreement,” the defendant filed a motion to provide evidence that introduce evidence of a separate image that he had found on the internet before the video and he believed to be the victim, with her naked, tied in ropes, and hanging from a tree (the bondage image). The defendant did not contest that the victim consented to creating the sex video with the defendant but objected to the defendant’s motion in limine as to the separation of bondage image. The State argued that bondage image was irrelevant because the fact that the defendant believed the victim consented to post bondage photos online did not imply, she consented to him posting a sex video of her online, nor did it suggest the defendant was reasonably able to infer consent based upon his subjective belief. The trial court agreed with the State that the bondage image was irrelevant to the matters at trial and denied the defendant’s motion in limine. After a three-day trial, the jury found the defendant guilty of four counts of nonconsensual dissemination of private sexual images, and the defendant appealed to the Supreme Court.

The Court affirmed the trial court’s ruling that the bondage image was irrelevant.
and thus properly excluded from evidence. While the defendant argued that “testimo-
ny about the bondage image was relevant because he believes about the bondage im-
age encouraged and supposed him in think-
ing that the victim, more than most people, was disposed to consent to the public dis-
closure of sexualized images of her naked body.

In State v. Mazzaglia (2016) and State v. Higgins (2003), the Court had previously held that the court’s decision to search a person or one in no way implies consent to such activity with another. Each decision to consent to a new, a change made on the circumstances prevailing in the pres-
ent, not the past, and the refusal by the victim whether a woman previously engaged in a particular type of sexual activity . . . with another person has no bearing, in and of itself, on whether she agreed to do so with the defen-
dant.” Extending that reasoning, the Court concluded in this case that “our determina-
tion that ‘consent to sexual conduct with one person in no way implies consent to such activity with another’ also applies in the context of the dissemination of private sexual images.” (cleaned up). As such, tes-
timony about what she said the defendant thought the bondage image depicted the victim did not have a tendency to make it more or less probative that the victim later consented to the dissemination.

The Court also rejected the defen-
dant’s argument that the charged statute involves a subjective belief of whether the person consented, as “The Statute does not ‘know’ that the person has not
er the defendant ‘[k]nows or should have
that the dissemination of the video.

The Court also rejected the defendant’s argument that the evidence had been obtained by a violation of her right under Part I, Article 19 of the New Hampshire Constitution to be free from unreasonable searches and sei-
uzes, and thus reversed and remanded to the trial court. The Court explained that a traffic stop is a seizure for purposes of the State Constitution, and that the scope of a stop is determined by whether the police suspected illegal activity “only if the offi-
cer has a reasonable and articulable suspi-
cion that other criminal activity is afoot.” (Whren v. United States, 417 U.S. 806 (1984)).

Specifically, given that the legislature in recent years has made the possession of three quarters of an ounce or less of marijuana a viola-
tion-level, rather than criminal, offense in certain circumstances, Perez explained that the odor of marijuana may indicate both criminal and non-criminal activity. As such, Perez rejected a per se rule that the smell of marijuana alone could support a reasonable, articulable suspicion that a person possesses an illegal quantity of mari-
juana. Rather, the smell of marijuana “remains a relevant factor” to be considered, among the totality of circumstances.

In this case, the Court interpreted the trial court as having imposed a per se rule that the smell of marijuana proves rea-
nontable, articulable suspicion of criminal activity for the officer to expand the scope of the stop to ask for permission to search the vehicle, in violation of the holding of Perez. The Court stressed the defendant’s innocent responses to the officer’s in-
quiry, her demeanor, and the lack of other evidence suggesting criminal activity. The Court noted that the officer’s belief that the student was absent for a drug related reason was based on his knowledge that the student had been absent from school on multiple occasions the last sev-
eral months. In a subsequent case visit home, the CPSW, both mother and father denied mother’s criminal activity, despite her ar-
rest and post-arrest admissions to the po-
tice. The trial court (Luneau, J.) (Metcalfy, J.) thereafter granted DCFY’s ex parte mo-
tion for removal of the children from the home, held an adjudicatory hearing because neither parent had corrected the behavior that led to the children’s initial re-
moval. Mother and father each appealed to the Supreme Court.

The Court affirmed the trial court’s findings and orders. Both mother and father challenged the sufficiency of the evidence supporting the determination that the children were neglected because they were without proper “education as re-
quired by law.” The Court agreed with the trial court that the non-compliance of educational neglected, emphasizing that B.R. had been absent for the majority of school days while enrolled in public school, had not consistently par-
ticipated in any of the required courses.

At-A-Glance (continued)

John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Sam M. Gonyea, attorney, on the brief and orally), for the defendant.


April 25, 2023

Affirmed

Reversed and Remanded

Criminal Law

Whether there was sufficient evidence to support the trial court’s (1) determi-
nation that both mother and father had neglected the children (suspicion), and (2) order that the children be removed from their home.

The appellants are the mother and father of B.R., S.R., and J.R., and both parents have a significant history with the New Hampshire Division for Children, Youth and Families (DCFY) and law en-
forcement, including reports of concern relating to the parents’ purchasing or selling methamphetamine in the home with the children present. A 2019 report of concern resulted in the children’s removal from the home and neglect findings against both mother and father, but the parents and children were reunified, and the case closed in March 2020. Thereafter, DCFY received three separate reports of concern from the children’s school district regarding absenc-
es at school in late-2020 and early-2021, followed by another report of concern from the school district in December 2021 re-
garding lack of attendance. A child protec-
tive services worker (CPSW) investigated the situation, and mother claimed that she had enrolled B.R. in virtual courses for the purpose of homeschooling, but a review of the online account showed B.R. was not actually participating in such courses. As to S.R. and J.R., mother admitted they had frequently been absent from or tardy to school and were not engaged in home-
schooling. The CPSW was unable to con-
tact either despite repeated attempts. In March 2022, DCFY learned from law enforcement that mother had been arrested for possession and conspiracy to sell methamphetamine, and in her post-
arrrest interview mother admitted to pur-
chasing methamphetamine from a dealer she believed to be associated with a drug cartel on multiple occasions the last sev-
eral months. In a subsequent home visit by the CPSW, both mother and father denied mother’s criminal activity, despite her ar-
rest and post-arrest admissions to the po-
tice. The trial court (Luneau, J.) (Metcalfy, J.) thereafter granted DCFY’s ex parte mo-
tion for removal of the children from the home, held an adjudicatory hearing because neither parent had corrected the behavior that led to the children’s initial re-
moval. Mother and father each appealed to the Supreme Court.

The Court affirmed the trial court’s findings and orders. Both mother and father challenged the sufficiency of the evidence supporting the determination that the children were neglected because they were without proper “education as re-
quired by law.” The Court agreed with the trial court that the non-compliance of educational neglected, emphasizing that B.R. had been absent for the majority of school days while enrolled in public school, had not consistently par-
ticipated in any of the required courses.

At-A-Glance (continued)


April 26, 2023

Criminal Law

Whether the trial court erred in deny-
ing the defendant’s motion to suppress narcotics found in her vehicle, where the defendant was initially stopped for a traffic violation and the lone reason that the police officer asked her consent to search the vehicle was the smell of burnt marijuana.

The defendant was pulled over for driving with her left license plate light out, and when she rolled down her window the officer immediately noticed a strong odor of marijuana coming from the vehicle. The defendant provided her license and registration, and explained that she knew her license plate light was out. When the officer informed the defendant about his observation of the smell of marijuana, the defendant denied that she had any marijuana earlier in the day (she was from Massachu-
setts where marijuana is legal) but assured the officer none was in her car. The officer

Superior Court

Judicial Evaluation Notice

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

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Hon. Peter H. Bornstein
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Hon. Martin P. Honeberg
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Hon. Jacki A. Smith
Hon. Daniel I. St. Hilare
Hon. Charles, S. Temple
Hon. Brian, T. Tucker
Hillsborough County Superior Court – North District
Rockingham and Carroll County Superior Courts
Coos and Grafton County Superior Courts
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Grafton and Coos County Superior Courts
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Rockingham County Superior Court
Hillsborough County Superior Court – South District
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until June 30, 2023. From there you can choose the justice that you would like to eval-
uate and it will bring you directly to that justice’s survey. While responses will be shared with the justices being evaluated, the identity of the respondent will remain anonymous and will otherwise be treated as confidential.

If you do not have access to the internet, or would prefer to have a hard copy of the evaluation mailed to you, please contact my office by calling the Superior Court at 603-271-3030 and request that one be mailed to you. As with all surveys while responses will be shared with the justices being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do not sign the completed evaluation.

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

Tina L. Nadeau
Chief Justice
New Hampshire Superior Court

NEW HAMPSHIRE BAR NEWS

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MAY 17, 2023

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while homeschooled, and that S.R. and M.H. were not able to be for the current tax year.” As such, to qualify for proration, the plaintiffs must first establish that their buildings were “damaged” and, second, that the “damage” was “due to unintended fire or natural disaster.” The Court held that evidence supported the trial court’s de

The plaintiffs own commercial real estate on which they operate hotels, some of which offer restaurant services along with banquet or function facilities. Throughout 2020 in connection with the COVID-19 pandemic, the Governor issued various executive orders declaring a state of emergency, restricting the capacities and operations of lodging providers, and restricting the capacities and operations of restaurants and other food services. Given the disruption to their business— caused by the COVID-19 pandemic and those executive orders, the plaintiffs each filed timely abatement applications with their respective municipalities, seeking an abatement of real estate taxes pursuant to RSA 76:17 and proration of real estate taxes pursuant to RSA 76:21. The municipalities either denied the plaintiffs’ abatement requests or granted partial abatements. The plaintiffs then each filed a petition in superior court seeking abatement and proration of their real estate taxes, and thereafter filed an amended motion for interlocutory transfer with the trial court (Messer, J.), which was granted. The Supreme Court accepted both transferred questions.

RSA 76:21, I provides that “Whenever a taxable building is damaged due to unintended fire or natural disaster to the extent that it renders the building not able to be used for its intended use, the assessing officials shall prorate the assessment for the building for the current tax year.” As such, to qualify for proration, the plaintiffs must first establish that their buildings were “damaged” and, second, that the “damage” was “due to unintended fire or natural disaster.” The Court held that evidence supported the trial court’s determination that DCYF made such responsible efforts.
The Supreme Court of New Hampshire, pursuant to RSA 490:4, directs that proceedings in every State court in New Hampshire may be suspended on Friday, June 23, 2023, to facilitate continuing judicial and legal education and to accommodate any judges’ meetings being held in conjunction with the annual meeting of the New Hampshire Bar Association. A judge, referee, or master may decide not to suspend proceedings if the judge, referee, or master and the lawyers on a case do not plan to attend the annual meeting, or if the judge, referee, or master, in his or her discretion, decides that the efficient administration of the court or ensuring justice in a particular case compels that a case be scheduled for a hearing or trial, or that a hearing or trial continue to be litigated, on that day.

Issued: April 19, 2023
ATTEST: Timothy A. Gudas, Clerk of Court

New Hampshire Bar News

US District Court Decision Listing

April 2023

* Published

FLSA, Conditional Certification
4/18/2023 McCarthy v. Medicus Healthcare Solutions, LLC
Case No. 21-cv-668-JL, Opinion No. 2023 DNH 039

Plaintiff moved for conditional certification of a collective of current and former employees of Medicus Healthcare Solutions. The parties disputed the applicable standard for the motion due to the late procedural posture of the case and the fact that discovery was well underway. The court found that the more lenient standard from the first conditional certification stage should apply. Under that standard, the plaintiff made a modest factual showing that Medicus had a common pay practice or plan that resulted in him and a group of similarly situated employees not receiving overtime wages for all earned overtime hours and certain employees not receiving overtime wages at the correct rate. The defendant’s arguments dealt with merits or witness credibility issues, which were not determinable at the conditional certification stage. As a re-sult, the court conditionally certified a collective and approved the sending of notice of the suit under a specific procedure and timeline. 23 pages. Judge Joseph N. Laplante.

Subject-Matter Jurisdiction; Exhaustion of Remedies
4/19/2023 Seely v. Eastern Region 89, et al.
Case No. 22-cv-268-JL, No written opinion

In a quiet title suit relating to a private landowner’s use and access to federal property, the defendants moved to dismiss on mainly jurisdictional grounds. Defendants first argued, under the derivative jurisdiction doctrine, that because the plaintiff first filed the quiet title suit in state court, the federal court did not have jurisdiction to hear it, even after a proper removal. Defendants next argued that because the plaintiff did not exhaust his administrative remedies with the appropriate federal agency, the court did not have jurisdiction to hear his tort claims under the Federal Tort Claims Act. Finally, defendants argued that because the federal government did not waive its sovereign immunity for fraud or misrepresentation claims under the FTCA, the plaintiff’s fraud claim must be dismissed. The court found merit in all the defendants’ arguments and, after a hearing, issued an oral ruling granting the motion. Because the state court did not have jurisdiction to hear the plaintiff’s quiet title action, the federal court did not have jurisdiction after removal. Moreover, because the plaintiff admittedly did not exhaust his tort claims with the appropriate federal agency before filing suit, he could not meet the FTCA’s jurisdictional exhaustion prerequisite. The plaintiff’s claims were dismissed without prejudice to refiling them in the appropriate court, after exhausting his administrative remedies. Judge Joseph N. Laplante.

Class Certification; Disability Discrimination
4/17/23 Fitzmorris v. Weaver
Case No. 21-cv-25-PP-B; Opinion No. 2023 DNH 036

A putative class of disabled individuals enrolled in New Hampshire’s Choices for Independence (CFI) waiver program sought class certification under Rule 23(b) (2) to challenge the state’s failure to provide class members with the full array of waiver services that they were authorized to receive. The court denied the plaintiffs’ motion for class certification, finding that they failed to establish commonality. The court concluded that, under controlling Supreme Court and First Circuit precedent, the plaintiffs could not satisfy the commonality requirement through proof that they all suffered the same injury. Rather, the plaintiffs were required to prove the existence of an official policy or unofficial but well-defined practice driving the common claims. The court found that the plaintiffs identified some practices that could meet this burden, but did not supply adequate proof of these practices. Accordingly, the court denied the plaintiffs’ motion, but without prejudice to their ability to file a renewed motion for class certification supported by evidence of common drivers. 23 pages. Judge Paul Barbadoro.

Attorney’s Fees; Social Security Appeals
4/17/23 Chase v. Kijakazi
Case No. 20-cv-915-PB; Opinion No. 2023 DNH 037

SUMMARIES continued on page 40

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Supreme Court of New Hampshire

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May 17, 2023 39
Attorney’s Fees; Clean Water Act

4/26/23 Conservation Law Foundation v. Mazonoise
Case No. 18-cv-996-PB; Opinion No. 2023 DNH 033

The Conservation Law Foundation (CLF) brought suit against various state defendants under the Clean Water Act. Some of CLF’s claims were dismissed following summary judgment, whereas others were permitted to proceed. The parties eventually executed a consent degree for the remaining claims, which the court approved. CLF filed a motion for a full award of attorney’s fees and costs. The court reduced the fees award to account for the hours spent on unsuccessful claims after concluding that the successful and unsuccessful claims were not interrelated. The court further reduced the award to account for (1) CLF’s failure to keep contemporaneous records of their hours; (2) an unreasonable number of hours spent on the fee petition; (3) an unreasonable number of hours spent by a legal intern on the case; and (4) the impermissible billing of travel time. 23 pages. Judge Paul Barbadoro.

Assistant City Prosecutor
City of Laconia, NH

The City of Laconia is seeking a highly skilled attorney to fill the position of Assistant City Prosecutor to manage criminal cases in the City Prosecutor’s Office. Salary Range: $80,329.60 - $93,100.80, plus a competitive benefits package (Starting salary based upon experience)

Submit cover letter and resume to:
Laconia Police Department
Attn: Executive Assistant Lori Marsh
126 New Salem St.
Laconia, NH 03246

The position will remain open until filled.

EOE

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Submit a letter of interest and resume to Chief Gilman at 45 Sanborn Road, Tilton, NH 03276, or email agilman@tiltonpd.org. This posting will remain open until filled.

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

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

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

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J.D. from an accredited law school, N.H. Bar membership, a driver’s license and/or access to transportation for statewide travel, and four years’ experience in the practice of law.
Recent graduates are encouraged to apply – an exception may be requested for years of experience.

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

For questions about this position, please contact Attorney Deanna Baker, Legal Director at (603) 271-1220, deanna.baker@dhhs.nh.gov.
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JUNE 12, 2023

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1. Monthly financial report
2. Legal services provided
3. Benefits and expenses

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MAY 17, 2023

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NH Bar members look back and share advice and career highlights for the next generation.

The following profiles are based on questionnaires sent earlier this year to New Hampshire Bar members marking 50 years of law practice, and those who responded are included. Responses have been edited for length and clarity.

A special supplement to the May 17, 2023 issue of Bar News.
As a political science major in college, I became involved in Boston community willing to mentor him/her. I says, “my best advice was to keep the Rules of Professional Conduct on one’s desk and read it!”

After graduating from Tufts University, Mark Alpert felt that “law school and analytical thinking seemed [to be] a good fit” for him. In 1973, he graduated from Columbia University School of Law and joined the Legal Services Department of Volunteers in Service to America (VISTA), a national service program founded in 1964 to alleviate poverty. A year later, he began working as an in-house counsel for insurance companies. He eventually landed in the law department of John Hancock Life Insurance Company in 1984, where he was instrumental in establishing and serving as counsel to several very successful product lines. These included John Hancock’s structured settlement program, the Federal Long-Term Care Program, its natural resources and participating pension accounts, and guaranteed investment contracts. Alpert was also very active in Tufts University alumni affairs, serving a term as president of the university’s alumni association.

Mark D. Alpert

Philip Bonafide felt that becoming a lawyer was the best way for him to be of service and help people in his community. He received his JD from Georgetown Law Center in 1973 and went right to work in litigation until he retired as a partner at Normandin, Cheney & O’Neil. Bonafide believes his most memorable cases were ones that seemed simple to resolve when the client walked in, but then snowballed. One such case involved a defendant being sued in 1981 by a new neighbor over a small strip of land that the defendant’s family had fenced off and utilized adjacent to their home for two generations, believing they owned it by deed. He lost in Superior Court because the law at the time required a subjective intent to hold land adversely and a claimant could not hold land adversely if they thought they owned it by deed.

Bonafide then appealed to the NH Supreme Court, resulting in an expansion of the definition of “adverse” in adverse possession claims in NH to include persons who claim land in dispute because they believed they owned it by deed. During his career, Bonafide was a member and past chairman of Sanbornton ZBA for 25 years, commissioner of the NH Personnel Appeal Board for 10 years, and a past president and current board member of the Laconia Kiwanis Club for 27 years. He feels his most meaningful community service is his current position (since 1973) as a trustee of the Lakes Region Scholarship Foundation, which provides financial assistance to college students. When asked what advice he would give to young lawyers, Bonafide says, “The most important asset for any young attorney is the phone number of an experienced attorney willing to mentor him/her.”

Philip P. Bonafide

“I wanted to be my own boss and help people,” Stephen Borofsky, founder and senior managing partner of Borofsky, Amodeo-Vickery & Bandazian, PA, says of his decision to become a lawyer. After obtaining his JD from Columbia Law School in 1973, he clerked for a year at the US District Court, District of NH for the Honorable HH Bownes before starting at the McLane Law Firm in 1974.

In 1978, he started The Legal Clinics, the first law firm in the Granite State to concentrate in serving the legal needs of middle-income people. The firm changed its name in 1996 to Borofsky, Lewis & Amodeo-Vickery and then to its current iteration in 2001. Borofsky’s hero is Justice William O. Douglas, who holds the record for the longest continuous tenure on the US Supreme Court. He says his mentors throughout his career have been Judge Bownes, Jack Middleton, and his daughter, Niki.

His community service throughout his life has intersected with his professional career. For 40 years, he has served as a participating attorney, board member, treasurer, and chair at the American Civil Liberties Union of NH. He is also a member of the NH Bar Foundation’s IOLTA Grants Committee.

“The most important decision you make in any case is whether or not to take the case,” Borofsky says to lawyers starting their own practice. “The most important quality in a partner is his/her judgment. And with respect to every decision you make, every thought you put in a brief, every question you ask at trial – be able to articulate: ‘What is the purpose of what I am doing?’”

Stephen E. Borofsky

Judge Jean Burling was the first woman lawyer appointed to the NH Judiciary in 1979. After receiving her JD from Boston University Law School in 1973, she worked as a solo practitioner in Plainfield until she was appointed as a judge. “As a political science major in college, I became involved in Boston community politics and thought a law degree would be valuable in my future,” Judge Burling says. “As a hero of mine, I admired tremendously Barbara Jordan, an African American Congresswoman from Texas. I followed her career from the time she made history, giving the keynote address at the 1974 Democratic Convention during the Nixon impeachment.”

Judge Burling was a co-founder of Drug Court in Grafton County, a court-supervised diversion program designed to break the cycle of addiction for offenders and thereby end criminal behavior. She is also a member of the Sullivan County Battered Women’s Resource Group. “When I served as Chair of the Professional Conduct Committee,” Judge Burling says, “my best advice was to keep the Rules of Professional Conduct on one’s desk and read it!”

Hon. Jean K. Burling

For more, visit: www.nhbar.org
Hon. Daniel M. Cappiello

Residence: Barrington, NH
Hometown: Barrington, NH
Education: University of New Hampshire, BA (1967); New England School of Law, JD (1973)
Family: Joyce Cappiello (wife); Nicholas Cappiello, Lena Bere, and Benjamin Cappiello (children); and seven grandchildren
Military Service: United States Army (1968-1970); 23rd Battalion Legal Technician, South Korea
Areas of Practice: NH Judiciary and general practice
Current Firm or Employer: Retired
Past Firms or Employers: Rochester District Court (Judge 2000-2013); Shaheen, Cappiello, Stein & Gordon, PA (1981-2000); Daniel M. Cappiello (1979-1981); Keefe, Dunnington & Cappiello, PA (1977-1979); Law Office of Alfred Catalfo (1973-1977)

Judge Daniel Cappiello’s interest in law began in 1967, after he graduated from UNH, when he was assigned the position of a bail bondsman sponsored by the County Attorney’s Office of Miami, Florida, while working as a VISTA volunteer. However, his legal career would have to wait, as he was drafted into the US Army in 1968. Stationed in South Korea, he was initially a combat soldier until he learned that his battalion needed someone to take over operation of the legal department.

“Ordinarily this was the job of a lawyer,” Judge Cappiello says. He overheard the current legal technician, a lawyer licensed in Maine, telling his colleagues that the battalion had been unable to find a lawyer to replace him and that he was leaving in two weeks.

“I boldly tapped him on the shoulder, apologizing for eavesdropping, and said I knew I could do his job as I had legal experience working out of the Miami Public Defender’s Office. He was sufficiently impressed to invite me for an interview the very next morning.”

While he was still stationed in Korea, Judge Cappiello arranged to take his LSAT. In 1970, he was accepted into New England School of Law and graduated near the top of his class in 1973.

After four years as an associate at the Law Office of Alfred Catalfo, Judge Cappiello eventually became partner at Keefe, Dunnington & Cappiello. In 1981, he co-founded Shaheen, Cappiello, Stein & Gordon (now Shaheen & Gordon), and worked there until he became a judge in 2000. He retired in 2013.

He cites Freddie Catalfo as his early mentor, and William Shaheen and Steven Gordon as his heroes and good friends.

After a trip to Reno, Nevada, where he was the guest of a judge who oversaw a highly successful mental health court, Judge Cappiello worked with Rochester Police, the Strafford County Attorney, and the Public Defender’s Office to develop the Rochester District Mental Health Court.

“This was a good 15 to 16 years ago,” Judge Cappiello says. “And this program is still operable and a complete success as of today under the leadership of Judge Susan Ashley.”

For lawyers starting their own practice, Judge Cappiello says to not underestimate what you can and cannot do as a lawyer.

“Always be honest with your fellow lawyers,” Judge Cappiello says. “Being respected by your peers is so important in the practice of law. As someone who had gone off on his own rather early in my career, my advice is to know your limits, hire a good secretary/paralegal, and treat them well. I was fortunate to have had a very good and experienced secretary when I went off my own. I let her know how important she was, and whenever I could afford it, I made sure there would be a bonus or a raise for her.”

– Judge Daniel Cappiello

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Always be honest with your fellow lawyers. Being respected by your peers is so important in the practice of law. As someone who had gone off on his own rather early in my career, my advice is to know your limits, hire a good secretary/paralegal, and treat them well. I was fortunate to have had a very good and experienced secretary when I went off my own. I let her know how important she was, and whenever I could afford it, I made sure there would be a bonus or a raise for her.”

– Judge Daniel Cappiello
George L. Chimento

Residence: Dover, MA  
Hometown: Aiken, SC  
Education: Brown University; UC Berkeley School of Law  
Family: Betsy (wife)  
Areas of Practice: ERISA and executive compensation  
Current Firm or Employer: Chimento & Webb, PC  
Past Firms or Employers: Adler, Pollock & Sheehan, PC; Mintz, Levin, Raskenbaum, Sawyer & Brewster

After George Chimento graduated from UC Berkeley School of Law in 1973, he served as Special Counsel to the Pension Benefit Guaranty Corporation, where he learned from his boss, Henry Rose, who was a lawyer for the Senate Education & Labor Committee. In addition to Rose, Chimento lists Bernie Pollock as one of his mentors.

When asked why he decided to become a lawyer, Chimento says, “it seemed like a logical career for a history major who loves this country.”

“I’ve been an ERISA/benefits lawyer for some of the finest banks, hospitals, and tech companies in New England,” Chimento says of his achievements. “My best achievement is simply to have gained the trust of very smart and highly ethical people.”

For 11 years, Chimento was elected to the Planning Board in Dover, MA, dealing with inevitable development and trying to keep land and trails open for horses and recreation.

“Consider hard whether you really want to be a lawyer,” Chimento cautions young lawyers. “Do you have the passion to help people? Are you good at explaining complicated matters in understandable terms? This career can kill a person without that passion. On the plus side, if you have the drive, it can be the best thing in your life except [for] family.”

Offering advice for maintaining well-being and a strong practice, Chimento says, “Stay physically fit. Your body is a temple. Abjure brown liquids, except at festivals celebrating your 50th anniversary of practice, and other select occasions.”

Michael E. Chubrich

Residence: Portsmouth, NH  
Hometown: Chicago, IL  
Education: Knox College, AB (1967); University of Chicago, JD (1972); Boston University, LLM (1975)  
Family: Donna Saunders (wife); Nikola and Robert Chubrich (sons)  
Areas of Practice: General practice  
Current Firm or Employer: Lifeguard at the Portsmouth Indoor Pool  
Past Firms or Employers: New Hampshire Legal Assistance; Shaines & McEachern; M.E. Chubrich, PA

Michael Chubrich says he never met a lawyer until he attended law school in 1967. Although he doesn’t remember the reason why he decided to become a lawyer in the first place, he remembers that after receiving his JD from the University of Chicago Law School in 1972 and his LLM from Boston University School of Law, it was Chief Justice Frank Rowe Kenison, the late Robert Shaines, and Paul McEachern who taught him how to be a New Hampshire lawyer.

His most memorable cases come from his appellate practice. He considered it an honor to argue before the New Hampshire and Maine Supreme Courts, along with the First Circuit Court of Appeals.

Chubrich served as a trustee of the Chase Home in Portsmouth, where he helped in the effort to save the Portsmouth Music Hall. He was also a director and treasurer of the Bow Street Theater Trust, Inc., and helped Portsmouth attorney Chuck Doleac with SIPP (Save the Indoor Portsmouth Pool).

“Give your clients the advice they need, not what they want to hear,” Chubrich offers as advice for lawyers starting their own practice. “Obey our Code of Professional Responsibility, treat your clients and opponents with respect, and keep the promises that you make.”

Albert J. Cirone, Jr.

Residence: Lebanon, NH  
Hometown: Adams, MA  
Education: Tufts University, BA (1970); George Washington University Law School, JD (1973); University of New Hampshire, MBA (1985)  
Family: Nancy G. Cirone (wife)  
Areas of Practice: General practice but primarily in transactional matters, including estate planning, trust and probate administration, contract and corporate matters, and real estate  
Current Firm or Employer: Albert J. Cirone, Jr., PLLC  

For Albert J. Cirone, Jr., the inspiration to become a lawyer stemmed from watching episodes of Perry Mason on TV. He realized at an early age that he always enjoyed advocating and arguing for various viewpoints.

In 1988, he was appointed as presiding judge for the Lebanon District Court and served until 2014, when he retired from the bench to return to private solo practice.

“One of Cirone’s mentors as a young lawyer was Jess Feldman, a San Francisco attorney who gave him his first job and taught him about justice, preparation, being civil in the practice of law, and doing charitable and community work as part of a practice. Another mentor was Raymond Staley, for whom Cirone worked at NASA, and from whom he learned to understand different viewpoints.

Before his judgeship, he served on many local boards, including the Mascoma School Board and a developmental training center for disabled children. Of his many community service efforts, he is most proud of the work he and others did in resurrecting the Governor’s Breakfast event at the NH International Speedway in Loudon as part of the July NASCAR race weekend. He says the governor always attended and they consistently raised over $100,000 annually for the Children’s Hospital at Dartmouth and David’s House in Lebanon.

“Be competent, prepared and civil, and put in whatever time is required to provide your clients with the appropriate legal work they need,” Cirone offers in the way of advice for lawyers starting their own practice. “Ask for assistance from other lawyers within and without your firm – we are always willing to provide input. I still reach out to this day when I need advice from other lawyers. Get involved in community activities, return phone calls within 24 hours, keep clients informed of whatever is happening in their matter, take the long view toward client relationships, and bill reasonably – adjust downward more than upward.”

Bradford E. Cook

Residence: Manchester, NH  
Hometown: Glen Ridge, NJ  
Education: University of New Hampshire, BA (1970); Cornell University Law School, JD (1973)  
Family: Kathleen Cook (wife); Richard Cook, IL; James Cook, and Thomas Cook (sons); Henry Cook and Ellen Cook (grandchildren)  
Military Service: NH Army National Guard, Captain (1973-1980); UNH Army ROTC Commissioned 1970  
Areas of Practice: Not-for-profit institutions, estate planning and probate, corporate law  
Current Firm or Employer: Sheehan, Phinney, Bass & Green, PA

After graduating with his JD from Cornell University Law School in 1973, Bradford Cook started as an attorney at Sheehan, Phinney, Bass & Green. He had been working as a summer associate at the firm during his last year of law school and remains at the same firm to this day.

“Decided to become an attorney since it appeared to be a way to be involved in public life while at the same time having an interesting profession which allowed me to help others and support my family,” Cook says. His mentors include William Green, Kimon Zachos, Richard Morse, Fred Hall, Jack Middleton, and numerous other attorneys whose examples set the standard for younger attorneys to emulate.

Cook says he has been blessed to be involved with many boards, including Easter Seals New Hampshire, New Hampshire College, Greater Manchester Chamber of Commerce, the Business and Industry Association, Taylor Community, UNH Manchester, Manchester Airport Authority, Manchester Community Access Television, Little Suna-

“It’s important to look at yourself in the mirror every morning and be proud of the fact that you are a lawyer and that you have a unique opportunity to blend a very happy and active social life with a rigorous professional life,” Daly offers as advice for maintaining well-being and a strong practice. “To me, my ‘schedule’ was always an overlap of the business and personal sides of my life. Maintaining the proper balance ensures that you will have an interesting and invigorating life.”

Asked for advice for lawyers starting their own practice, Daly says the least desirable part of practicing law is the business and financial framework within which you must operate to be successful.

“A key element in preparing to start your own practice is to evaluate and deal with balancing that fiscal reality with providing your client with the best professional services while always acting in their best interests.”

When Patrick Daly was a teenager, he was drawn to the TV show, The Defenders, because he admired the social issues addressed in the legal context of the episodes. As he got older, he realized he wanted to practice law because he considered it a learned profession, and it would give him an excellent opportunity to both serve and help society in a meaningful way.

**Hon. J. Michael Deasy**

Residence: Newbury, NH  
Hometown: Framingham, MA; Milford, NH  
Education: Rensselaer Polytechnic Institute, BS (1967); Boston College Law School, JD (1973)  
Family: Betsy Deasy (wife); Jennifer Deasy and Suzanne Wright (children)  
Areas of Practice: Bankruptcy, corporate, and environmental law  
Current Firm or Employer: Retired  

**Patrick J. Daly**

Residence: Reading, MA  
Hometown: Bergenfield, NJ  
Education: Boston College (1969); Boston College Law School (1973)  
Family: Kathleen Daly (wife); Christine Daly Allendorf and Michael Daly (children – both of whom are attorneys and both of whom married attorneys)  
Areas of Practice: Originally litigation-focused, but transitioned into residential real estate and wills and trusts  
Current Firm or Employer: Adams & Blinn  
Past Firms or Employers: Law Office of John J. Thornton; Reliance Insurance Company

We are so thankful for Brad’s tireless dedication to clients and community. We look forward to many years of the same, as he continues adroitly to manage his many professional responsibilities; charitable and community commitments; and time with his family, including his lovely grandchildren, Henry and Ellen.
Judge J. Michael Deasy, who served in the US Navy from 1967 to 1973, and graduated cum laude from Boston College Law School in 1973, says the law was intellectually interesting to him as a young man. The first lawyer he worked for, David Hamblett, taught him the importance of being precise and thorough when drafting documents and researching the law. Another of his mentors was his predecessor at the bankruptcy court, Judge James Yacoc. According to Judge Deasy, Judge Yacoc’s demeanor and expectations made the attorneys who regularly appeared in his courtroom better lawyers.

When asked what professional achievements he is most proud of, Judge Deasy says his selection by the First Circuit Court of Appeals to serve as a bankruptcy judge was his highest professional accomplishment at the time of his appointment; however, he is most proud of receiving the 2016 Justice William A. Grimes Award for Judicial Professionalism from the Bar Association.

“The award was based upon the recommendations of the many lawyers who had appeared in my courtroom over the years,” Judge Deasy says. “Their recognition of my judicial performance was very satisfying and humbling.”

Judge Deasy served for three years as an elected member of the Milford School Board and a subsequent year as an interim appointment in a vacancy. At various times, he also served as a member and chair of both the Milford School Budget Committee and the Town of Milford Budget Committee, as well as various study and building committees for the Milford Library and town hall. Additionally, he was a member of the Milford Rotary Club for 15 years, working to raise funds primarily for scholarships.

“I would advise all lawyers, whether solo or at a firm, to be both thoughtful and skeptical about what they think they know,” Judge Deasy says. “It is perhaps more important to recognize what you don’t know than it is to be confident in what you do know. And in dealing with other lawyers and judges, your word and reputation for being honest is the most valuable asset you have for yourself and the clients you represent. Do not trade your personal credibility for any prospective short-term gain or any client.”

R. Peter Decato

Residence: Manchester, NH
Hometown: Lebanon, NH
Education: University of New Hampshire, BS (1969); University of Maine School of Law, JD (1973)
Family: Marjorie Decato (wife); Beth Decato (daughter); Carrie Ayers, DO (daughter)
Military Service: NH Army National Guard (28 years)
Areas of Practice: Civil, criminal, family, and probate
Current Firm or Employer: Decato Law Office
Past Firms or Employers: Decato & Ciome, PA; Decato & Connolly, PLLC; Nighswander, Martin & Mitchell

While in undergrad at UNH, Peter Decato attended a trial in the Durham District Court, and it got him interested in the law. After graduating in 1969, he attended the University of Maine School of Law, receiving his JD in 1973. His heroes include his father, Harry Decato, and Professor Harry Glassman of the University of Maine School of Law, who recruited Decato and then mentored him once he got to law school.

He says his most memorable case is State v. Richard Bilodeau, wherein Bilodeau was charged with three counts of negligent homicide involving two New Hampshire troopers and a prisoner killed in a crash that occurred in Warren, NH in 1991.

When asked what advice he has for lawyers starting their own practice, Decato says, “Work hard, care about your clients, always be well prepared, and embrace the role of being a counselor.”

“Be there for younger lawyers when they call for advice,” he says. “When you win, don’t gloat. When you lose, congratulate the winner, and silently resolve to do a better job the next time.”

“Be there for younger lawyers when they call for advice. When you win, don’t gloat. When you lose, congratulate the winner, and silently resolve to do a better job the next time.”

– Peter Decato

Robert A. Dietz

Residence: Laconia, NH
Hometown: Huntington, NY
Education: Lehigh University, BS; Duke Law School, JD
Family: Patricia (wife); Anna, Scott, Carrie, and Amanda (children)
Areas of Practice: Business, estate planning, and trust administration
Current Firm or Employer: Normandin, Cheney & O’Neil, PLLC
Past Firms or Employers: NH Department of Employment Security (1978-1979)

Robert Dietz earned his JD from Duke Law School in 1973 and joined the US Air Force the following year, where he eventually served as a Judge Advocate General. He then worked for the NH Department of Employment Security for a year before starting at the law firm of Normandin, Cheney & O’Neil, where he has worked for 44 years. He has also been a member of the Lake Winnipesaukee Association for more than 30 years.

“Develop relationships with experienced local attorneys who can provide perspective when needed,” Dietz advises young lawyers.

When asked what advice he has for maintaining well-being in the practice of law, Dietz says, “It is not always easy, but being able to separate one’s private life from the pressures of legal practice allows an attorney to have perspective, remain enthusiastic, and avoid burnout.”

In the future of law, Dietz hopes to see expanded availability of legal services among the middle class.

Michael J. Donahue

Residence: Newington, NH
Hometown: Manchester, NH
Education: College of the Holy Cross, AB (1970); University of Pennsylvania Law School, JD (1973)
Family: Diane (wife of 50 years); Sarah and Kerry (daughters)
Areas of Practice: Land use and permitting, real estate development and conveyance, and environmental law
Current Firm or Employer: Retired
Past Firms or Employers: Donahue, Tucker & Ciandella, PLLC

“Like many others, I was uncertain about a career, and law presented options and a scholarship to Penn,” Michael Donahue says of his decision to become a lawyer. “Those options were quickly narrowed by a ping pong ball drawn from a bingo basket that led to Navy JAG Corps service upon graduation.”

While serving as a Judge Advocate General, Donahue was one of two assigned to a small branch office in Long Beach, CA. There, he participated as either a prosecutor or defense counsel in 120 court martials (some contested) in 18 months. He says he made a lot of mistakes and learned from them, and only later did he appreciate the value of the responsibility he had been given.

Returning to NH in 1977, he joined up with the late Peter Kearns and John Colliander, who had a busy general civil practice in Exeter. He eventually became partner in the firm, which was then known as Kearns, Colliander, Donahue & Tucker (now known as Donahue, Tucker & Ciandella).

“Resist the impulse to take on everything that comes in the door,” Donahue says to lawyers starting their own practice. “And value highly your existing clients by staying in touch with them and taking an interest in them and their businesses.”

When asked what excites him about the future of law, Donahue says, “During my practice life, I saw the demise of the ‘brotherhood’ and the well-earned rise of the ‘sisterhood’ as a result of hard work, resilience, and a collaborative, rather than competitive, ethic. The continued success of women in the Bar bodes well for the Bar’s current leadership efforts at diversity and inclusion.”
David M. Gottesman

Residence: Nashua, NH  
Hometown: Pennsauken, NJ
Education: University of New Hampshire, BA (1970); Suffolk University Law School, JD (1973)
Family: Jean Gottesman, Eric Gottesman, Marc Gottesman, and Michael Gottesman
Areas of Practice: Plaintiff’s personal injury and medical malpractice
Current Firm or Employer: Gottesman & Hollis, PA
Past Firms or Employers: The Leonard Firm (1973-1975)

After receiving his JD from Suffolk University Law School in 1973, David Gottesman worked at The Leonard Firm until 1975, when he founded Gottesman & Hollis. He says one of his heroes was his professor at law school, Tom Lambert, who spent his final years teaching students that people who were negligent “had to pay for what they break.” Gottesman was elected NH State Senator from District 12 and served from 2004 to 2008. He was also a Rotarian in the Nashua West Rotary Club for 45 years. Many of his friends and business relationships emanated from that service. In addition, Gottesman was also the chair of the Nashua Division of the NH Charitable Foundation, president of the NH Association for Justice, and president of the Nashua Bar Association.

“There is no substitute for having a good reputation,” David Gottesman says. “Honesty and integrity are paramount in having credibility among other lawyers and insurance adjusters. It is not that hard to follow the simple rule of being truthful in your behavior. It only takes one time with me of someone crossing the line in a bad way, and then I remember them and their behavior forever.”

Asked what advice he has for lawyers starting their own practice, Gottesman says, “No matter who calls you, return your phone calls. An early case that I had involved a local janitor who was not able to get a lawyer to return his calls. I did return his call, only to find out that his son had been in a terrible accident leaving him paralyzed. I took the case and it resolved for a substantial settlement.”

Douglas P. Hill

Residence: Gilford, NH  
Hometown: Gilford, NH
Education: Dartmouth College, BA; Boston University School of Law, JD
Family: Alexandra T. Breed (wife), admitted to the NH Bar in 1974
Areas of Practice: Conservation, real estate, and municipal
Current Firm or Employer: Squam Lakes Conservation Society
Past Firms or Employers: Nungesser & Hill (1978-2014); NHLA (1974-1977); NH Supreme Court (1973-1974)

Douglas Hill earned his JD from Boston University School of Law in 1973 and then clerked for a year at the NH Supreme Court. He then worked at NH Legal Assistance for three years before starting the firm of Nungesser & Hill in 1978. In 2014, he joined the Squam Lakes Conservation Society, where he focuses on land protection.

Hill says his heroes and mentors were the judges of the Frank Rowe Kenison Supreme Court.

He has served on the Conservation Commission in the town of Gilford for more than 30 years and serves on the NH Bar Foundation board. He also served on the NHLA board and the former board of Legal Advice and Referral Center.

“I share the often-expressed pessimism arising in part from the descent of respect for SCOTUS,” Hill says of the future of law. “But I have hope that a bright new generation of lawyers committed to the integrity of the bench and Bar will turn it around.”

Congratulations to our colleague, mentor and friend, Robert A. Dietz on his 50th Anniversary as a member of the New Hampshire Bar Association.

Bob’s dedication to his clients and leadership within the firm continue to set a shining example for every practitioner at NCO.
Bruce R. Jasper

Residence: Croydon, NH
Hometown: Nashua, NH
Education: University of New Hampshire, BA (1970); University of Tulsa College of Law, JD (1973)
Family: Ann (wife); Jennifer Lynch & Michelle Gilbert (children)
Areas of Practice: Criminal, family, real estate, probate, and estate planning
Current Firm or Employer: Elliott, Jasper, Shklar, Ranson & Beaulac, LLP
Past Firms or Employers: Edes & Elliott; Elliott & Jasper; Elliot, Jasper & Bennett, and various other offtakes of Elliott, Jasper.

Bruce Jasper earned his BA from UNH in 1970 and his JD from the University of Tulsa College of Law in 1973. He says he didn’t have any legal heroes or mentors but loved Perry Mason.

Jasper has been involved in many community service boards and organizations, including membership in the Newport Rotary Club for 40 years, as well as his current position as moderator for the Town and School District in Croydon.

“Congeniality with other lawyers and the clerk’s offices goes a long way to making for a pleasurable practice,” Jasper says to lawyers starting their practice. “Don’t be afraid to ask for help. New Hampshire is a great place to practice.”

With respect to maintaining well-being and a strong practice, Jasper says, “Only accept cases you are competent to handle and don’t take on more than you can handle. Your mental health is more valuable than money.”

Edward M. Kaplan

Residence: Contoocook, NH
Hometown: Brooklyn, NY
Education: University of Kansas, BA; University of Kansas Law School, JD
Family: Maddy (wife); Adam and Elizabeth (children)
Areas of Practice: Labor, employment, education, healthcare, trial, and appellate
Current Firm or Employer: Retired
Past Firms or Employers: Sullivan & Hollis, PLLC

After college, Edward Kaplan was debating between a graduate program in American Studies and law school. He decided becoming a lawyer would give him more options to get involved in issues that mattered to him and eventually earned his JD from University of Kansas Law School in 1973. That same year, he joined Sullivan & Hollis (then Sulloway, Hollis, Godfrey & Soden) and remained with the firm until his retirement in 2021.

“I was fortunate to be a part of a wonderful and successful firm during my entire career,” Kaplan says when asked about maintaining well-being and a strong practice. “I was always supported by other lawyers, paralegals, and an exceptional staff. This helped me be very responsive to my clients, which I believe is integral to maintaining a strong practice. It is, of course, essential that practitioners remain current in their practice areas. ‘Well-being’ is a tougher challenge and is, in my view, very specific to the individual. Generally, it’s likely many lawyers will experience ‘wins and losses’ during a career. Put your best effort forward and try not to dwell on the losses.”

Kaplan was a board member and chair of both the Hopkinton School District and Manchester Board of Appeals, Manchester Board of Selectmen, Manchester Budget Committee, and his church’s finance committee. He was also a Scout leader and a baseball and soccer coach.

“Offering advice to young lawyers, Kaplan says, “When you don’t know, say so and seek assistance. Always respect your opponent and try to look at matters from their per-
spective. Always be prompt in answering phone calls and emails. Do not procrastinate. Seek a balance between your professional career, your family, and your community. There is much more to life than the law, and you will be a better lawyer and a happier person if you achieve that balance. And no matter how long you practice, remain a student of the law.”

James L. Kruse

Residence: Concord, NH
Hometown: Bethesda, MD
Education: Cornell University (1969); SUNY University at Buffalo School of Law (1972)
Family: Marcia MacKay (life partner); Dan and Cynthia (children); Geoff and Stu (stepsons); four grandchildren
Areas of Practice: Litigation, professional conduct
Current Firm or Employer: Retired
Past Firms or Employers: NH Attorney General; Burlingame & Kruse; Merrimack County Attorney; Sulloway & Hollis; Gallagher, Callahan & Gartrell; Concord High School; NH Attorney Discipline Office

James Kruse graduated from Cornell University in 1969 and received his JD from SUNY University at Buffalo School of Law in 1972. He was admitted to practice in the State of New York in 1973 and was admitted to practice in New Hampshire in 1975. Of his community service over the years, his most meaningful roles include Community Players of Concord (actor and board member), First Night NH (board member), Concord Community Music School (board member), and Suncook Valley Chorale (board member).

“Find a mentor to advise on business matters, marketing, client communications, compliance with Rules of Professional Conduct, and life balance,” Kruse says to lawyers starting their own practice.

When asked what advice he has for maintaining well-being and a strong practice, Kruse says, “Engage in ongoing legal training, assume responsibilities for the Bar and the judiciary, engage in community and philanthropic endeavors, and do not neglect personal family, recreation, and exercise.”

Mark A. Larsen

Residence: Charlestown, MA
Hometown: Larkspur, CA
Education: Beloit College, BA (1970); University of California College of Law, JD (1973)
Family: Susan (partner); Hannah and Faith (children)
Areas of Practice: Criminal defense, personal injury, healthcare, mental health
Current Firm or Employer: Retired
Past Firms or Employers: Massachusetts Committee for Public Counsel Services; NH Public Defender; partnerships with Marilyn McNamara, Nighswander Law Firm, and NHLA

“It was either the law or the clergy, both for social justice reasons,” Mark Larsen says when asked why he decided to become a lawyer. “The law won out and I came to New Hampshire, where I had the privilege of working with Bruce Friedman at NHLA and then in private practice with Marilyn McNamara.”

Larsen says one of his heroes in New Hampshire was Judge Hugh Bownes, federal judge for the First Circuit and for the District of New Hampshire.

He is most proud of his work with NHLA, with the NH Public Defender, and as the head of the Mental Health Litigation Division of the Committee for Public Counsel Services in Massachusetts, overseeing public and private attorneys.

They are great organizations providing legal aid to those who cannot afford the cost of an attorney,” Larsen says. “I am also proud of the work I did to make sure that the NH Bar Journal survived in the early 1980s.”

In the way of advice for new lawyers, Larsen offers the following: “Be patient and listen to your clients; they will help pay your bills. Stay current in the law by reading Supreme Court opinions and attending to your continuing legal education. Not every CLE will be filled with new material and ideas, but I learned that one of my law school professors was correct when he said that you will learn at least one new thing every time you go.”

Hon. Paul H. Lawrence

Residence: Francetown, NH
Hometown: Francetown, NH
Education: University of Denver Sturm College of Law, JD (1973)
Family: Jane R. Lawrence (wife); two children
Areas of Practice: Primarily as District/Circuit Court Judge
Current Firm or Employer: State of NH, Judicial Branch, as a judicial referee
Past Firms or Employers: District/Circuit Court Judge; Lawrence & Lawrence Professional Association; NH Public Defender

After earning his JD from the University of Denver Sturm College of Law in 1973, Judge Paul Lawrence started working at the NH Public Defender Office in Manchester with the late Justice Jim Duggan. He subsequently developed a private law practice with his wife, Jane Lawrence, called Lawrence & Lawrence Professional Association, which they operated for 15 years. After serving a number of years as a part-time District/Circuit Court judge, he eventually went full-time. Although he has retired, he now serves as a judicial referee and has served as the Town Moderator for Francetown for 30 years.

“Practice in the areas that you have expertise in or want to develop expertise in and that you feel are personally worthwhile,” Judge Lawrence says to new lawyers. “Keep your overhead low.”

Hon. John M. Lewis

Residence: Durham, NH
Hometown: Durham, NH
Education: Columbia Law School, JD (1973)
Family: Cindy (wife); Michael, David and Madeline (children)
Areas of Practice: General practice, with a focus on family law, personal injury, workers’ compensation, Social Security litigation, product liability, business, and employment
Current Firm or Employer: John M. Lewis ADR Services

Judge John Lewis received his JD from Columbia Law School in 1973 and clerked for Federal Chief Judge Frank J. Battisti of the Northern District of Ohio for the following year. In 1974, he became an assistant regional attorney with the Equal Employment Opportunity Commission in Philadelphia, PA, for two years, before joining the labor and employment group of a large firm in New York City.

Following his move to NH, Judge Lewis joined The Legal Clinics, which later became Borofsky, Lewis & Amodeo-Vickery, where he was eventually made partner. In 2001, he was appointed as a Superior Court judge and served until 2013, when he began operating an alternative dispute resolution service.

Speaking about his achievements and proudest moments, Judge Lewis recounted memorable cases he heard as a judge, including Duncan v. State of NH in 2013, and a major voting rights case in 2012.

“As an attorney, I am proud to have represented Vicki Bader in her family case against Seth Bader, and then to later seek relief against Seth Bader arising from his killing of Vicki,” he says. “I am also proud to have co-authored with my former partner, Stephen E. Borofsky, a law review article entitled, Claremont I and II – Where They Correctly Decided, and Where Have They Left Us? 14 U.N.H. L. Rev. 1 (2016).”

Judge Lewis advises new attorneys to get involved in their community by joining a school board, planning board, or zoning board, to name a few.

“This has a worthwhile craft where, with your skills, you can make a significant difference in so many different ways.”
When John Macoul was a pre-med student at Case Western Reserve University, he took a course in Constitutional Law and quickly decided to switch gears to pursue a career in law. After graduation, he attended St. John’s University School of Law and eventually earned his JD in 1973. He then started a solo practice and remained solo until he retired in 2022.

“I had many challenging and unique cases, but I believe the most challenging was State v. Lister, my first homicide,” Macoul says of his most memorable cases. “The defendant escaped after four jurors were selected, but none were sworn in. It went to the Supreme Court on an emergency basis, and the defendant was ultimately tried in absentia.”

Macoul cautions new attorneys to pace themselves in their practice.

“New Hampshire lawyers have always been generous with advice based on years of experience. We were all new lawyers once.”

By the time Jeffrey Osburn was finished with his engineering studies at General Motors Institute, he was convinced that he did not want to work as an engineer or for a large corporation.

“I decided to try law school with no real plan,” Osburn says. “It was a lucky choice and sort of serendipity that I ended up with a career I really enjoyed. I was also lucky to land a first job at Wiggin, where I had the opportunity to ‘bag’ multiple cases for Paul Nourie. He was generous with his time, advice, and criticism. He would take time to discuss cases post-verdict and what he felt was effective or ineffective for each side. It was a great learning experience.”

With respect to starting a practice, Osburn advises lawyers to work hard and to not hesitate to contact more experienced counsel to ask for help with issues of concern.

“New Hampshire lawyers have always been generous with advice based on years of experience,” Osburn says. “We were all new lawyers once.”

He also cautions lawyers to go out of their way to communicate with other counsel in person or by phone and believes that many issues or misunderstandings can be resolved just by picking up the phone to discuss concerns with opposing counsel.

“Practicing law by text, email, and letter may be quick and efficient, but it is isolating,” he says.

### John A. Macoul

**Residence:** Hampton, NH  
**Hometown:** Lawrence, MA  
**Education:** St. John’s University School of Law, JD (1973)  
**Family:** Stephanie, Matthew, Christine  
**Areas of Practice:** Family law, civil and criminal litigation  
**Current Firm or Employer:** Retired  
**Past Firms or Employers:** John A. Macou

### Richard E. Mills

**Residence:** Meredith, NH  
**Hometown:** Meredith, NH  
**Education:** Northeastern University, BSBA (1970); Boston College Law School, JD (1973)  
**Family:** Donna (wife of 54 years); Jonathan, Timothy, and Jeffrey (sons)  
**Military Service:** US Army Reserves, 2nd Lieutenant  
**Areas of Practice:** Insurance Defense  
**Current Firm or Employer:** Retired  
**Past Firms or Employers:** Devine Millimet (1991-2008); Eaton, Solms, Mills & McNinch (1973-1991)

### Jeffrey B. Osburn

**Residence:** Englewood, FL and Golfstown, NH  
**Hometown:** Tecumseh, MI  
**Education:** General Motors Institute, ME (1970); University of Michigan Law School, JD (1973)  
**Family:** Susan (wife); Adam, Ben, and Matt (sons); six grandchildren  
**Areas of Practice:** Civil litigation  
**Current Firm or Employer:** Retired  
**Past Firms or Employers:** McDowell & Osburn, PA (2001-2020); Wiggin & Nourie, PA (1973-2001)
For Michael Ransmeier, the law runs in his family. His father was a lawyer, and his brother became one, as well. He had opportunities to obtain a PhD in political science, but he always wanted to be his own boss and understood the practice of law to be more conducive to that.

Ransmeier is proud of serving his North Country clients, individuals, and businesses on a long-term basis in a manner that has created long-term relationships. One of his most memorable cases was representing the plaintiffs in one of the earliest Lemon Law cases decided by the NH Supreme Court: Sanborn v. Aranosian, 119 NH 969 (1979).

He has been very involved in community service in the North Country throughout his career, including serving as a selectman in the town of Landaff for 20 years, as a moderator of the Landaff School District for more than 12 years, and six years on the Grafton County Economic Development Commission. He has also been the Senior Warden of the Church of the Epiphany (Episcopal) in Lisbon since 1985 and is a long-time member of the Littleton Rotary Club.

“Our colleagues are a terrific resource for staying in touch with changes in the law, and [for] how to respond to those changes. They are also our close friends and can provide emotional, as well as practical, support. We really cannot do without each other.”

– Michael Ransmeier

After graduating with a BA from Ohio Wesleyan University, Kenneth Robinson attended the University of Michigan, where he earned his JD. His most satisfying case in private practice was State v. Robert H. at the NH Supreme Court.

Robinson says it was very easy to become involved in community organizations as a young lawyer in Concord, NH. He served, at various times, on the boards of the Arthritis Foundation, Project Second Start, the ABC House, the Concord SPCA, and the Rotary Club of Concord.

“The New Hampshire Bar Association Guide to SUCCESSION PLANNING

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

Now Available on the Member Portal!
William Shaheen

Residence: Madbury, NH
Hometown: Dover, NH
Education: University of New Hampshire, BA (1965); University of Mississippi, JD (1973)
Family: Jeanne Shaheen (wife); Stacey, Stacey, and Molly (children)
Areas of Practice: Personal injury, business, family
Current Firm or Employer: Shaheen & Gordon, PA
Past Firms or Employers: NH District Court (1981-1996); US Attorney, District of NH (1976-1981); City of Somersworth (1974-1976)

William Shaheen decided to become a lawyer because of his father, Nick Shaheen. His mentors and heroes include President Jimmy Carter, Governor Hugh Gallen, and Attorney Skip Smith.

After receiving his JD from the University of Mississippi, he worked as an attorney for the City of Somersworth for two years before becoming the youngest US Attorney in the country. One of Shaheen’s proudest accomplishments was building the US Attorney’s Office to always seek justice and to remove politics from that office.

In 1981, he opened his practice with Steven Gordon and built the firm on that same kind of philosophy of justice. That same year, he was appointed as a judge for the Durham District Court. In 1996, he retired from the bench and focused all his efforts on his firm.

One of his most memorable cases was taking on the FBI in a wrongful death action involving the murder of John McIntyre by Whitey Bulger. He says the case spanned decades without any compensation until the very end.

Shaheen has been enthusiastic about political activism during his career. He was the NH Primary chair for Jimmy Carter, Al Gore, John Kerry, and Hillary Clinton. He was also on the Steering Committee for both President Obama and President Biden.

For advice in maintaining well-being and a strong practice, Shaheen says to keep a sense of humor.

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Richard J. Sheehan, Jr.

Residence: Wells, ME
Hometown: Haverhill, MA
Education: Boston College, BA (1969); Albany Law School, JD (1973)
Family: Carole Sheehan (wife of 54 years); Four children; Seven grandchildren
Areas of Practice: General practice, probate, real estate, commercial lending
Current Firm or Employer: Sheehan, Schiavoni, Jutras & Magliocchetti, LLP

Upon graduating with his JD from Albany Law School in 1973, Richard Sheehan began working as an attorney for Cogswell Law Office – a firm that was founded in 1912 – where he continues to practice today (the firm has since changed its name to Sheehan, Schiavoni, Jutras & Magliocchetti).

Outside of his legal practice, Sheehan has been a trustee of the Haverhill Public Library for 40 years and has helped lead the revitalization of downtown Haverhill’s business and residential districts.

“Never compromise your integrity and honesty in dealings with clients, lawyers, and courts,” Sheehan offers as advice to new lawyers. “Finding a mentor or two for advice and guidance will be invaluable. Use your talents wisely, keeping your focus on the best interests of your clients who will put their trust in you. At times, [it’s] a heavy burden for a lawyer, but [it’s] usually a heavier burden for those who ask for your assistance. Seek always to make that burden lighter for those who come to you. The practice of law is a privilege – protect and preserve that honorable privilege.”

Defining Different for 50 Years.

Congratulations, Bill Shaheen!

Creating a different kind of law firm takes passion and commitment, qualities that you’ve also applied to making a difference for our entire state. We’re honored to be a part of your legacy, Bill. Congratulations on 50 years as a member of the New Hampshire Bar!

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Edward E. “Terry” Shumaker, III

From the age of 12, Terry Shumaker intended to become a lawyer. He says it just seemed to fit, and working for two different law firms during college summers sealed the deal. After graduating law school in 1973, he served as a Judge Advocate General in the US Army before joining Gallagher, Callahan & Gartrell in 1976. In 1997, he went on to serve as the US Ambassador to Trinidad at the US Department of State. Then, after six years working as executive director and general counsel of the National Education Association of NH, he began working at Bernstein Shur, where he eventually retired in 2018.

“One of the senior NH lawyers I most admired was Chief Justice Frank Kenison, who swore me in and later presided over my first argument in his court. He always seemed to get the legal analysis right,” Shumaker said when asked about his early years. “My senior partners at CCG were my key mentors and giants of the Bar in my era. From Chris Gallagher, I learned in any negotiation or case, always put yourself on the other side of the table and see what it looks like from there. From Mike Callahan, I learned how to try cases and, most importantly, how to cross examine witnesses. And from Don Gartrell, I learned that patience for lawyers is crucial, that a gentleman can be a strong advocate, and that overheated or nasty rhetoric is never persuasive.”

He is most proud of his work on Cloutier v. Great Atlantic & Pacific Tea Co. (1981), which saved the wrongful discharge cause of action in the Granite State and righted a terrible wrong done to a 31-year employee with an unblemished record who was terminated by a Tilton grocery store because the store was robbed on his day off.

“In addition, I was honored to serve with Jack Middleton as one of the two attorney members of the Supreme Court Rules Committee for 16 years,” Shumaker says. “I was particularly pleased and humbled to be the first New Hampshire attorney elected by my peers to the College of Labor and Employment Lawyers.”

Shumaker was involved in many community service efforts over his career, but two of his great honors were being appointed by Governor Steve Merrill to be the first chair of the AmeriCorps Program in NH and being asked to chair the NH Political Library Board of Trustees by Secretary of State Bill Gardner.

“Get out from behind that computer screen. Get involved in non-legal activities. For me, it was politics, where I met lots of other lawyers and made lifetime friends. Pick up the phone and call opposing counsel; don’t just email them to death.”

——Terry Shumaker

Gregory H. Smith

When Gregory Smith graduated from Concord High School, he could not afford to go to college. Fortunately, his mother’s childhood friend, Carolyn Cheney Rowley, made it possible for him to matriculate at UNH. Smith supported himself through college working 30 hours a week. After graduating from the University of Maine School of Law in 1973, he started at the NH Attorney General’s Office, where he worked his way up from a lawyer in the Criminal Division to Attorney General of the State of NH. In 1984, he joined McLane Middleton, where he continues to practice in environmental law.

“John F. Kennedy inspired me to believe that public service can be a noble endeavor,” Smith says of his hero. “I changed my plans to be a research chemist and went to law school to serve those in our society less fortunate and with less means.”

Smith’s professional mentors include Supreme Court Justice and NH Attorney General David H. Souter, former NH Attorney General and US Senator Warren B. Rudman, former NH Attorney General Thomas Rath, and Jack Middleton.

In the last few years, Smith feels privileged to have worked with other highly conscientious and able lawyers to advocate successfully for the repeal of the death penalty in NH. Smith advises new lawyers to learn avidly from lawyers that came before them, and to ensconce and able lawyers to advocate successfully for the repeal of the death penalty in NH.

“We are living in times of accelerating change, and in its midst, it is harder than it will eventually be to see where exactly we are going and what will be expected of you,” he says. “Adopt the habits of a life-long learner. One of the intellectual rewards and the satisfaction of helping clients with their challenges large and small is the inevitable change in the law, and how you can apply your knowledge of it as it evolves for the benefit of your clients, your community, and society.”

“Get out from behind that computer screen. Get involved in non-legal activities. For me, it was politics, where I met lots of other lawyers and made lifetime friends. Pick up the phone and call opposing counsel; don’t just email them to death.”

——Terry Shumaker

From everyone at McLane Middleton, we congratulate you on 50 influential years with the New Hampshire Bar.

We are proud to have you as part of the McLane Middleton family and thank you for your years of guidance, friendship, and commitment to the community.
Richard W. Smith

Residence: Cape Elizabeth, ME
Hometown: Bath, ME
Education: Bowdoin College, AB; Boston University School of Law, JD
Family: Helen M.V. Smith (spouse); Elliot J. Smith (son)
Military Service: Maine Army National Guard
Areas of Practice: Real estate leases and acquisitions, real estate title and title insurance, business organizations
Current Firm or Employer: Retired
Past Firms or Employers: Bernstein Shur (2005-2017); Tior, Commonwealth Land, Lawyers, and Chicago Title Insurance companies (1985-2005); Law Office of Donald A. Spear; Spear, Smith & Smith; Smith & Smith; Smith & Keith (1973-1985)

Richard Smith has been a member of the NH, MA, and ME bars and was involved in real estate transactions for retail interests in five New England states. As in-house underwriter, state counsel, and manager for title insurers who are now all part of the Fidelity group, his work included consulting on business operations and transactions in eight northeastern states. His early hometown practice in Bath, Maine included opening one of the state’s first title insurance agencies, Pioneer Title of Maine, later Tiorc, Title of Maine, which served as many as 135 Maine approved attorneys in the early 1980s.

While at Bernstein Shur, Smith was recognized by Best Lawyers in NH, ME, and by Chambers in Maine, became the first ME lawyer to be accredited by the US Green Building Council as a LEED AP, and served as volunteer counsel to the NH Chapter of the US Green Building Council.

In 1992, Smith started what is now the Hydrogen Energy Center and remains active in the organization, promoting the decarbonization of industry, buildings, and transportation using green hydrogen technologies.

John F. Teague

Residence: Concord, NH
Hometown: Newport, NH
Education: Amherst College (1968); Georgetown Law School (1973)
Family: Christine (partner); Reuben, Neal, Daniel, and Alexander (children)
Areas of Practice: General practice, with concentration in plaintiff representation, litigation, appellate law, and municipal and school district representation
Current Firm or Employer: Retired
Past Firms or Employers: Upton & Hatfield, LLP

John Teague joined Upton & Hatfield after graduating from Georgetown Law School in 1973 and remained there until his retirement. His legal heroes and mentors include US Senators Howard Banker, Birch Bayh, and Jacob Javits, as well as US Supreme Court Justices Earl Warren and William Douglas.

“I can drive around New Hampshire and view schools such as Prospect Mountain Usonian houses. Winter Olympics, and as a docent at the Currier Museum and its two Frank Lloyd Wright Usonian houses.”

James E. Townsend

Residence: Manchester, NH
Hometown: Meriden, NH
Education: Yale University (1968); Cornell Law School (1973)
Family: Sandra (spouse); Torrey and Julia (children)
Areas of Practice: Private practice/public law
Current Firm or Employer: State of New Hampshire
Past Firms or Employers: Townsend Law Office; Larson & Townsend; NH Attorney General’s Office; Bielaguss & Solomone; Devine, Millimet, Stahl & Branch

Since earning his JD from Cornell Law School in 1973, James Townsend has worked for various firms across the Granite State and has served as Senior Assistant NH Attorney General. Currently, he is the Chairman of the NH Appellate Board. He says his heroes include his parents, wife, and children, as well as his friends Brad Cook and Justice John Broderick for their work in public service, Jamie Raskin and other outspoken advocates for democracy and rule of law, and Reverend William Sloane Coffin, Jr., who was a civil rights and anti-war advocate and his mentor at Yale.

Townsend has been an election worker for many years, including stints as Moderator, Ballot Inspector, and Selectman in Ward 1, Manchester. He has volunteered as a youth soccer coach, a race official in cross-country skiing events, including the 1980 and 2002 Winter Olympics, and as a docent at the Currier Museum and its two Frank Lloyd Wright Usonian houses.

When asked what advice he would have for a lawyer starting their own practice, Townsend offers the following:

“Network with a mentor or two. Hire and maintain good staff. Stay away from cases outside your area(s) of expertise. Bring in co-counsel when you know you need to – for your client’s sake and for your own mental health. We have a wonderful Bar. Your colleagues can and will help in times of need. Attend numerous CLEs and join affiliation groups like the NH Association for Justice or Insurance Defense or Criminal Law. Do some Pro Bono work. Listen and learn.”

James J. Troisi

Residence: Hampstead, NH
Education: Suffolk Law School, JD
Family: Deborah (wife); five children; two grandchildren
Military Service: US Army Reserve
Areas of Practice: General litigation, civil, criminal, zoning, domestic, real estate
Current Firm or Employer: Retired
Past Firms or Employers: Troisi & Sullivan Law Office; Troisi Law Office; Rockingham County Attorney’s Office

James Troisi was an insurance claims adjuster after college graduation, and then a self-employed real estate title examiner. In those positions, he interacted with veteran lawyers and the spark of legal interest was ignited. His initial interest was personal injury and real estate law. However, while taking night classes at Suffolk Law School, he became excited about the law in general. He decided it would be a challenging and interesting career that would allow him to help others in need of legal assistance.

He served as president of both the Rockingham County Bar Association and the Greater Salem Bar Association. He has also acted as chairman of the local campaigns for former Governor Steve Merrill, has provided volunteer legal services to the Rockingham Christian Church for more than 15 years, and has served on the boards of the Rockingham County VNA and Salem Exchange Club, and the Salem Boys and Girls Club. However, he felt the most meaningful service was becoming a Big Brother to an 11-year-old boy, who is now almost 40 years old, married with two children, and is the breadwinner for his family.

“Procure a mentor and also consult with other veteran lawyers beforehand,” Troisi says to new lawyers. “Make certain to learn the business side of practicing law and have...”
a good financial foundation. Always keep your clients informed, over-prepare your cases, especially for hearings before any tribunal, and always ask for assistance from other practitioners in areas where you have less experience."

Troisi adds, “Never lose sight of the fact that it is always preferable to resolve disputes short of trial for the emotional and financial benefit of your clients. When my good friend and colleague Attorney Michael Gorham was alive and practicing, he would call opposing counsel on a new case, and after some personal banter, his first words would be, ‘how are we going to resolve this dispute between our mutual clients?’”

Richard V. Wiebusch

Residence: Hudson, MA  
Education: Dartmouth College, AB (1968); Cornell Law School, JD (1973)  
Family: Margaret (spouse); Kimberly, Alice, and Katrina (children)  
Areas of Practice: Corporate and litigation  
Current Firm or Employer: Retired  

After earning his JD from Cornell Law School in 1973, Richard Wiebusch began working as Assistant NH Attorney General. In 1985, he became US Attorney for the District of NH. He has also worked in corporate law and litigation for private law firms, including Sheehan Phinney, Sulloway Hollis, and most recently Hale & Dorr, where he retired.

In 1984, Wiebusch co-authored and published *New Hampshire Civil Practice & Procedure*. He also served on several boards and government commissions, including NH Ballot Commission, NH State Council on the Arts, Christa McAuliffe Planetarium Foundation, Manchester United Way, and Blue Cross/Blue Shield of NH.

“Work with people who you like and who challenge you,” Wiebusch offers as advice to other lawyers. “Work hard but don’t lose track of your family. Be open to working together and mentor when you have the chance.”

Randall E. Wilbert

Residence: Bolivia  
Hometown: Bolivia  
Education: University of Notre Dame (1970); George Washington University Law School (1973)  
Family: Jody (wife and NH lawyer); Virginia, Randy, John, Michael, David (children)  
Areas of Practice: Commercial litigation, administrative law  
Current Firm or Employer: Retired  
Past Firms or Employers: US Department of Agriculture, Hamblett & Kerrigan; Wilbert Law Office

In high school, Randall Wilbert became engrossed in famous trials and constitutional debates. These, along with a viewing of the movie *To Kill a Mockingbird* during English class, influenced him to become a lawyer. He lists his heroes as US Supreme Court Justice Oliver Wendell Holmes, Clarence Darrow, and Atticus Finch.

In addition to his work as a lawyer, Wilbert also served as the Legal Officer for the NH Civil Air Patrol for 14 years. In addition, he worked on the Nashua Airport Authority as one of the five commissioners during the rapid expansion of the airport. He says his most meaningful community service was being able to coach his children’s baseball and basketball teams.

Regarding the maintenance of well-being and a strong practice, Wilbert says, “You need to set fences. No phone calls on weekends unless it’s an emergency. Try to discourage clients from just dropping by, especially if you have a client waiting. Do not be late for court or a closing or other important meeting. When it comes to billing, unless you have a pro bono arrangement, consider withdrawing from representation if the balance owed keeps growing with no attempt by the client to reduce what is owed.”

Wilbert continues: “Always remember the law can be a beautiful thing, but it is also a destroyer. I have witnessed too many contemporaries felled by depression, substance abuse, broken families, and failing health. Keep in mind, if you are a good attorney, you will always have another client.”

When asked what advice he has for staying connected in the legal community, Wilbert says it is important to meet with other attorneys now and then. “You don’t want to take away from your personal time, but lunch with a colleague or two will help the practitioner realize that he or she is not alone,” he says. “We all feel the same pressures at one time or another and it is helpful to talk with others about common issues.”
93 make Bar For 67% Pass-Rate

Ninety-one men and two women have been announced as successful candidates for the New Hampshire Bar, as a result of the July examination. The passing percentage of 67% is the second lowest in recent years, and is far below last year’s 80% rate. Of the successful candidates, 13 had previously been admitted to another jurisdiction (6 in Massachusetts), and 3 (out of 9) who tried) had previously failed the N.H. exam. One of the least successful records turned in by a law school belonged to Suffolk, with 14 passing and 14 failing. On the other side, Boston University Law saw 14 graduates pass and 3 fail. Georgetown fielded the next highest number of applicants, nine, three of whom failed. New England School Of Law’s box score was eight tries for two failures. Two-thirds of the successful applicants had graduated from New England colleges and universities, over one-third of those from New Hampshire colleges.


The successful candidates were:
1973 New Admittees

We couldn't begin to "left-to-right" these ladies and gentlemen for our readers.... suffice it to say that the master photo has the proper I.D.'s for the archives. Successful applicants not admitted on November 2 were Charles R. Bradley, III, William D. Hughes, William R. Joslin, Richard A. Koory and Lawrence S. Smith.
Supreme Court Judges 1973

THE SUPREME COURT

Left to right: Associate Justice William A. Grimes, Associate Justice Laurence I. Duncan, Chief Justice Frank R. Kenison, Associate Justice Edward J. Lampron, Associate Justice Robert F. Griffith.

Judges of Probate 1973

JUDGES OF PROBATE, 1973

Standing left to right: Honorable Jarlath M. Slattery, Sullivan County; Honorable Nicholas G. Copadin, Hillsborough County; Honorable Robert A. Jones, Grafton County; Honorable Donald W. Cushing, Merrimack County and Honorable Richard G. Tilton, Belknap County.

Sitting left to right: Honorable Harry C. Lichman, Cheshire County; Honorable Frederick J. Harrigan, Coos County and Honorable William W. Treat, Rockingham County.

Absent when picture was taken were: Honorable William E. Galanes, Strafford County and Honorable Arkold C. Shea, Carroll County.
Celebrating 50 Years of Law Practice

Superior Court Judges 1973


Association Officers 1973

The NH Bar Association recognizes the following members as they reach the milestone of 50 years of law practice.*

Mark D. Alpert  
Hon. John P. Arnold  
Michael A. Bailin  
Philip P. Bonafide  
Stephen E. Borofsky  
Hon. Jean K. Burling  
George F. Burns  
Hon. Daniel M. Cappiello  
George L. Chimento  
Michael E. Chubrich  
Albert J. Cirone, Jr.  
Bradford E. Cook  
Patrick J. Daly  
Hon. J. Michael Deasy  
R. Peter Decato  
Stephen J. Dibble  
Robert A. Dietz  
Michael J. Donahue  
David J. Driscoll  
Donna W. Economou  
Hon. John C. Emery  
Hon. Peter H. Fauver  
Mayor James J. Fiorentini  
Stephen J. Frasca  
David M. Gottesman  
H. Scott Haskell  
Edmund S. Hibbard  
Douglas P. Hill  
John R. Hughes, Jr.  
Bruce R. Jasper  
Edward M. Kaplan  
John C. King  
Joseph M. Kozak  
James L. Kruse  
Mark A. Larsen  
Hon. Paul H. Lawrence  
Hon. John M. Lewis  
John A. Macoul  
J. Christopher Marshall  
William L. McCague, II  
Douglas A. McIninch  
Richard E. Mills  
Jeffrey B. Osburn  
Michael B. O'Shaughnessy  
Donald J. Perrault  
Michael M. Ransmeier  
Edward W. Richards  
Sanford Roberts  
Kenneth L. Robinson, Jr.  
William H. Shaheen  
Richard J. Sheehan, Jr.  
Edward E. “Terry” Shumaker, III  
Gregory H. Smith  
Lawrence S. Smith  
Richard W. Smith  
Dale T. Swanson  
John F. Teague  
James E. Townsend  
James J. Troisi  
Robert C. Varney  
Hon. Timothy J. Vaughan  
Richard V. Wiebusch  
Randall E. Wilbert  
Ralph R. Woodman

* This list is not all-inclusive of the 2023 50-year members. Some of our members who have practiced law for 50 years did not wish to be recognized (not listed here), and some did not wish to answer the questionnaire (listed here but not profiled within the supplement).