The NHBA Prison Series: The Initial Days of Serving Time

By Tom Jarvis and Scott Merrill

A crime that only takes a few seconds or minutes – a murder committed in the heat of the moment, an armed robbery – can lead to years in the New Hampshire criminal justice system. And for those facing potentially long prison sentences, the first months of incarceration can be some of the cruelest, especially for those unfamiliar with the system.

The initial shock of being in jail after an arrest, staying there while awaiting a sentence hearing, and then entering the prison system and going through Reception and Diagnostics (R&D) presents a gauntlet of psychological and social challenges. Separated from family while awaiting hearings and sentencing, learning to perfect one’s “chow-hall face,” and accepting – or not – a loss of autonomy, the newly incarcerated must come to terms with their circumstances and the consequences of their crimes.

Joseph Lascaze was first introduced to the criminal justice system after an arrest for armed robbery in 2005 at the age of 17 and served time in various New Hampshire prisons for more than 13 years. He says the initial days and months at the county jail were one blunt reminder after another that his life was never going to be the same. He recalls his time at the Hillsborough County House of Corrections (locally known as the Valley Street Jail) in Manchester – where he awaited sentencing for 13 months before entering the state prison following a plea deal – as the worst experience of his life.

“I’d rather do five years in prison than a year at Valley Street,” Lascaze says. “It was absolutely terrible.”

Awaiting Sentencing

Defendants awaiting sentencing after being found guilty of felonies, or those awaiting plea hearings – like Lascaze – are remanded by a judge to one of the county jails. Any days the defendant serves in the county facility count toward the prison sentence, with some exceptions.

One of those exceptions is when a defendant is arrested on two charges at the same time and is held in jail pending trial or plea on both. In this case, a judge may decide to only award what is usually called “pre-trial credit” toward one of the charges.

“The law is that a defendant may not ‘double dip,’ which refers to a defendant getting his time awaiting a disposition to more than one charge,” says Donno.

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Recent SCOTUS Decision Leaves New Lawyers and Law Students Disappointed

By Grace Yurish

Following the recent United States Supreme Court (SCOTUS) rejection of President Joe Biden’s plan to cancel some or all federal student loan debt, many young lawyers and law students are left worried about the financial burden that law school has put on them.

“It’s depressing and disheartening to say the least,” says Alex Attilli, a second-year law student at the University of New Hampshire’s Franklin Pierce School of Law. “Getting rid of ten grand, or for some people twenty grand, would have been monumental. That would have canceled some people’s debt, and it would have substantially reduced my own.

In a 6-3 ruling, the highest court struck down Biden’s initiative aimed at providing relief to as many as 43 million federal student loan borrowers. The plan intended to eliminate up to $20,000 of debt for those who had received Pell Grants for college attendance and up to $10,000 for most other borrowers. However, SCOTUS concluded that the Biden Administration lacked the authority to forgive these debts, causing apprehension among many loan borrowers regarding their financial futures.

In 2021, the American Bar Association’s Young Lawyers Division conducted a student loan survey to show the debt burden among young lawyers, and the effect on their lives and well-being. Ninety percent of survey respondents borrowed student loans to pay for their legal or other education. On average, borrowers owe $108,000 in law school loans and $130,000 in all loans combined at graduation.

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Practitioner Profile

A Bar Members’ Bar Member Keeps Paying It Forward

By Kathie Ragsdale

When Catherine Shanelaris was seven years old, she informed her parents that she wanted to grow up to be a lawyer.


That never-waverung aspiration took her to where she is today, a partner/owner in her own Nashua family law firm and a Bar members’ Bar member who has served on a succession of committees dedicated to advancing the profession she loves.

Fellow lawyers have returned the favor, honoring her with numerous accolades, including the Marilla M. Ricker Achievement Award and the Bruce Friedman Award.

She says she believes in “paying it forward.”

A New Hampshirite to the core, Shanelaris grew up in Franklin, attended the University of New Hampshire, and received her juris doc- tor from Franklin Pierce Law Center. Law school found her working at the New Hamp- shire Department of Public Safety, drafting administra- tive rules, followed by a position at the then-firm of Merrill & Broderick, which had just taken on several asbestos property defense cases.

“I cannot tell you how much I learned from them on how to be an attorney,” she says of the Manchester firm’s two found- ers, “John Broderick was an amazing litiga- tor. Watching John at trial, he was just

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Level 3
Level 2
Level 1
Attorney Wellness, Artificial Intelligence, the Rule of Law, and Facts vs. Opinion

By Paul Chant

I recently attended the National Council of Bar Presidents meeting in Denver. I am happy to report that the priorities that I indicated I strongly wanted the Bar to address this year – attorney wellness and the effect of Artificial Intelligence on the practice of law – were both issues at the forefront of the meeting. Our NHBA Midyear Meeting will focus on these two topics, as well. NHBA Executive Director George Moore and I have identified excellent, national-quality speakers in these areas, and we are excited to bring them to you.

A presentation titled We Are Here: Our Profession noted the following: “Thirty percent of lawyers are experiencing mild depression and 20 percent are experiencing severe depression.” Add 30 and 20 and you quickly realize half of the lawyers in this country are experiencing depression. These results came from a study done by the American Bar Association (ABA). Further, greater than 50 percent of lawyers were noted to engage in risky drinking, and another 30 percent to engage in high risk/hazardous drinking. I have fallen into both categories at times. Another statistic that may well be related to stress and/or risk/hazardous drinking is the following: greater than 50 percent of lawyers are experiencing severe depression.” Add 30 and 20 and you quickly realize half of the lawyers in this country are experiencing depression.

This year, the Bar will be looking to preserve the Rule of Law, the same study found that in countries where the Rule of Law is stronger, there is greater GDP per capita, as well as more peace, better health, and better level of education. I am very hopeful that as we move toward an election next year, the Bar will do all it can to preserve the Rule of Law and an independent judiciary.

Several years ago, I read a very interesting article called Distinguishing Between Factual and Opinion Statements in the News. The article noted that “in today’s fast-paced and complex information environment, news consumers must make rapid-fire judgments about how to internalize news-related statements – statements that often come in snippets and through pathways that provide little context.”

The Pew study focused on whether the American public can discern between opinion and fact. The study asked five factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults. In each set of answers the respondents correctly identified three factual statements and five opinion statements, all to adults.

McManus says, “I look forward to working with the staff and members of the Association.”
In 1942, he joined the US Army, where he served as a logistics officer during World War II and the Korean War. Throughout his military career, he received numerous commendations, citations, and medals for meritorious service and eventually earned the rank of Major. He also continued to pursue further graduate and graduate studies at Rutgers University, Northeastern University, and the University of Maryland Overseas Division in Austria and Italy.

In the late 1950s, while stationed at Fort Devens in Massachusetts – and working as the editor of both the Fort Devens Dispatch and the Camp Drum Sentinel – he began attending the Suffolk University School of Law. In 1960, he earned what was then known as a Bachelor of Law degree, or LLB. (In the mid-to-late 1960s, the American Bar Association encouraged law schools to upgrade the name to juris doctor to reflect the postgraduate status of the degree.)

“When he was attending classes in law school, while finishing up in the military, he would drive almost an hour home to Harvard [Massachusetts] from Fort Devens in his little Volkswagen Karmann Ghia, grab a sandwich, and then drive an hour to Boston to attend classes. It was a grind,” Louise Cobb Phillips says. She is the youngest of Cobb’s three daughters. “There were times when we all would go to the law library in Boston. My sisters and my mother would all be grabbing books and whatever was needed to help him research cases. It was a big family affair.”

Cobb retired from the military in 1962 and opened a law practice in his hometown of Colebrook, New Hampshire. Two years later, he was nominated by then-Governor John W. King to become a Special Justice of the Colebrook Municipal Court. His appointment made national news the next day, including coverage in the New York Times.

“Especially because he was a Black attorney and judge in a community where we were the only family of color. That’s why it made national news. In 1965, Judge Cobb received an honorary JD from Suffolk University School of Law, and in 1968, he was confirmed as a judge of the Colebrook District Court, where he served until his retirement in 1981. He also served on the New Hampshire Commission on Civil Rights.

Judge Cobb passed away in December 1992. Less than a year later, in August 1993, his wife Elsie died.

In the mid-1970s, Judge Cobb’s eldest daughter, Marilyn Cobb McDonald, began attending North Carolina Central University School of Law. While she was away, her daughter Marilyn would stay with the Cobbs in Colebrook.

“I was the first grandchild, so I had him basically monopolized until my cousin Edmond was born,” Judge Cobb’s granddaughter Marilyn McDonald Hendricks says. “Granddaddy was a lot of fun. He would skip down the street with me, singing ‘Skip to My Lou,’ and he would race me across the yard. Sometimes he’d let me win and sometimes he didn’t. He also built me a launching pad on a huge tree, and he used to fling me over the yard and be a daredevil. He was really fun.”

Cobb’s children are all lawyers today. Seventeen family members from all over the country posing with Judge Ivorey Cobb’s portrait at the highest court in the Granite State. Sitting from left to right: Gretel Denise Webster Jones, Marilyn McDonald Hendricks, Louise Cobb Phillips, Gretel Cobb Webster, Dennis O. Webster. Standing from left to right: Rudolph Jones holding Rudolph “Rudy” Jones, III, Donna Dinkins Hoggard, Jay Hoggard, Carissa L. Phillips, Robert E. Sugis, Amanda Crommett, Patrick Webster, Ava Webster, Nikhil Webster, Devra Webster, and Kristin Cobb Webster. Photo by Rob Zelinski.

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Jessica Gendron To Receive Paralegal Professionalism Award

By Tom Jarvis

Shaheen & Gordon paralegal Jessica Gendron will be presented with the 2023 Paralegal Professionalism Award on Friday, September 15, at the Paralegal Association of New Hampshire’s Annual Meeting at the Manchester Country Club.

This annual award is presented to the nominee who best exhibits a high degree of professionalism, possesses an outstanding level of knowledge about their job, is motivated beyond expectations, is considered a role model for other paralegals, and promotes paralegal work as a profession.

“I am very happy and appreciative to be receiving this award; it’s very exciting,” Gendron says. “I enjoy the work I do. It is also nice to know the attorneys I support appreciate me enough to nominate me for this award and had such wonderful and kind things to say about me.”

Gendron has been a paralegal for 25 years, with a focus on civil litigation, primarily in family law. She graduated from Notre Dame College in 1998 with a bachelor’s degree in paralegal studies and began her career as a paralegal for attorney Ronald Caron at Brennan, Lenehan, Iacopino & Hickey.

“Jessica is marvelous,” Caron says. “She is extremely intelligent, she goes above and beyond, her analytical skills are terrific, her assimilation of discovery is extremely good, her organization is beyond what one would expect, and her personality is just disarming. She is quite deserving of this award. I’m proud of her, and I can’t imagine somebody more qualified than she is for this award.”

In 2014, Gendron followed Caron when he joined Devine Millimet. There, she assisted him and attorney Crystal Maldonado.

“She is so well-deserving of this award,” Maldonado says. “She’s just so smart. Her attention to detail is amazing, her attention to financials is unparalleled, and she takes amazing care of my clients. I even get compliments from other attorneys about how good my paralegal is – and that’s saying something.”

Maldonado continues: “She also goes above and beyond to help other paralegals when they need it or if they are feeling overwhelmed. She’s always the first one to say, ‘hey, I can help?’ She’s been going out of her way to help the paralegals here learn better ways of doing things and to make their jobs easier and to make things better for our clients.”

In January 2023, Maldonado was offered a position at Shaheen & Gordon. Since Caron announced that he would soon retire, Gendron decided to follow Maldonado.

“I can’t do my job without her,” Maldonado says. “She makes me a better lawyer. When Shaheen & Gordon approached me about a job with them, I said I’d be happy to join you, but only if my paralegal can come with me. She’s a package deal because she really is just such a huge and integral part of my practice. We always joke that if either of us wins the lottery, we’re going to have to make things better for our clients.”

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Past Paralegal Professionalism Award Recipients

2023 Jessica Gendron; Shaheen & Gordon
2022 Laura Maynard; Office of the New Hampshire Attorney General
2021 Diane Atkens; Office of Public Guardian
2020 Monica Marcotte; Cleveland, Waters, and Bass
2019 Tricia G. Bell; Atkins Callahan
2018 Margaret O. Conway; Orr & Reno
2017 Nancy Dorr; McLane Middleton
2016 Priscilla Sleeper; Sheehan, Phinney, Bass & Green
2015 Christine Foley; Donahue, Tucker & Candella
2014 Kari Fridley; Niederman, Stanzel & Lindsey
2013 Anna McLaughlin; Boutin & Altiere
2012 Stacey Peters; Preti Flaherty
2011 Suzanne Blake; City of Concord Solicitor’s Office
2010 Melissa McNally; Bourque & Associates
2009 Linda Hammond Lewis; Wiggin & Nourie
2008 Candace C. Gebhart; New Hampshire Legal Assistance
2007 Anikó Bouley; Goff Wilson Professional Association
2006 Renee C. Wormell; Citizens Bank New Hampshire
2005 Deborah Snow; Anthem Blue Cross/Blue Shield
2004 Sue Gendron; Hebert & Uchida
2003 Michele Berardo; Orr & Reno
2002 No recipient this year
2001 Thomas Van Beaver; Merrimack County Attorney’s Office
2000 Heather Molkenstine; Hamblett & Kerrigan
1999 Lorinda Gaillard Monroe; Ransmeier & Spellman
1998 Rebecca L. Myers; Boynton, Waldron, Doleac, Woodman & Scott
1997 Cheryl Meachen; McLane, Graf, Raulerson & Middleton
1996 Merry Sweeney; Garner & Minckow
1995 Kathleen Williams-Fordin; McLane, Graf, Raulerson & Middleton
1994 Charles A. Burke; McLane, Graf, Raulerson & Middleton
1993 Felicia Bessey; Fenehy, Adams & Bennett
1992 Pauline Leman; Wiggin & Nourie
1991 Betty Jean Bailey; Sheehan, Phinney, Bass & Green

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Young Adult Court: A Transformative Approach to Rehabilitation

By Grace Yurish

The Hillsborough County Superior Court North has introduced an innovative pilot program known as the Young Adult Court. This program provides an alternative sentencing approach for individuals aged 18 to 25 who have been charged with a crime and are at risk of re-offending without proper support and supervision.

The inception of the program was prompted by a suggestion from the New Hampshire Public Defender to Superior Court Judge N. William Delker, who now oversees the program. The Young Adult Court operates as a collaborative effort involving the Department of Corrections, the Department of Health and Human Services, the Hillsborough County Attorney’s Office, and the New Hampshire Public Defender. Drawing inspiration from similar initiatives across the country, this pilot program seeks to address the unique needs of young adults within the justice system.

Individuals aged 18 to 25 often fall into the category of transition-age youths (TAY). While these individuals attain legal adulthood at 18, research indicates that their brains continue to develop until their mid-twenties, specifically the prefrontal cortex responsible for impulse control and abstract reasoning.1 Treating TAYs as fully mature adults within the criminal justice system presents challenges, as their decision-making processes might be influenced by impulse rather than careful consideration of consequences.

Judge N. William Delker oversees the Young Adult Court program. Photo by Grace Yurish

“There’s a lot of science behind the fact that the brain doesn’t fully mature until you reach age 25,” Judge Delker says. “Often, individuals in that younger age set make decisions based on impulse and lack of experience. They’re not thinking about the long-term consequences of actions because of the undeveloped parts of the brain that make us think about what is good for us in the long term. Some of it is common sense, but there is a lot of science to back it up. We’ve all been young, and we understand that we don’t make the same decisions when we’re 18 or 20 that we do when we’re 35 or 50.”

Engagement with the justice system during youth can lead to enduring stigmatization, reduced educational and employment prospects, and heightened chances of re-offending. The Young Adult Court aims to redirect TAYs towards positive trajectories through comprehensive services including job training, education support, mental health treatment, and case management.

Overseeing the case management aspect is My Turn, Inc., a regional nonprofit that specializes in fostering skills through alternative education, career exploration, and employment training. The program participants will be based at the Manchester location of My Turn.

“My Turn provides a whole host of different programs,” says My Turn Executive Director Allison Joseph. “We do a lot of academic and employment training for people with all different potential barriers to success. Court-involved youth and young adults have always been one of our target populations, but we also serve young families, people with disabilities, and people from low-income households – anybody that might need additional help to achieve their academic and employment goals.”

The pilot will host approximately five participants. To be eligible, an applicant must agree to be sentenced to participate for 12 months and to abide by the rules of the program. An applicant’s pending charges cannot involve certain serious violent crimes, including homicide, sexual assault, or shooting that caused injury to another person. The program is designed for individuals at a high to medium risk of re-offending, who need a support system to guide them down the right path. Participants will be observed through frequent random drug testing, recurring meetings with a probation officer, and regular status hearings in front of a judge and other professionals including the prosecutor, defense lawyer, probation officer, and case manager.

“The program is heavily focused on rehabilitation and deterrence,” says Judge Delker. “Part of that is being engaged with probation and being held accountable by the court. That’s hopefully going to deter bad decision making, but also give the participants the skills to be able to be productive once they’re out of the criminal justice system.”

Program progress will be monitored through established benchmarks. These benchmarks include successful completion of a high school equivalency test, securing employment, demonstrating responsible decision making, and adherence to program rules. Meeting these benchmarks earns participants additional privileges, such as reduced court appearances and curfew hours. Failure to meet expectations will incur consequences determined by the court. Moreover, program termination might result in incarceration as a last-resort sanction.

Both Delker and Joseph stress the importance of participant motivation and dedication in achieving goals and eventually graduating from the program. Early signs of success have emerged in the pilot phase, with participants displaying commendable progress toward their weekly and bi-weekly goals. The professionals involved in New Hampshire’s Young Adult Court program look forward to witnessing positive transformations in the lives of young adults within the state’s criminal justice system. The hope is that this initiative will benefit not only the participants but also the broader community.

Endnote

1. nhm.nih.gov/health/publications/the-teen-brain-7-things-to-know

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36x420 to 732x1183
By Tom Jarvis

Thirty-eight judges got together for an informal dinner at the Red Blazer in Concord on September 6, to celebrate the growing number of women in the judiciary. All but three active sitting women judges from all the state and federal courts were in attendance (the three that couldn’t make it were on vacation). Some retired women judges, marital masters, and a few male judges were also in attendance. The dinner was organized by Circuit Court Judge Susan Carbon and Superior Court Chief Justice Tina Nadeau.

“We both really appreciate the camaraderie of the women who were there,” Judge Carbon says. “It’s an unstated realization, if you will, that all of us had to work really hard to overcome some obstacles to get to where we are. Nobody talks about that; it’s just sort of understood. So, to see this room full of women at every level of court, state and federal, was just a sheer joy.”

Although this is the third dinner of its kind, it is only the second to occur annually. The first took place in 2019, with approximately 45 attendees. Judge Carbon and Justice Nadeau had intended to do it again the following year, but the COVID-19 pandemic overturned those plans. It wasn’t until September 2022 that the second dinner – which consisted of 30 judges – finally took place.

“The purpose of the judges’ dinner is for colleagues (men and women) to get together outside of the courtroom and spend time catching up on each others’ lives,” Justice Nadeau says. “I particularly enjoy getting together with judges on other courts, since we don’t see each other through our daily work. Getting together socially is important. Judges spend long hours on the bench, sometimes fairly isolated from other colleagues, so spending some relaxing time together helps us stay focused and invigorated in the courtroom.”

Although there was no formal program for the festivities, the guests participated in some light judicial trivia. One of the questions invited everyone to estimate the number of combined years of service (rounding up to one year for brand-new judges) there was in the room. Circuit Court Judge Elizabeth Leonard guessed the closest to the answer, which was 305 years. Another question was who attended law school the farthest geographical distance from New Hampshire, which turned out to be Circuit Court Judge Polly Hall, who went to the University of Denver’s Sturm College of Law.

“There’s never an agenda to these meetings other than seeing how we are growing as a group and celebrating that, and just having fun with each other,” Judge Carbon says. “It’s nice for the judges to see each other. We have very few opportunities for Circuit, Superior, and Supreme Court judges to get together and even fewer opportunities for state and federal. So, it may be safe to say that this is the one time in a year that all the women from all the courts have an opportunity to get together.”

Although Justice Nadeau will retire at the end of the month, she will sit under senior active status like Judge Carbon, and the two plan to continue organizing these events.

“Spend time with dear colleagues is always a joy,” Justice Nadeau says. “I will miss everyone after I retire but will always be engaged in this meaningful event.”
By Grace Yurish

This month, the New Hampshire Bar Association welcomes ten attorneys to the Leadership Academy class of 2024. Designed as a comprehensive nine-month program, the Leadership Academy aims to cultivate leadership skills and foster the professional growth of attorneys who have practiced for three to ten years. Lawyers from around the state were carefully selected to be part of this year’s class of future Bar leaders. They are as follows:

Kirsten J. Allen, Shaheen & Gordon
James J. Armillay, Shaheen & Gordon
Devon L. Ayer, New Hampshire Public Defender
Afra M. Danai, Bernstein, Shur, Sawyer & Nelson
Amanda S. Dupuis, Bernstein, Shur, Sawyer & Nelson
Katherine E. Hedges, Rath, Young & Pignatelli
Lynnette V. Macomber, Orr & Reno
Jessica F. Morrissey, New Hampshire Legal Assistance
Jessie J. O’Neill, McLane Middleton
Danielle L. Pomeroy, Shaheen & Gordon

Beginning in 2010, the program’s inception was inspired from the ideas of past Bar presidents Richard Uchida and Jennifer Parent. The program seeks to identify future Bar leaders, provide a program where participants can learn and strengthen their leadership abilities, offer benefits that help grow their career, and encourage participation and service in the NHBA after their graduation.

This year’s participants will begin their curriculum next month with a two-day retreat at the Wolfeboro Inn on beautiful Lake Winnipesaukee. From October to June, participants will attend monthly modules addressing various topics such as business, media relations and public speaking, the New Hampshire Judicial Branch, public interest and nonprofits, and the legislative and executive branches. Through their learning, the new class will gain exposure to leaders in the legal, business, and government communities. They are also expected to complete a project to demonstrate the skills gained through their time in the Leadership Academy.

Participants will also attend the NHBA’s Midyear Meeting in February and then the NHBA’s Annual Meeting in June, where they will graduate from the program.

Following their graduation, Academy members will commit to two additional years of service to the Bar. This allows them to exercise their newly acquired skills and continue to grow within the profession. Previous alumni have gone on to become leaders of their firm, elected officials, and judges.

Israel Piedra, a partner at Welts, White & Fontaine, graduated from the Leadership Academy in 2022. He has previously served two terms in the New Hampshire House of Representatives and has been selected to the Super Lawyers Rising Stars list seven years in a row. He is also a member of the NHBA’s New Lawyers Committee.

“The NHBA’s Leadership Academy was an enriching experience that exposed me to a diverse range of industries and viewpoints,” says Piedra. “Connecting with fellow new lawyers not only expanded my network but also broadened my perspective. The insights and friendships gained undoubtedly strengthened my confidence as a lawyer, manager, and member of the legal community.”

Another alum of the Academy is Lyndsay Robinson of Shaheen & Gordon. Robinson is an active member of the NHBA, serving on the Board of Governors, the Board of Directors of the New Hampshire Bar Foundation, and the NHBA’s Gender Equality Committee. She also is on the board of the New Hampshire Women’s Bar Association. Robinson has received many accolades throughout her career including the Pro Bono Rising Star award.

“One of the best decisions I have ever made was to apply for the Leadership Academy,” Robinson says. “The Leadership Academy provided me with endless opportunities and allowed me to meet members of the Bar and the legal community throughout the state that I would not have been exposed to in my day-to-day practice. I learned so much through this program and really felt like I grew as a leader. I am grateful for the opportunity to learn from others, especially to observe other leadership styles.”

A reception for the new class will be held at the Bar Center in Concord on September 28. The Leadership Academy will be held at the Bar Center in Concord on September 28. The Leadership Academy Steering Committee, NHBA staff, and Leadership Academy alumni will be in attendance to welcome the class of 2024. Congratulations to this year’s Leadership Academy participants!
By Molly Ranns
Director, State Bar of Michigan Lawyers and Judges Assistance Program

Editor’s Note: This article originally appeared in the January 2022 issue of the Michigan Bar Journal and is reprinted with permission.

perfectionism /per-fek-chuh-niz-uhm/ n: A disposition to regard anything short of perfection as unacceptable.7

Perfectionism has been identified by psychologists as a personality style characterized by an individual’s concern with striving for flawlessness.2 It is also a term routinely heard coming from the mouths of lawyers. Many of you reading this article and, in full disclosure, the one writing it are self-identified perfectionists and have been labeled so by ourselves or our colleagues, family members, and friends. In fact, some of us may even have an investment in the identity of being a perfectionist and its traits that may be considered virtuous—impeccably high standards, extreme attention to detail, and a steadfast commitment to excellence.1

In a society that seems to applaud constant proclamations of being busy and dismisses the notion that, at times, rest can be productive, it’s not surprising that a recent study shows a 33 percent increase in socially prescribed perfectionism in the last 30 years.4 Despite this strong need for increasingly unrealistic expectations related to education and professional accomplishments, perfectionism is not analogous to success, and research shows that the quest for it may do more harm than good.2

While perfectionists have been shown to have higher levels of motivation and conscientiousness than non-perfectionists, they have also been known to be overly self-critical and embrace all-or-nothing thinking—believing their performance is either perfect or a complete failure.6 Perfectionists have been found to have higher levels of stress, burnout, and anxiety compared to their non-perfectionistic counterparts.3 Interestingly, these same traits are found at statistically and significantly higher levels among lawyers than in the general population.5

Research shows that perfectionists struggle with procrastination.7 The fear of failure can lead to an inability to complete a task or even begin it. Many refer to this as decision paralysis — taking no action at all for fear that the approach isn’t the absolute best. Miniscule tasks that should take no time at all are pushed lower and lower on the to-do list. Some may mistake this for difficulties with attention and concentration, or even laziness. Many perfectionists may have problems with their relationships.3 The difficulties making and acknowledging mistakes and vulnerabilities coupled with high expectations placed on their partners can make coexisting with a perfectionist a challenge.

In addition to increased anxiety and depression and other mental and emotional struggles, perfectionists can develop more physical health issues than non-perfectionists.2 They have been shown to have higher levels of fatigue, and insomnia, and chronic stress has been linked to heart disease and even a shortened life span.3

Those willing to turn a blind eye to emotional and physical health concerns—believing they can manage mental health issues or care for their physical well-being down the road—and confident that their perfectionistic tendencies will lead them to professional success will be surprised to hear that that belief is unfounded.18 Research suggests that perfectionism and perfectionism are not related.13 In other words, perfectionists’ performances are no better or no worse than that of non-perfectionists.14

As difficult as it is to believe, perfectionism is likely not constructive in the workplace,11 and may actually prevent lawyers from achieving their full potential and meeting their goals. An optimal approach where one puts forth the maximum effort and accepts it as the best that he or she can do inevitably yields to increased mistakes and, consequently, decreased success.16 To those of us always searching for the perfect way to approach each and every situation — as if perfection exists — this research should actually come as a relief.

With an unyielding quest for exactness and precision in our lives, how does one take this information and manage perfectionistic tendencies before they get the best of us?

1. Remove all-or-nothing thinking. This type of thinking is unrealistic and predictable. It splits one’s views into extremes or dichotomies, leaving little to no gray area in between. It can lead to an inability to see alternatives and result in negative thinking patterns. Remove unconditional words like “never,” “nothing,” or “always” from your vocabulary and remind yourself that things are not always absolute.

2. Embrace self-compassion and learn to respect yourself. Perfectionism has been defined in this article as being overly self-critical, and the opposite of that is self-love. Self-compassion has been linked to greater life satisfaction, improved coping skills, and a decrease in anxiety.19 Not surprisingly, it is also inversely related to perfectionism.20 Replace your negative self-talk with positive self-talk and hold yourself in higher regard. Forgive your failures, stop the constant self-blame, and prioritize your mental health.

3. Learn from your successes. Instead of focusing on failures, look at what’s gone well. Because nothing in life happens flawlessly, chances are your greatest achievements included some bumps along the way. Focusing on successes allows us to see what is possible to achieve goals and be fruitful in our endeavors without every little thing going exactly to plan. What may seem like a catastrophe at the time could end up being the best-case scenario for the future.

As always, if perfectionism is harder to rein in than one might think, contact the New Hampshire Lawyers Assistance Program to find out about the many resources available to you.

Endnotes

1. Perfectionism, Merriam-Webster https://www.merriam-webster.com/dictionary/perfectionism. All websites cited in this article were accessed December 8, 2021.


5. Reigning in Perfectionism.


7. Id.

8. Id.


12. 7 Dangers of Perfectionism.

13. Id.

14. Id.

15. Id.

16. Id.

17. Id.

18. Reigning in Perfectionism.


20. Reigning In Perfectionism.

21. Id.
Free LPM Webinar: Mastering Online Lead Generation

By Misty Griffith

On Tuesday, October 24, from noon to 1:00 pm, a free, interactive webinar, Mastering Online Lead Generation: Strategies for Attorneys, designed to help you take your law firm’s online presence to new heights, will be presented. This is the latest offering in the NHBA’s Lunchtime LPM series. The convenient virtual format will eliminate the burden of travel time, saving valuable billable time and making it easier to take advantage of this opportunity.

Law practice management (LPM) is not a skill that is typically taught in law school. However, to succeed a firm must also be a successful business. No matter the size of your firm, someone is responsible for running the business aspects of the practice. Lunchtime LPM webinars offer a chance to learn and ask questions from professionals with experience in their field. Although open to all members, this series of virtual interactive webinars is especially useful for small firms and solo practitioners.

The October 24 webinar delves into the crucial aspects of local SEO listing management and the significance of online reviews and reputation management for attorneys. Discover how local SEO can significantly enhance your law firm’s online visibility and attract potential clients in your target area. Find out how local SEO helps clients find your firm and increases your chance to convert leads.

Gain valuable insights into the power of online reviews and reputation management. Learn effective strategies to manage your online reputation, engage with your customers, and maintain transparency to build trust and credibility. Understand how positive reviews can boost your revenue and attract more clients.

The webinar will be led by Link Moser, a seasoned entrepreneur and the proud owner of Windhill Design, LLC, who has a passion for helping small business owners thrive in the digital landscape. Moser specializes in generating high-quality leads through effective digital marketing strategies. With a keen eye for detail and a thorough understanding of the ever-evolving digital marketing landscape, he remains at the forefront of industry trends and best practices. By staying ahead of the curve, he offers cutting-edge strategies that deliver exceptional results.

Moser has a wealth of experience in copywriting, content writing, and all forms of digital marketing. Having built a solid reputation as a highly skilled professional in the field, he creates compelling websites that are not only search engine optimized, but also conversation optimized. He provides tailored digital marketing solutions ensuring that each client receives a personalized strategy designed to maximize their online presence and drive tangible results.

Master the art of online lead generation. Sign up on our website today. You may also register staff members for this free program. We hope you will join us on October 24 at noon.

To learn more or take advantage of any of these member services, visit nhbar.org. If you have any questions, contact NHBA Member Services Supervisor Misty Griffith at mgriffith@nhbar.org or (630) 715-3227.
The money earned from the IOLTA program helps tens of thousands of New Hampshire’s most vulnerable citizens receive free or low-cost civil legal services.

You have a choice of where you open an IOLTA account.

Leadership Banks pay interest rates of 65% of the Federal Funds Target Rate.

The money earned from the IOLTA program helps tens of thousands of New Hampshire’s most vulnerable citizens receive free or low-cost civil legal services.
The New Hampshire Bar Association would like to thank Wescott Law for a successful LawLine event held on August 9, 2023.

Wescott took 40 calls from counties all over the state on a variety of legal topics including consumer law, landlord/tenant disputes, real estate law, and family matters. The NHBA is immensely grateful to all our volunteers for their continued support and participation in this valuable public service each month.

LawLine is a free public hotline, hosted by volunteer attorneys, on the second Wednesday of each month from 6:00 pm to 8:00 pm. The Bar staff forwards the phone calls from the public, so you remain anonymous.

We are currently seeking volunteers for upcoming 2024 LawLine events. For more information, or to volunteer, please contact NHBA LawLine Coordinator Anna Winiarz at awiniarz@nhbar.org. You can contact a volunteer and make a difference this year.

Correction to Bar News Vol. 34, No. 1

In the print edition of the June 2023 issue of the Bar News, a freelance writer for the article called The Children’s Law Center is Dedicated to Young People at Risk missstated the origin of the nonprofit and its mission. The correct statement is:

Formed in July 2022, the Children’s Law Center of New Hampshire was conceived of, created, and founded by its executive director, Lisa Wolford. In addition to advocating for systemic reform, the Center protects the legal rights of children by providing integrated legal representation and social services advocacy to children growing up in poverty who are at the center of Children in Need of Services (CHINS), delinquency, and abuse and neglect matters; who have special education needs; or who are otherwise at risk.

THE BAR DISCOURSE

An NHBA Podcast

Catch the conversation about artificial intelligence and the law with members of the NHBA’s new AI Committee, Bob Lucic (chair) and John Weaver.

The Bar Discourse focuses on the legal community and the practice of law in the Granite State.

Streaming now at nhbar.org or soundcloud.com/thetbardiscourse
Shanelaris & Schirch, PLLC is now
Shanelaris Schirch & Warburton, PLLC

as we welcome Jennifer E. Warburton as a partner.

Jennifer will continue to concentrate her practice in the areas of domestic violence, stalking and appeals.

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PROFESSIONAL ANNOUNCEMENTS

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If you would like to place an announcement, email advertise@nhbar.org
is pleased to announce that

Joshua S. DeYoung

and

Joseph J. Dumais

have joined the firm as associates.

Joshua is a 2023 graduate of Boston College Law School. Prior to joining Wadleigh, Joshua interned at the Office of the New Hampshire Attorney General in the Criminal Justice Bureau and remotely conducted legal research and writing for a law firm in New York, New York throughout law school.

Joseph is a 2023 summa cum laude graduate from the University of NH Franklin Pierce School of Law. Prior to joining the firm, Joe was a legal resident with Justice Anna Barbara Hantz Marconi at the New Hampshire Supreme Court as well as a legal resident with Judge David D. King in the Trust Docket of the New Hampshire Circuit Court. In addition, Joe interned at a law firm in Nashua, New Hampshire before joining the firm and was a summer associate at Wadleigh.

95 Market Street Manchester, NH 03101
603.669.4140 www.wadleighlaw.com
Florian Probate: Nothing to Fear

By Norman Silber

Although there are various strategies to "avoid" probate anywhere, there are two general situations in which New Hampshire lawyers may be called on to help their clients with probate matters in Florida. Those situations are (a) a New Hampshire resident dies owning Florida real estate, typically a vacation residence; and (b) a New Hampshire resident has a relative who dies as a Florida resident. In either case, what to do?

In the first case, it is assumed that initial probate proceedings will be initiated in New Hampshire, making any Florida proceeding "ancillary" probate. In the other case, the probate proceeding in Florida is "plenary.

All probate matters in Florida are handled through the state's e-filing system. The Florida Bar has developed an extensive set of forms designed to cover almost every conceivable probate matter, the latest set of which number 201 different forms. Those forms are not available online but rather are only available for purchase from one of several authorized vendors and are typically updated each year. Since the forms have their form numbers and revision dates (typically annual revisions of some but not all forms) on their footers, it is believed that most judges prefer to see the standardized forms utilized, and some judges are known to have bounced submissions using forms that have not been updated by the latest revision.

The balance of this article will assume that whatever the probate matter might be, there are no conflicting claims as to a will's validity or to any petitions for administration. Thus, the proceedings to be handled on an ex parte basis and no in-person hearings will be required.

Probate administration in Florida is governed by Chapter 733 of the Florida Statutes, and a variety of probate rules. The Florida nomenclature for what is called an executor or executrix in other states is a Personal Representative, commonly referred to as the PR. Most papers filed in the Florida proceeding are not required to be notarized, although they may express state that they are executed under penalties of perjury.

A probate proceeding in Florida is initiated with the filing of a Petition for Administration, typically by the PR named in the will, if available for any reason or if there is no will, a PR chosen by a majority in interest of the beneficiaries of the estate. It is usual and customary for all beneficiaries to execute a joinder in the Petition, including a waiver of formal notice of the proceedings.

In an ancillary administration, exemplified copies of the New Hampshire probate proceedings must be filed electronically as well as in hard copy with the Court. In any probate proceeding, a scanned copy of the death certificate must be e-filed, and the original filed with the court. And in any probate proceeding in Florida, a copy of the paid funeral bill and a Department of Revenue form attesting to the absence of any liability for estate taxes (if any is not due) must be e-filed.

If the decedent owned Florida real estate, a certified copy of the death certificate and the Department of Revenue form regarding estate taxes should also be recorded in the land records.

If any of the decedent’s Florida real estate is to be sold before the estate administration is closed, there is a procedure for obtaining court authorization for such a sale, as well as applicable forms.

Florida law requires that the PR either be a Florida resident or, if not a Florida resident, within certain degrees of relationship with the decedent. This restriction has been tested for constitutionality over the years and it remains good law.

The PR must designate a Florida resident as its agent for service of process, and if not a resident of the county in which the action is pending, the agent must be a member of the Florida Bar.

In a testamentate estate, even if the will waives the requirement of a bond for the PR, it is strictly up to the court whether to waive the bond or not. In estates in which there are no liquid assets, it will be customary to file a petition to waive bond, joined in by the beneficiaries, whether there is a will or not and irrespective of what the will might say. If there are liquid assets, it is likely that the court will require the posting of a bond. Some probate judges will allow the use of a restricted bank deposit in lieu of a bond, if requested.

In an intestate estate, an Affidavit of Heirship will typically be required, setting out a detailed family tree of the decedent. Each judge seems to have its own preferred form of such affidavits, although they may accept other versions.

Many of the probate judges require the completion and filing by counsel of an initial checklist (in their preferred form) at the inception of the estate administration, as well as a different checklist (also in their preferred form) with the Petition for Discharge.

Proposed orders are drafted by counsel and submitted to the court either using the e-file system, or, in some counties, using a different specialized electronic system for use by the judges specifically for orders. After the requirements have been met, the court will typically issue an order appointing the PR, and, if applicable, admitting the will to probate, as well as issuance of Letters of Administration. If a bond is required, the order will state the amount of the bond needed.

Promptly after issuance of letters, the PR must publish a Notice to Creditors in a newspaper in the relevant county, the first (of two) publication of which starts the running of a three-month period in which creditors must file claims or be barred. Naturally, there is a procedure for disputing and resolving any claims that might be filed.

Unless expressly waived, the PR must also serve a copy of a Notice of Administration on a variety of persons who may have an interest in the estate; and the PR must also serve a copy of the Notice of Administration on the Florida Agency for Health Care Administration in Tallahassee unless the decedent was under age 55 at death.

The PR is required to file an inventory within 60 days after issuance of letters.

After expiration of the creditors' period and assuming neither no claims were filed or any filed claims have been disposed of, and assuming a nontaxable estate, a Petition for Discharge can be filed, usually with broad consents and waivers from all estate beneficiaries. It should be noted that if the decedent owned Florida real estate, it would be appropriate for the PR to execute and record in the land records a release deed (documentary excise tax, essentially the Florida deed transfer tax, of $0.70, plus recording costs, must be paid, irrespective of the property) indicating that the property was required to be sold to cover administrative expenses. The PAH-PR obtain title in the specific beneficiary(ies), before filing the Petition for Discharge.

If the estate was taxable, an IRS Estate Tax Closing Letter and proof of payment of the tax specified in the closing letter must be filed with the court prior to filing the Petition for Discharge. There is no Florida estate or inheritance tax.

Then, assuming no unresolved disputes, the court would enter an Order of Discharge of the PR and releasing any bond that might have been posted.

If things proceed in the regular order and without complications, and if the estate is not taxable, the Florida proceedings can usually be completed in much less than a year.

Finally, there is an an abbreviated procedure available for estates in which the value of the estate, less the value of property exempt from creditor claims, does not exceed $75,000, or that the decedent has been dead for more than two years.

Norman J. Silber was admitted to the Florida Bar in 1970 and the New Hampshire Bar in 2008. He practiced in Miami for approximately 40 years before moving permanently to Gilford, New Hampshire in 2012. He served two terms as a New Hampshire State Representative from Belknap County. Silber can be contacted at nj@silbersnh.com.
By Misty Griffith

This series profiles New Hampshire lawyers who have discovered the rewards of solo practice and successfully navigated the unique challenges that arise from being your own boss. 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 their words of wisdom.

Solo practitioners who are willing to share your advice and experience, please contact NHBA Member Services Supervisor Misty Griffith at mgriffith@nhbar.org. We would love to include you in a future article.

Vincent J. Marconi
Attorney at Law, PLLC
17 years in practice, 15 years as a solo (or 85 in dog years)

What inspired you to become a solo?
The freedom and flexibility to choose the types of cases and areas of the law that interested me. Also, the flexibility it eventually allows for one to invest in their personal and family life and to explore one’s hobbies and passions (make sure to have enough time to enjoy this world).

Best thing about being solo: Ties are optional!

Hardest thing about being solo: The buck stops with you. There is no one you can blame for poor lawyering or a sloppy office. Clients are relying on you, and you alone, to assist them with what is usually the most difficult time in their life. That kind of relationship brings a lot of responsibility; however, when you do your homework and deliver a great resolution for a fair price that intrinsic reward is well worth it and what we all went to law school for.

Memorable solo experience: Winning that first jury trial against a large and sophisticated New Hampshire firm.

Advice for new solo: If you decided to go it alone, make sure you have a great support network of colleagues and mentors – the New Hampshire Bar has a wonderful mentor program.

Would you advise anyone else to go it alone? Absolutely. I think working on your own is a rewarding experience and if you do it right can lead to a great professional career and happy life.

Jenny Proulx, Proulx Law Offices
23 years in practice, 11 years as a solo

What inspired you to become a solo? Demands of and dissatisfaction with law firms.

Best thing about being solo: Independence, the ability to make my own decisions about who I take as clients, and enjoyment of my own professional achievements.

Hardest thing about solo practice: Remaining confident in your abilities when confronted by an unreasonable opposing counsel or an unreasonable client.

Memorable solo experience: Becoming fully aware that a pro hac vice case involved a three-plus-hour road trip which made me appreciate the beauty of the Canadian borders of New Hampshire, as well as Vermont. Now, when such events happen, my husband and I make the best of the situation and enjoy the scenery and local restaurants.

Advice for new solo: Do not allow yourself to be intimidated by a judge, opposing counsel, your client, or your circumstances.

• A judge may aggressively challenge you, so you articulate the grounds to rule in your favor.
• Opposing counsel may posture when he or she has a bad case or when he or she underestimates you.
• Clients may be tamed with a calm discussion or a short diversion such as talk about sports or similar pastimes.
• Always keep up appearances because modest circumstances are easily dealt with in our modern era with technology, co-op workspaces, and space at local bar associations.

Make connections.
• Reach out to former law school classmates or co-workers and reconnect over dinner.
• Always attend Bar events and seminars, introduce yourself, and listen and talk.
• Find attorneys who you can exchange information with, consult with, and refer people to.
• Find relevant good professionals such as investigators, realtors, accountants, and title examiners to name a few.

Would you advise anyone else to go it alone? YES!

Words of Wisdom from Solo Practitioners
In general, the way I do my job as an attorney, and is always kind and generous with her practice clinic and his commitment to the indigent. She also received the 2002 Hillsborough County South Pro Bono Attorney of the Year award, the 2008 Distinguished Small Law Firm Pro Bono Award, and the 2010 New Hampshire Bar Association L. Jonathan Ross Distinguished Pro Bono Service Award.

Shanelaris says she has seen changes in family law in her 29 years of practicing it, in some cases making it more difficult for practitioners. An example is the elimination of the Guardian Ad Litem Fund, under which the court could appoint someone to represent the interests of children in contested cases, requiring people to now pay for them privately.

“It falls upon the lawyers and the court to deal with it in court instead of having someone talk to the kids,” she explains. But she still holds dear the profession she has pursued since childhood.

“We are in our twenty-third year,” she says of her firm, “and we are grateful Jennifer is coming on. We’re working on a new website and a new logo and looking forward to the future.”

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Join us on October 11, 2023 from 9:00 AM-3:30 PM for

**The DOVE Project: Closing the Gap for Survivors**

*a live CLE event in Concord, NH, for current, new, and prospective Pro Bono Volunteers*

Join the DOVE Project with 603 Legal Aid and hear from experts in the field on ways we can close the gaps for survivors of Domestic Violence and Stalking and provide legal advocacy in the courtroom and beyond. The day will also include “A Conversation with the Court: A Moderated Judge Panel” with Justice Hantz Marconi, Hon. Kimberly Chabot, and Hon. David Burns.

Register at: [https://member.nhbar.org/calendar/register/MjUyQQ==](https://member.nhbar.org/calendar/register/MjUyQQ==)

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Shanelaris from page 1

effortless.”

While at the firm, she took on her first family law case, which also happened to be her first pro bono case. She represented a woman on welfare, with children, seeking a divorce.

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Every October since 2009, legal organizations across America participate in the National Celebration of Pro Bono to draw attention to the need for pro bono participation, and to thank those who give their time year-round. This celebration is coordinated nationally by the ABA Center for Pro Bono. As New Hampshire’s leader in connecting low-income individuals with pro bono services, 603 Legal Aid (603LA) plans to spend the entire month of October promoting, celebrating, and facilitating pro bono.

Our full slate of events includes a criminal record annulment clinic in Lebanon in collaboration with LISTEN Community Service on October 4, two free CLEs to promote pro bono service, a referral marathon, and the annual ceremony honoring the Bruce Friedman Award in collaboration with the University of New Hampshire Franklin Pierce School of Law (UNH Law).

October is also Domestic Violence Awareness Month, and the need for pro bono volunteers to join the DOVE Project persists. Each year, thousands of New Hampshire victims and survivors of domestic violence and stalking seek a protective order, but nearly 90 percent of these victims are unrepresented by legal counsel (New Hampshire Judicial Branch data). This is in part due to the many barriers survivors face in accessing affordable legal services.

To build an even more robust panel of attorneys willing to assist these survivors with high-quality legal representation at these hearings, the DOVE Project will be hosting a 330-minute live CLE on October 11. The CLE, The DOVE Project: Closing the Gap for Survivors, will focus on the barriers survivors face in accessing legal services, and the strategic ways attorneys can help survivors overcome them. Whether you are a current, new, or prospective DOVE attorney, please join us for this invaluable opportunity and register on the NHBA website at member.nhbar.org/calendar/register/MjUyOQ==

The other CLE that will be offered in October is in collaboration with the New Hampshire Department of Justice Charitable Trusts Unit. This 195-minute CLE, Representing Start-Up Charities: An Opportunity for Pro Bono Service, will be held on October 25 and is intended to support practitioners looking for a rewarding and impactful pro bono opportunity that does not involve litigation. There are few moments as consequential to the success of a new charity than the thoughtful drafting of its formation and governance documents. Presenters will provide attorneys with sample documents, as well as information about various legal forms a charity can take, alternatives to forming a separate charity, charities regulation by the state and federal government, and frequent pitfalls faced by new charities.

Both CLEs are free of charge to attorneys. In exchange, 603LA will be asking all attendees to agree to register to become a pro bono volunteer and to take at least one case. In the evening, we hope you will join us at 5:30 pm at UNH Law to celebrate the 2023 recipient of the Bruce Friedman Award. This award is given in memory of Bruce Friedman, the late founder of the civil practice clinic at the law school and a legend in the world of civil legal services in the state. For over a decade, 603LA and the law school have paid tribute to Friedman’s legacy by honoring the accomplishments of a UNH Law graduate and New Hampshire Bar member who exemplifies the commitment to public service of Bruce Friedman. Friedman was vocal and active in developing a culture in New Hampshire where lawyers utilized the privileges of being a lawyer to serve those who needed it most.

Be sure to check out our social media (@NHJustice4All on Facebook, @NH_Justice_For_All on Instagram, and @603LegalAid on LinkedIn) for volunteer spotlights, client success stories, and more information on how you can celebrate Pro Bono in October.

Emma Sisti is the 603 Legal Aid Deputy Director and Taylor Flagg is the 603 Legal Aid DOVE Project Coordinator.
1. 5G technology spreads the coronavirus through newly built cell towers.
2. The contrails that large passenger air lines leave behind are laced with chemicals intended by the government to control the weather.
3. Digital voice assistants (e.g., Amazon Alexa or Google Home) are microphones that pipe our conversations into monitoring stations used to spy on our behaviors.

It’s important to note that, depending on the surveys used, around 30 percent of the United States population believes that any one of these above theories is fact. We know that all people can’t be wrong all the time, so with this in mind, I submit to you that statement number three (the one about Alexa) is the true one.

Don’t believe me? No less of an authority than TIME magazine ran a story a few years ago exposing eavesdropping by digital voice assistants, yet the idea seems so far out there that many people still believe this is a conspiracy theory!

The fact is that these digital voice assistants still need some human help to understand what you are saying in the shower, to keep track of your favorite songs. They also need to know what you are discussing in your living room to “learn” how to understand your local accent and slang. Yes, there are real humans (versus AI bots) in real office buildings spread around the world in cities like Boston, but also in countries like Costa Rica, India, and Romania, who are parsing your commands and regular conversations brought in through the microphones on these voice assistants.

Sure, there are opportunities to opt out and obtain greater privacy, but most people just stick with the default settings.

We’ll call this “voice eavesdropping,” and we’ll also assume that this voice eavesdropping is closely managed by Big Tech who would never use this information against any individual. Wink.

But what about Email Eavesdropping™ activities? As we’ve mentioned in our previous articles in this series, RPost has launched RMail Pre-Crime services with Email Eavesdropping™ alerts, which is a service that can identify when your email is being eavesdropped on—presumably by cybercriminals working on a lure often cleverly designed to trick you.

However, what we did not expect is to have the Email Eavesdropping detection service used for is to see where in the world one’s email is being routed, presumably analyzed by “cloud” security systems. Much like how voice assistant data is being analyzed all over the world, so potentially is your email data.

Would it be a big concern, for example, if you are a government organization, and it turns out your email is (legitimately, based on your service providers) being routed to be analyzed by security systems in, say Russia, Poland, or Singapore? Maybe not. But if you’re legally bound to have email remain in the US (or at least not analyzed in a country with a business embargo), or if you are legally bound by your clients not to have email route to certain foreign countries, Email Eavesdropping detection service will be an eye opener.

What if you would have known when your clients are being drawn into the above scheme before you were cut out of the loop? Put another way: if an email someone sends is being eavesdropped on due to an unknown security issue with the recipient’s email account, would you like to be alerted? Would you like to get alerts after they click send, before the message is sent, that you are about to correspond with a cybercriminal unknowingly, preventing the cybercrime while raising e-security awareness at the user level? Providing this level of advanced threat hunting is the best way to confront the type of trickery cybercriminals are using to cause human error resulting in mis-payments.

Zafar Khan is the CEO of RPost, a global leader in cybersecurity. Prior, Khan worked with Deloitte Consulting, Goldman Sachs, and US manufacturers to transfer DOE National Lab weapons technology to industry. For more information, visit rpost.com.
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22nd Annual Labor & Employment Law Update
  • 365 NHMCLE min. incl. 60 ethics/prof.
  • Concord – NHBA Seminar Room/Webcast

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

OCTOBER 2023

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

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

MON, OCT 23 – 12:00 p.m. – 1:00 p.m.
Tech Tock, Tech Tock, the Countdown to your Ethical Demise!
  • Webcast; 60 NHMCLE min.

WED, OCT 25 – 9:00 a.m. – 12:30 p.m.
Representing Start-Up Charities: A Pro Bone Alternative for the Transactional Attorney
  • 195 NHMCLE min.
  • Concord – NHBA Seminar Room

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

NOVEMBER 2023

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

DECEMBER 2023

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

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

MON, DEC 11 – 12:00 p.m. – 1:00 p.m.
Confidential Mediation Statement
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12:00 - 1:00 p.m.
60 NHMCLE min.

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

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Wednesday, March 27, 2024

Insurance Law
Thursday, May 9, 2024

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Tuesday, May 14, 2024

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Faculty
Corey M. Belobrow, Friedman & Feeney, PLLC (of counsel), Concord
Simon R. Brown, Preti Flaherty Beliveau & Pachios PLLP, Concord
Thomas M. Closson, Jackson Lewis, PC, Portsmouth
Tracey G. Cote, Shaheen & Gordon, PA, Concord
Edmond J. Ford, CLE Committee Member, Ford, McDonald & Borden, PA, Portsmouth
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Timothy A. Gudas, NH Supreme Court, Concord
Christopher M. Johnson, NH Public Defender, Concord
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Paying with Crypto Currency

Dear Ethics Committee:

I recently completed some work for a client and sent my client my final invoice. The client wants to pay that invoice using cryptocurrency. Is that permissible?

Answer

Yes, but accepting payment from the client in the form of cryptocurrencies is not the same as paying in “real” currencies. As a result, the transaction is likely subject to N.H. R. Prof. Conduct 1.8(a) and you should ensure that: (1) the transaction and terms are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and your role in the transaction, including whether the lawyer is representing the client in the transaction.

Discussion

Cryptocurrencies are not like traditional currencies and an attorney should not treat them as if they are. The IRS treats “virtual currency,” i.e., cryptocurrencies, as property. IRS Notice 2014-21. As a result, you should ensure that: (1) the transaction and terms are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and your role in the transaction, including whether the lawyer is representing the client in the transaction.

The IRS treats cryptocurrencies as if they were a real currency, an at

property. IRS Notice 2014-21. As a result, you should not treat them as if they are. The IRS treats cryptocurrencies as not like traditional currencies and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.

Due to cryptocurrency’s volatility, you should include a number of terms when drafting the writing required by N.H. R. Prof. Conduct 1.8(a). Among other things, the writing should identify the specific cryptocurrency that is being exchanged, how the cryptocurrency will be valued, the exchange(s) being used, the date and time of the transaction, and how the cryptocurrency will be exchanged, and which party is responsible for any fees related to the transaction.

See N.H. R. Prof. Conduct 1.8(a).

Due to cryptocurrency’s volatility, you should include a number of terms when drafting the writing required by N.H. R. Prof. Conduct 1.8(a). Among other things, the writing should identify the specific cryptocurrency that is being exchanged, how the cryptocurrency will be valued, the exchange(s) being used, the date and time of the transaction, and how the cryptocurrency will be exchanged, and which party is responsible for any fees related to the transaction.

So, while you can accept payment for completed legal services in the form of cryptocurrency, you should document and discuss the transaction with the client consistent with the requirements of N.H. R. Prof. Conduct 1.8(a). One way to avoid these additional requirements is to have the client convert the cryptocurrency to traditional currency and simply accept the traditional currency as payment. But it may be that the client wishes to avoid converting cryptocurrency into traditional currency for any number of a variety of reasons. In such a circumstance, a prudent lawyer should ensure compliance with the requirements of N.H. R. Prof. Conduct 1.8(a) when entering into such a transaction with a client.

This Ethics Corner Article was submitted for publication review to the NHBA Board of Governors at its June 22, 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.

Endnote

1. At least one jurisdiction has found that such a transaction is “an ordinary one where the lawyer is simply agreeing as a convenience to accept a different method of payment, but the client is not limited to paying in cryptocurrency if it is not beneficial to do so.” NYCBA, Comm’n on Prof’l Ethics, Formal Op. 2019-5.
snowbank for my red flying saucer and would sometimes actually get in the saucer with me.”

Hendricks remembers how Judge Cobb “taught her critical thinking by having her solve riddles and how he taught her lessons in fairness with the use of snacks.

Judge Ivory Cobb working in his office while his granddaughter, Marilyn “Mimi” McDonald Hendricks pretends to be his legal assistant. Photo courtesy of the Cobb family.

“For example, Granddad liked pomegranates and his rule was that whoever cut it, the other person got to choose which half they would get,” she says. “So, if you tried to cut it unevenly, thinking you were going to get a bigger piece, that’s not going to happen because the other person gets to decide which one they want.”

Hendricks says Judge Cobb was a brilliant intellectual with a great sense of humor and that he was “unapologetically a brilliant intellectual with a great sense of humor and that he was “unapologetically phenominally intelligent.”

Hendricks continues: “Judge Cobb believed that these sentences were opportunities to divert some juvenile defendants from becoming hardened criminals.

Many years later, on Main Street, a Colebrook prior offender shared with [my aunt] Louise that Judge Cobb had saved his life by sending him to church.

Near the end of the ceremony, Judge Cobb’s daughters, Louise Cobb Phillips and Gretel Cobb Webster, pulled a black canvas off the portrait to reveal it.

Hendricks says that because her mother was a lawyer, she felt she was also a lawyer. She always insisted that we get all the facts from multiple sources to support educated decision making.

Hendricks’ mother earned her JD in 1977 and clerked for Judge Cobb for a while before moving back to Pennsylvania with her daughter. There, she practiced housing law for a few years before moving to Illinois and then later to Washington, DC, where she worked for then-US Congressman Louis Stokes on the House Committee on Appropriations.

Hendricks says that because her mother was a lawyer, she felt she was also representing her when she spoke at Judge Cobb’s portrait unveiling ceremony.

Other speakers at the event included New Hampshire Bar Foundation Chair Scott Harris, NAACP Manchester President James McKim, Congresswoman Annie Kuster, representatives from the offices of Senator Jeanne Shaheen and Congressman Chris Pappas, and Circuit Court Administrative Judge David King.

Judge King, who went to elementary school with Hendricks, said Judge Cobb had a reputation as a law-and-order judge who could be tough on sentencing criminal defendants.

“Judge Cobb’s secretary and his clerk of court was Joan Shatney,” Judge King said. “After Judge Cobb passed on, I think he passed away from pancreatic cancer, and I think she was his huge support. She was his rock.”

Just prior to the portrait unveiling, as Hendricks spoke of her grandfather’s philosophies and achievements, she described how his empathy toward juveniles resulted in a creative diversion tactic for them.

“He strongly believed that just like reporters, lawyers must also possess a strong respect for words, and that advocacy must rest upon a strong factual foundation,” Hendricks said at the event. “He always insisted that we get all the facts from multiple sources to support educated decision making.

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Near the end of the ceremony, Judge Cobb’s daughters, Louise Cobb Phillips and Gretel Cobb Webster, pulled a black canvas off the portrait to reveal it.

Neither daughter spoke to the audience at the event, knowing fully well that they would not make it through without breaking down in tears.

However, once the portrait was unveiled, Webster softly said, “that’s daddy,” and the two of them wept.

“I was very touched by all the wonderful things that everyone had to say about my father,” Phillips says. “All our lives growing up in that household, we knew that he was exceptional and that’s just the way it was. This was the acknowledgment of his exceptionalism and just what it took from his humble beginnings in Alabama to becoming a district court judge in New Hampshire. My father would be very proud. It’s overwhelming.

A good overwhelming. Just thinking about it brings tears to my eyes again.”

“Judge Cobb’s portrait is now a permanent fixture at the New Hampshire Supreme Court. I greatly appreciate the fact that Justice Hicks led the effort to do this, that the Supreme Court felt it was important enough to have a reception, and that the Bar Foundation supported the effort,” he says. “I encourage it and I hope it portends the beginning of a more diverse bench for the State of New Hampshire.”

SUCCESSION PLANNING

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Brown, an attorney who worked for New Hampshire Public Defender for 25 years before going into private practice. “A judge has the discretion to award the pre-credit on multiple charges, [but] the defendant is not entitled to ‘double dip.’”

In some cases, if the defendant was already out on bail during the trial, the judge may allow them to remain out pending sentencing. But this wasn’t an option for Lascaze, who was unable to post the $100,000 bail the State had set. This was common for most people at the county jail, he says.

Lascaze describes his initial experience at Valley Street as disorienting. “It’s like looking at a dance floor with the light from above changing all the time,” he says, describing the psychological weight of learning to fit into a new and sometimes harsh environment.

He was placed in a housing unit, or “pod,” at Valley Street, where correctional officers have direct, face-to-face interactions with multiple prisoners.

“If you had violent charges or more serious offenses, they put you in a specific pod, nicknamed ‘Gladiator School,’” he says. Because Lascaze had Class A felonies for robberies and gun charges, he was required to enter a pod with others convicted of first-degree murder and armed robbery. “I went there, and it was all about natural order and survival of the fittest. That’s all it was.”

At Valley Street Jail, Lascaze recalls correctional officers arbitrarily calling all inmates convicted of first-degree murder and armed robbery. “I went there, and it was all about natural order and survival of the fittest. That’s all it was.”

Lascaze made a plea arrangement while at Valley Street because he was told by his public defender at the time that if he did not take a deal, he would be “doing more time than I’d been alive at that time.”

Following a plea arrangement, Lascaze was transferred to the New Hampshire State Prison for Men (NHSP) in Concord where he went through the intake process at R&D and learned to adapt to a new environment again.

“Just when you’re adapting to all of that trauma – that type of jungle or lifestyle – you’re getting put into another one as a young adult,” he says, adding that at that time there were no alternative solutions. “Now there are diversion programs, but [at that time] there was no in-depth analysis, no one asking, ‘what is causing Joseph to behave this way?’ It was born out of a tough-on-crime mentality.”

The R&D process and housing at the State Prisons

In the R&D unit of the NHSP – and on a smaller scale at the women’s prison – staff perform an intake and a security assessment to determine what medical or other services prisoners need and what programs they will be eligible for.

The intake process involves a thorough body search for contraband, as well as photographs and fingerprints. All property and money on the person at time of arrival is placed in storage for safekeeping and a property receipt is issued to the inmate. The inmate also receives a copy of the correctional handbook, bedding and toiletries, an identification card, and state-issued prison clothing.

Upon completion of the intake process, the inmate is isolated from other prisoners in a quarantine status for 30 days, with some exceptions. During those first 30 days of incarceration, the prisoner is interviewed and tested by a multidisciplinary team of prison staff and receives classification for their custody level based on the intersection of public risk and institutional risk.

“I’ve known people who have gotten stuck in R&D longer than 30 days, which is particularly unfortunate because it is clearly not designed to hold people long-term,” says Meredith Lugo, a lawyer at New Hampshire Public Defender for more than 20 years. “People want to get out of there as quickly as possible because they are quarantined and not allowed visitors. It’s certainly the worst place to have a client – they are not allowed in the visiting room and not subject to the regular visiting schedule – so, we are sort of at the mercy of calling and hopefully getting permission to visit them in the R&D building.”

The custody levels for inmates range from C1 to C5, with C5 being the highest level of security. C3 is the general population of the prison, and where new inmates are generally housed.

“Some individuals are never going to be able to go below C3 just because of the seriousness of the crime they were convicted of – no matter how good their behavior,” Lugo says.

C5 is reserved for dangerous or problem inmates. The C5 inmates spend all but one hour per day in the Secure Housing Unit (SHU), which is colloquially known as Solitary Confinement. C4 inmates were previously C5 but are working their way back to C3. C2 inmates are housed in a minimum-security facility just outside the prison. C1 classification is for inmates on work release and who are allowed to live in transitional housing units as they prepare for re-entry into the community.

If it is determined that an inmate has a documented medical or psychiatric issue or other inmates in the county jails, has previously escaped from a secure facility, is sentenced to life without parole, or has been convicted of an especially dangerous crime, the inmate will be assigned to the SHU, where they are separated from the general inmate population. Inmates requiring constant medical or psychiatric care are assigned to either the health services center or the Secure Psychiatric Unit (SPU), respectively.

“SPU is complicated because it’s not just inmates who are housed there,” Lugo says. “SPU also has persons found not guilty by reason of insanity – if they are found to be sufficiently dangerous – and some individuals who are not involved in the criminal justice system at all.”

The latter group – those who have never been charged with a crime – are committed through a probate court but deemed too dangerous by the New Hampshire Hospital, Lugo says. She explains these cases would be a whole other series because they are a subject of litigation.

[These cases involve] the State housing some people behind the walls of a prison that have never even been charged with anything,” she says.

Prisoners Display a Range of Emotions

Brown says many of his clients over the years, who may have had episodic bad behavior, have never been in the criminal justice system before.

“I’ve represented thousands, probably tens of thousands of people,” Brown says, explaining that as a public defender her case load would sometimes include 80 or 90 people at a time. “It’s rewarding to sometimes keep people off of the grasp of the government when I can.”

But when that doesn’t happen, and her clients are sentenced to prison time or are already serving time in county jails, Brown says she has seen a range of emotions come out.

“I’ve seen everything. I’ve had clients who are just emotional wrecks, crying, frightened, not sleeping because they’re afraid to sleep,” she says. “Sadly, it depends on how much experience the person has with the criminal justice system.”

Brown explains that for some peo-
ple, the terror of prison is compounded by mental illness or withdrawal from drugs.

"I will say the jails have gotten bet-
ter," she says. "They’ve finally realized that when someone is withdrawing from serious drugs, they have to have a proto-
col for how they handle medications and how the person is treated."

Two Crimes, Years in Prison

Evenor Pineda, 41, and Tony Hebert, 39, were relatively young when they en-
tered New Hampshire’s correctional sys-
tem. Their initial experiences, while shar-
ing similarities, are also different.

Pineda, a first-generation American from Nashua, was 23 when he was ar-
rested in 2005 for manslaughter. At the time, he had two young children and says he was at a fork in the road in his life. Pineda was no stranger to the streets or the correctional system, having spent a lot of time as a teenager with a local gang, as well as a short stint in the early 2000s at Valley Street Jail when minors were con-
sidered adults.

"As my kids began getting older, I
started tapering off from the life — but I still had those connections on the streets," Pineda says. He recalls the day a fistfight over drugs with someone he considered a friend led to a fatal stabbing and 15 years of prison time. "I stabbed him, and he passed away. It was one o’clock on Sun-
day. By seven that night, I was arrested. I was arraigned in the morning and sent to Valley Street, where I stayed for one year and 10 days before going to Concord."

Pineda says his experience with the system paved the way to entering the NHSP, which included 22-hour lockdowns with two hours for "rec time," initially led him to embrace the gang affiliations he had ad-
opted earlier in life.

"In the prison system, the gang is very present, and I gravitated back to what I was most familiar with," he says, explaining the relief and comfort he felt going to prison after getting out of Valley Street. "All the rumors of excessive force by COs used at Valley Street were true. I remember waking up in the middle of the night to a grown man screaming because he was getting beat up by an officer — or more likely, officers."

Pineda met Hebert at the NHSP in 2014. Hebert was convicted of a first-
slaughter a year prior, following an alter-
cation in July 2011 that led to the shoot-
ing death of a young man in Manchester. Hebert had served two and a half years at Valley Street before receiving a sentence of 14 to 30 years at the NHSP.

Pineda, who had experience with the system, says he put his head down and prepared for a new identity without his children or his friends when he entered the prison. Hebert, meanwhile, had no
such experience, making the transition much more difficult.

"I was shocked, and it was an out-
body experience," Hebert says, explaining that his initial experience of prison came with a lot of guilt — over the price both the victim’s family and his own paid for his crime — which still weighs on him. "But those first few minutes, I was in complete disbelief."

In his two and a half years at Valley Street, Hebert had seven public defenders before he struck a deal.

"My lawyer told me: ‘You’re a young black man in the state of New Hampshire, and you’re accused of a violent crime with a firearm. You should take the deal,’" he says. "After being at Valley Street for that long, I didn’t care. Just get me out of here, I thought."

After leaving Valley Street, Hebert was sent to a Closed Custody Unit (CCU) at the NHSP following his initial time in R&D.

"I was nervous because it was a long

Moving Forward in Prison

La Porsha Hebert, and Pineda all con-
cur that the initial days and months in jail and prison involved a lot of compartmen-
talization.

"Compartmentalizing is a survival technique people use to differentiate the inside and the outside," Pineda says. "Everyone wears masks on the outside, but on the inside, you wear a thicker mask to pro-
tect yourself. Everyone has their chow-
hall face."

All three men agree that letting one’s guard down happens over time, but it’s
difficult.

"For me, the motivation was that my wife was visiting with my kid saying, ‘Daddy, Daddy, Daddy,’" Hebert says. "There are so many factors between trying to balance family life and navigate the prison system, but that meant more to me than anything else that came with the prison system."

The next few articles in the NHBA Prison Series will focus on life in prison, following Joseph Lascaze, Evenor Pineda, Tony Hebert, and their experiences with the New Hampshire State Prison system. ■

I SCOTUS from page 1

The report found that 90 percent of borrowers felt their debt hindered their progress toward major life milestones like buying a house, getting married, or having children. Additionally, more than half of the respondents reported that they worry about being able to pay for monthly living expenses.

For the end of the day, student loans impact what jobs we take, whether to stay in our job, or leave for another one," says attorney Samantha Puckett of Barnes and Thornburg in Boston and member of the NHBA’s New Lawyers Committee. "It also impacts things like buying a home, starting a family, or how many kids you have. All those kinds of things are really impacted by student loans."

The survey also concluded that nearly a third of new lawyers have moved away from public service work and more than half have prioritized their salary due to student loan debt. This shift has ramifications for marginalized communities’ access to justice. Attilli, who is passionate about public service work, acknowledges the challenges posed by loan debt.

"It’s frustrating for people like me who want to go out and do this important work to help people, but who lack the resources and time to do so properly," Attilli says. "I think because of the decision, a lot of people who wanted to go into public interest may end up going into private practice for monetary reasons. Their loan payments are just too high."

The Court’s decision held that the Biden Administration did not have author-
ity under a 2003 federal law to forgive $430 billion in student debt. The law, called the Higher Education Relief Opportunities for Students Act (HEROES Act), was enacted following the tragedies of September 11, 2001. The original act gave the Secretary of Education the authority to “waive or modify any statutory or regulatory provision” to protect borrowers who were affected by acts of terrorism. In 2003, the act was expand-
ed to include borrowers affected by wars, military operations, and national emergen-
cies. When the COVID-19 pandemic hit the country and then-President Donald Trump declared it a national emergency, the HE-
ROES Act was invoked to pause student loan repayment requirements and halt the accumulation of interest. As of September 1, interest has resumed with payments due starting in October.

“As young lawyers, and young people with loans, we understand that we bor-
owed this money, and we are obligated to pay back what we borrowed,” Puckett says. “We’re just looking for something reasonable to help us pay off this debt be-
cause even on federal loans the interest rate is eight percent, which is outrageous.”

It appears interest rates are one of the biggest issues surrounding student debt. Many feel that it is impossible to pay back what they borrowed when the amount be-
comes insurmountable, and that getting interest rates under control would be a rea-
sonable and helpful way to provide some relief.

“I think of a lot of these issues could be solved with lower interest rates alone,” says Attilli. “People can pay on time ev-
every month, they could even make double payments, and their balance will just go up and up because of how high interest rates are. Back when my parents were in school, interest rates were eight percent. That’s what they are this year."

The Biden Administration is continu-
ing to pursue other avenues to provide relief to millions of citizens struggling to get their debt under control. In July, a mere two weeks after the SCOTUS ruling, Biden announced the cancellation of the remaining balances of over 800,000 borrowers, amounting to $39 billion. This forgiveness targets borrowers affected by previous payment-counting errors. Eligibility for loan forgiveness requires the ac-
cumulation of the equivalent of 20 to 25 years’ worth of qualifying months, largely benefiting older borrowers. Thus, the younger generation continues to advocate for debt assistance.

“I hope that we can come up with some thing reasonable that makes it more realistic for us to pay off what we’ve bor-
rowed,” Puckett says. “Whether that’s a reduction of the interest rate or a defined amount of money. I hope that’s something we can find bipartisan support for. It’s such a high priority for Millennials and Gen Z, so I’m sure it will be a focal point in the next election.” ■

Endnote

1. americanbar.org/content/dam/aba/ad-
ministrative/young_lawyers/2021-student-
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The Meandering Federal Definition of Navigable Waters

By Marcia Brown

Watching the definition of Navigable Waters has become a bit like watching a tennis match with the ball bouncing between courts. For background, the Clean Water Act (CWA) was enacted back in 1972. It gives federal jurisdiction to “navigable waters,” which in turn, has been defined as “the waters of the United States, including the territorial seas.” 33 U.S.C. 1362(7). Court cases since have shaped this definition, including United States v. Riverside Bayview Homes, 474 U.S. 121 (1985); Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers, 531 U.S. 159 (2001); and Rapanos v. United States, 547 U.S. 715 (2006).

In 2015, in response to these cases and extensive public comment, the US Environmental Protection Agency (USEPA) and US Army Corps of Engineers (USACE) redefined “waters of the United States.” It was short-lived. The agencies repealed the definition in 2019. In 2020, the agencies issued another definition that essentially reduced the reach of the CWA.

Then, in January 2023, the agencies offered a new definition that “waters of the United States” included: (1) traditional navigable waters, the territorial seas, and interstate waters; (2) impounding of qualifying waters; (3) tributaries to qualifying waters; (4) wetlands adjacent to qualifying waters; and (5) certain intrastate lakes and ponds, streams, and wetlands. This January 2023 rule has been criticized as expanding the reach of the CWA.

Meanwhile, enter Sackett v. EPA. 143 S. Ct. 1322 (2023). On May 25, 2023, the US Supreme Court issued a decision narrowing the definition and rejecting the Rapanos “significant nexus” test. The Court ruled that the Sackets’ wetland near a ditch that fed into a creek that fed into Priest Lake in Idaho was not jurisdictional under the CWA. While this description by the Court makes the wetland seem remote, the Sackett’s property was located on the opposite side of the street from the shorefront properties and was part of a large fen wetland complex about a football field’s length away from Priest Lake.

Thus now, for projects that require federal permits under the CWA, the jurisdictional reach will be to “those relatively permanent, standing or continuously flowing bodies of water forming geographic features that are described in ordinary parlance as streams, oceans, rivers, and lakes.” Sackett at 1337. Since Sackett, on August 29, 2023, the federal agencies issued revisions to its January 2023 rule. They removed the “significant nexus” standard from analyses of “Tributaries,” “Adjacent Wetlands,” and “Additional Waters.” They also removed “Interstate Wetlands” from the text of the interstate waters provision. A fact sheet on the changes is on the USEPA website.

So where does this leave us in New Hampshire? New Hampshire enjoys the status of having strong wetland protection laws. Further, New Hampshire’s laws have also been fairly stable in existence and as administered by the Department of Environmental Services. That stability helps New Hampshire not be caught in a lurch by Sackett. A good list of these protective statutes and rules can be found in Appendix B to the USEPA’s General Permit for New Hampshire: nai.usace.army.mil/Missions/Regulatory/State-General-Permits/New-Hampshire-General-Permit. Because of these state laws, New Hampshire should see less of an impact from Sackett as compared to other states in the middle of the country who rely more on federal law for wetlands regulation.

Marcia Brown is a solo practitioner at NH Brown Law, an environmental, energy, and utility law firm. She has more than 30 years of regulatory experience, and is a member of several sections and committees, including the ABA Environmental & Natural Resources Section, the ABA Environment, Energy, and Resources Section, the New Hampshire Water Works Association, and New England Women in Energy and Environment.

Rate Case Naming Convention

By Marcia Brown

Thank you to the Bar Association for running section articles. It gives us practicing in one area the ability to pass along advice. To that end, I want to pass along advice that the late Dom D’Ambrosio gave to me. Dom had been Executive Director of the Public Utilities Commission (PUC) and in that role, he managed the process of dockets before the PUC.

The PUC regulates the monopoly utilities charge customers.

At the core of that function is the Rate Case, a typically year-long review of the utility’s books and records. But the legislature did not set up Rate Cases to automatically involve a year-long review. Under RSA 378:3, all a utility has to do to change its general rates is file tariff rate schedules 30 days in advance of the effective date. There are other requirements that require the filing of a Notice of Intent (Puc 1604.05) and the filing of Full Rate Case Schedules (Puc 1604.01), but the point is, the utility doesn’t have to ask for, or petition for, general rate increases. The utility just sets them via the tariff rate sheets it files. It is the PUC who must then act to suspend the taking effect of those rates if the PUC wishes to invoke the year-long review. Also, if the suspension of the rates will harm the utility, the PUC itself can set temporary rates (RSA 378:27) while the investigation is underway.

The point of raising this is to distinguish Rate Cases from other dockets where a utility must first seek permission. It is to also not lose the legislature’s intent of RSA 378:3 among the habit we’ve grown accustomed to. The habit now is to name a proceeding “Petition for...”. It is instinctive. But there is no “Petition for...” in a pure, general Rate Case. No such pleading need be filed. Although the legislature is regulating these monopolies, it didn’t take away every business discretion, or in the case of Rate Cases, self-help in setting rates. I urge that the naming convention correctly reflect the filing and who is taking the action.
Utility Easements and Claims

By Leigh S. Willey

When it comes to real estate transactions, the seemingly straightforward process of transferring property ownership can quickly become entangled in a complex web of competing legal rights and interests. Utility easements are one aspect that presents challenges that buyers, sellers, and even lenders must navigate with care.

A utility easement is a legal right that allows utility companies to access and use a designated portion of someone else’s property for the purpose of installing, maintaining, and operating utility lines and equipment. Utility easements are designed to ensure the smooth deployment of essential public services, such as electricity, water, sewer, gas, and telecommunications, and are an important part of community development. Utility easements are created by deed, by agreements between the property owner and the utility company, or in recorded plans, indicating the exact location and dimensions of the easement area.

Despite their public benefit, utility easements can restrict certain uses of the underlying property and impact the property’s value and development potential. Like most other types of easements, utility easements strike a delicate balance between the rights of the utility companies and the rights of the property owner. On the one hand, utility companies have the right to access and maintain their infrastructure within the easement area. On the other hand, property owners can still use the easement area provided that such use does not interfere with the utility company’s access or hinder its operations. It is therefore critical that property owners and utility companies know the location and scope of intended use of the easement area to avoid interfering with the other’s property rights, which could lead to legal disputes.

Litigation is expensive, time-consuming, and inherently unpredictable. Litigation of disputes involving easements is uniquely challenging. Such litigation involves applying complex, and often archaic, legal theories to historical property documents to ascertain the intent of the parties to the original easement grant and to establish patterns of usage of the disputed easement area. In addition, easement litigation usually requires expert witnesses, such as surveyors, appraisers, or land use/real property specialists, whose fees for consultation, preparation, and testimony are significant, making an already costly undertaking even more expensive.

Title insurance plays a crucial role in mitigating risks associated with potential legal claims involving utility easements. It may provide coverage to owners and lenders for financial loss caused by utility easements, such as disputes about or unexpected limitations on the use of the easement area. During the title search process, public records, including deeds, agreements, and plans, are examined to identify existing utility easements on the property. If a utility easement is not properly disclosed during the sale of a property and later comes to light, the buyer might face unexpected restrictions on the use of his/her land, and in more serious cases, be forced to make costly modifications to the property to accommodate the easement and the utility company’s use of the easement area.

For example, in a residential transaction, a new homeowner discovers that a utility company has an easement across the property to install and maintain power lines. The property owner was unaware of the easement when he purchased the property and had installed a swimming pool in the easement area. The easement significantly limited the owner’s use of the affected portion of the property. Assuming coverage is available, the owner can file a title insurance claim to address the issue and potentially seek compensation for the undisclosed easement’s effect on the property’s value, including the forced removal of the swimming pool.

Sometimes, utility companies abandon their easement rights. If a utility company no longer needs the easement because of technological advances or because of changes in its infrastructure, it may choose to stop using an easement. Utility companies also abandon easements because property development makes it more practical to relocate the easement or because financial, legal, or regulatory changes render the easement invalid or unnecessary. Regardless of the reason, if not properly documented, abandoned easements can still cloud the property’s title and have unintended consequences on the owner’s ability to sell or refinance the property. Depending on the circumstances, title insurance may be available to assist the property owner in addressing such situations.

Lenders are particularly concerned about the presence of utility easements on property because they affect the property’s value and marketability, which in turn affects the lender’s collateral for the loan. Similarly, if an owner’s ability to use or develop the property is restricted by a utility easement, the owner’s financial ability to repay the loan may be compromised, posing a higher risk for the lender. Properties encumbered by several utility easements may be less appealing to prospective buyers, making foreclosure proceedings more challenging to the lender in the event the owner defaults on their loan obligations.

Given these potential risks, lenders want to ensure that utility easements are properly disclosed, documented, and evaluated during the underwriting process. Many lenders will request that an ALTA 17.2-06 Utility Access Endorsement be issued with the final loan policy. Generally, this endorsement is used when the insured property is restricted by a utility easement, the owner’s financial ability to repay the loan may be compromised, or the easement is not properly disclosed, documented, or evaluated.

Utility easements can still cloud the property’s value and marketability, which in turn affects the lender’s collateral for the loan. Depending on the circumstances, title insurance may be available to assist the property owner in addressing such situations.
Head Winds and Tail Winds in Offshore Development

By Rebecca Walkley

Following President Biden’s ambitious goal to deploy 30 gigawatts (GW) of offshore wind by 2036, several New England states have taken steps to promote the development of offshore wind. Massachusetts, Rhode Island, and Connecticut passed legislation requiring electric utilities to issue Requests for Proposals (RFPs) to procure the output of wind projects being developed in relatively shallow waters off Martha’s Vineyard and south to Long Island. The first major project, the 800-megawatt (MW) Vineyard Wind project, is currently under construction and due to begin generating power by the end of this year. Maine and New Hampshire have focused on the longer-term goal of developing floating wind turbine projects in the deep water off the Gulf of Maine. In 2021, Maine submitted a lease application to the Bureau of Ocean Energy Management (BOEM) for the installation of the nation’s first floating offshore wind research site in federal waters. The Federal Inflation Reduction Act of 2022 (IRA) includes a number of provisions to promote offshore wind development. Among other provisions, $100 million has been earmarked for regional transmission planning and $760 million has been set aside for grants to speed up local siting processes. In addition, the IRA extends and increases investment and production tax credits through 2024 for wind energy projects that begin construction prior to January 1, 2025. In 2025, the tax credits for wind will be replaced with technology-neutral credits for low-carbon electricity generation, which will phase out in 2032, or when US power sector greenhouse gas emissions decline to 25 percent of 2022 levels, whichever is later.

Recent decisions on major offshore wind projects both in New England and along the East Coast, however, suggest the current economic and market conditions could scale back previous expectations for the rapid deployment of offshore wind. At the same time, grass roots activism and the resulting political considerations are generating opposition to offshore wind—a trend consistent with most large infrastructure projects.

In July of this year, state officials in Rhode Island decided not to move forward with a large-scale offshore wind project in Rhode Island. The proposed project involved a joint venture between Eversource and Orsted to create 600 to 1,000 MW of offshore wind generation. The joint venture project was the only project bid in response to an RFP issued by the state of Rhode Island back in October 2022. Rhode Island’s decision not to proceed with the project was made following a four-month evaluation process, which was completed in consultation with the Rhode Island Office of Energy Resources and the Division of Public Utilities and Carriers. This review is mandated under applicable federal regulations. The Energy Policy Act of 2005 requires that BOEM coordinate with relevant federal agencies and affected state and local governments to obtain fair return for leases and grants issued, and to ensure that renewable energy development takes place in a safe and environmentally responsible manner. The state determined that rising costs made the project too expensive for ratepayers and concluded the project was inconsistent with state law, specifically, the state’s Affordable Clean Energy Securities Act and its requirement to “reduce energy costs.”

The decision in Rhode Island is a glimpse of what is happening in terms of offshore wind development all along the east coast of the United States and globally. Several developers in the country have sought to renegotiate power supply contracts in response to rapidly increasing costs, due partly to supply chain issues and rising demand. For example, BP and Equinor recently announced they would be renegotiating their power purchase agreements with respect to their development of the Empire and Beacon offshore wind projects, which have a total capacity of 3,300 MW. Rising interest rates also means that financing the billions of dollars in investment that go into these installations has also become far more expensive. In part, the challenges surrounding financing for offshore projects is amplified by the nature of such offshore development and the applicable regulatory approval process. Offshore projects can require a decade to progress from planning stages to generating power. Consequently, developers are terminating projects, even in the face of hefty penalties, because it is more economical than moving forward with project construction. Avangrid agreed to pay $48 million to terminate a power purchase agreement signed with the Commonwealth of Massachusetts just last year. Avangrid, and others, cited the war in Ukraine, rising interest rates, and supply chain disruption as the cause for their inability to procure financing. These same projects will likely be rebid in future state procurements, but at a higher price point.

These changing market conditions are unlikely to stop offshore development across the board. In fact, the Department of the Interior just announced in July 2023 that it will hold the first offshore wind energy lease sale in the Gulf of Mexico. The department also announced in August its approval of the Revolution Wind project located approximately 15 nautical miles from Rhode Island with an estimated capacity of 704 MW. BOEM is also forecasting that it will review at least 16 Construction and Operations Plans of commercial, offshore wind energy facilities by 2025, which would represent more than 27 GW of clean energy for the nation. Nevertheless, it is likely we will see negotiated power purchase agreements and other related, essential contracts affected by these significant changes in the market.

Rebecca Walkley is a member of McLane Middleton’s Administrative Law Department where she advises clients in state, federal, and municipal, environmental, and energy regulatory and litigation cases. She can be reached at rebecca.walkley@mclane.com.

Offshore projects can require a decade to progress from planning stages to generating power.


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NEW HAMPSHIRE BAR NEWS
By Nicole W. Austin

On August 14, 2023, a Montana state court judge issued a landmark ruling in climate change litigation, driven by the plaintiffs’ fundamental “right to a clean and healthful environment” under the Montana Constitution “for present and future generations.” Mont. Const., art. II, § 3; art. IX § 1. The Montana Supreme Court had previously held this right to be a fundamental one, but the Held case was the first time the right was evaluated in the context of climate change. The resulting order is a remarkable step forward for environmental protection advocates.

The plaintiffs in this class action suit were a group of 16 young Montanans, between the ages of two and 18, when the case began in 2020. They sued the State of Montana, the governor, and four state agencies for violations of the above constitutional rights stemming from the practice of permitting energy projects like coal and natural gas. The plaintiffs challenged a provision of the Montana Environmental Policy Act (MEPA), known as the MEPA Limitation, forbidding state agencies from considering the impacts, in-state and/or out-of-state, of greenhouse gas (GHG) emissions or climate change in their environmental reviews. SB 557, signed into law only earlier this year, curtailed challenges brought against agencies’ adherence to the MEPA Limitation. Among other things, SB 557 limited who could bring a challenge, required challengers to pay a fee, and prescribed that even a successful challenge could not vacate, void, or delay a lease, permit, license, or other entitlement/authority issued under the MEPA Limitation. These laws could not withstand strict scrutiny review and are facially unconstitutional under Montana’s State Constitution.

Judge Kathy Seeley of the Montana First Judicial District Court of Lewis and Clark County declared as such in a 103-page order and after a monumental trial. The court heard testimony from 27 witnesses, all but three of whom were called by the plaintiffs, and admitted 172 exhibits, all but four of which were offered by the plaintiffs. A significant portion of the order is devoted to robust findings of fact about the science of climate change. Judge Seeley’s comprehensive and accessibly written order is in a class of its own and will provide attorneys and other judges with ample reference material in cases to come. The order also makes groundbreaking findings of fact about the concrete impact that climate change has on individuals, particularly children. The court concluded that “climate change is already harming plaintiffs” and that “because of their unique vulnerabilities, their stages of development as youth, and their average longevity on the planet in the future, Plaintiffs face lifelong hardships resulting from climate change.” The court’s findings were critical in establishing the plaintiffs’ standing to sue, a common issue in environmental protection litigation, though potentially less so in the future with citations to Judge Seeley’s order.

The connection between climate change and the defendants’ actions (or inactions in even considering climate implications in their permitting processes) was the focus of the parties’ dispute. These issues of traceability, causation, and redressability are other common sticking points for similar classes of plaintiffs, but not here. The court strongly and clearly disagreed with the defendants’ position that the plaintiffs could not demonstrate how the defendants’ actions in Montana, pursuant to the MEPA Limitation, quantifiably contributed to climate change and the plaintiffs’ harm. It found that “Montana’s GHG emissions are not de minimis but are nationally and globally significant,” explaining that, in 2019, Montana was responsible for 166 million tons of carbon dioxide emissions, exceeding that of many large countries. The court found that the relationship between permitted activities and resulting environmental harms is reasonably close and found that the State’s practice of authorizing fossil fuel activities without analyzing GHGs or climate impacts results in GHG emissions in Montana and elsewhere, which in turn exacerbates climate change in “an already destabilized climate system.”

Further, the court found that the defendants “can alleviate the harmful environmental effects of Montana’s fossil fuel activities through the lawful exercise of their authority if they are allowed to consider GHG emissions and climate change” during the permitting process, which in light of the fact that Montana’s land “contains a significant quantity of fossil fuels yet to be extracted,” would provide partial redress to the plaintiffs’ injuries by being able to “reject projects that would lead to unreasonable degradation of Montana’s environment.” While this reasoning is of course specific to Montana, it provides a compelling framework for future cases to establish the required, and previously often abstract, link between a specific defendant’s actions and the global phenomenon of climate change.

The holding is narrow, but it is one that is nonetheless making headlines as ushering in a shift into a new era of climate change litigation. The language of the Montana Constitution that was critical to this plaintiffs’ win is currently uncommon but may not be for very long, particularly if momentum builds as is expected after Judge Seeley’s order. At least 15 other states are witnessing campaigns for so-called “green amendments,” and there are already several state constitutions, such as those in Massachusetts, Hawaii, Illinois, Rhode Island, and Alaska that contain environmental pro-LITIGATION continued on page 31

Held v. Montana: Montana Judge Charts a Path Forward for Climate Change Litigation

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Rematriation and Using Land Trusts to Dovetail Indigenous and Modern Land Ownership Systems

By Amy Manzelli and Julia Nosel

New England’s rich and beautiful landscape has been and continues to be home to many generations of people, and with that comes the responsibility to conserve it for future generations. The indigenous peoples of this area, primarily the Wabanaki, Abenaki, and Pennacook peoples, take this responsibility very seriously. Knowledge passed down through generations about how to live with and within the land, plants, and animals, makes the indigenous peoples of this area some of the best suited to conserve the natural environment. Since this land was colonized, these peoples have had to fight to preserve their culture, history, languages, and way of life.

The rematriation movement has been a holistic initiative to literally give land back to these groups but also to return all things that depend on their connection to the land – sustainable food sources, housing, education, language, culture, etc. While there are many nuances around the motivations and goals of the rematriation movement, this article specifically focuses on the formation of land trusts by indigenous communities to then serve as a vehicle through which to return land and other resources to those indigenous communities.

Conservation

The symbiotic relationship between indigenous peoples and the land on which they live is globally recognized as beneficial to the conservation of species as well as reducing the negative impact of human activity upon the environment at large. While many efforts to conserve the natural environment here in New Hampshire come from essentially sheltering certain areas of land from human interaction, indigenous peoples have ways to sustainably live within the environments they protect through knowledge systems built over generations. Across the country, indigenous groups have worked to restore and reintroduce plant and animal species to their historic environments while still using the resources they need that the land provides.

In contribution to an article by Grist, Marcus Briggs-Cloud of the Maskoke people in Alabama describes one way they re-spectfully and justly use resources without damaging the environment in their community at Kevyn-Yeleve'.

“We have a ceremony with every single tree before we fell it. Then we skid, debark, and mill the timber onsite to avoid fossil fuel consumption and carbon emissions that would have been required to import timber. It also allows us to describe our efforts to conserve the biodiversity of the area: “We are reintroducing buffalo and lake sturgeon. This fish is sacred to our people, but they were extirpated from our traditional Maskoke homelands because of the hydroelectric dams that were erected on the Coosa River. It was about 70 years ago that the last lake sturgeon was seen as naturally occurring in the Coosa watershed.” [On Earth Day in 2020], we put the first group of sturgeon back into the river.” Read the full article at grist.org/itk/justice/indigenous-landback-movement-can-it-help-climate.

Rematriation

Returnship to indigenous peoples is a concept covered by various terms: landback, rematriation, decolonization, and more. However, the process of returning land to indigenous peoples generally do not see themselves as “owners” of land, rather as caretakers and stewards. However, the modern legal system of land ownership that has developed since colonization means indigenous caretakers and stewards need some form of legal protection to ensure their use of the land is secure and defensible if challenged. Therefore, returning land to various indigenous groups across the country has required novel conversations between parties about needs and innovative thinking on how to best meet those needs within the current context of the legal system of land ownership.

One common solution has been for an indigenous community to organize a land trust to hold (own) rights. From there, exact strategies differ acording to how the communities’ wants and means. In Oakland, California, the Sogorea Te’ Land Trust can use the trust for educational, cultural, and environmental purposes with full confidence it will never be at risk.

Like any other land trust, these trusts may also acquire full title ownership of land through donation or purchase. Last year, the Native Land Conservancy in Massachusetts received thirty-two acres of donated land which they are restoring to its pre-colonized condition. According to a WBUR article, the former summer camp had all buildings, pavement, and other hard surfaces removed as well as any non-native vegetation, while native species that are significant to the Wampanoag culture were planted in their stead. Read more about that here at bostonherald.com/2021/05/18 native-land-restoration-massachusetts.

It is important to have discussions on the use of the land before deeds transfer to assure the indigenous communities have all the rights requisite to accomplish their goals. On the other side of home, efforts are underway north of Portland, Maine to return land back to the Abenaki/Wabanaki community through an indigenous formed and run land trust collaborating with another land trust.

Conclusion

The process of righting wrongs of the past is not easy or simple. When it comes to harms to the indigenous peoples in this country, the landback movement is just one step toward reparations. Using land trusts to return stewardship and caretaking of lands to the people who safeguarded it for centuries benefits everyone, and we can learn many things from their knowledge systems of how to coexist peacefully with the environment and conserve it for future generations. With the effects of climate change being felt more every year, these practices are more important to preserve than ever before.

Amy Manzelli, attorney, and Julia Nosel, paralegal, both of BCM Environmental & Land Law, PLLC, are based in the Concord office, where they serve clients in environmental, conservation, and land law. Amy is a member and former co-chair of the NHBA’s Environmental and Natural Resources Law Section and a member of the Real Property and Municipal & Governmental Law Sections. Julia will be a first-time attendee at the Land Trust Alliance Rally, the National Land Conservation Conference, in Portland, Oregon, when this article goes to print. Contact either one at (603) 225-2585 or bcmenvirolaw.com/contact.

The UNH Environmental Law Society Continues to Grow

By Brandon Latham

This summer, the United States Supreme Court significantly changed how the Clean Water Act can be interpreted and applied. Last year, it issued a landmark decision in the case of United States v. E. Gordon Goodwin II, the first group of sturgeon back into the river. Read the full article at grist.org/itk/justice/indigenous-landback-movement-can-it-help-climate.

By Brandon Latham

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The UNH Environmental Law Society continues to grow largely because of climate change, which has attacked New England with prolonged drought, shorter tourism windows, and increased demand for northern real estate. This summer has seen wetlands to dry sitting, drinking-water safety, and flood response consistently in the headlines. New Hampshire agencies, firms, corporations, and public-interest organizations of all sorts need attorneys familiar with these areas of the law to best achieve their goals and serve their clients. The ELS’s mission continues to make sure UNH Law is producing such attorneys.

We do this through events, trainings, and other programming with the help of attorneys like you. In the 2021-22 academic year, we had more events than ever before. Then, in 2022-23, we had more events in April alone than recorded in any previous school year. We want to keep growing so we can better pursue our mission. Practicing attorneys – as well as state and local officials, non-profit leaders, and policymakers – make great mentors for our members, speakers for our events, and partners on any projects. And do not hesitate to put us to work, too. Our members have tracked legislation, presented at public functions, and otherwise applied our legal training for the community. I cannot wait to see what we can do this year, and I hope you will be a part of it.

Brandon Latham is a third-year law student at UNH Franklin Pierce School of Law and a master’s candidate at Vermont Law School. He can be reached at Brandon.Latham@law.unh.edu.
Community Power Is Transforming the Energy Landscape in New Hampshire

By Katherine Hedges and Lauren Kilmister

How electricity is supplied to New Hampshire customers is currently undergoing a significant transformation through the adoption of community power programs, also known as municipal aggregation. This movement was triggered by a key change in state law (amending RSA 53-E), and is motivated by communities’ desire to respond to high retail electricity prices and an appetite to take significant climate action.

Traditionally, most New Hampshire customers have received their electricity supply from their electric utility, with some customers electing to receive power from a competitive electricity supplier. Under community power, a municipality or county chooses the source of electricity supply for customers within its borders. The electric utility still provides transmission and distribution services, and customers receive one bill from the utility that reflects both the electricity supply chosen by the municipality and the services provided by the utility.

Since 2021, a significant and increasing number of New Hampshire municipalities have been preparing to move to community power. Many municipalities have community power programs under development, the first programs launched in the spring of 2023. And as of this writing, 16 municipalities have begun to supply community power to their residents.

Why are municipalities choosing community power? There appear to be two main drivers: high energy prices and a desire for greater integration of renewable energy.

First, community power enables municipalities to obtain potentially lower electricity rates for their constituents. Utilities are required by state law to buy electricity supply in six-month increments, which entails using wholesale electricity markets where the clearing price is set by suppliers. Natural gas prices have been volatile in recent years, particularly during winter months, and are subject to international market forces (such as the Russia-Ukraine conflict). Under community power programs, municipalities are not similarly restricted. They can access medium or long-term supply arrangements as they deem advantageous. This enables municipalities to lock in lower prices and minimize exposure to fossil fuel price fluctuations.

Second, community power enables municipalities to include a greater number of renewables in their electricity supply mix than what their electric utility would offer. This transformation is taking on greater importance given the urgent need to address climate change and dissatisfaction by some with the state’s climate response. Some New Hampshire cities and towns have adopted 100 percent renewable energy or net zero carbon emission goals and wish to take action to achieve those goals. New Hampshire’s community power program is modeled on a wholesale portfolio standard law (RSA 362-F) requires utilities to obtain 23.4 percent of their electricity from renewable sources or to purchase renewable energy credits to cover the remainder. This figure rises to 25.2 percent in 2025 but does not increase thereafter. Community power enables municipalities to go beyond these limited state renewable energy targets.

Another key factor driving the adoption of community power is that RSA 53-E now allows municipalities to organize community power on an “opt-out” basis. Prior to a statutory amendment enacted in 2019, community power was only allowed on an opt-in basis. The order “opt-in” caused problems not in the community power program unless they affirmatively choose to be. Under “opt-out,” a customer is deemed to be in the community program if they affirmatively chose not to, except that customers of competitive electricity suppliers will be included in the community power program only if they opt in. Because most customers will not make an election under either approach, a municipality is better able to serve more customers and achieve its policy goals (e.g., cost savings and/or more renewable energy) with an opt-out program rather than an opt-in program.

In order to establish a community power program, a municipality must obtain an electric aggregate plan that includes statutorily required information regarding operation and funding, rate setting costs, and participants’ rights and responsibilities. This is drafted by a community power committee that will seek public input at public hearings, and then the plan is submitted to the town/city legislative body to be approved by majority vote. The municipality must submit the plan to the Public Utilities Commission (PUC) for review, which is limited to ensuring the plan for “conforms to the requirements of RSA 53-E and applicable rules.” The municipality must also submit the plan to the Office of the Consumer Advocate and any electric utility providing service in the municipality. Once plans are approved, municipalities are required to mail notice of the commencement of an opt-out program to each customer within their boundaries for 60 days. Following this notice, the municipality, allowing the customer at least 30 days to make an election to opt out.

Municipalities can develop community power programs either on their own or through collaboration with other communities. So far, most are doing so either as members of the Community Power Coalition of New Hampshire or by working with an energy services broker. Formed in 2021, the Coalition has 35 municipal members and one county member (Cheshire County) as of June 30, 2023, and continues to grow. The Coalition currently has 12 operating community power programs representing about 75,000 customers, making it a larger electric supplier than Liberty/Granite Electric or Unitil. At least 15 other municipalities have or will launch their programs while working directly with a broker such as Good Energy/Standard Power, and Colonial Power.

Many municipalities are structuring their community power programs to promote renewable energy, offering alternatives to customers to choose another offering with a different amount of renewable energy included. Coalition members offer “Granite Basic” as an option (with five to ten percent more renewable energy than the utilities), while allowing customers other options – no increase in renewable energy, 30 percent renewable energy, and 50 percent renewable energy. Keene, working with Good Energy and Standard Power, offers Keene Local Green (five to ten percent more renewable energy with an emphasis on local sources) as its default service, with the same other options as the Coalition. The municipalities that have launched their programs are offering cost savings to their customers, at least at the outset. The Coalition’s “Granite Basic” rate is currently 10.9 cents/kWh and the Keene Local Green rate is 11.47 cents/kWh; both of which are lower than the default energy service rates currently charged to residential customers by Eversource (12.582 cents/kWh), Unitil (13.257 cents/kWh) and Granite State Electric (12.612 cents/kWh).

There is no guarantee that community power supply rates will be lower than utility default energy service rates at all times, but community power appears to offer the opportunity to reduce and stabilize electric supply rates for residents in most cases. Importantly, each municipality has the flexibility to offer the options it believes will best serve its residents, whether to realize lower prices, more renewable energy, more local energy, or another objective.

There are some practical issues with implementing a community power program that are not yet fully resolved. For example, net metering consumers with onsite generation will not receive a monetary credit for any energy they export to the grid while participating in community power programs, largely due to barriers in data exchange with utilities. Supporters of community power are working with the PUC to address this issue, as RSA 53-E contemplates integrating net metering consumers into community power.

Community power is here to stay. The 16 municipalities that have launched programs so far represent about 16 percent of New Hampshire’s population. With many more communities expected to launch programs later this year or in the first half of 2024, it is possible that up to half of the state’s population may be served by community power by the middle of 2024.

Katherine Hedges and Lauren Kilmister are members of the Energy and Utilities Practice Group at Rath, Young & Pignatelli, PC, where they work with developers, operators, investors, and lenders involved in the production of power and fuels from biomass, hydropower, wind, solar, cogeneration, landfill and bio-gas, and alternative fuel feedstocks on a wide-range of legal issues.

Endnotes
1 The 16 municipalities are the Cities of Keene, Lebanon, Nashua, and Portsmouth, and the Towns of Canterbury, Enfield, Exeter, Hanover, Harrisville, Marlborough, Peterborough, Plainfield, Rye, Swanzey, Walpole, and Wilton.
2 RSA 53-E:II.
3 About Us, COMMUNITY POWER COALITION of NEW HAMPSHIRE, cpcnh.org/about (last visited Aug. 30, 2023).
8 Marie J. Willey, Eng. is New Hampshire Title Counsel at CATIC. She can be reached at 866-595-5559 or lwilley@catic.com.

Litigation from page 29

Pennsylvania and, fairly recently, New York, have enshrined environmental protections in the Bill of Rights of their state constitutions similar to those in Montana. Pa. Const. art. 1, § 27 (“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the commonwealth shall conserve and maintain them for the benefit of all the people.”); N.Y. Const. art. 1, § 19 (“Each person shall have a right to clean air and water, and a healthful environment.”). Florida’s Constitution is another. At least 6 states are watching as Our Children’s Trust, the not-for-profit law firm that represented the Held class of plaintiffs, has cases pending in each on behalf of classes of youth plaintiffs. For now, at least, we haven’t seen similar headlines in the Granite State.

Nicole W. Austin is a litigation associate at Sheahan Phinney Bass & Green.

Utility from page 27

nergy has access to the utilities identified in the endorsement (e.g., water, electrical, natural gas, etc.). A utility when severe, telereview, and third-party providers lend assurances that the premises, they assures against loss if there is a lack of a right of access to the specified resources, the role of title insurance claim investigation, and common title insurance claim scenarios, stakeholders can better protect themselves against unenforced legal battles and financial losses.
August 2023

Administrative Law

Appeal of Fran Rancourt (New Hampshire Compensation Appeals Board), No. 2021-0153

August 16, 2023

Affirmed.

• Whether the CAB committed an error of law, or the CAB decision was unjust or unreasonable by a clear preponderance of the evidence.

The claimant appealed a decision of the Compensation Appeals Board (CAB), granting the request of the carrier to reduce the claimant’s Temporary Total Disability (TTD) rate to the Diminished Earning Capacity (DEC) rate, because there was a change in the claimant’s condition unrelated to the work injury.

The Court detailed the factual record including that after working at the Community College System of New Hampshire for ten years, the claimant slipped and fell on ice and sustained a concussion. The claimant initially missed ten days of work and then three months later proceeded with partial duty because of the concussion. The claimant continued to treat regarding this concussion and was to be evaluated two years post-injury. Just shy of two years, the claimant fell while in Maine and sustained a severe hamstring injury which resulted in surgery. During the CAB hearing, the claimant alleged that the fall was caused by her ongoing concussion symptoms; however, this was disputed by an excerpt from the medical record which indicated that the fall was from stepping onto a boat when the boat moved away from the dock. Approximately three years after the injury, the carrier requested a hearing to reduce or terminate the TTD indemnity benefits. This request for hearing was granted, and the benefits were reduced because of the claimant’s changed condition. The claimant appealed the decision to CAB, which held a de novo hearing. The CAB found its decision and concluded that the carrier met their burden of proof that there was a change in the claimant’s condition that warranted the reduction of the indemnity benefits to the DEC rate. The CAB noted that it found an independent medical examination report “persuasive.” The report noted that claimant’s physical limitations and disability from the work-related injury were unrelated to the concussion. The claimant moved for reconsideration, which the CAB denied. The claimant then appealed. The Court concluded that based on the evidence, the CAB did not commit an error of law, and the CAB decision was not unjust or unreasonable by a clear preponderance of the evidence.

The Trustees of the AZNH Revocable Trust, as owner of a condominium unit at the defendant Spinmaker Cove Yacht Club Association, Inc., requested preliminary injunctive relief, and a declaration, to enjoin the Board of Directors from purchasing land outside of the condominium association to add ten guest parking spaces to the association. The trial court denied the request for a preliminary injunction and granted the condominium association’s summary judgment. On Appeal, the Supreme Court conducted a de novo review and analyzed both the applicable condominium statutes as well as the condominium documents. The Spinmaker Cove Yacht Club Association consists of 91 units of parking spaces and the remaining unit is a commercial warehouse owned by a business in boat sales, service, and storage. Each unit has the exclusive right to use a boat slip corresponding to that unit.

The basis of the complaint was to seek relief because the condominium board undertook steps to purchase land outside the condominium to add ten guest parking spaces, which would have been

At a Glance Contributor

Laura D. Devine
Shareholder
Boyle Shaughnessy Law
Manchester, NH

Concluding that the plaintiff also sufficiently pled facts supporting that claim. 79 pages. Judge Joseph N. Laplante.

Property Law

AZNH Revocable Trust & a v. Spinmaker Cove Yacht Club Association, No. 2021-0385

August 3, 2023

Affirmed.

• Whether the condominium act and/or the condominium documents prevent a condominium board from purchasing additional common area property and paying for it with special assessments.

The Trustees of the AZNH Revocable Trust, as owner of a condominium unit at the defendant Spinmaker Cove Yacht Club Association, Inc., requested preliminary injunctive relief, and a declaration, to enjoin the Board of Directors from purchasing land outside of the condominium association to add ten guest parking spaces to the association. The trial court denied the request for a preliminary injunction and granted the condominium association’s summary judgment. On Appeal, the Supreme Court conducted a de novo review and analyzed both the applicable condominium statutes as well as the condominium documents. The Spinmaker Cove Yacht Club Association consists of 91 units of parking spaces and the remaining unit is a commercial warehouse owned by a business in boat sales, service, and storage. Each unit has the exclusive right to use a boat slip corresponding to that unit.

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At a Glance continued on page 33

Declaratory Judgment; Statute of Limitations

Case No. 22-cv-79-JL, Opinion No. 2023 DNH 105

In an insurer’s declaratory judgment action to determine insurance coverage, the defendant-insured moved to dismiss, arguing that the insurer’s complaint was barred by the six-month statute of limitations in N.H. RSA 491:22. The court granted the motion in part and denied it in part. When the insurer’s declaratory judgment claim as to certain underlying suits against the insured was timely, because the insurer waited more than six months from the filing of ten other underlying suits to file its declaratory judgment claim, the court dismissed the declaratory judgment claim relating to those suits as untimely. The subsequent filing of a consolidated complaint that included those ten suits did not create a new trigger for the statute of limitations. The court also denied the insurer’s request to amend its complaint to add a claim under the Federal Declaratory Judgment Act, as the six-month limitations period in RSA 491:22 would still apply to that claim and bar the declaratory relief as to the ten underlying suits. 16 pages. Judge Joseph N. Laplante.

Employment

Case No. 21-cv-968-JL, Opinion No. 2023 DNH 112 *

The plaintiff in this employment case alleged that he was retaliated against and wrongfully terminated from his position at the defendant company because he reported concerns about safety issues and compliance with COVID-19 protocols, and because he requested accommodations for a disabled employee that he hired. He brought retaliation claims under the Americans with Disabilities Act and state law, associational discrimination claims under the ADA and

Listing continued on page 34

US District Court Decision Listing

August 2023

* Published

Breach of Contract

8/15/23 Collision Comm. v. Nokia Solutions & Networks
Case No. 20-cv-949-LM (D.N.H.), Opinion No. 2023 DNH 100

Plaintiff Collision Communications alleged that defendant Nokia Solutions & Networks breached an oral contract to license certain cellular telecommunications technology. Collision also brought claims for breach of the implied covenant of good faith and fair dealing, promissory estoppel, negligent and intentional misrepresentation, quantum meruit, and violation of the New Hampshire Consumer Protection Act, RSA 358-A. Nokia moved for summary judgment, arguing that no contract had been formed and that mere breach of contract, in any event, does not suffice for a Consumer Protection Act claim. The court found that genuine disputes of material fact existed to whether a contract had been formed, but that there was insufficient evidence to elevate Collision’s commercial contract claims into misconduct that violated the Consumer Protection Act. 37 pages. Chief Judge Landya Maceda-Cafferty.

Contracts; fraud

8/15/23 PC Connection v. IBM
Case No. 22-cv-397-JL, Opinion No. 2023 DNH 103 *

In this action, the plaintiff asserted contract, negligence, fraud, and New Hampshire Consumer Protection Act claims all stemming from the defendant’s allegedly poor performance under a contract governing a software implementation project. The plaintiff contended, among other things, that the defendant misrepresented and/or omitted material facts going to its ability to perform under the contract, the nature and scope of the project, and issues that arose during its performance. The plaintiff asserted eight claims: breach of contract, contractual indemnification, breach of the duty of good faith and fair dealing, negligence or professional negligence, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation, and breach of the New Hampshire Consumer Protection Act. The defendant moved to dismiss each of these claims. The court denied the motion as to the breach of contract claim upon finding that the claim was not barred under applicable New York law or the statute of limitations. The court dismissed the contractual indemnification claim, given that the subject contract’s indemnification provision applied to third-party claims, and not claims between the contracting parties. Next, the court denied the motion as to the breach of the duty of good faith claim, after concluding that it was not duplicative of the breach of contract claim. On the other hand, the court dismissed the negligence claim because the plaintiff failed to allege facts supporting an independent tort duty that could give rise to a claim for negligent performance of a contract. Further, the fraud-based claims—for fraudulent inducement, fraudulent misrepresentation, and negligent misrepresentation (which sounds in fraud)—survived the plaintiff’s motion in part to the extent that the plaintiff plead facts supporting each claim with the requisite particularity, they were based on actionable statements, and they were not duplicative of the breach of contract claim. The court denied the motion to dismiss the New Hampshire Consumer Protection Act claim, concluding that the plaintiff also sufficiently pled facts supporting that claim. 79 pages. Judge Joseph N. Laplante.

Defamation

Case No. 21-cv-131-JL, Opinion No. 2023 DNH 095

Gary Michael Voris, et al.,

Very Reverend Georges F. de Laire, J.C.L. v.

At a Glance

Laura D. Devine
Shareholder
Boyle Shaughnessy Law
Manchester, NH

Declaratory Judgment; Statute of Limitations

Case No. 22-cv-79-JL, Opinion No. 2023 DNH 105

In an insurer’s declaratory judgment action to determine insurance coverage, the defendant-insured moved to dismiss, arguing that the insurer’s complaint was barred by the six-month statute of limitations in N.H. RSA 491:22. The court granted the motion in part and denied it in part. When the insurer’s declaratory judgment claim as to certain underlying suits against the insured was timely, because the insurer waited more than six months from the filing of ten other underlying suits to file its declaratory judgment claim, the court dismissed the declaratory judgment claim relating to those suits as untimely. The subsequent filing of a consolidated complaint that included those ten suits did not create a new trigger for the statute of limitations. The court also denied the insurer’s request to amend its complaint to add a claim under the Federal Declaratory Judgment Act, as the six-month limitations period in RSA 491:22 would still apply to that claim and bar the declaratory relief as to the ten underlying suits. 16 pages. Judge Joseph N. Laplante.

Employment

Case No. 21-cv-968-JL, Opinion No. 2023 DNH 112 *

The plaintiff in this employment case alleged that he was retaliated against and wrongfully terminated from his position at the defendant company because he reported concerns about safety issues and compliance with COVID-19 protocols, and because he requested accommodations for a disabled employee that he hired. He brought retaliation claims under the Americans with Disabilities Act and state law, associational discrimination claims under the ADA and

Listing continued on page 34
part of the condominium common area. The Court observed that a condominium association’s legal documents are a contract and governs the legal rights between the Association and property owners. Further, the Court observed that the condominium act, RSA chapter 356-B (2022), governs condominiums in the State. The Court concluded that the trial court was correct when it concluded that the Association has the authority to purchase land. This conclusion was based on both the condominium act and the condominium documents permitting the acquisition of common area property. The Court stated that the plaintiff’s argument that such a purchase does not mutually benefit each condominium owner is false. The Court upheld that the condominium association is permitted to use assessment monies to acquire common area property.

John Sullivan, Chandler, Arizona, for plaintiff. Demetrio Aspiras, Manchester, Drummond Woodsum, for the defendant.

Katherine R. Brady v. Lawrence P. Sumski, Chapter 13, Trustee, No. 2023-0023 August 17, 2023 Remanded.
• Whether the non-owning spouse who occupies as a homestead a manufactured housing unit with an owning spouse has a homestead right with respect to that home.

The US District Court for the District of New Hampshire certified two questions of law under Supreme Court Rule 34. The Supreme Court concluded that RSA 480:1 (Supp. 2022) includes an ownership requirement that applies to all real property occupied as a homestead and a non-owning occupying spouse does not hold his own homestead right.

Here, the debtor/plaintiff filed a Chapter 7 bankruptcy petition and later converted it to a Chapter 13 petition. In the bankruptcy schedules, for both bankruptcy matters, the debtor/plaintiff sought a homestead exemption under RSA 480:1 in the amount of $120,000, and also sought one for her non-debtor, non-owner spouse in the amount of $120,000. Both the Chapter 7 Trustee and later the Chapter 13 Trustee objected to the homestead exemption of the spouse. Ultimately, the bankruptcy court permitted her homestead exemption, but denied that of her spouse. The debtor appealed this to the US District Court for the District of New Hampshire, and the question was certified for the Supreme Court.

The Bankruptcy Court concluded that to maintain a homestead right pursuant to RSA 480:1, a person must demonstrate both occupancy and ownership interests in the homestead property. Both the plaintiff and the state (as intervenor) argued that under this statute a person has a homestead right in the homestead property owned by the person’s spouse, even if they are not on the title, so long as they occupy the property. This was rejected by the Supreme Court. The Court concluded that the phrase “interest therein” is possessory and requires an ownership interest in the homestead property.

The Court noted that both ownership and occupancy is required for the homestead right. The Court reasoned, in part, that the homestead right is not an “inter est” but a “personal privilege.” A second question was also certified, but the Court declined to answer it because the property at issue was not a manufactured home. The second question was whether the ownership requirement described in the second sentence or RSA 480:1, applies to all real property occupied as a homestead, including manufactured homes.

Leonard Deming, II, Deming Law Office, Nashua, for plaintiff. Lawrence Sumski, Chapter 13 Bankruptcy Trustee, self-represented party; Mary Stewart, Zachary Towne (in brief), John Formella, attorney general, and Amanda Densmore, solicitor general for the State of New Hampshire, intervenor. Ryan Borden and Edmond Ford, Ford, McDonald & Bor den, Portsmouth, for Michael Asparagus, Trustee for the Bankruptcy Estates of William Linane and Debra Linane, as amici curiae.

Todd H. Maddock & a. v. Michael J. Higgins, No. 2022-0234 August 23, 2023 Affirmed in part; reversed in part; and remanded.
• In considering land surveying, whether field monuments control over bearings or distances in a deed or plan.

This matter concerns a dispute regarding a property line boundary between neighbors. Parts of the plaintiffs’ driveway, parking area, and shed are within the disputed area. Further, the defendant cut down several trees within the disputed area. The plaintiffs’ filed a petition to quiet title of the disputed area, and then later requested Declaratory Judgment, Equitable Relief, and Temporary Injunction. The plaintiffs’ asserted causes of action for adverse possession, boundary by acquiescence, and timber trespass. The trial court conducted a seven-day bench trial and then ruled in favor of the defendant, finding that there was no adverse possession, no adverse boundary by acquiescence, and thus no timber trespass. The court granted the plaintiffs a prescriptive easement covering the driveway and parking area.

On appeal, the Supreme Court noted that the trial court’s factual findings and rulings will be upheld unless they lack evidentiary support or are legally erroneous. First, the plaintiffs argued that judgment on the ground concerning boundary between two properties as a matter of law, regardless of what may be written in a deed. This argument was rejected by the Court and thus it concluded that the trial court did not err in determining that documents do not in and of themselves establish boundary lines as a matter of law.

Second, the Court analyzed the trial court evidence for the adverse possession claim and determined that the evidence supports the trial court’s determination that the site plan evidence was unreliable and therefore did not prove the color of title claim for an adverse possession claim.

Next, the Court analyzed the evidence for the character and history of the use and occupancy of the disputed area and found that it was not sufficiently notorious to provide notice to title holders to support an adverse possession claim. Specifically, the Court noted that the shared use of the driveway was by agreement. However, the Court found that the plaintiffs adversely possessed portions of the driveway and parking area that extended into the defendant’s property. Thus, the Court remanded this portion of its ruling to the trial court.

Last, the Court affirmed the trial court’s decision that the plaintiffs failed to establish boundary by acquiescence because they failed to establish the required elements of this claim, specifically, that they failed to occupy the respective lots up to a certain boundary.


• Whether a second rehearing request must be made from the Town’s Zoning Board of Adjustment for a superior court appeal when new issues were raised and new evidence was presented.

This matter concerns a request for a variance for a setback for a residence. The Town’s Zoning Board of Adjustment (ZBA) held a hearing on the application and voted 3-2 to deny the application. The plaintiffs requested a rehearing. A rehearing was held and the ZBA upheld its decision. Next, the plaintiffs appealed to the Superior Court. The Town moved to dismiss the appeal as new issues were raised by the board in its second denial and that a second motion for rehearing is a jurisdictional pre-requisite.

On Appeal, the Supreme Court noted that the jurisdiction pre-requisites are controlled by statute, RSA 677:3. The Court held that pursuant to RSA 677:3, the plaintiffs perfected their appeal to the Superior court from the ZBA’s denial by timely moving for rehearing. The Court noted that this is the requirement that vests subject matter jurisdiction with the superior court. The Court noted that in the appeal is limited to the grounds set forth in the motion for the rehearing, unless good cause is shown. Notably, during the appeal, the plaintiffs argued that there is good cause to permit them to be heard on all issues, including that there was no written decision from the ZBA’s first meeting available to them, and that they were relying on their notes and recollections from that meeting. Further, they allege that the written decision from the second hearing was never provided to the plaintiffs until they received the certified record. The Court remanded this matter to the trial court to determine whether good cause is shown. The plaintiffs should be allowed to specify additional grounds.

Barry Schuster, Schuster, Battrey & Wing, PA, Lebanon, for plaintiff. Laura Spector-Morgan, Mitchell Municipal Group, Laconia, for defendant.

Right-to-Know
Laurie Ortolano v. City of Nashua, No. 2022-0237 August 18, 2023 Affirmed and remanded.
• Whether a public entity must conduct a search of its back-up drives to meet its obligations in conducting a reasonable search pursuant to RSA 91-A.

The petitioner requested e-mail records of certain city employees pursuant to RSA 91-A. In response, the City conducted a search of the specific employees’ own devices and their personal u-drives but did not conduct a search of the City back-up drives. The City argued

AT A GLANCE

US Bankruptcy Court Opinion Summary

Judges Harwood issued the following opinions:

Berkley Insurance Company v. Keevers, et al. (In re Keevers), 2023 BNH 003, issued August 23, 2023 (HA) denying joint debtor’s chapter 7 discharge pursuant to 11 U.S.C. § 727(a)(3) and (4)(A) (Counts I and II) based on their concealment of documents and financial information from which their financial condition could be ascertained without reasonable justification and reckless disregard of their disclosure obligations when they made material false oaths on the monthly operating reports and during the § 341 Meeting of Creditors, and entering judgment in the debtors’ favor as to Count III (11 U.S.C. § 727(a)(6)), finding that their failure to comply with the Court’s orders was not “willful” or intentional.

The full text of the opinion will be available on the Bankruptcy Court’s website at www.nhb.uscourts.gov.
that these back-up drives were not “readily accessible” under RSA 91-A, in-part because IT assistance was required to conduct the search. In response, the trial court reasoned that there was a reasonable search of the back-up drives for responsive records and to participate in remedial training for RSA 91-A compliance. The City filed a motion for reconsideration which was denied and then appealed to the Supreme Court.

On appeal, the Supreme Court analyzed the regulation regarding deleted electronic records to determine whether the e-mails in question could be considered deleted electronic records and therefore be exempt from RSA 91-A. The City focused its analysis on the requirement that for this exemption, the deleted records must no longer be “readily accessible.” The Court determined that the records at issue were “readily accessible” because of the detailed trial court testimony of the City’s Department of Information Technology. Specifically, the IT director testified about the e-mail retention policy in place, and systems in place to permanently store employee email documents. He testified regarding the City’s back-up tapes (or back-up drives) and the time and procedure that would have to be undertaken to conduct a reasonable search. The trial court and the Supreme Court found the IT director’s testimony compelling and found that the data on the back-up drives is thus readily accessible.

Further, the Court held that it was not an error to order remedial training and contemporaneously request that supplemental memoranda be filed by the parties before an order addressing specific details of the training order issued.


Torts

Andrew Szyucz & a. v. Continental Paving, Inc., Case No. 2022-0101
August 16, 2023
Affirmed in part; reversed in part; and remanded.

• Whether the DOT is immune from liability under RSA 230:78-80.
• Whether the trial court erroneously struck the plaintiff’s causation expert reports.
• Whether there was sufficient non-speculative evidence for a reasonable jury to find a cause of flooding attributable to each defendant.

The plaintiffs were involved in a motor vehicle accident which was caused by a catastrophic failure of a DOT-issued paving project on Route 3. The plaintiffs filed suit against the DOT and its contractors, including the company hired to un- dertake the paving project. They claimed that the paving project was proximately caused by the DOT’s defendant. The DOT filed a motion to dismiss under RSA 230:78-80, which limits the liability of the DOT pertaining to public highways under specific circumstances. The trial court granted the DOT’s motion to dismiss, and the Supreme Court affirmed this ruling.

Both contractor defendants filed motions for summary judgment and argued that there was insufficient evidence for the plaintiff to prevail on a claim of negligence by failing to find an element of flood- ing attributable to each defendant. Additionally, the defendants filed a motion to strike the plaintiff’s causation expert’s report and argued that it was too speculative.

On appeal, the plaintiffs argued that the trial court erred when it concluded that the plaintiff’s expert testimony was insufficient to show negligence against the contractor defendants. The summary judgment record, the plaintiffs identified two experts to support their case. The trial court granted the DOT’s motion to dismiss, finding that the evidence was insufficient.

The Supreme Court concluded that the trial court erred when it concluded that the plaintiff’s evidence was insufficient to support his claims. The trial court determined that the expert reports were unreliable, because (1) the expert opinion was based on speculation without expert support; and (2) neither the testing nor scientific methodology was employed.

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ATTORNEY – Davis Steadman Percy & Stuka, LLC seeks an attorney to join its well-established firm located in the Upper Valley of Vermont and NH on an equity basis. Minimum of 5 years experience required. Preferred practice areas: Administrative License Suspension, estate planning, trusts, and mediation. Confidentially guaranteed. Reply: Infotip Whistler, info@dspstuka.com

WANT TO BE THE BEST LAWYER IN TOWN? Retaining solo lawyer in Wilton is looking to rent a furnished law office and self practice. The office has been used by lawyers for over 50 years and is included at a certain amount of established book traffic. The practice has been about 60% estate planning, a mix of other business and civil matters. (603) 654-6101.

REAL ESTATE ATTORNEY – Alfano Law, PLLC seeks a lawyer with 5+ years experience handling closings, purchase and sale agreements, leases, financings, and title matters. A well established firm is available for a lateral associate (related, associate, remote work). Health insurance, dental insurance and 401(k) available for full time employees. Please contact Deb Alfano at debalfano@alfanolaw.com or 603.715.2545 4 Park Street, Concord, NH 03301.

CIVIL LITIGATOR ATTORNEY – Alfano Law, PLLC seeks a full-time civil litigator with 5+ years’ trial experience. Familiarity with real estate a plus. Flexible arrangements (remote vs. in-office). Health insurance, dental and 401(k) available. Please contact Deb Alfano at debalfano@alfanolaw.com, 4 Park Street, Concord, NH 03301 or 603.715.2545.

FAMILY LAW ASSOCIATE ATTORNEY – Cohen & Winters is a growing law firm servicing central and southern New Hampshire, and the seacoast. We currently have offices in Concord, Manchester and Exeter. We are seeking an experienced family law attorney. The ideal candidate will have 2+ years of family law experience. We offer a competitive salary package and benefits (including health, dental insurance, retirement plan, insurance and retirement account match). We offer a very congenial work environment with lots of great colleagues and support staff. Salary will be commensurate with experience. Please send replies to: dorothy.darby@cohenwinters.com.

EXPERIENCED STAFF ATTORNEY – The Disability Rights Center – New Hampshire (DRC-NH) seeks an experienced attorney, full time or part time, to join DRC-NH in protecting and promoting the civil rights of people with disabilities. Attorneys with more than 3 years of civil law or criminal litigation experience are encouraged to apply. For a complete job description, visit: https://drcnh.org/go/jobs. Please send cover letter, resume, and a writing sample (not to exceed 30 pages) to hrdrc@nh.gov.

ATTORNEY – Monaghan Sarar PLLC has an immediate opening for a motivated, hard-working and creative attorney interested in a great work place. Monaghan Sarar is in search of an associate attorney with a strong research, writing and analytical background. As an associate, you will be asked to draft complex motions and legal memoranda. You will be exposed to depositions, motion hearings, and alternative dispute resolution. Monaghan Sarar is seeking someone who is either licensed in the State of Vermont or eligible to obtain licensure. The firm offers a competitive salary, 401(k) employer match, health, dental, and vision insurance, paid leave and a great working environment. Interested candidates should send a cover letter, resume, and two writing samples with a legal memo or brief.

STAFF ATTORNEY – New Hampshire Public Defender is seeking an experienced trial attorney. Applicants must have a commitment to indigent criminal defense and extensive experience in trial advocacy. We are located in Concord and the firm offers a competitive salary, 401(k) administration. The Office Manager is responsible for the overall management of the firm’s physical facilities.

PRACTICE FOR SALE

Profitable Seacoast NH Law Practice started in a prime location in quickly developing Rochester with over 100 Google reviews for sale or acquisition via gradual transition to a qualified and experienced attorney.

Are you an ambitious and talented attorney seeking to expand your legal footprint?

Look no further as we are a seasoned and dedicated team of an experienced attorney, paralegal, and support staff. Leverage our expertise, strategic partnerships, and knowledge to seamlessly transition to your new role and continue delivering exceptional legal services. The firm has a proven track record with a 29-year history of successful case resolutions as a respected law firm within the legal community.

Stay at the forefront of legal practice with the firm’s state of the art technology through a seamless transition into a turnkey operation. Fantastic SBA funding available.

Our law practice offers a solid foundation upon which you can build your own thriving practice in any one of many legal areas.

To express your interest or obtain further details about this opportunity, please contact us today at bobiski@metrocast.net. All inquiries held in strictest confidence.

“Seasoned” Lawyer

Alfano Law seeks an experienced New Hampshire litigator to mentor and manage the firm’s growing real estate litigation caseload. The role includes identifying causes of action, creating strategy, editing, making sure things get done, and mentorship.

If you are looking to transition from handling cases across many areas while sharing the strategic knowledge you have acquired, this position may interest you.

The position is new, so full or part-time roles are possible.

You may work remotely, following a brief acculturation period in our Concord, NH office.

Full benefits (health, dental, 401(k)) for full time employees.

Inquiries, please reach out to Paul Alfano at palfano@alfanolaw.com.
PROBATE, TRUSTS AND ESTATE PLANNING ATTORNEY

Morneau Law, a steadily growing Nashua firm, is seeking a probate, trusts, and estate planning attorney with 3-7 years’ experience to join our team. Someone who is dedicated to giving back to the community and a self-motivated team player would thrive in our position.

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

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

Litigation Attorney

Pastori | Krans, PLLC, a law firm in Concord, NH, is seeking a litigation attorney. The ideal candidate will have excellent oral and written communication skills, a strong work ethic, and enjoy working with a dynamic team in a fast-paced environment. The position requires NH bar admission and at least 2 years of experience.

Pastori | Krans is committed to investing in our team’s professional growth and development, and provides excellent mentorship, training, and opportunities to work on sophisticated and challenging legal matters. We offer competitive compensation, a comprehensive health benefits package, a generous 401(k) match, cutting-edge technology, and a collegial work environment.

Submit cover letter and resume to blandry@pastorikrans.com. All inquiries are held in strict confidence.

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Manchester, NH

Associate Attorney
Coverage Litigation
Manchester, NH

Associate Attorney
Real Estate
Trust & Estates
Manchester, NH

Paralegal (PT)
Insurance Defense
Manchester, NH

Brendan D. O’Brien
Attorney
Manchester, NH

Primmer is an award-winning law firm with offices in NH, VT and DC. Regularly recognized as a Best Place to Work, and a Top Law Firm, Primmer is a great place to build your career. Come join us.

PROSECUTOR: Attorney I, City of Manchester

Are you a talented and ambitious attorney seeking a rewarding opportunity? We are a well-established small law firm dedicated to providing exceptional legal services to our clients, and we are currently seeking a skilled attorney to join our dynamic team.

Our firm focuses on estate planning and elder law and we pride ourselves on delivering personalized and high-quality legal services. We strive to foster a collaborative and supportive environment, where every team member’s contribution is valued and recognized. We’re looking for an ambitious team player with a strong work ethic who will proactively focus on practice growth and high-quality work. The ideal candidate will have a license to practice in NH and/or MA, a minimum of 5 years of experience working in a law firm and/or 2-5 years of experience in relevant practice areas and have a demonstrated attention to detail and ability to manage multiple cases. Salary and benefits commensurate with experience.

Please submit your resume, a cover letter outlining your relevant experience and practice areas of interest, and any additional supporting documents to jholmes@curtinlawoffice.com. All applications will be treated with the utmost confidentiality.

ATTORNEY POSITION AT SMALL LAW FIRM

Are you a talented and ambitious attorney seeking a rewarding opportunity? We are a well-established small law firm dedicated to providing exceptional legal services to our clients, and we are currently seeking a skilled attorney to join our dynamic team.

Our firm focuses on estate planning and elder law and we pride ourselves on delivering personalized and high-quality legal services. We strive to foster a collaborative and supportive environment, where every team member’s contribution is valued and recognized. We’re looking for an ambitious team player with a strong work ethic who will proactively focus on practice growth and high-quality work. The ideal candidate will have a license to practice in NH and/or MA, a minimum of 5 years of experience working in a law firm and/or 2-5 years of experience in relevant practice areas and have a demonstrated attention to detail and ability to manage multiple cases. Salary and benefits commensurate with experience.

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Please submit your resume, a cover letter outlining your relevant experience and practice areas of interest, and any additional supporting documents to jholmes@curtinlawoffice.com. All applications will be treated with the utmost confidentiality.
The General Court’s Office of Legislative Services (OLS) is seeking a full-time attorney in its Legal and Drafting Division at the State House in Concord. Responsibilities include: drafting legislation and amendments for members of the House of Representatives and the Senate; ensuring that all legislative documents meet the technical and editorial standards of OLS; advising members of the legislature in resolving practical, technical, and legal issues in their drafting requests; compilation and review of statutory changes enacted in each legislative session for publication in the New Hampshire Revised statutes annotated (RSA); and assisting the OLS Administrative Rules Division in reviewing and presenting agency rules to the Joint Legislative Committee on Administrative Rules.

Candidates for the position must be a graduate of an accredited law school and admitted to practice in the state of New Hampshire. They should have experience drafting legislation and amendments for the House of Representatives and would be responsible for handling multiple tasks simultaneously.

Requirements:
- Graduation from an accredited law school
- Admission to the NH Bar
- 5+ years of experience

If you are as passionate about service as we are, then this opportunity may be the perfect fit for you! We offer a collegial team environment, professional development, and personal satisfaction in their pursuit of personal and professional achievement. We offer competitive salaries, benefits, and paid vacation.

Inquiries, please reach out to Deb Alfano at dalfano@alfanolaw.com or phone 603.715.2543

Benefits include:
- Health Insurance (full-time)
- Dental (full-time)
- 401K (full-time)

Join our professional team!

Join our professional team!

We are an equal opportunity employer.

Please send your resume and letter of interest to:

David J. Alukonis, Director of Legislative Services
David.alukonis@leg.state.nh.us
ENERGY, ENVIRONMENTAL, AND TELECOMMUNICATIONS ATTORNEY

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

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

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

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

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

Minimum Qualifications
J.D. from an accredited law school.

Desired Qualifications
Experience or advanced degrees in environmental, energy or telecommunication.

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

LABOR & EMPLOYMENT ASSOCIATE ATTORNEY

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

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

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

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

Hearings and Rules Administrator – Position #16738

The N.H. Department of Labor, Hearings Bureau seeks a full time Hearings Examiner. This position administers agency objectives through planning of organizational goals and developing program policies and procedures, and to administer the objective of the bureau of hearings by interpreting rules, policy, process and other information for the Bureau of Hearings for the Department of Labor.

Requirements:
Education: Juris Doctorate from recognized law school.
Experience: Five years’ experience as an attorney, two years of which must have been as an attorney involved with administrative law or concerned with regulatory authorities.
License/Certification: Valid driver’s license and/or access to transportation for statewide travel.
Special Qualifications: Must be an active member of the New Hampshire Bar Association and in Good Standing.

How to apply: Please go to the following website to submit your application electronically through NH 1st: http://das.nh.gov/jobsemployment.aspx. Please reference the job ID number that you are applying for: #30650 Hearings Examiner. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

For questions about these positions please contact Commissioner Kenneth Merrifield at Kenneth.d.merrifield@dol.nh.gov or 603-271-3699.

Hearings Officer – Position #18086

The N.H. Department of Labor, Hearings Bureau seeks a full time Hearings Officer. This position conducts adjudicatory hearings and renders decisions in accordance with state laws and regulations.

Requirements:
Education: Bachelor’s degree from a recognized college or university with a major in pre-law, economics, industrial relations, business administration or public administration. Each additional year of approved formal education may be substituted for one year of required work experience.
Experience: Five years’ experience in conducting hearings or administering laws related labor insurance or business practices, with demonstrated progression of increasing responsibility either in a public or private agency or in private industry.

How to apply: Please go to the following website to submit your application electronically through NH 1st: http://das.nh.gov/jobsemployment.aspx. Please reference the job ID number that you are applying for: #30819 Hearings Officer. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

For questions about these positions please contact Commissioner Kenneth Merrifield at Kenneth.d.merrifield@dol.nh.gov or 603-271-3699.

The Division for Children, Youth and Families is seeking Child Protection Attorneys Statewide (Keene, Nashua, Rochester, Concord, Manchester and Laconia (PTT))

The DCYF Legal Team is a dynamic group of experienced child protection attorneys and their legal assistants, stationed around the state, who seek judicial protection for children subjected to abuse or neglect. The focus of our work is on the immediate protection of the child and strengthening, whenever possible, families to eliminate abuse and neglect in the home. The DCYF Legal Team works in partnership with the New Hampshire Attorney General’s office. We offer paid training, competitive salaries up to $93,328.95, and a comprehensive benefits package. Benefits Summary (nh.gov)

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

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

How to APPLY: Please go directly to the following link to submit your application electronically through NH First: https://lmkp.nh.gov/lawtpdr/xmhit/shorturl.do?key=8AFT or visit Candidate Space (nh.gov) and enter Attorney in the Job Title field.

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

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

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

JOB DESCRIPTION:
- Under the general direction of the County Attorney, the Assistant County Attorney will draft complaints and pleadings.
- Researching pertinent case law, decisions, and legislations.
- Present investigations and cases to the Grand Jury; conduct Bench trials. Jury trials and all required hearings related to the assigned caseload in the Superior and/or District Courts.
- Must be able to handle multiple tasks, meet deadlines, be organized, have communication skills, and be able to negotiate. Must be an effective team member.
- Have a working knowledge of principles and rules of criminal law and the New Hampshire criminal justice system.
- Mandatory criminal record check is required for all new employees.
- Salary will commensurate with litigation experience

Benefits:
- Medical, Dental, Life Insurance, Holiday & Sick time, Longevity Pay, Short Term Disability, NH Retirement System, Mileage Reimbursement, County issued cellphone

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

Salary Range: $73,486.40 - $102,876.80, dependent on experience.

ACCESS ISSUES?
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- HISTORICAL RESEARCH
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- TRIALS

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(603) 226 -1188

The Office of the Attorney General is an Equal Employment Opportunity employer and does not discriminate on the basis of race, color, national origin, gender, age, sexual orientation, handicap condition, and/or disability.


HOURS WORKED:
Minimum of three(3) years relevant work experience.

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

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

EQUAL OPPORTUNITY EMPLOYER

Recruiting practices shall be consistent with all laws and regulations affecting the city, keep current with respect to all laws and regulations affecting the city. The position acts in place of Corporation Counsel in fulfillment of duties as the chief legal officer of the city. The position performs legal work of the city to outside persons and organizations. Counsel when advising city officials or representatives of the public. Representing the city in court and in settlement of claims. The position acts as the legal advisor to the City, and must be able to handle multiple tasks, meet deadlines, be organized, have communication skills, and be able to negotiate. Must be an effective team member.

Have a working knowledge of principles and rules of criminal law and the New Hampshire criminal justice system. Mandatory criminal record check is required for all new employees. Salary will commensurate with litigation experience.

Benefits:
- Medical, Dental, Life Insurance, Holiday & Sick time, Longevity Pay, Short Term Disability, NH Retirement System, Mileage Reimbursement, County issued cellphone

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

Salary Range: $73,486.40 - $102,876.80, dependent on experience.

Doreen Connor
dconnor@primmer.com

Assistant Corporation Counsel
City of Nashua

DEPARTMENT: Legal
HOURS WORKED: Monday - Friday (8:00am to 5:00pm)
AFFILIATION: Unaffiliated
SALARY & GRADE: Grade 18, Salary not to exceed $110,000

PRIMARY DUTIES
This position will assist the Corporation Counsel in fulfillment of duties as the chief legal officer of the city. The position acts as the legal advisor to the City, and must be able to handle multiple tasks, meet deadlines, be organized, have communication skills, and be able to negotiate. Must be an effective team member.

Have a working knowledge of principles and rules of criminal law and the New Hampshire criminal justice system. Mandatory criminal record check is required for all new employees. Salary will commensurate with litigation experience.

Benefits:
- Medical, Dental, Life Insurance, Holiday & Sick time, Longevity Pay, Short Term Disability, NH Retirement System, Mileage Reimbursement, County issued cellphone

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

Salary Range: $73,486.40 - $102,876.80, dependent on experience.

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