Vol. 33 No. 12



Brian Coughlin's legal team standing on the steps of the US Supreme Court the morning of April 24, 2023. From left to right: Brian Coughlin, Terrie Harman, Richard Gottlieb, Gregory Rapawy, and Matthew Drecun (an associate from Rapawy's firm). Courtesy Photo

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 focused on probate litigation, estate planning, and general civil litigation, but it was one of her old bankruptcy cases that caught the eye of Boston lawyer, Richard Gottlieb, leading to a phone call that would place her on a trajectory to the highest court in the land.

Gottlieb was representing a client named Brian Coughlin in a Chapter 13 bankruptcy. Gottlieb assured his client that the harassing, relentless calls from his creditors would cease due to the automatic stay. However, one creditor, an online payday lender called Lendgreen, continued harassing him mercilessly. After many failed attempts to get them to stop, Coughlin became overwhelmed and attempted suicide. Following approximately two weeks of recovery in Mass General, Coughlin sued Lendgreen for violating the automatic stay.

After discovering Harman's work on the *Duby* case 10 years ago, Gottlieb reached out to her.

Dorothy Duby was an elderly, blind widow whom Harman represented *probono* in a Chapter 7 bankruptcy. When Duby filed, she had included a debt of \$1,800 to the US Department of Agriculture, but the USDA continued to harass her. Duby became despondent and fearful.

"It scared the dickens out of her," Harman says. "She literally thought the whole force of the US government was going to come down on her."

With Harman's help, Duby sued the USDA, claiming emotional distress damages for their violation of the automatic stay. The First Circuit ruled that emotional distress damages were not allowed for violation of the automatic stay by the Sovereign. As there was an apparent split in the circuit courts on the matter, Harman petitioned the US Supreme Court for a writ of certiorari, but it was denied.

SCOTUS continued on page 27

150-Year Retrospective: Preserving New Hampshire's Legal History Throughout the Years

By Scott Merrill

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 Winifred "Winnie" McLaughlin became the first woman ad-

mitted 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)



NHBA Executive Director George Moore poring over a file containing his torical budget and tax documents. Photo by Tom Jarvis

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 inter-

HISTORY continued on page 26

Practitioner Profile

An Ocean of Experience in Environmental Law

By Kathie Ragsdale

Marcia Brown is so committed to the environment that she has made it her primary office.

A solo practitioner with a focus on environmental and utility law, she spends an estimated half to two-thirds of the year working from her 51-foot Able Apogee sailboat, using a satellite system for communication. "I only need to be on land for emergencies or court hearings," she says. "They are so intertwined," she adds

"They are so intertwined," she adds about her personal and professional lives. "I cannot live without being in the environment and I fully immerse myself when



I am on the boat."

A true New

A true New Hampshirite,
Brown comes from a family that has been in the state for 400 years, and her great-great grandfather,
John Greenfield, was a founding stockholder in her

native community of Rochester. She also counts Torrs, Gerrishes, and Wentworths

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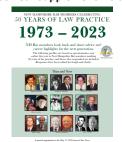
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2023 NHBA Annual Meeting: Honoring the 2023 Award Recipients and Celebrating 150 Years of the Bar Association

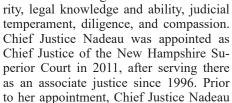
By Jonathan Eck

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 indi-

viduals. 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 integ-







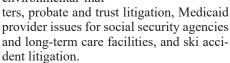
By Jonathan M. Eck Orr & Reno Concord, NH

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 to the Legal Profession Award. 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 mat-



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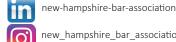
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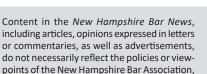


NHBAR





new_hampshire_bar_association



the Board of Governors, the NHBA Editorial

Advisory Board, or the NHBA Staff.

NHBA Welcomes New MarComm Director and Accounts Receivable Administrator

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

Cailin Dow is the NHBA's new Director of Marketing, Communications, and Member Outreach, where she will oversee the Marketing and Communications (MarComm) partment, as well as Member Services



and Lawyer Referral Service. 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." ■



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DOVE Project Coordinator, Pamela Dodge, to Retire After 23 Years of Helping Victims of Domestic Violence and Stalking

By Tom Jarvis

Pamela Dodge, a name that has been synonymous with the DOVE Project for more than two decades, has announced her upcoming retirement on June 30, 2023.

Dodge has been the DOVE (Domestic Violence Emergency) Project Coordinator for 23 years. A lifelong Granite Stater, she graduated from the University of New Hampshire in 1977, with a degree in retail management and merchandising. After college, she worked as a store manager for a regional retailer, then worked for Philip Morris International as a sales representative, and later became a training manager for the Weathervane clothing store.

In 1997, Dodge decided on a career change. She felt the law was interesting, so she began working on her paralegal certificate from Franklin Pierce College. Concurrently, she was hired by former NHBA Legal Services Director Virginia "Ginny" Martin as an unpaid intern for the NHBA Pro Bono Referral Program (Pro Bono).

"After probably four or five months, Ginny came to me and said, 'we have to start paying you. You can't keep doing this for free," Dodge says. "So, that's how my career with Pro Bono started."

Dodge was officially hired as Pro Bono Assistant in January 1998, splitting her time between doing pro bono referrals and helping former DOVE Project Coordinator Mary Searles. Two years later, Mary Searles (now the law librarian at the John W. King New Hampshire Law Library) moved on and Dodge was named DOVE Coordinator.

'It seems like a really big leap to go from what I was doing [in retail], to doing legal services, but it wasn't," Dodge says. "A lot of what I did for my first 20 years was mentoring new store managers and hiring young women - nurturing and training them to get them started on a career. It was taking on responsibility, and it was selling. When I look back, it was a great preparation for what I do.'

Retired NHBA Legal Services Director Ginny Martin says that when it comes to DOVE, Dodge has given it her all.

"A leader within the state's domestic violence prevention network, and a soughtafter resource by New Hampshire attorneys, Pam has been relentless in pursuing and coordinating the legal assistance that survivors require, always rising to meet the latest challenge or need with empathy, skill, and creativity," Martin says.

The DOVE Project began in the ear-



Pam Dodge in 2004, in her office at the old NHBA Bar Center on Pleasant Pam Dodge in 2023, in her office at 603 Legal Aid. Photo by Tom Jarvis Street in Concord. Courtesy Photo



ly 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

Dodge says she has many fond memories over the years at both the NHBA and 603LA, but one of the early reminiscences 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 become a lawyer."

Dodge remembers Nixon calling her and saying, "we need to get more DOVE lawyers. We're going to do an Uncle Sam campaign. I have a friend who is a photographer, I'll pay for him and for the Uncle Sam outfit. You get the lawyers to come in and pose."

'So, we did this Bar News splash," Dodge says. "Every single Bar News had a different DOVE attorney pointing and saying we want you. Dave did his differently. He took things from all branches of the military and put it into one outfit and did a

little test – name the seven things that are wrong with this picture and whoever won, Dave took them out to lunch."

Since Dodge began coordinating the DOVE Project, she says it has grown over the years. Part of that growth can be attributed to her work partnering with UNH Franklin Pierce School of Law's Daniel Webster Scholars (DWS) Program to train their graduates to do DOVE cases.

'One of the things I think is unique to what I've done with the DOVE Project is the relationship that I've nurtured with the law school throughout the years," Dodge says. "But that's really thanks to John Garvey. He approached me about working with the law school to train the Websters to do DOVE cases, and it has really grown over the years. As those years have gone by, and graduates became DOVE attorneys, we have replaced the lawyers who were doing the programming with DWS attorneys who are doing the DOVE work. So, the whole program now is Scholars teaching Scholars, teaching 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

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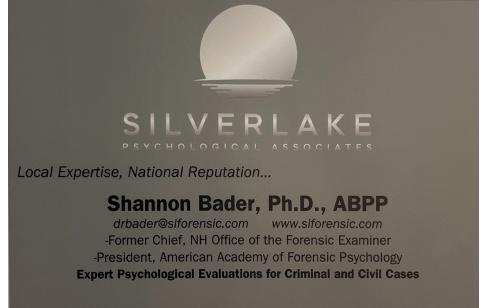
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Eleven Steps to an Easy License Renewal Process

Beginning June 1, 2023, the "My NH-BAR" 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 CLE program minutes must be entered by the attorney attending the class. All NHBA CLE course minutes for the reporting year beginning June 1, 2022, and ending May 31, 2023, must be completed by June 29, 2023, to assure minutes are loaded to ART to file the Affidavit of Compliance by July 1.

Tip:

Watch videos at **nhmcle.org** for tips on using ART.

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@nh-bar.org will contain a web 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 Accounts 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.

Tip:

Law firms may have the managing partner complete a single TAC form for all lawyers at the firm by adding each firm attorney to the form.

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.

Tip:

Attorney information such as IOLTA account numbers may be cut and pasted from other sources to avoid keying errors.

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.

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.

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.

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.

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:

We encourage all members to review, and if needed, update this info ASAP – and certainly prior to June 1, 2023 – to ensure members receive every message concerning license renewal in a timely manner.

Questions? Email **Billing@nhbar.org** or call the member hotline at (603) 715-3279. Completing license renewal before the July 1, 2023, deadline saves time, energy, and reduces stress. Have a great year! ■



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2023 NHBA Board of Governors Election Results

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Vice President

Derek Lick



Governor-at-Large

Kristin G. Fields



Governor-at-Large

James A. Shepard



Governor-at-Large

Robert R. Lucic





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Anthony Naro

Merrimack County Governor



Petar M. Leonard

Rockingham County Governor



Paul B. Kleinman

Strafford County Governor



Joshua M. Wyatt

ABA Association **Delegate**



Lyndsay Robinson

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, legal blogs, analytics, workflow tools, and legal news.

TechConnect is another FREE benefit offered to exclusively to NHBA members. The NHBA has partnered with Affinity Consulting to provide free consultations for members. Their consultants provide the expertise to help you discover the most cost-effective technology solutions for your firm. Your TechConnect benefit also offers tips and tools to use as your career progresses or your firm evolves, including video tutorials, whitepapers, and technology comparison charts. Members can also e-mail an expert with a question. All TechConnect resources, a value of more than \$500, are available free of charge to nhbar.org/resources/member-servicebenefits.

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 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 Capterra - 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 pay-

BENEFITS continued on page 29



NHBA members and their staff. Many legal technology and service providers offer discounts to NHBA mem-To access these discounts, visit

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NEW HAMPSHIRE BAR ASSOCIATION 2023 Midyear Business Meeting February 17, 2023 – 11:45 am

Doubletree by Hilton Downtown Manchester, NH

Please contact Debbie Hawkins for more information dhawkins@nhbar.org

DRAFT MINUTES

President Jonathan Eck - Presiding

1. Call to Order

President Jonathan Eck called the meeting to order at 12:05 pm.

2. Approval of the Minutes of the Annual Business Meeting – Friday, June 17,

ACTION

On motion to approve the draft minutes of the 2022 Annual Membership Business Meeting. Passed.

3. Old Business

There was no old business to discuss.

4. New Business

a. Vote on Proposed changes to Bylaws – Article IV, Section 4 President Jonathan Eck presented the proposed revisions to the NHBA bylaws, copies of which were provided to attendees.

ACTION

On motion to accept the proposed revisions to the NHBA Bylaws. Passed.

5. Adjournment

The meeting was adjourned at 12:10 pm.

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.
 - Vote on change to Article VI Section 1.

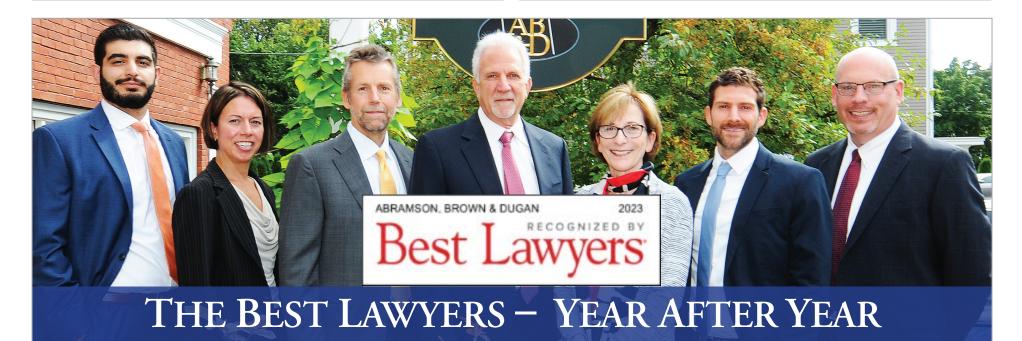
This revision addresses the problem in the less populous counties, namely Coos, whereby those wishing to submit a petition to run for the County Governor Seat are unable to obtain 10 signatures due to lack of active attorneys practicing in that county.

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.



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

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Perspective from page 2

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 'goto' person in New Hampshire when there is a difficult or ethical issue facing an attorney." Russ's practice involves commercial and insurance litigation, professional dis-

cipline, 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 Hamp-

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.





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
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- Leadership Academy
- Legislation
- New Lawyers

Learn more at nhbar.org/nhba-committees

Questions? Contact Debbie Hawkins at dhawkins@nhbar.org or (603) 715-3269

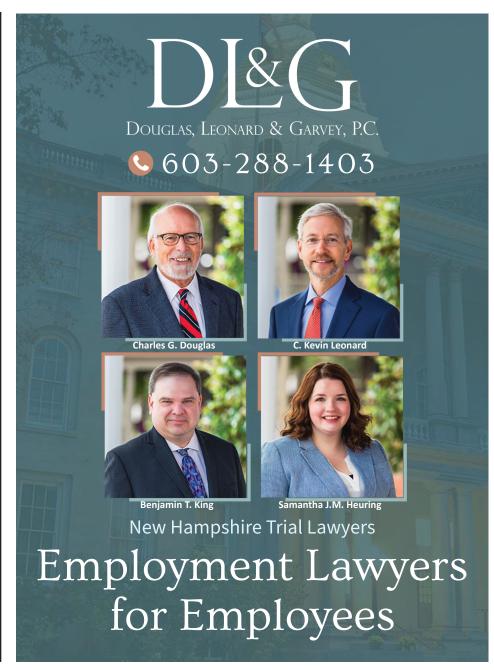






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Who is Your Favorite Fictional Lawyer? The Bar President Edition, Part Two

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, *Perry Mason*, 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. Tulkinghorn of [the novel] Bleak House. [He's] an extremely capable attorney caught in the clutches of the interminable chancery court processes that seem to envelope us all from time to time. The pa-



tience shown by all involved in *Jarndyce v. Jarndyce* would not be countenance or rewarded in today's high-tech, e-filed court system, where brevity and more expeditious 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

Larry Vogelman, Shaheen & Gordon

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 defen-

dant 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)."

lar. He would be just as successful in to-

day's courts, as his calm professionalism

Greg Robbins, Hoefle, Phoenix,

Gormley & Roberts, PLLC

NHBA President from 2000 to 2001

"Lawrence Preston (played by E.G.

never goes out of style with juries."

from

Marshall)

the old TV show

The Defenders. It

showed the legal

profession at its best

and took on seri-

ous topics. In one

episode, the pro-

tagonists defended

a neo-fascist hate

speaker's right to

make a scheduled

speech before a large

NHBA President from 2012 to 2013

"Vinny Gambini 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 tjarvis@nhbar.org. Please include your favorite fictional lawyer, why they are your favorite, and your opinion on how they would fare in a present-day New Hampshire courtroom. ■

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In 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 it so wrong that you can't help but shake your head?

Let us know who you think should be on the list and why. Contact NHBA Publications Editor Tom Jarvis at tjarvis@nhbar.org with your answers.

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, Virgina, 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 Cevaso, 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 NHBA, 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



Milford High School students at the National Conference Center after the first day of National "We the People" Finals. From left to right: Ziera Dodson, Charles Cevaso, Morgan Peterson, Madelyn Bergen, Nikol Zyzen, Eden Leak, Troy Williams, Olivia Rolanti, and Robert Anderson. Courtesy Photo

take place in January. The top performing class then earns the opportunity to represent New Hampshire in the National Finals in or around Washington, DC.

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 am. 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, DC.

"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 fundraise \$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, Frederic K. Upton Fund, and the Advancement of Justice Restricted Fund.

"We are super grateful and appreciative

NATIONALS continued on page 29

#1 in Verdicts and Settlements



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



NEW HAMPSHIRE

BAR FOUNDATION NEWS

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 (FDIC) or the Federal Savings and Loan 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 gov-

ernment 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

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 depositor's] injury, if any, was [the bank's] unforeseen demise." Id. at 325, 788 N.Y.S.2d

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.

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In Memoriam

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 Law 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, 2022 – May 31, 2023 member year are Michelle Radie-Coffin, Chair; Laura B. Dodge, Vice Chair, and Elaina L. Hoeppner, Clerk.

The Section is planning its next meeting in September at a location (TBD) in Portsmouth, which will likely be an ice cream social. The Real Property Section encourages members to attend the next meeting and get involved with further efforts on drafting the proposed legislation. The Section welcomes ideas and suggestions from members for future events.

On behalf of the Real Property Section of the New Hampshire Bar Association, we would like to thank NHBA Sections Coordinator Lazaro Laserna for all of his work and support in planning and carrying out these events.

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 chil-



dren, 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 Falmouth, 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 Keith Academy in Lowell, after which he traveled to Quantico, 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 Nahua Street, Boston, MA 02114, caringforacure.org.

LawLine

The 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 mat-

ters, 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 Morneau, Paralegal Alycia Gelin, Attorney Amanda Steenhuis, and Paralegal Abbey Reville.

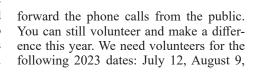
LawLine is a free public hotline, hosted by volunteer attorneys, on the second Wednesday of each month from 6:00 pm to 8:00 pm. Assemble a handful of colleagues in your office to take calls, and we will



Douglas, Leonard & Garvey attorneys, Samantha Heuring (left) and Benjamin King (right)

November 8, and December 13.

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





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Words of Wisdom from Solo Practitioners

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 cli-

ent's 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 volume.

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.

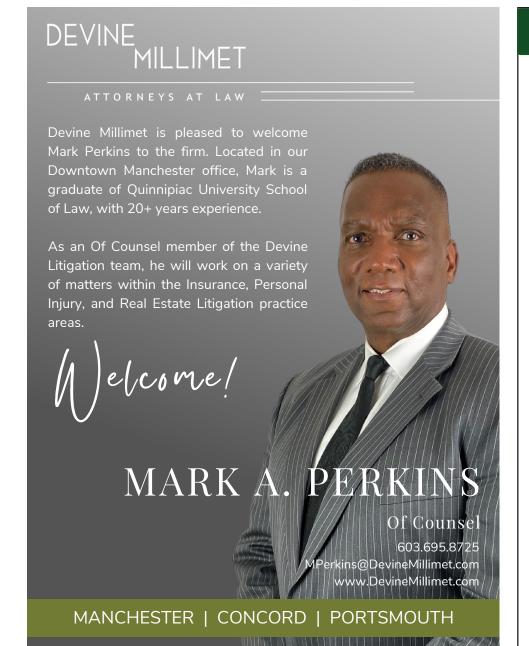


Hardest thing about solo practice: Being isolated and having to make tough decisions without input from others.

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. ■



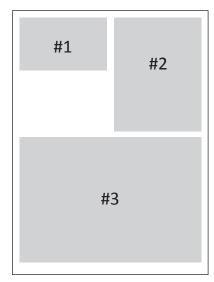
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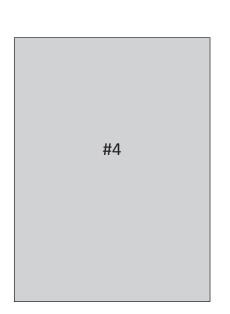
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Associate Attorney Melissa A. Kowalewski

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, then 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 victims' 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 grade-three aggressive breast cancer. Our life was turned upside down.

I was extremely fortunate that the Air Force was able to find me a position in San Antonio, Texas, so that my wife could be near her family during treatment, but my new assignment further depleted my emotional tank. I'd been reassigned to Disability Counsel, where I fought for military healthcare and retirement benefits for discharged service members.



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

My second week on the job, I was assigned my first client, a 39-year-old diagnosed with Stage IV terminal cancer. I'll never forget the feeling of loss and hopelessness when I got off the phone with that client. 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 vou'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. I remembered how much I had loved it when my dad would take me to ride my Honda CR80R dirt bike around the Rochester fairgrounds. I thought dirt bikes might be the ideal diversion for my sons. 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 clutches. 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 narrative of that event, 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, things have 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 yourself 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 jasonhebert603@gmail.com.



Jason and Jace Hebert training in Texas. Courtesy Photo

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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 in another proceeding. E.g., *Matter*

of Nwakanma, 397 P.3d 403, 427 (Kan. 2017) (attorney violated Rule 3.4(f) by requesting, via settlement agreement with former client, that the client "refrain from voluntarily giving relevant information in the [parallel] disciplinary proceedings"); Kentucky Bar Ass'n v. Unnamed Attorney, 414 S.W.3d 412, 418 (Ky. 2013) (attorney violated Kentucky equivalent of Rule 3.4(f) by negotiating a settlement between another attorney and the other attorney's client in which the other attorney "agreed to refund [his] \$30,000 fee in return for [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 "Fairness 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 "[f]air 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)) ("[W]hen 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 Conditioned on Noncooperation are Illegal 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), in referring to "another party," seems to 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 noncooperation 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 majority interpretations offered 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 proscription where: (1) "the person is a relative or an employee or other 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 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 conduct or to suggest topics for Ethics Corner commentaries by emailing: Robin E. Knippers at reknippers@nhbar.org.



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First-Years Go to Moot Court in the Case of *State v. Johnson*

"I feel like I have

myself because I

did something so

powerful and scary."

assurance in

this newly sprouted

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 vou.

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 em-

powering 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 rab-

bit out of a hat."

- Sarah Viders, 1L

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

Judge Messer wants students to know "it gets easier," over 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. ■



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Brown from page 1

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 citizenship. 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 listened to my gut telling me my field was environmental law," she says now.

She went on to earn a Master of Science in Law and a JD from Vermont Law and Graduate School, where she was president of the Environmental Law Society.

Upon graduation, looking for a job that would offer "mom hours" for a family that would eventually include three daughters, Brown went into administrative law, working for the Office of State Planning. She was an early fighter for the Coastal Zone Management Act federal consistency program, which gives the state a voice

in federal permitting, and led the effort requiring two natural gas pipeline companies competing on the seacoast to come before a state Site Evaluation Committee.

"Being a new lawyer, it was quite a coup," she says.

She is likewise proud of her work protecting Packer Bog and Great Bog, where 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.

She has also served on the faculty of the New Hampshire Technical Institute and the National Association of Regulatory Utility Commissioners, and spent two years at Rath, Young, and Pignatelli, with a focus on environmental and energy law.

Donald Ware, COO of the Pennichuck Corporation, met Brown in 2001 when she was a new staff attorney at the Public Utilities Commission, and he was chief engineer for Pennichuck Water Works. They continued to interface over the years through Pennichuck's various filings with the state, and in 2016 Pennichuck hired Brown, then working for Rath, Young, and Pignatelli, as its primary attorney for filings with the NHPUC.

"Since 2016, Marcia has represented Pennichuck in seven rate case and multiple other regulatory filings," says Ware. "It has always been a pleasure to work with Marcia as she is always pleasant, very thor-



Marcia Brown takes a break from the helm to act as 'rail meat' during the Eggemoggin Reach Regatta. Courtesy Photo

ough, and has a strong grasp of not only the legal side of the regulatory world but also the operational dynamics of the regulatory world. She is a great listener and an excellent negotiator, and she and I share a common goal of doing what is right for all involved in each regulatory proceeding."

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. When the registry went into effect, it was retroactive, Brown explains, capturing people who had no idea they would

be included in it and providing no safety valve for those who could establish they were not a threat to the public. Though she got a mixed decision from the Court, the case "set the stage for a change in law for a safety valve," she says.

In 2016, when Brown's need for "mom hours" or elder care hours less-ened, "I learned I could jump ship literally and start working from a boat," she says. "That's when I launched into being solo, just me."

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.

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 NHBA 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

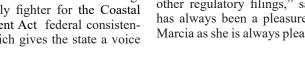
in 2018, live in Somersworth.

Brown served as secretary to the board of directors for the Concord Cooperative Market board for two years and has also been affiliated with the New Hampshire Water Works Association, New England

Women in Energy and Environment, New Hampshire Association for Justice, Greater Concord Chamber of Commerce, New Hampshire Business & Industry Association, and the New England Council.

She is also a past commodore of the Kittery Point Yacht Club board of directors and helped pilot the club during a difficult time. Current commodore Chris Snow, president of Property Tax Advisors in Dover, says Brown "demonstrated excellent leadership skills with a lot of personalities and responsibilities," not to mention that she is "quite able and easy to get along with onboard, which is a rare combination."

Being onboard is her favorite location, Brown admits. "A happier lawyer makes a more productive lawyer," she says, adding that some clients like to track her sailing locations electronically. "It's like 'where's Waldo?" she says. "Where's Marcia?"





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"A happier lawyer

productive lawyer."

- Marcia Brown

makes a more

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 oversee service providers with access to regulated information.
- 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.

Who is Covered?

The applicability of the FTC's Safeguard 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 an eclectic group of organizations, including mortgage brokers, motor vehicle dealers, collection agencies, tax preparation firms, payday lenders and check-cashing businesses that operate outside the GLBdriven regulation of what one might think of as a financial institution, like banks examined under the FFIEC standards. Interestingly, most colleges are subject to the Rule, because of their processing of student loans despite the ostensible reach of other cyber rules.

Under its new Rule, the FTC gave itself the authority to expand its reach to "finders," i.e., those that bring together sellers and buyers of a product or service. The full scope of that reach is ostensibly limited to those that handle regulated information and the FTC kindly enumerates 13 old types of business that are subject to the new rule (though providing little help with "finders") and four types that aren't subject to the Rule. As an act of regulatory mercy,

those presumably small businesses that maintain regulated information for fewer than 5,000 individuals are exempt.

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 du-
- Penetration testing and vulnerability scanning are probably preferrable 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) Brighton, Joel, Huntersville, NC (Effective March 10, 2023) 2Eads, Dana, Hopkins, MN (Effective March 14, 2023) Hirsch, Victoria, Concord, NH (Effective March 14, 2023) Joyce, Debra, Amherst, MA (Effective March 31, 2023)

Active to RESIGNED:

Ramsdell, 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 Retired to ACTIVE:

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





Krans

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 oftenemotional 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 give 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, who you represent (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") Client. [Opposing counsel] represents Cat's husband, Patrick ("Pat") 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 pro-

"According to

a leading New

law medi-ator,

Hampshire family

approximately 62

do not submit a

percent of lawyers

mediation statement

prior to mediation."

pounded 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 the 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 orders in effect, 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 parenting 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 client'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 po-

tential 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 what 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 specify whether your client has any dealbreakers (i.e., "Cat will not enter into any settlement that requires her to pay Pat alimony, especially if he remains in the marital home").

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

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 quick (10 minutes, give or take) 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 on the central facts in the case and parties' respective motivations (including a party's perceptions of the opposing party's motivations) during the mediation only delays 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 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 Fed-



eral Courts, Fifth Edition. It is the perfect treatise for any commercial litigator.

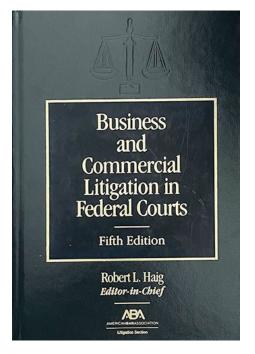
The 16-volume work is available in a hardbound set of books or as a ProView eBook. While I often prefer flipping through the pages of a hardbound book, particularly when researching statutes, I recognize the changing look of our law libraries today and the continuing need to access legal resources from 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 desk-top 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 all aspects of business litigation in federal courts. Beginning with the assessment of a new matter when the call first comes in on a case to preparation of the complaint or answer and third-party practice, the Fifth Edition is a valuable resource. The treatise is full of useful tips on handling a commercial case at all stages of litigation, provides sample discovery, and contains various forms for use. Together, the 393 principal authors from throughout the country - including 32 judges - reveal valuable insights, perspective, and stepby-step strategies for trying a commercial case, whether for a plaintiff, a defendant, or a third party.

Of great assistance to any trial lawyer, this treatise contains numerous checklists, model jury instructions specific to federal litigation, and various proposed orders. The *Fifth Edition* is also unique from other resources because it contains chapters central to any law practice on the topics of Budgeting and Controlling Costs, Fee Arrangements, Third Party Litigation Funding, and Crisis Management. The comprehensive index of rules, statutes, and over 50,000 cited cases allow an easy reference guide and shows the amazing array of topics 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 open-

ings 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. Storytelling, brevity, and clarity, and mastering the facts of a case are some of the other items included. There is also a section on effective legal teamwork during trial. Anyone responsible with training within their firms or organizations will appreciate the practical and helpful materials.

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, 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; 120 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.

22

• 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

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

• Webcast; 60 NHMCLE min.

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.

JULY 2023

THU, JUL 20 – 8:00 a.m. – 5:15 p.m. CLE by the Sea: NE Solo & Small Firm Conference

- Up to 380 NHMCLE min.
- Newburyport, MA Blue Ocean Event Ctr.

SEPTEMBER 2023

THU, SEP 14 – Time TBD
Where Business & Your Practice Collide

- Credits TBD
- Concord UNH Franklin Pierce School of Law

THU, SEP 21 - 9:00 a.m. - 4:30 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
- Refresher on Trust Account Obligations
- Ethics and Pro Bono Legal Services

Faculty

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

Stephanie K. Burnham, Burnham Legal PLLC, Manchester

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

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

Emma M. Sisti, 603 Legal Aid, Concord

Richard Guerriero, Program Chair, Lothstein & Guerriero, Keene

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

WE DO THE REPORTING FOR YOU!

How to Register

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

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

SAVE THE DATE

22nd Labor & Employment Law Update Sept. 21, 2023

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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.

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

Navigating the **Health Care World**

Wednesday

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



May 24

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

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.



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. incl. 60 ethics/prof. min.



Manchester - DoubleTree by Hilton Downtown

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

Faculty

Corey M. 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

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

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.

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

July 20

8:00 a.m. – 5:15 p.m. Up to 380 NHMCLE min.



Blue Ocean Event Center, Salisbury Beach, Salisbury, Massachusetts

Topics will include (with faculty from Maine, New Hampshire and Massachusetts):

- \bullet 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-ne-conference-for-solos-and-small-law-firms

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

NH Supreme Court Extends Equal Protection to Children in Litigation Against DCYF

By Michael S. Lewis

In Petition of New Hampshire Division for Children, Youth and Families, No. 2021-0563 (Feb. 8, 2023) (Petition of DCYF), the New Hampshire Supreme Court imposed heightened scrutiny upon statutes depriving children of the



equal protection of our laws. While the decision focused on the State's effort to impose unequal status on children through its interpretation of the applicable statute of limitations, its outcome has broader implications. Among other things, it places the State's reliance on statutory caps to liability in peril.

The decision reached the New Hampshire 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-CV-00677 (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 abusive 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 detective noted that DCYF failed to respond to her repeated entreaties to protect them for weeks. Id. In November of the same year, the abusive parent killed one of the siblings of the children under circumstances that led the State to successfully prosecute her for second 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 it had no duty to the children. The trial court rejected that theory, noting that "The vast majority of courts from other jurisdictions have held that an entity charged with investigating and protecting children from abuse and neglect, such as DCYF, owes a duty of care to conduct a competent investigation once it receives a report of suspected abuse." *Id.* at 10 (citations omitted).

The State also argued that the children were barred from seeking relief under the applicable statute of limitations. According to the State's theory, even though children, generally, may file suit two years after they reach

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the age of majority for injuries they suffer as minors, when the State is the defendant, the same children must file suit within three years of the injury. The trial court, again, rejected that position. "The Court believes that the legislature did not intend to have a rigid three-year limitation for tort claims brought on behalf of children who were just eight and ten years old at the three-year anniversary of their sister's death. To interpret the law as the State is asking the Court to, would lead to an absurd, unfair, and unjust result." *Id.* at 8. The trial court's decision *did not* turn on State constitutional law.

In affirming the trial court, the New Hampshire Supreme Court went even further. It noted that the statute of limitations the State relied upon arose out of, and was contained within, 1985 legislation that responded to judicial concerns about the continued sustainability of the doctrine of sovereign immunity. Petition of DCYF, slip. op. at 3. Reviewing its precedent, the Supreme Court concluded, "when the State waives its sovereign immunity, a statute restricting the ability of a party to bring suit against the State must comport with the principles of equal protection guaranteed by the New Hampshire Constitution." Id. at 4. It further observed that because the right to bring a tort action is an "important right," the State bears the burden of justifying unequal treatment by demonstrating that the challenged legislation is substantially related to an important government interest. Id. at 5. The State's effort to create two classes of children, those who sue the State and those who sue all other entities, failed this test. Id.

The Court ruled that the purpose of the statute at issue, RSA 541-B, was to waive sovereign immunity and to permit tort recovery against the State. Id. at 5. The State's interpretation, far from accomplishing that goal, would extinguish the rights of children "injured by the State who do not have . . . a parent or next friend willing to bring suit on their behalf, like many in DCYF custody. . .." In the case, the Court ruled that the State failed to articulate "any reason - let alone an important governmental one - for foreclosing lawsuits against the State for some child plaintiffs, while allowing lawsuits for children in the same position with claims against private tortfeasors." Id. at 6.

As a result of the decision, the State bears the burden of articulating important interests favoring the differential treatment of that class, under State equal protection law. Unlike rational basis review, the State cannot rely on post hoc or hypothesized justifications for its positions. It must identify the actual justification for treating abused and neglected children worse than the popula-

tion, generally. *See Lennartz v. Oak Point, P.A.*, 167 N.H. 459, 463 (2015).

This ruling has serious implications for defenses the State relies upon in civil litigation. RSA 541-B:14, for instance, limits 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 million 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 update 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 statutory cap. See Kristen Carosa, 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 provisions not discussed in *Petition of DCYF*. Part I, Article 14, for instance, provides that "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 McMahon, *The End of Governmental Exceptionalism*, NH Bar News 4 (Jan. 16, 2019).

Can accountability and illegality, when proven, countenance an incomplete remedy against a State with a record as bad as DCYF's when it comes to protecting children in the face of mandatory duties? When thinking about this question, consider the outgoing director's implicit condemnation of the State in his interview with NHPR. Julie Furukawa, Mary McIntyre, NH's DCYF direct is leaving. What work remains to improve the child welfare system? NHPR.org (Apr. 24, 2023) ("Not every kid is getting access to everything 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 Callery, Report prompts changes after Harmony Montgomery's death, but some say more must be done, Several New Hampshire children have died while under DCF care, WMUR.com (Apr. 11, 2023) (describing serious DCYF dysfunction in relation to deaths of NH children.)

Michael S. Lewis is a senior litigation shareholder 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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History from page 1

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 socalled Langdell Revolution, named after Harvard lawyer Christopher Columbus Langdell. This approach, which acknowledged the increasing complexity of the law, led to the casebook method of study focusing on finding precedents that is still used today, in combination with the Socratic method and other forms of instruc-

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 economic complexities which led to the demand for a growing specialization in law. This approach, which continued to utilize the casebook method and a body of ordered principles, 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 be-

gan after seeing an advertisement from the NHBF around 1991 calling for the formation of a Legal History Project. By March of 1993, Raiche Manningchaired the who committee—and a group of several others had completed guidelines for



Raiche Manning

their interviews and soon hired a professional video production service. 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 around 2000, the stories they had collected—which involved hundreds of hours of interviews and editing-painted 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 then, are now part of the NHSCS's Oral History Project.

Gregory Smith, former state Attorney General, and member of the NHSCS Board of Trustees (Editor's Note: 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 Legal History Project established in the early 90s 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 library which ones were recorded in high definition and which were recorded ear-

lier on VHS," he explaining says, that the early tapes converted were 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."



Smith

When getting started with the project, Raiche Manning says she began by asking for 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. Upton, who died in 2013. 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 sworn in at the New Hampshire Supreme Court during an impromptu visit without taking the bar exam— a common practice at the time. Upton went on to work with his father, former US Senator Robert W. Upton, and his older brother, Richard Upton, at what is Upton Hatfield today.

In 1990, Patti Blanchette, who became the first woman president of the NHBA in 1992, interviewed Wyman Boynton, who she worked for in Portsmouth in the early

Blanchette credits Paul McEachern

for her ascension to the Bar presidency. McEachern was interviewed for the Oral History Project in 2017 by Superior Court Judge John (Editor's Lewis. Note: Judge Lewis is honored in the 50-Year Member Supplement contained in the center of this issue.)



Blanchette

"[McEachern] opened the door for me by inviting me to serve on various bar committees," Blanchette recalls.

Raiche Manning says one of the interesting things about her work on the Legal History Project was that many of the interviewees were people she respected and

"I felt like they were such important figures in the Bar Association and in the practice of law in New Hampshire," she

Raiche Manning shared her own story for the Bar News of her early days as an attorney when women were sometimes referred to by their male colleagues as ter."

This was at a time, she explained, when the bar was made up of primarily men and at the time male attorneys often referred to each other as "brother."

"Brother Nixon, Brother Upton...at some point I said 'No, we don't want to be called sister. We're not your sisters," she says, citing an interview from the Legal History Project told by Cathy Green that illustrates 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 court-

"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 surprised she'd won. 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 Wilinterviewed liam Chapman, who he has known for 35 years, for the NHSCS Oral History Project. Chapman, he says, was a mentor during his time as an attorney at Orr & Reno.



Bassett

"He is a great example of someone who has had an interesting life and who has had a large 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 bar in the 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, established limits 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 profes-

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 Supreme Court sat where the Senate convenes for a number of years in the second half of 19th century," he says, explaining that in the early 1800s judges rode a circuit and sat in courtrooms around the state. The NHSC celebrated the building's bicentennial in 2019 by hearing oral arguments in Representatives Hall. The court first heard arguments there in 1824, then moved into the Senate Chamber across the hall in 1875, and eventually across the street into its own building in 1895.

"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 uncovers historical documents that are in storage.

"During my time at the Court, we were able to locate the documentation for Daniel Webster becoming a member of the Bar," he says, adding that court is mindful of its responsibility to maintain and locate historical records. "We have a responsibility to preserve and present the history of the Court and the leaders of the Bar."

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 Judge," Justice Anna Barbara Hantz Marconi, and Mary Searles, law librarian at John W. King New Hampshire Law Library. Northeast Document Con-Center, servation which specializes in treating and digitizing collections



Hantz Marconi

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 with money approved by the state legislature, as well as COVID grant funds, according to Searles.

In her perusals of the old cases, Searles says she found an exhibit of the late Justice Robert Peaslee's doodles, as well as a lurid story relating to her own family

"It was a divorce case from the 1800s, and I was asked to track down some information for a family genealogy," she says, explaining the case involved a kidnapping. "Apparently [the mother] had divorced the man and he showed up with a pistol and ran away with the child. They were found hiding behind a chimney in Maine and he had cut the girl's hair to pretend she was a

Justice Hantz Marconi refers to the cases being archived and digitized as a window into New Hampshire's historical practice of law and the individuals who participated.

"We have documents written by prior judges and justices who rode the circuit that include deeds and actual exhibits that are stitched into the parchment," she says. "There's information about the practice of law, how cases were decided, who the judges and lawyers 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 conserved archival ma-

"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 rehabbing of our HVAC system, so we may be able to piggyback on

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 between then 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, explaining that the list of assets in 1972 included IBM typewriters equipment rentals, and mimeograph machines totaling \$1,809. "That really puts in perspective the size of the Bar at the time and how much it has changed."

Scott Merrill is a staff writer for Business NH Magazine and former editor of the Bar

SCOTUS from page 1

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 handsomely 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 and needed the expertise of counsel who is very experienced in matters potentially going before the US Supreme Court. Rick [Gottlieb] and I did not fit that bill, so I called Greg Rapawy."

Gregory Rapawy, a partner at Kellogg Hansen in Washington, DC, is no stranger to the US Supreme Court. After law school, he clerked for Justice David Souter and has previously argued before the Court on another case.

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 the US Supreme Court, and it was granted in mid-January 2023.

The Bankruptcy Code abrogates sovereign immunity with respect to the automatic stay. The Code further provides a broad definition of "sovereign" to include all governments, foreign and domestic; however, it does not specifically mention Native American tribes. The Tribe argued that since Native American tribes are not listed, they are excluded.

The federal courts are split on whether this language explicitly expresses Congress's intent to nullify tribal sovereign immunity.

"This kicked back to what I learned in law school about statutory construction," Harman says. "I never thought I would have any use for statutory construction, but here I am, all these years later, remembering those classes and learning a lot about how to construe what Congress intended. The Tribe is saying, 'we're not listed; therefore, we're not really included,' and we are saying 'there's no magic words requirement for Native American tribes.' The law is clear: it ab-



Terrie Harman holding the brief for the case of *Lac Du Flambeau Band of Lake Supe- rior Chippewa Indians, et al v. Brian W. Coughlin,* her first appearance before the US
Supreme Court. She says it was so surreal that the nine justices were holding the same brief. Photo by Tom Jarvis

Terrie Harman posing in her hotel with the quill feather memento that the Court gives to attorneys who appear before them. Courtesy Photo

monetary damages in the Bankruptcy Court for his medical bills for the hospitalization incident and his other actual damages."

Terrie Harman says she learned a lot from the Coughlin case.

"The whole thing has been a tremendous learning experience for me," she says. "I thought I knew a fair amount about bankruptcy, but I have this whole new understanding about something called, *in rem* jurisdiction, which we bankruptcy lawyers never even think about. And I have this whole new layer of historical understanding about bankruptcy."

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 exhausted from the whole thing."

rogates immunity for all governments, foreign and domestic – and that includes the Tribe, as a government."

Four Amicus briefs were filed on behalf of Coughlin, including one by retired US Bankruptcy judges Judith Fitzgerald (PA), Joan Feeney and Carol Kenner (MA), Phillip Shefferly and Steven Rhodes (MI), and Eugene Wedoff (IL), as well as one by the Office of the Solicitor General.

"This was just beyond the usual, everyday practice of me sitting here in Exeter, New Hampshire," Harman says. "I get a call from Greg Rapawy saying we're on for a call with the Solicitor General [Elizabeth Prelogar] and let me tell you, I grew an inch. There were 31 lawyers from the Federal government on that Zoom."

After the call, the legal team of Harman, Rapawy, and Gottlieb agreed to cede 10 of their 30 minutes allotted before the Court to Assistant Solicitor General Austin Raynor.

In preparation for their SCOTUS appearance, the team participated in several in-house moot arguments, including one with retired US Bankruptcy Justice Joan Feeney and another with G. Eric Brunstad, Jr., a partner from Dechert, LLP, who has argued 11 SCOTUS cases and worked on more than 35 other SCOTUS matters.

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 nice 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 out 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.

"The Supreme Court has a practice of deciding all the cases for a term before they leave for their summer recess," Rapawy says. "The Tribe has already said to the Supreme Court that they consider themselves to be bound by the automatic stay. So, we would hope at this point, that they would comply regardless of the result, and that Mr. Coughlin will not be bothered again. If the judgment is affirmed, then we will continue to seek

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Dodge from page 3

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.

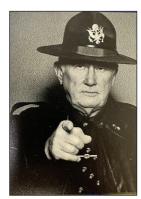
"I thought Angelika was the perfect fit to succeed me as the DOVE Coordinator," Dodge says. "She took over the stalking thing and did a fantastic job. She became our resource with the DOVE attorneys who were calling with just a quick legal question."

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











DOVE Project volunteers posing for the We Want You! recruitment campaign in 2002. Left to right: Justice Anna Barbara Hantz Marconi, Marth Van Oot, David Nixon, Patrick Hayes, and Anthony McManus. Courtesy Photos

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 micromanage 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.



Various members of the DOVE Project at its 10-year anniversary celebration in 2002. From left to right: Former NHBA President David Nixon (1980-1981), Judge Susan Carbon, NH Coalition Against Domestic and Sexual Violence Executive Director Grace Mattern, 603 Legal Aid Interim Executive Director Steven Scudder, former NHBA President Martha Van Oot, former NHBA Legal Services Director Virginia Martin, Pam Dodge, and Judge James Leary. Courtesy Photo

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Milford High School students holding recently decided SCOTUS cases outside of the US Supreme Court. From left to right: Charles Cevaso, Eden Leak, Carla Costas, Robert Anderson, Troy Williams, Olivia Rolanti, Nikol Zyzen, Morgan Peterson, Madelyn Bergen, and Ziera Dodson. Courtesy Photo

Nationals from page 9

to the New Hampshire Bar for helping to get us there," Lundstedt says.

When asked about his feeling on not placing in the top ten, Lundstedt was optimistic.

"The personal growth to me is the most important," he says. "If you look at from when I met [the participating students] in September, there's a tremendous amount of growth in terms of their civic knowledge, their ability to communicate effectively, and their ability to write. Those are all big victories to me. Ten years from now, they're not going to say, 'I came in 29th in the National competition.' They are going to say, 'I participated in a civics competition at the national level.'"

Attorney Shawn Tanguay, a WTP alum from 1989, was one of the volunteer judges for both the State and National Finals.

"It's a very intense process, but very rewarding at the same time," Tanguay says. "It's great to see so many young individuals having the passion for civics, the constitution, and the government. It was fantastic to see that type of interest and dedication. It takes a lot for these kids to put together these presentations and to give a professional response to a lot of difficult questions that

come from the judges."

Charles Cevaso, a junior at Milford High School and one of the participating students, says it was a wonderful trip and that he couldn't ask for a better teacher for the class.

"It was kind of surreal just being there," Cevaso says. "But even with the stress of competing, it was fun to just tour everything in the Capitol. It was definitely a great experience to have. I feel like we did very well – definitely better on the second day, as we got more of a foothold. I think everyone on the team was outstanding in their work."

The NHBA's Law Related Education department is actively engaged in efforts to increase the WTP program's outreach with the goal of getting the program into more schools.

"The We the People program is an effective tool to help create future citizens who are knowledgeable in civics and can communicate effectively," Lundstedt says. "Even if they don't go into government or politics or something related, they have that civic knowledge with 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."

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 lawjmc@comcast.net.

Benefits from page 5

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Real Property Law

What Do Pre-COVID Leases Look Like Post-COVID?

By John Weaver

The two years before COVID – before quarantine, before wide-spread work from home policies – represented the peak of the leasing market for office space. With a strong economy and high demand, land-lords 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 - ecommerce, 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 the US work force worked from home. That number shot up to 61.5 percent at the beginning of the pandemic and is still around 30 percent now. This will come as no surprise to anyone working in an office. Those spaces feel emptier.

The office leases that were signed one or two years before the start of the pandemic and still in effect will start expiring soon, and most of those tenants have already started to reconsider their space needs: "How many of our employees come into the office each day? How many do we want in the office? What should we do with our space to attract the desired amount of



in-office time from our employees? When will the next recession start and how much overhead should we carry then?" As these tenants look at the terms of their current leases, they may also feel some remorse for the resources they have devoted to space they did not use.

With this in mind, office tenants coming out of pre-COVID leases are increasingly expecting shorter terms with more options to renew, lower rents, and (if possible) options to expand and contract their spaces. These conditions respond to concerns about the economy and continuing uncertainty about how employees will use office spaces. Tenants may also pay more attention to the amenities in the building 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 O4 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 exercise 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 position 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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Conservation Easements: A Primer

By Jack D. Hepburn and Thomas N. Masland





Hepburn

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 do-

nated 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

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Amendments Versus Variances: Selecting Pathways of Lesser Resistance

By Rowan D. Ferrier and Ari B. Pollack





Ferrier

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 de-

liberation on proposed ordinances can take place. Being familiar with local government process for zoning changes 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 assess-

ment 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-

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Agency Driven

Significant Changes to NH Land Use Law

By Chris Swiniarski

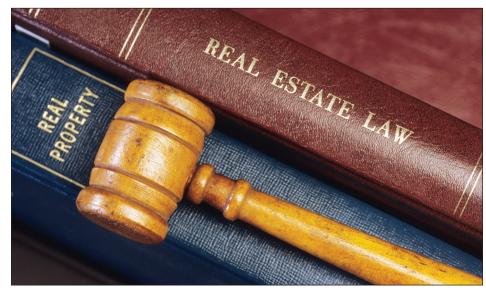
The past year has seen significant changes to New Hampshire land use law as a result of House Bill 1661's passage in 2022. Most of these changes impart heightened levels of accountability to local planning boards



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 statue 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

than 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 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 674:33 VIII 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

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Real Property Law

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requires 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: If a conservation easement can be amended, 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*, 978 F.3d 1200 (11th Cir. 2020). In *Pine Mountain*, the 11th Circuit, reversing a Tax Court opinion, held that the existence of an amendment

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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 Guideline's "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.

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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), eviscerating 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 municipality to comply with the statute's timelines. Applicants to the ZBA currently enjoy no such leverage; the HB 1661 amendments for the ZBA shot clock do not have the "deemed approved" teeth of the Planning Board amendments.

Many municipalities request applicants to waive these shot clocks. That waiver is a mistake. Better to evaluate the particular issue raised by the board, and the time it will take to address the issue. Then, the applicant should agree (in writing) to an extension (not a waiver) of the applicable deadline to a specific date.

Chris Swiniarski is a real estate and land use attorney at Devine Millimet, one of the state's oldest and most respected law firms. He represents business clients in every single aspect of law relating to real estate.



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Real Property Law

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pare what the individual stands to lose or gain against what the community, taken as a whole, would lose or gain. If the loss to the individual is not outweighed by a gain to the general public, then that constitutes an injustice that granting a variance would be able to remedy.

- (4) The value of surrounding properties is not diminished. While straightforward in the abstract, this element is often hotly contested by participating abutters.
- (5) Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. While all elements of the variance test must be satisfied, this fifth element is often the deciding factor in whether applicants should pursue a variance or seek to amend the existing ordinance. "Unnecessary hardship" only exists if (a) it is derived from the special conditions of the property which distinguish it from other properties in the area, or if (b) those special conditions require a variance for reasonable use.

The "special conditions" requirement is difficult to define, as no two special conditions are the same. Additionally, the New Hampshire Supreme Court has had to balance the statute's language with the desire to give all property owners the right to enjoy their property as they dictate. At the very minimum, the property must have unique attributes that contribute to the need for the variance. Those attributes must be considered unique within the context of the neighborhood where the property is located. If the property cannot be distinguished from others

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 & Gartrell, 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.

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Six Tips for Ethically and Effectively Representing Clients in Domestic Violence Matters

By Brian R. Moushegian

Lawyers 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(g), 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 representation 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 arising in such matters, i.e., NH RSA 173-B (Protection of Persons from Domestic Violence); NH RSA 631:2-b (Domestic Violence); and NH RSA 633:3a (Stalking). The lawyer must also 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 process of establishing rapport with and gathering information, evidence and case direction from the client."1 Among other things, a lawyer should be aware of the statistics on the prevalence of domestic violence, common characteristics and indicators of abusive relationships, and the effects of domestic violence on victims and

Before representing a client in a domestic violence action, a lawyer should be aware of the full legal impact of bringing an IPV action. That means considering 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 with 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.

Lastly, after screening and advising your client, competent advocacy means developing an effective litigation plan – identifying the relevant issues, witnesses, direct evidence (e.g., emails, pictures of injuries, other documentation), or circumstantial evidence. Failing to competently advocate on behalf of your client may undermine your competency in other areas.

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 courses of action that they can take to prevent future abuse, as well as collateral legal issues. Acting diligently may also require a lawyer to immediately seek a protective order on behalf of a client, 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 clients 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 limited 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 of Professional Conduct 4.3 (Dealing with Unrepresented Person), which sets forth the requirements for (and limitations on) a lawyer's communications with an unrepresented party. If a Court issues a protective order, statutes further regulate a lawyer's communications with a pro se party, in particular with the plaintiff in an IPV case. 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 (Permissible 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.

Endnote

1. American Bar Association's Commission on Domestic Violence, Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault, and Stalking in Civil Protection Order Cases (2007).

Brian R. Moushegian is general counsel for the New Hampshire Attorney Discipline Office. ■

NH Supreme Court At-a-Glance

Criminal Law

The State of New Hampshire v. Justin M. Lamontagne, No. 2021-0464 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 ac-

tivity with him. The defendant and victim had previously been in a three-year romantic relationship, but the relationship had ended, and 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 had "formed an agreement whereby 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 whomever he wished." In support of his argument that he reasonably believed the victim would enter into such an "agreement," the defendant filed a motion in limine to 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

At-a-Glance Contributor



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a tree (the bondage image).

The State 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 separate 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 (Tucker, J.) 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 returned guilty verdicts on the four charges 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

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and thus properly excluded from evidence. While the defendant argued that "testimony about the bondage image was relevant because his beliefs about the bondage image encouraged and supposed him in thinking that the victim, more than most people, was disposed to consent to the public disclosure of sexualized images of her naked body," (cleaned up), the Court disagreed. In State v. Mazzaglia (2016) and State v. Higgins (2003), the Court had previously held that "Consent to sexual conduct with one person in no way implies consent to such activity with another. Each decision to consent is a new act, a choice made on the circumstances prevailing in the present, not governed by the party. 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 defendant." Extending that reasoning, the Court concluded in this case that "our determination 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, testimony about the defendant's belief that the bondage image depicted the victim did not have a tendency to make it more or less probable that the victim later consented to the dissemination of the video.

The Court also rejected the defendant's argument that the charged statute involves a subjective belief of whether the person consented, as "The Statute does not address whether the person would consent or be likely to consent to the dissemination of a private sexual image, but rather whether the defendant '[k]nows or should have known' that the person has not consented." Lastly, the Court rejected the defendant's argument that the trial court erred in failing to conduct a Rule 403 analysis—Rule 403 only applies to relevant evidence, and the trial court had properly concluded that the bondage image was irrelevant.

John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Sam M. Gonyea, attorney, on the brief and orally), for the State. Christopher M. Johnson, Chief Appellate Defender, of Concord (on the brief and orally), for the defendant.

Criminal Law

The State of New Hampshire v. LeeAnn O'Brien, No. 2022-0081 **April 26, 2023** Reversed and Remanded

Whether the trial court erred in denying 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 for 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 admitted to smoking marijuana earlier in the day (she was from Massachusetts where marijuana is legal) but assured the officer none was in her car. The officer

did not observe any indication of impairment but asked the defendant for her consent to search the vehicle for marijuana or any other drugs, which the defendant provided. Upon search, the officer found her purse with two wrappers containing an orange pill split in half, which he identified as suboxone. The defendant acknowledged the purse was hers and said the pill was her brother's suboxone, and on that basis was arrested and charged with possession of a narcotic drug and control of a vehicle where a controlled drug was illegally kept. The defendant moved to suppress the evidence obtained from the traffic shop under the federal and state constitutions, which the trial court (Kissinger, J.) denied. A jury subsequently found the defendant guilty, and she appealed to the Supreme Court.

The Court agreed with the defendant that the evidence had been obtained in violation of her right under Part I, Article 19 of the New Hampshire Constitution to be free from unreasonable searches and seizures, 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 may be expanded to investigate other suspected illegal activity "only if the officer has a reasonable and articulable suspicion that other criminal activity is afoot." "Whether the detention is a lawful investigatory stop, or goes beyond the limits of such a stop, depends upon the facts and circumstances of the particular case."

Much of the Court's analysis revolved around the application of its recent decision in State v. Perez (2020), which had addressed how the decriminalization of marijuana and legalization of medical marijuana affected the standard for reasonable, articulable suspicion of criminal activity in the context of a traffic stop. Specifically, given that the legislature in recent years has made the possession of three quarters of an ounce or less of marijuana a violation-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 marijuana. 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 odor of marijuana provided a reasonable, 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 inquiry, her demeanor, and the lack of other evidence suggesting criminal activity. The Court concluded those factors should have dispelled the officer's objective initial suspicion of illegal drug activity or of possession of more than three-quarters of an ounce of marijuana. Accordingly, the Court held that the officer lacked reasonable suspicion of criminal activity based on the totality of the circumstances, and the Court thus reversed the trial court's denial of the defendant's motion to suppress. Chief Justice MacDonald and Justice Hantz Marconi dissented, arguing that there was more than a mere odor of marijuana and that the officer did indeed have a reasonable, articulable suspicion based on the totality of the circumstances.

John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Sam M. Gonyea, attorney, on the brief and orally), for the State. Stephanie Hausman, Deputy Chief Appellate Defender, of Concord (on the brief), and Pamela R. Phelan, public defender, of Concord (orally), for the defendant.

Family Law

In re J.R.; In re S.R.; In re B.R., Nos. 2022-0329, 2022-0356 **April 25, 2023 Affirmed**

- Whether there was sufficient evidence to support the trial court's (1) determination that both mother and father had neglected their children and (2) order that the children be removed from their
- Whether the trial court provided specific written findings sufficient to justify its orders, as required by RSA 169-C:6-b,

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 (DCYF) and law enforcement, including reports of concern relating to the parents' manufacturing or selling methamphetamines 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, DCYF received three separate reports of concern from the children's school district regarding absences at school in late-2020 and early-2021, followed by another report of concern from the school district in December 2021 regarding lack of attendance. A child protective 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 homeschooling. The CPSW was unable to contact father despite repeated attempts.

In March 2022, DCYF learned from law enforcement that mother had been arrested for possession and conspiracy to sell methamphetamine, and in her postarrest interview mother admitted to purchasing methamphetamine from a dealer she believed to be associated with a drug cartel on multiple occasions the last several months. In a subsequent home visit by the CPSW, both mother and father denied mother's criminal activity, despite her arrest and post-arrest admissions to the police. The trial court (Luneau, J.) (McIntyre, J.) thereafter granted DCYF's ex parte motion for removal of the children from the home, held an adjudicatory hearing that found both mother and father neglected the children, and held a dispositional hearing that found returning the children to their home would be contrary to their welfare because neither parent had corrected the behavior that led to the children's initial removal. 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 trial court's determination that the children were neglected because they were without proper "education as required by law." The Court agreed with the trial court's finding of educational neglect, emphasizing that B.R. had been absent for the majority of school days while enrolled in public school, had not consistently participated in any of the required courses

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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:

Hon. David A. Anderson Hon. Mark. D. Attorri Hon. Peter H. Bornstein Hon. N. William Delker Hon. Martin P. Honigberg Hon. Lawrence A. MacLeod, Jr. Hon. Jacki A. Smith Hon. Daniel I. St. Hilaire 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 Hillsborough County Superior Court – North District Rockingham and Sullivan County Superior Courts Grafton and Coos County Superior Courts Cheshire County Superior Court Rockingham County Superior Court Hillsborough County Superior Court - South District

Merrimack and Sullivan Superior Courts

To complete a questionnaire go to www.courts.nh.gov/resources/committees/ judicial-performance-evaluation-advisory-committee/current-superior-court until June 30, 2023. From there you can choose the justice that you would like to evaluate and it will bring you directly to that justice's survey. While responses will be shared with the justice 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 Center at (603) 271-2030 and request that one be mailed to you. As stated above, while responses will be shared with the justices being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do **not** sign the completed evaluation.

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

Tina L. Nadeau Chief Justice New Hampshire Superior Court

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while homeschooled, and that S.R. and J.R. had been absent or tardy for a significant portion of the 2021-2022 school year. The Court also found unpersuasive father's argument that the findings were focused on the mother's conduct, because as a custodial parent father shared with mother equal responsibility to provide his children with an education as required by law.

While both mother and father further contended that DCYF had failed to follow its own policies in the course of its investigation, the Court agreed with DCYF that a court's determination of neglect is defined exclusively by statute and case law interpreting that statute, not by DCYF's internal policies. As to mother's criminal activity and involvement with methamphetamines, the Court held that evidence supported the trial court's determination of imminent harm to the children and ordering their removal from the home. Moreover, with respect to father's argument that the trial court erred in failing to provide specific written findings for the neglect and out-of-home placement determinations, the Court looked not only to the court's adjudicatory and dispositional orders, but also the findings in its prior ex parte order that were incorporated by reference into those later orders. Finally, while mother argued that DCYF did not make reasonable efforts to prevent the children's removal, the Court found that the record supported the trial court's determination that DCYF made such reasonable efforts.

Pearlman Legal Enterprises, of Boston, Massachusetts (David A. Pearlman on the brief and orally), for father. Sommers Law, of Concord (Eric M. Sommers on the brief and orally), for mother. John M. Formella, Attorney General, and Anthony J. Galdieri, Solicitor General (Laura E.B. Lombardi, Senior Assistant Attorney General, on the brief and orally), for the New Hampshire Division of Children, Youth and Families.

Real Estate; Tax Law

Clearview Realty Ventures LLC v. City of Laconia, No. 2022-0196 April 18, 2023 Ruling on Interlocutory Transfer

- Whether, for purposes of RSA 76:21, the COVID-19 pandemic constitutes a "natural disaster."
- If so, whether the buildings owned by the plaintiffs were "damaged" by CO-VID-19 such that they were "not able to be used for [their] intended use" within the meaning of RSA 76:21, I.

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-

es 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 assented-to 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." RSA 76:21, I. On the first issue of whether their buildings were "damaged," the plaintiffs argued that the statute does not require a showing of direct and/ or physical loss to the property, and that their buildings were damaged because they were not allowed to carry on business, the hotels suffered a significant decline in income, and the reduced income negatively impacted the fair market value of the taxable buildings.

The Court rejected the plaintiffs' argument and agreed with the defendants that purely economic loss cannot be read to be within the terms of RSA 76:21 as the type of "damage" for which the statute was intended to provide relief. The Court examined the plain and ordinary meaning of the statutory language as well as the overall statutory scheme, concluding that the statute first requires physical damage to the building before considering an economic loss. As such, the Court held that the taxable buildings subject to this interlocutory transfer were not "damaged" such that they would be entitled to a proration of real estate taxes under RSA 76:21, I. And in so concluding, the Court thus declined to answer the first transferred question of whether the COVID-19 pandemic constitutes a "natural disaster" for purposes of the statute.

Bernstein, Shur, Sawyer & Nelson, of Manchester (Hilary H. Rheaume and Roy W. Tilsley, Jr. on the brief, and Mr. Tilsley orally), for the plaintiffs. Mitchell Municipal Group, of Laconia (Laura Spector-Morgan on the joint brief for defendant City of Laconia and orally for all defendants), for the defendants. Devine Millimet & Branch, of Manchester (Matthew R. Johnson on the joint brief), for defendant City of Keene. Peter R. Chiesa, of Manchester (on the joint brief), for defendant City of Manchester. Upton & Hatfield, of Portsmouth (Russell F. Hilliard on the joint brief), for defendant Town of Bedford.

NH Superior Court Judicial Assignments: April - June 2023

COURT	HILLS NO	HILLS SO	ROCKINGHAM	MERRIMACK	STRAFFORD	CHESHIRE	BELKNAP	SULLIVAN	CARROLL	COOS/GRAFTON
MO/WK	Judges	Judges	Judges	Judges	Judges	Judges	Judges	Judges	Judges	Judges
4/17/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (G) MacLeod (G)
4/24/23	+Nicolosi Anderson Messer Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (G) MacLeod (G)
5/1/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
5/8/23	Messer Anderson +Delkerr	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard Attorri	+Honigberg		+Bornstein (C) MacLeod (G)
5/15/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+ Attorri	+Bornstein (G) MacLeod (G)
5/22/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (G) MacLeod (G)
5/29/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (G) MacLeod (G)
6/5/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (C) MacLeod (G)
6/12/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard Attorri	+Honigberg		+Bornstein (G) MacLeod (G)
6/19/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (G) MacLeod (G)
6/26/23	Messer Anderson +Delker	+Colburn Temple	+Ruoff Schulman St. Hilaire English	+Kissinger Tucker Ignatius	+Howard Will	+Smith	+Leonard	+Honigberg	+Attorri	+Bornstein (G) MacLeod (G)

+Supervisory Justice

Assignments commence on the first Monday of each month

Schedule is subject to change.

Effective 04/10/23

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 Supreme Court of New Hampshire



LD-2022-0001, In the Matter of Matthew J. Martin, Esquire

On March 8, 2023, the Professional Conduct Committee submitted its recommendation, pursuant to Rule 37(11), that the court grant Attorney Matthew J. Martin's request to resign from the bar.

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

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

DATE: April 19, 2023 ATTEST: Timothy A. Gudas, Clerk

LD-2023-0004, In the Matter of Lisa A. Wellman-Ally, Esquire

By Order of the New Hampshire Supreme Court dated April 19, 2023, in Case No. LD-2023-0004, In the Matter of Lisa A. Wellman-Ally, Esquire, the New Hampshire Supreme Court Attorney Discipline Office (the ADO) was ordered to publish a notice to the former clients of Attorney Lisa A. Wellman-Ally of Claremont, New Hampshire as follows:

Notice is hereby given to the former clients of Attorney Lisa A. Wellman-Ally (Ms. Wellman-Ally) that Ms. Wellman-Ally was suspended from the practice of law by Court's Order dated February 21, 2023. Further notice is given, that Ms. Wellman-Ally has retained possession of her client files as per the Court's Order of April 19, 2023, in the within matter. These files are currently being stored at the former office of Ms. Wellman-Ally located at 98 Charlestown Road, Suite 1, Claremont, NH 03743. Former clients of Ms. Wellman-Ally should contact her via email at wellmanally@ gmail.com or the ADO at (603)224-5828 to request the return of their file(s). Please note that if you do not contact Ms. Wellman-Ally or the ADO for the return of your file, your file will be destroyed without additional notice to you within 30 days of this published

In accordance with RSA 101-B:2, the Chief Justice of the Supreme Court appoints Tanya Pitman, the strategic funding initiatives manager of the judicial branch, to serve a three-year term on the Deferred Compensation Commission. The term of Tanya Pitman, who replaces Richard W. Head on the commission, shall commence immediately and expire on April 23, 2026.

Issued: April 24, 2023 ATTEST: Timothy A. Gudas, Clerk of Court Supreme Court of New Hampshire

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**

4/19/223Seely v. Eastern Region #9, et al. Case No. 22-cv-268-JL, No written opin-

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-PB; 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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Attorney's Fees; Clean Water Act

Social Security claimant Jennifer Chase retained attorney Francis Jackson to appeal the Social Security Administration's (SSA) decision to deny her disability benefits. After Jackson filed a complaint in this court, the SSA agreed to a voluntary remand for further administrative proceedings, which ultimately resulted in an award of \$100,917 in past-due benefits to Chase. In-voking his contingent fee agreement with Chase, Jackson now seeks \$19,000 in attorney's fees under 42 U.S.C. § 406(b). The court concluded that Jackson was entitled to fees, but that the requested amount would result in a windfall based on the relatively little time and effort expended. The court awarded Jackson three-times

Attorney's Fees; Section 1983

his hourly rate, resulting in an award of

\$15,540. 10 pages. Judge Paul Barbadoro.

4/26/23 McMenamon v. Shibinette Case No. 21-cv-479-PB; Opinion No. 23-

A pro se plaintiff brought suit against three state actors under 42 U.S.C. § 1983. After the suit was dismissed on summary judgment, the defendants filed a motion for attorney's fees pursuant to 42 U.S.C. § 1988(b), claiming that the suit was frivolous and groundless. The court de-nied the motion, finding that the plaintiff's suit was not frivolous. 4 pages. Judge Paul Barba4/26/23 Conservation Law Foundation v. Mason

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 attor-ney's fees and costs. The court reduced the fees award to account for the hours spent on unsuc-cessful claims after concluding that the successful and unsuccessful claims were not interrelat-ed. The court further reduced the award to account for (1) CLF' 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.

Classifieds

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ASSOCIATE ATTORNEY - EMPLOYMENT LAW - RE-MOTE - Remote Associate Attorney sought for a busy employment firm based Keene, NH. This is a benefited FT position. The Law Offices of Wyatt & Associates represents employees whose rights have been violated in the workplace. Responsibilities include: Client interviewing and intake; Drafting discrimination charges, etc. General litigation projects and support; Legal research and writing. We assist clients in all states in New England and NY. Applicants already admitted into one of the New England (or NY) state bars preferred. Demonstrated experience or exposure to employment law is a plus, but not required. Applicants should explain their interest in employment law. This is a FULLY REMOTE position, though travel within New England/NY is required for legal matters. Please email a cover letter and resume to spatriquin@ wyattlegalservices.com.

ASSOCIATE - Small litigation firm located in South Lawrence, MA is looking for an Associate Attorney to work on cases including but not limited to researching the law, drafting pleadings, arguing motions, assisting in trials in District and Superior Courts and Administrative Agencies. Preferably someone with 2-3 years of experience in personal injury and worker's compensation cases. Firm handles cases in Massachusetts and New Hampshire. Health and dental insurance available. Salary commensurate with experience. Send resumes only; no phone calls. Email resumes to: dixonlaw@verizon.net; Simon Dixon, Esq., Dixon and Associates, 439 South Union Street, Suite 202 Lawrence, MA 01843.

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The New Hampshire Judicial Council announces the general availability of contracts for representation of indigent defendants pursuant to RSA 604-A:2. Under the statutory framework, contract attorneys receive cases when the Public Defender is unable to accept appointment due to a conflict of interest or when there are multiple defendants in a case. These contracts pay fixed rates for attorney services in criminal cases, and new rates will go into effect July 1, 2023 (subject to the availability of legislative appropriations).

Applicants with prior criminal defense experience, including a demonstrated ability to bring appropriate matters to trial, are highly preferred. Applications for all counties will be accepted.

If interested in obtaining further information or submitting a contract application, please contact: Richard E. Samdperil, Acting Executive Director, New Hampshire Judicial Council. Email: Richard.E.Samdperil@jc.nh.gov. Phone: 603-271-3592.

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Job description available at www.tiltonpd.org. 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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Assistant Corporation Counsel City of Nashua

DEPARTMENT: Legal

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AFFILIATION: Unaffiliated

SALARY & GRADE: Grade 18, Salary ranges between \$80,000 - \$95,000

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NEW HAMPSHIRE BAR MEMBERS CELEBRATING 50 YEARS OF LAW PRACTICE

1973 **-2023**

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.

Then and Now







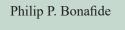








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Residence: Newton Centre, MA **Hometown:** Newton, MA

Education: Tufts College, Columbia University School of Law, CLU, London Business School Senior

Executive Program

Family: Jane Roberts (spouse), five children, four

grandchildren

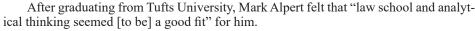
Areas of Practice: In-house counsel – pensions, structured settlements, investment management,

fiduciary matters

Current Firm or Employer: Retired

Past Firms or Employers: John Hancock Life Insurance Company (1984-2011); Finnegan & Stanzler, PC (1979-1983); Travelers Insurance

Company (1977-1979); Chubb United Life and Accident Insurance Company (1974-1977); VISTA Western Massachusetts Legal Services (1973-1974)



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 1965 designed to alleviate poverty. A year later, he began working as 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.

Philip P. Bonafide

Residence: Sanbornton, NH **Hometown:** Manhasset, NY

Education: Georgetown University, BA (1970);

Georgetown Law Center, JD (1973)

Family: Jackie Bonafide (wife); Christopher P. Bonafide, MD (son); Michael P. Bonafide, Esq. (son);

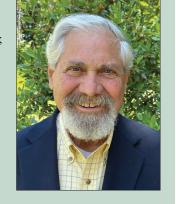
five grandchildren

Areas of Practice: Civil and criminal litigation

Current Firm or Employer: Retired

Past Firms or Employers: Normandin, Cheney & O'Neil, PLLC; Bonafide & Bradley; Arthur

Nighswander, et al



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 2017) 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."

Stephen E. Borofsky

Residence: Manchester, NH **Hometown:** Bedford, NH

Education: Dartmouth, BA (1968); Columbia Law

School, JD (1973)

Family: Linda (wife); Niki (daughter)

Areas of Practice: Personal injury, civil rights, and

general practice

Current Firm or Employer: Borofsky, Amodeo-Vickery & Bandazian, PA

Past Firms or Employers: The Legal Clinics (1978-1996); McLane Law Firm (1974-1978)



"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?'"

Hon. Jean K. Burling

Residence: Cornish, NH Hometown: Gardner, MA

Education: Wellesley College, BA; Boston

University Law School, JD

Family: Peter (husband); Jonathan (son)

Current Firm or Employer: Retired NH Superior

Court

Past Firms or Employers: NH Judiciary (1979-

2008); Solo practice (1974-1979)



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!"

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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 Berc, and Benjamin Cappiello (children);

and seven grandchildren

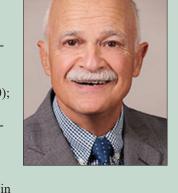
Military Service: United States Army (1968-1970); 23rd Battalion Legal Technician, South Korea Areas of Practice: NH Judiciary and general prac-

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, Dunning-

ton & 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

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."

"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



Congratulations to

Stephen E. Borofsky

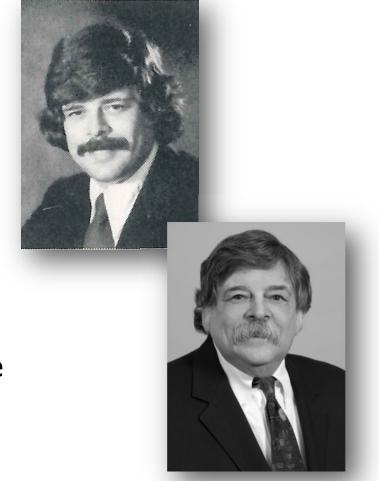
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George L. Chimento

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, PBGC; Mintz, Levin, Rackemann, 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)

Military Service: United States Marine Corps

(1968-1970)

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: Nanci 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

Past Firms or Employers: Hinkley & Donovan (1973-1974); Decato & Cirone (1974-1985); Law

Office of Albert J. Cirone, Jr. (1985-1988); Nighswander, Martin & Mitchell

(1988-1995); Lebanon District Court (1988-2014)



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 Stayley, 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 or 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, II, James Cook, and Thomas Cook (sons); Henry Cook

and Ellen Cook (grandchildren)

Military Service: NH Army National Guard, Captain (1973-1980); UNH Army ROTC Commis-

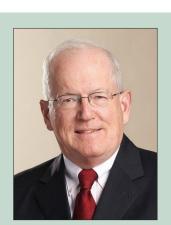
Areas of Practice: Not-for-profit institutions, estate

planning and probate, corporate law

Current Firm or Employer: Sheehan, Phinney,

Bass & Green, PA

sioned 1970



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.

"I 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-

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pee Protective Association, Bishop's Charitable Assistance Fund, Diocesan Camps, and

Asked what advice he has for staying connected with others in the legal community, Cook advises participation in events that allow you to see your fellow attorneys regularly. "Seek out those with whom you wish you had more contact," he says. "So, you don't have to wish you did when it is too late to do so."

Looking forward, Cook says: "Those of us reaching 50 years (much sooner than expected) could be tempted to say how much better the law was and practice was when we started, but what excites me today is the level of education and expertise of the bright young attorneys coming into the profession, their enthusiasm, and their hope to use the law to right wrongs and do justice."

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)

Military Service: US Army Reserve (1969-1975);

Active duty in 1970

Areas of Practice: Originally litigation-focused, but transitioned into residential real estate and wills and

Current Firm or Employer: Adams & Blinn

Past Firms or Employers: Law Office of John J. Thornton; Reliance Insurance

Company

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.

While still serving in the US Army Reserve, Daly graduated from Boston College Law School in 1973. He subsequently worked as a trial attorney for Reliance Insurance Company and for the Law Office of John J. Thornton before joining his current firm, Adams & Blinn.

"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.'

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)

Military Service: US Navy (active duty 1967-1970;

nuclear submarine reserves 1971-1973) Areas of Practice: Bankruptcy, corporate, and

environmental law

Current Firm or Employer: Retired

Past Firms or Employers: US Bankruptcy Court for the District of NH (1999-2017); McLane Middleton (1998-1999); Deasy & Dwyer (1988-1998);

Hamblett & Kerrigan (1973-1987)



Hon. J. Michael Deasy continued on page VI

Congratulations

Sheehan Phinney congratulates **Bradford E. Cook** on 50 Years of exemplary legal service.



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.

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Hon. J. Michael Deasy continued from page V

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 Yacos. According to Judge Deasy, Judge Yacos' demeanor and expectations made the attorneys that 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

MAY 17, 2023

Education: University of New Hampshire, BS (1969); University of Maine School of Law, JD (1972)

Family: Marjorie Decato (wife); Beth Decato (daughter); Carrie Ayers, DO (daughter)
Military Service: NH Army National Guard (28

Areas of Practice: Civil, criminal, family, and

probate

Current Firm or Employer: Decato Law Office Past Firms or Employers: Decato & Cirone, 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)

Military Service: US Air Force, JAG (1974-1978) 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 Em-

ployment 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 Wicwas 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)

Military Service: US Navy, JAG (active duty 1973-1976); drilling Navy Reserve (through 1998)

Areas of Practice: Land use and permitting, real estate development and conveyance, and environ-

mental law

Current Firm or Employer: Retired

Past Firms or Employers: Donahue, Tucker &

Ciandella, PLLC



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"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.

Retuning 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."

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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

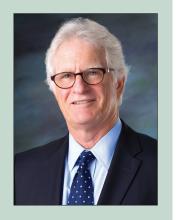
Areas of Practice: Plaintiff's personal injury and

medical malpractice

Current Firm or Employer: Gottesman & Hollis,

Past Firms or Employers: The Leonard Firm

(1973-1975)



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

Military Service: US Army Reserve (1970-1976) Areas of Practice: Conservation, real estate, and

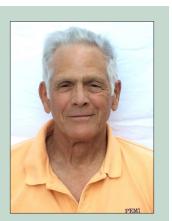
municipal

Current Firm or Employer: Squam Lakes

Conservation Society

Past Firms or Employers: Nungesser & Hill (1978-2014); NHLA (1974-1977); NH Supreme

Court (1973-1974)



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 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."

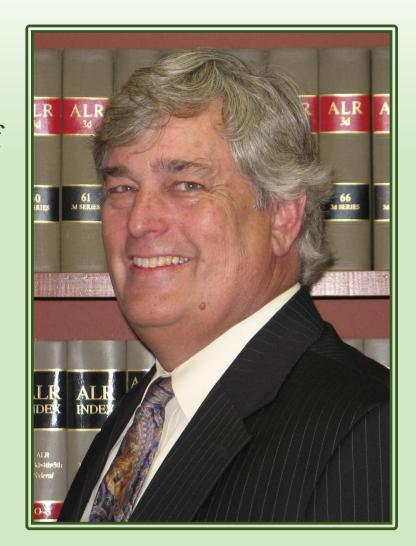
Congratulations to our colleague, mentor and friend, Robert A. Dietz

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.

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Bruce R. Jasper

Residence: Croydon, NH Hometown: Nashua, NH

Education: University of New Hampshire, BA (1970); University of Tulsa College of Law, JD

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: Sulloway & 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 Sulloway & 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 New Hampshire Public Radio. He was also a board member of both the Hopkinton Public Schools Foundation and the Capitol Center for the Arts.

Kaplan's advice to others in the legal community is to stay connected as much as possible, including with your adversaries.

"My practice benefited greatly from my participation in several national professional organizations that I was honored to be elected to," Kaplan says. "Personal relationships in those organizations and in the NH Bar led to many referrals and helped develop my practice. Equally important, I was generally on the defense side of the table. Maintaining relationships with those I knew on the plaintiffs' side of the bar often lowered the tension in what is, after all, an adversarial process."

John C. King



Residence: Moultonborough, NH Hometown: New Britain, CT

Education: Georgetown School of Foreign Service;

Georgetown Law Center

Family: Patty (wife); Megan, Shaela, John Patrick,

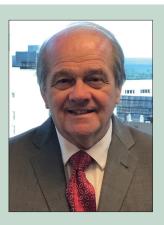
Colin, and Brighid (children)

Military Service: US Army Reserve (1968-1974) Areas of Practice: Commercial litigation, government relations, municipal law, and

administrative proceedings

Current Firm or Employer: Updike, Kelly &

Spellacy, PC



For John King, who earned his JD from Georgetown Law Center in 1973, the law appears to be in his genes, as his father was a lawyer. After law school, King served as a law clerk to Connecticut Supreme Court Justice John P. Cotter before becoming Senior Associate Justice of the Connecticut Supreme Court and Chief Court Administrator for the State of Connecticut.

In 1981, King became a shareholder of Updike, Kelly & Spellacy, where he remains to this day. He is a past president of both the Hartford County Bar Association and the Pathways/Senderos Center in New Britain. He currently serves on the board of directors of the Hospital for Special Care.

King says one of his most memorable cases was representing the City of Bridgeport in a redistricting case at trial before the Second Circuit Court of Appeals, and then before the US Supreme Court, which reversed the trial court and the Court of Appeals and entered judgment for the City of Bridgeport.

For lawyers starting their own practice, King advises seeking advice from lawyers who have practiced a few years in firms both large and small.

Joseph M. Kozak



Residence: Manchester, NH Hometown: Binghamton, NY

Education: University of Bridgeport, AB (1967); Boston College Law School, JD (1972)

Family: Vicki Parker Kozak (wife); Michael Parker

Kozak and John David Kozak (sons)

Military Service: US Marine Corps (active duty

1968-1970)

Areas of Practice: Health law

Current Firm or Employer: Kozak & Gayer, PA Past Firms or Employers: Pierce Atwood (1977-1995); Maine Department of Health and Welfare

(1973-1977)



When Joseph Kozak was a youngster, he had a reputation for standing up to bullies. His elementary school yearbook labeled him as one who "always sticks up for the little guy." As such, a career in law just seemed to fit his personality. After serving active duty in the Marine Corps, where he earned three meritorious promotions in rank, he attended Boston College Law School, graduating with his JD in 1972. He was admitted to the Bar

Two of Kozak's mentors were professors. The first was his Political Science professor at the University of Bridgeport, Justice Van Der Kroef, who taught him respect for the legal system, self-confidence, and humility. The second was James Smith, his first-year torts professor at Boston College Law School, who taught him to look beyond the surface when analyzing facts and reaching legal conclusions.

Kozak says he is most proud of having had many satisfied long-term clients, some of whom have become lifelong friends. He had lots of memorable cases, but one standout involves crustaceans.

"While not the most complex or challenging, the one [case] that I am most fond of occurred when I was a young lawyer," Kozak says. "It was a volunteer lawyer case in which I successfully defended a lobsterman in a criminal tax evasion case. Although [I was] not expecting a fee, he asked me to meet him at a boat dock in Maine the next morning, where he filled the trunk of my car with lobsters. It still makes me smile."

Kozak has been very active in community service, serving as a chairman for several organizations, including the Manchester School Board, School Union 42 School Board, 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, Kozak says, "When you don't know, say so and seek assistance. Always respect your opponent and try to look at matters from their per-

MAY 17, 2023 www.nhbar.org NEW HAMPSHIRE BAR NEWS SUPPLEMENT 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

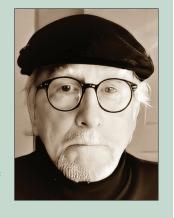
Current Firm or Employer: Retired

Past Firms or Employers: Massachusetts

Committee for Public Counsel Services: NH

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: Francestown, NH **Hometown:** Francestown, 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

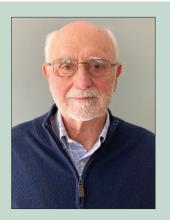
Court Judge

Current Firm or Employer: State of NH, Judicial

Branch, as a judicial referee

Past Firms or Employers: District/Circuit Court Judge; Lawrence & Lawrence Professional Associa-

tion; 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 to full-time. Although he has retired, he now serves as a judicial referee and has served as the Town Moderator for Francestown for 30 years.

When asked what achievements he is most proud of professionally, Judge Lawrence says, "Bringing about reforms in the Juvenile Justice system in New Hampshire and nationally in cooperation with the Annie E. Casey Foundation and the Coalition for Juvenile Justice."

"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

Service

Past Firms or Employers: NH Judiciary (2001-2013); Borofsky, Lewis & Amodeo-Vickery (1982-

2001); Proskauer, Rose, Goetz & Mendelsohn (1976-1982); Equal Employment

Opportunity Commission (1974-1976)



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 – Were 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.

"Treat law as a worthwhile craft where, with your skills, you can make a significant difference in so many different ways."

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



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.

"Work to live, don't live to work," he says. "Be honest and realistic with your clients, your adversary, and the court. Know your limits and be patient."

Of staying connected with others in the legal community, Macoul says, "Attend live CLEs whenever possible and try to attend functions, lunches, etc. with your colleagues to get to know each other in a non-adversarial setting."

J. Christopher Marshall

Residence: North Conway, NH **Hometown:** North Conway, NH

Education: Dartmouth College, AB (1970); George Washington University School of Law, JD (1973) Family: Jennifer Rood (wife); Shumway, Piper,

Hannah, and Sam (children)

Areas of Practice: Insolvency, corporate,

administrative

Current Firm or Employer: Retired

Past Firms or Employers: NH Department of Justice (2005-2022); Ford & Weaver (2004-2005); US Department of Justice (1996-2004); McLane

Middleton (1974-1996)



Retired attorney Christopher Marshall graduated from Dartmouth College in 1970 and earned his JD from George Washington University School of Law in 1973. His first job after law school was McLane Middleton, where he worked with two of his mentors, John McLane and Jack Middleton. In 1996, he went to work for the US Department of Justice, where he was mentored and influenced by some of his colleagues in the US Trustee Program.

"While serving as a US Trustee, I led a group of professionals who redressed nationwide abuses of the bankruptcy process in the solicitation and use by retailers of reaffirmation agreements," Marshall says of a memorable case. "After it surfaced in Boston that it was trying to collect discharged consumer debt, Sears Roebuck pled guilty to a bankruptcy crime, agreed to refund \$160 million to its customers, paid substantial fines, and, along with other retailers, reformed its practices. At the time, it was one of the largest consumer fraud cases to have occurred."

After a brief stint back in private practice at Ford & Weaver from 2004 to 2005, Marshall returned to the public sector at the NH Department of Justice, where he retired in 2022. During his career, Marshall served on the NHBA Board of Governors, as well as the board of NH Legal Assistance.

"I think it is valuable to gain work experience in both the public and private sectors so that a lawyer understands the values, processes, and mentality of each sector. It also facilitates a choice as to which one is more suitable for an individual," Marshall says. "Early on, I think new lawyers should work in a variety of practice areas to settle on those that are the most rewarding or interesting. I also think lawyers need to work especially hard in their early years to learn much needed legal skills, as well as the substance of their chosen practice areas."

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, Timo-

thy, and Jeffrey (sons)

Military Service: US Army Reserves, 2nd Lieu-

tenant

Areas of Practice: Insurance Defense Current Firm or Employer: Retired

Past Firms or Employers: Devine Millimet (1991-2008); Eaton, Solms, Mills & McIninch (1973-

1991)



After earning his JD from Boston College Law School in 1973, Richard Mills worked at the firm of Eaton, Solms, Mills & McIninch until 1991, when he joined the firm of Devine Millimet. He retired in 2008.

Mills says he became a lawyer to enhance his opportunities in business and that his early mentors were Professor Phillip Crotty from Northeastern University and Attorney Robert Eaton. His proudest achievement is his AV rating on Martindale Hubble. One of his most memorable cases was *Merrill vs. City of Manchester*, where he successfully defended against eminent domain taking of woodlands for commercial development.

Aside from his legal career, Mills served as chairman of the Trustee of Camp Carpenter for 25 years.

Jeffrey B. Osburn

Residence: Englewood, FL and Goffstown, 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)



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.

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

Jeffrey Osburn

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Michael M. Ransmeier



Residence: Landaff, NH Hometown: Hopkinton, NH

Education: Dartmouth College, BA, Université de Montpellier, France; Université de Louvain, Belgium; University of Michigan, JD Family: Joseph M. Ransmeier (son)

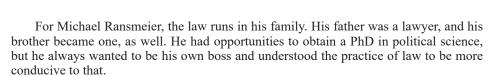
Military Service: US Army (1968-1971) Areas of Practice: Commercial law, estate planning and administration, real estate, planning and zoning

Current Firm or Employer: Law Office of Mi-

chael M. Ransmeier

Past Firms or Employers: Russell & Ransmeier; Moulton, Samaha, Vaughan & Ransmeier; Dane,

Howe & Brown; Stark & Peltonen; Sulloway, Hollis, Godfrey & Soden



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," Ransmeier says of staying connected with others in the legal community. "They are also our close friends and can provide emotional, as well as practical, support. We really cannot do without each other."

Ransmeier says the value of honesty and integrity is incalculable.

"It makes a huge difference if a judge, or anyone else in an important position, is thinking, 'I've dealt with him before, and he has always been a straight shooter and has had something worthwhile to say."

Kenneth L. Robinson, Jr.

Residence: Venice, FL Hometown: Tiverton, RI

Education: Ohio Wesleyan University, BA; Uni-

versity of Michigan Law School, JD

Family: Vicki (spouse); Abby and Matt (children) Areas of Practice: Corporate law, insurance law,

corporate governance

Current Firm or Employer: Retired Past Firms or Employers: Perkins, Upshall & Robinson; Perkins & Brock; Sulloway, Hollis,

Godfrey & Soden



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.

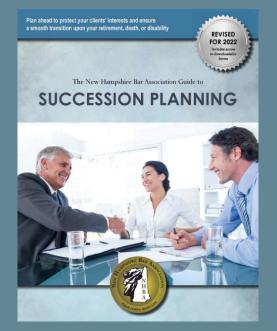
Robinson says it was very easy to become involved in community organizations as a young lawyer in Concord, NH. He served, at various times, on the boards of the Arthritis Foundation, Project Second Start, the ABC House, the Concord SPCA, and the Rotary Club of Concord.

"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

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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.



Celebrating 150 Years

William H. Shaheen



Residence: Madbury, NH **Hometown:** Dover, NH

Education: University of New Hampshire, BA (1965); University of Mississippi, JD (1973) **Family:** Jeanne Shaheen (wife); Stefany, Stacey,

and Molly (children)

Military Service: US Army, Captain (1965-1969) 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 Hilary 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.

"Take the work seriously, but not yourself," he says. "Hire people better than yourself. Give talent a chance, even if that individual doesn't have experience. Never miss an opportunity to offer advice to another lawyer."

When asked what excites him about the future of law, Shaheen says, "Knowing that the future of our state and country depends upon experienced lawyers mentoring younger lawyers to always do what is right and just."

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

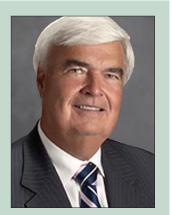
children; Seven grandchildren

Military Service: US Army Reserves (1969-1975) Areas of Practice: General practice, probate, real

estate, commercial lending

Current Firm or Employer: Sheehan, Schiavoni,

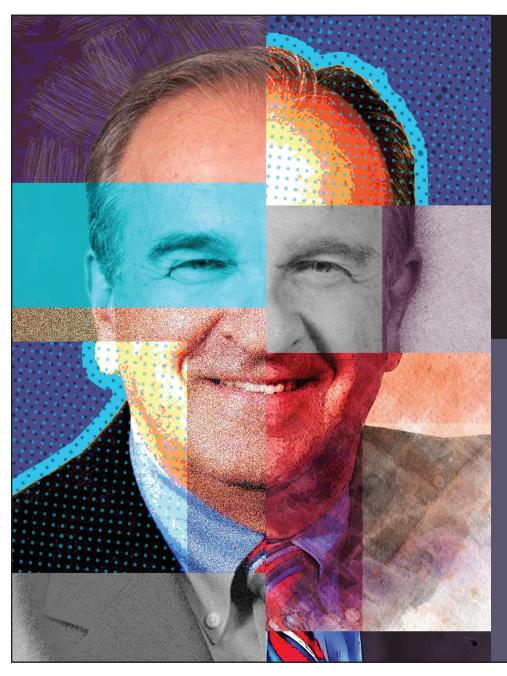
Jutras & Magliocchetti, LLP



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."



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Congratulations, Bill Shaheen!

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Edward E. "Terry" Shumaker, III



Residence: Concord, NH Hometown: Concord, NH

Education: Dartmouth College, AB; Boston Uni-

versity School of Law, JD

Family: Polly (wife); Nat, Dan, and Mike (sons) Military Service: US Army, JAG Corps (1973-

Areas of Practice: Labor and employment law; me-

diator for various courts and agencies Current Firm or Employer: Retired

Past Firms or Employers: Bernstein Shur (2008-2018); National Education Association of NH (2002-2008); US Department of State (1997-2001); Gallagher, Callahan & Gartrell (1976-1997)



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 GCG 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," Shumaker advises for staying connected in the legal community. "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."

> "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

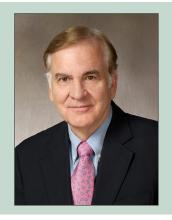
Residence: Concord, NH Hometown: Concord, NH

Education: University of New Hampshire, BA (1969); University of Maine School of Law, JD

Family: Yliana Rivas Picon (wife); Geoffrey H.

Smith and Stuart B. Smith (sons) Areas of Practice: Environmental law

Current Firm or Employer: McLane Middleton Past Firms or Employers: NH Attorney General's



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.

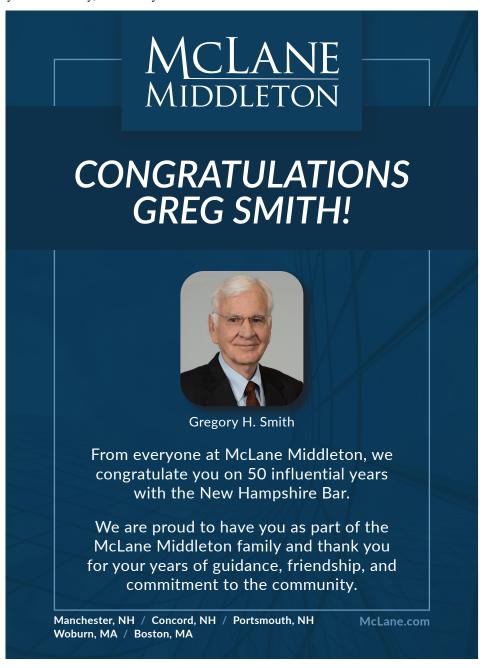
"John F. Kennedy inspired me to believe that public service can be a noble endeavor," Smith says of his hero. "I changed my plans to be a research chemist and went to law school to serve those in our society less fortunate and with less means."

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 be able to adjust effectively to changing attributes of client representation in the future.

"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."



Richard W. Smith



Residence: Cape Elizabeth, ME

Hometown: Bath, ME

Education: Bowdoin College, AB; Boston Univer-

sity School of Law, JD

Family: Helen M.V. Smith (spouse); Elliott J.

Smith (son)

Military Service: Maine Army National Guard Areas of Practice: Retailer real estate leases and acquisitions, real estate title and title insurance,

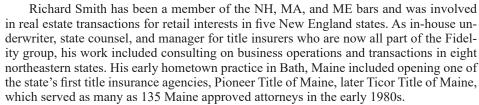
business organizations

Current Firm or Employer: Retired

Past Firms or Employers: Bernstein Shur (2005-2017); Ticor, 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)



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)

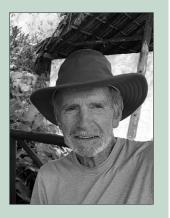
Family: Christine (partner); Reuben, Neal, Daniel,

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 High School, Exeter Cooperative High School, Concord High School and Elementary schools, and Conway schools that resulted, in great measure, from my negotiating agreements between warring towns, districts, and hostile community groups," Teague says of his professional accomplishments. "I am particularly proud of a product liability suit I brought as an associate against Honda as a manufacturer of the three-wheel ATV that tipped over on my client, Jeremy Hill, rendering him a paraplegic. The suit resulted in a lifetime settlement by Honda [and was] one of the few cases the company decided to settle."

For many years, Teague was on the board of the New Hampshire Arthritis Foundation and served on a national foundation fundraising effort at the National Institute of Health that earned him an award in recognition as a national volunteer. He was also given the Bradley Kidder Award, in connection with his work in education law as a frequent lecturer and adjunct professor, for his contribution to New Hampshire school law.

For advice to new lawyers, Teague says, "Relish the funny stories you and your peers will generate. They will help you get through the not-so-funny times."

James E. Townsend

Residence: Manchester, NH **Hometown:** Meriden, NH

Education: Yale University (1968); Cornell Law

Family: Sandra (spouse); Torrey and Julia (chil-

Areas of Practice: Private practice/public law Current Firm or Employer: State of New Hamp-

Past Firms or Employers: Townsend Law Office; Larson & Townsend; NH Attorney General's Office; Bielagus & Solomon; 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 grand-

children

Military Service: US Army Reserve

Areas of Practice: General litigation, civil, crimi-

nal, 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, to him, 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

"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

MAY 17, 2023 www.nhbar.org NEW HAMPSHIRE BAR NEWS SUPPLEMENT 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 Past Firms or Employers: Hale & Dorr (1989-2004); Sulloway, Hollis & Soden (1988-1989); Sheehan, Phinney, Bass & Green (1977-1985); NH

Attorney General's Office (1973-1977)



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

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, Ran-

dy, John, Michael, David (children)

Military Service: US Army, JAG Corps (1973-

Areas of Practice: Commercial litigation, adminis-

trative 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

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."

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New Hampshire



VOLUME IV NUMBER II SECOND CLASS POSTAGE PAID AT MANCHESTER, N.H.

OCTOBER

1973

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. Twothirds of the successful applicants had graduated from New England colleges and universities, over one-third of those from New Hampshire colleges.

Kudos for another herculean effort go to Bar Examiners Norman H. Stahl, Willard G. Martin, Albert D. Leahy, Jr., and Martin

The successful candidates were:

Rochester

Contoocook

Washington, D.C.

Moorestown, N.J

Name

Ahlgren, John L. Angelo, Bruce R. Arnold, John P. Bailin, Michael A. Black, Michael M. Bonafide, Philip P. Borofsky, Stephen E. Bradley, Charles H. III Braga, James A. Broderick, John T. Jr. Brodrick, William S. Brown, Kenneth M. Burling, Jean K. Cappiello, Daniel M. Carney, Gerald Champagne, Norman E. Chubrich, Michael E. Cirone, Albert J. Jr. Colella, Paul M. Colliander, John D. Cook, Bradford E. Davis, Arthur H. K. Deasy, John M. Decato, R. Peter Dibble, Stephen J. Dietz, Robert A. Donahue, Michael J. Driscoll, David J. Emery, John C. Falk, Arnold R. Farrell, Michael F. Fauver, Peter H. Frasca, Stephen J. Friedman, Bruce E. Funk, Wilfred John II Gottesman, David M. Greten, Richard W. Helmansis, Ansis M. Henderson, Lloyd N. Hibbard, Edmund S. Hill, Douglas P. Hughes, William D. Hunter, Carroll R. Hurd, Peter G. Ingemie, Ronald B.

Jasper, Bruce R.

Law School Hastings Dickinson Northeastern Yale Albany

Georgetown Columbia Georgetown Suffolk U. of Virginia U. of Maine Washington U. B. U.

New England Law St. John's U. Suffolk U. of Chicago George Washington Law Suffolk B. U. Cornell New England Law

B.C. U. of Maine U. of Iowa Duke U. of Pennsylvania Marshall-Wythe Suffolk Columbia Suffolk U. of Tennessee

Suffolk Harvard B. U. Suffolk Rutgers New England Law Suffolk Syracuse

B. U. B.C. Villanova Suffolk

George Washington Law U. of Tulsa

Town

Concord Londonderry Francestown Littleton Amherst Laconia Concord Wilmington, Del. Hudson Nashua Alfred, Me. Nashua Cornish Manchester Hanover Manchester Concord Lancaster Winchester, Ma. Hampton Manchester Boston, Ma. Nashua W. Lebanon Norwich, Vt. Meredith Manchester Woburn, Ma. Derry N. Swanzev Dover Canaan Bristol Manchester Concord Nashua Revere. Ma. Jamaica Plain, Ma. Hillsborough Laconia Concord Canton, Ma.

Meredith

Newport

Fitchburg, Ma.

Salem

Jones, Franklin C. Joslin, William R. Kaplan, Edward M. Koory, Richard A. LaFontaine, Michael R. Lemieux, Donald G. Marshall, John C. McCague, William L. II McIninch, Douglas A. McKenna, Douglas C. McKenna, Timothy J. Mills, Richard E. Morrison, Stephen M. Moyers, Michael C. Newman, Daniel M. Niemasik, Walter Jr. Osburn, Jeffrey B. O'Shaughnessy, Michael B. Perrault, Donald J. Pletcher, Larry B. Prew, Jonathan Ransmeier, Michael M. Raven, Robert B. Roberts, Sanford Robinson, Kenneth L. Jr. Ruback, Steven W. Saari, Peter J. Salomon, Craig N. Scheffy, Brackett L. Schulte, James H. Schwartz, Robert A. Shaheen, William H. Shumaker, Edward E. III Smith, Gregory H. Smith, Lawrence S. Steuk, Robert L. Sullivan, David B. Swanson, Dale T. Teague, John F. Townsend, James E. Troisi, James J. Vigue, Ronald L. Wensley, Danford J. Wiebusch, Richard V. Wlodkoski, Donna L. Woodman, Ralph R. Jr. Yarid, Charles M.

B. U. Georgetown U. of Kansas Rutgers B. U. Washington Law George Washington Law B. U. Suffolk Kansas U. Suffolk B.C. Suffolk Vanderbilt Columbia Georgetown U. of Michigan Albany Norwich U. U. of California Washington Law U. of Michigan New England Law Temple U. U. of Michigan

New York State U. Syracuse U. B. U. B. U. B. U. Georgetown U. of Mississippi B. U. U. of Maine U. of Michigan Case Western Reserve B. U. New England Law Georgetown Cornell Suffolk Suffolk B. U. Cornell

U. of Maine

New England Law

B. U.

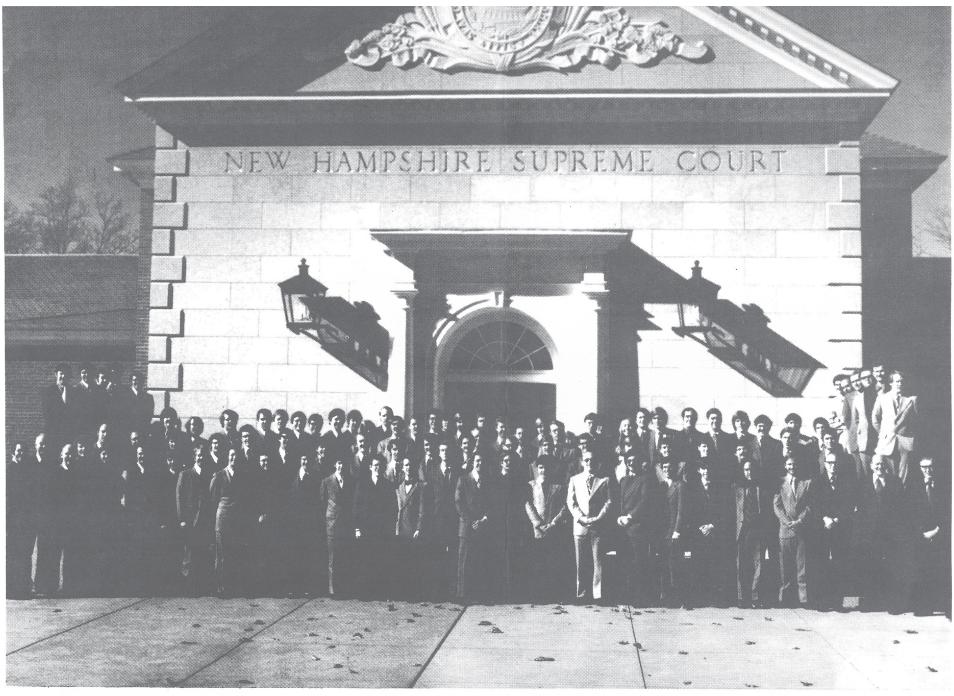
Nashua Arlington, Va. Conway Keene Manchester Concord Woodsville Manchester Portsmouth Bow Berwick, Me. Suncook Manchester Manchester Claremont Manchester Concord Concord Boston, Ma. Portsmouth Concord Concord Hampton N. Hampton Bradford Dover Portsmouth Dover Brighton, Ma. Portland, Me. Amherst Exeter Manchester Newmarket Newport Manchester Lawrence, Ma. Rochester Dover Concord Manchester

Portsmouth

Chelmsford, Ma

MAY 17, 2023 www.nhbar.org NEW HAMPSHIRE BAR NEWS SUPPLEMENT

1973 New Admittees



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 H. 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

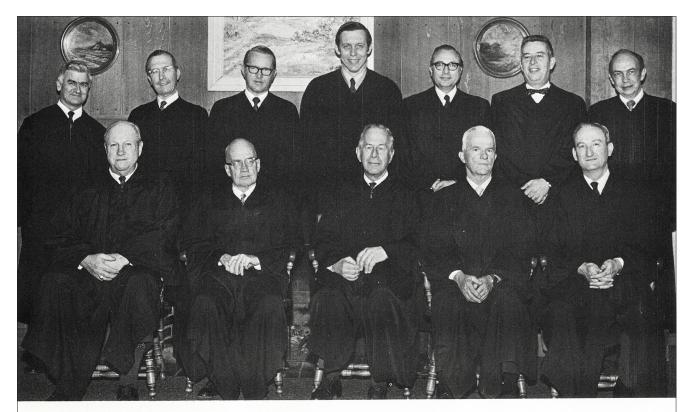
Standing left to right: Honorable Jarlath M. Slattery, Sullivan County; Honorable Nicholas G. Copadis, Hillsborough County; Honorable Robert A. Jones, Grafton County; Honorable Donald W. Cushing, Merrimack County and Honorable Richard G. Tilton, Belknap County.

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 Arlond C. Shea, Carroll County.

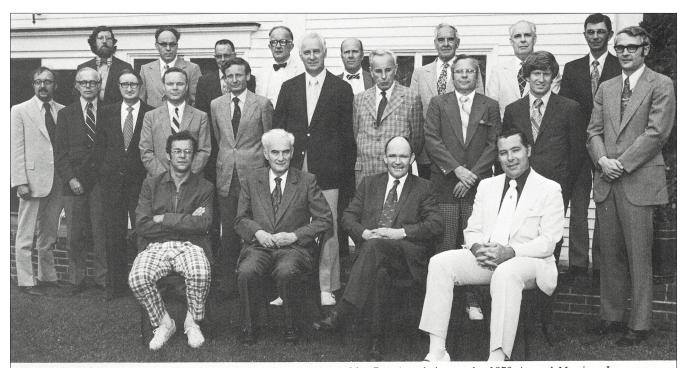
XVIII MAY 17, 2023 www.nhbar.org NEW HAMPSHIRE BAR NEWS SUPPLEMENT

Superior Court Judges 1973



The New Hampshire Superior Court, Spring 1973. Front row, left to right, Associate Justices Francis E. Perkins of Concord, George R. Grant, Jr. of Dunbarton, Chief Justice William W. Keller of Laconia, and Associate Justices Thomas J. Morris of West Rye and Charles J. Flynn of Nashua. Back row, left to right, Associate Justices Martin F. Loughlin of Manchester, John W. King of Goffstown, Richard P. Dunfey of Manchester, William R. Johnson of Hanover, William F. Cann of Concord, Wayne J. Mullavey of Exeter and William F. Batchelder of Plymouth.

Association Officers 1973



The Officers and Board Of Governors of the New Hampshire Bar Association at the 1973 Annual Meeting, June 29, 1973. Front row; Treasurer John B. Pendleton of Concord, President Donald R. Bryant of Dover, Vice President Shane Devine of Manchester, and Secretary-elect Robert A. Shaines of Portsmouth. Second row; Governor-elect John M. A. Rolli of Littleton, Governor John P. Chandler of Laconia, Governors-elect Edward D. Bureau of Derry and Edward A. Gage of Exeter, Governors H. Alfred Casassa of Hampton and Kenneth J. Arwe of Keene, Governor-elect George H. Keough of Berlin, Governors Robert L. Chiesa of Manchester, Robert W. Upton, II of Concord and James R. Muirhead of Manchester. Third row; Governor-elect Anthony A. McManus of Dover, Governor L. Hamlin Greene of North Conway, Governor-elect James S. Davis of Keene, Governor Ernest L. Bell, III of Keene, Past President N. Michael Plaut of Keene, Governor-elect Frederick S. Hall of Concord, Governors George E. Zopf of Claremont and William E. Galanes of Dover.

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

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



Celebrating 150 Years

^{*} 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).