

NHBA Member Center to Open in January

By Tom Jarvis

The NHBA Member Center, located within the Bar Center at 2 Pillsbury Street in Concord, will open in January as a free service to all members, active or inactive.

The space is meant to provide members with an “office away from the office” while in Concord. It is approximately 2,100 square feet and consists of four private rooms, a huddle area, a workstation area with four carrels, a high-top workspace with six stools, a hospitality area, and a lounge area.

Many attorney destinations – the Capitol, the New Hampshire Supreme Court, the US District Court, the US Bankruptcy Court, state agencies, regulatory offices, and law firms – are conveniently nearby.

The existing conference rooms and meeting rooms at the Bar Center are still available for client meetings, conferences, trainings, arbitrations, and mediations – the difference is this space is for NHBA members only.

“The principal benefit of a members-only center is it gives lawyers a place



The Member Center lounge area is a comfortable and airy place for lawyers to relax. Photo by Tom Jarvis



The huddle area and the workstations are equipped with laptop tables and charging stations. Photo by Tom Jarvis

with plenty of parking and controlled access by a fob to come to between depositions or hearings, or when work must be done at a time of day when they are not at their office,” says NHBA Executive Director George Moore.

A good example of this, Moore explains, is if a lawyer has a court hearing in Concord in the morning and a deposi-

tion down the road in the afternoon. With the Member Center, they have a place to come to in between to either unwind, check emails, or make phone calls.

“It’s a much nicer environment than sitting in a sub shop or something,” Moore says. “Members can have some level of comfort to do some light work, relax, or network if there are other law-

yers in here at the same time. I know when I was in private practice, I would kill time by asking a friend in another firm in town if I could use their conference room to get a little work done between meetings. There was no dedicated area where I could just be left alone

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The Future is So Bright, I Need My Sunglasses

By George R. Moore

I recently informed the officers and the Board of Governors of the New Hampshire Bar Association that I will be stepping down in a couple months as the executive director. It seems like a good time to take a moment, step back, and reflect on what we have accomplished over the past several years.

Serving the NHBA has proved to be even more significant, challenging, and worthwhile than I anticipated. As my time comes to a close, I take heart that we are blessed with solid volunteer leadership and a dedicated, experienced, and innovative staff. Stronger now than ever, their exceptional service is the lifeblood of the organization and enables us to achieve our critical goals. Our remaining Management Team of Paula Lewis, Caitlin Dow, and Vince O’Brien [starting in January] will continue to move the NHBA forward. I would be remiss if I didn’t acknowledge my two excellent executive assistants, Debbie Hawkins



Photo by Tom Jarvis

and Cindy Roberts, who kept me pointed in the right direction innumerable times. Indeed, the future is bright!

I am proud of what we have accomplished. With the help of others, I was able to take the Bar’s Pro Bono Referral Service and merge it into the Legal Advice and Referral Center, creating a statewide call center and improving the delivery of legal services through 603 Legal Aid. Improving access to justice for all members

GEORGE *continued on page 29*

NHBA Prison Series: Recidivism and Rehabilitation

By Scott Merrill

The New Hampshire Department of Correction’s (DOC) mission statement says its purpose is to rehabilitate and supervise prisoners and to ensure public safety. Yet, according to a DOC study examining cohorts of prisoners who entered in 2017 and 2018, nearly half (47.85 percent) of those serving time in DOC facilities return within 36 months.

To combat recidivism, the DOC provides programs for its inmates aimed at addressing the underlying causes of the behavior that landed them in prison. But some inmates and attorneys say the trauma of prison itself is overlooked and that some programs would be more rehabilitative if offered earlier in an inmate’s time served.

Programs and Rehabilitation of Inmates

Preventing returns to prison means making sure people are ready to be released. According to the National Insti-



tute of Justice, rehabilitation involves programs designed to reduce recidivism by “improving their behaviors, skills, mental health, social functioning, and to

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Happy Holidays, Fellow Bar Members

And Happy December and Happy New Year to those of you who do not celebrate December holidays.

The period from Thanksgiving through the New Year is always a mix of (un)bearable stress, anxiety, and great happiness. And, not unlike the feelings I had upon the birth of my first child – absolute joy and absolute responsibility.

The way most of us practice law adds to the stress and anxiety, corporate deals that must be closed by year end, personal injury cases that need to get done to make budget, spouses or ex-spouses demanding visitation changes for the holidays, and of course, the inevitable dialing for dollars in many law firms to maximize year-end profit to get the annual bonus and a better compensation in the new year.

These furious pressures run up against the pressures of family at home and social lives outside of the home. Why can't we just schedule over the next eleven months the many parties we are invited to in December, please? The pressures of attending the kids' school shows, ballet recitals, and sporting events add further to the anxiety. And then, there's extended family. Well, let's leave that alone.

If you are like me, these pressures sometimes are just too much. In my case, I feel like I have way too many different

President's Perspective



By Paul W. Chant
Cooper Cargill Chant
North Conway, NH

things to take care of and I get flat-out overwhelmed. Too many clients, too much family. I become a walking stress machine. I know I am not alone in feeling this way.

So, usually positive Paul, why are you sending this downer message? I do it because I want you to be well physically and mentally through the season. This year, the Bar Association is putting significant resources into attorney wellness. It is a priority. I made it one. I soon found out that there are many others who want to help and many, many who require help.

The Lawyers Assistance Program and its wonderful leader Jill O'Neill are there to help, confidentially. If you find yourself overwhelmed, falling behind, or losing focus – give Jill a call. Or give me a call. Or

call a good friend. Don't take it on alone.

I chose attorney wellness as an issue because, despite how I preach it, I have not consistently lived it. In my first years as a lawyer, I badly lost the battle of physical fitness, putting on an immense amount of weight while struggling to become a good lawyer. That battle continues every year. Currently, I am not doing well.

I have always worked hard, in my firm, as a parent, for the Bar and others, and for my community. Sometimes, all of that has led to marital problems for which both my wife of 37 years and I have turned to counseling and received great support.

Year 26 was particularly tough. I was diagnosed at the time as suffering from major depression. There are times when I still feel high/low. There are times of stress when I drink too much. I take medication for my depression. My depression has affected my work at times and work has caused me depression at times. When necessary, I return to a mental health counselor.

This is not a confession. It is my personal statement to you that I understand the importance of good mental and physical health. I appreciate wellness. I worry that my own life choices may well lead me to a shortened life.

PERSPECTIVE continued on page 5

From the Editor

The holiday season is upon us – a time when a lot of people reflect on the passing year and look to the next. In the January issue, we will publish a list recognizing our 2023 *Bar News* contributors by name, but I wanted to take a moment here to personally thank all of you. Your time and contributions to this publication over this past year have been invaluable. I have received a deluge of emails and LinkedIn messages from members with positive feedback on the *Bar News* this year and that is in no small part due to your indispensable efforts.

This December marks the final month of our 150-year celebration as a state bar association. Throughout the year, the *Bar News* team combed through countless old *New Hampshire Bar News*, *New Hampshire Bar Weekly*, and *New Hampshire Bar Journal* issues to piece together a 150-year timeline (as well as a diversity timeline that appeared in our Diversity, Equity, and Inclusion Supplement in October). From



that research, we were also able to write and publish several retrospective articles on major milestones in the Granite State's legal community, such as the Daniel Webster Scholar Honors Program and the infamous Pamela Smart trial. We hope that you enjoyed looking back through our history as much as we did.

As we can always learn from – and sometimes be entertained by – our past,

don't hesitate to contact me with other ideas for lookback articles for future issues. Just because the sesquicentennial celebration is over, that doesn't mean we can't continue to publish pieces that look back on our rich and distinguished history.

Aside from that, a lot happened this year in our bar. To include it all would make this column too long (subtext: if I have left something out, please don't send hate mail), but some of the highlights include the first in-person Midyear Meeting in three years; New Hampshire's first National Judicial Outreach Week; the first annual standalone 50-Year Member Luncheon; the creation of the Young Adult Court; the establishment of two new NHBA committees on wellness and artificial intelligence, respectively; and the addition of four valuable new member services: Smokeball, Windhill Design, ALPS, and the NHBA Member Center.

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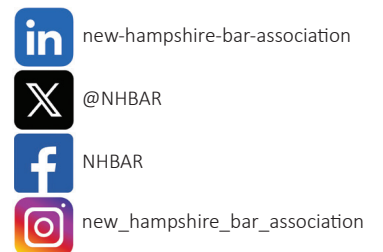
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'Tis the Season of Stress: Navigating the Holidays as an Attorney

By Grace Yurish

The holidays are an exciting time of year. A time to slow down, reflect on the months passed, and spend quality time with loved ones. They can also be very overwhelming, especially for attorneys. It's hard to find time to balance all the things that need to be done. Work deadlines, family commitments, parties, and holiday planning can cause a great deal of stress. And depending on your practice area, you may have urgent needs that must be met before the end of the year. However, it's important to meet your personal needs as well. There are things that you can do to effectively manage your responsibilities as an attorney and be able to better enjoy the holiday season.

Stay Organized

Managing cases, tracking details, and meeting strict deadlines are things attorneys deal with every day. The holidays certainly don't make it easier – adding more obligations that weren't there earlier in the year. One of the most important things you can do is stay organized. Keeping a detailed schedule with notes and reminders – both personal and professional – allows you to complete all your important tasks and embrace the season.

"As a general practice, I really try to keep on top of everything, so that if something urgent comes up, I will have the time to be able to devote to that," says Attorney Allison Ambrose of Wescott Law. "Making sure that everything is in a good place as I approach the holidays has been helpful. I keep a number of running lists to make sure I'm keeping on top of all those things."

With lots to be done, it's imperative to plan and start early. Procrastination will only worsen the stress of the holidays and waiting until the last minute can lead to lawyer burnout.

"Plan ahead," Attorney Jane Harding of Clark Law says. "You don't want to wait until the last minute with deadlines. You want to know what your schedule is when you return to the office after a break. You want to settle things well at the office so when you're home you can be devoted to your family and friends."

Attorney David Gottesman of Gottesman & Hollis shares, "Over the years, I've learned that if you plan ahead and schedule appropriately, you will be rewarded by having your quality time with your family."

Don't Go it Alone

Ask for help when you need it and learn to delegate tasks to colleagues or family members to wrap things up smoothly (hopefully with a bow!) before taking time off.

"I've really been focusing on collaborating with other attorneys in the office, delegating tasks out, and sharing the load for different things," Ambrose says. "Whether it be work related, on the administrative side, or the holiday planning side. That has been really helpful."

In a law firm, teamwork becomes even more critical during the holiday season, ensuring that essential tasks are covered despite tight deadlines and scheduled vacations.

"I think a good working relationship between attorneys is important," says Harding. "In my firm, we all assist each other. If I'm taking a week off for the holidays, but there's an *ex parte* hearing, my office is set up so that I can tap in another attorney."

For personal tasks, seek assistance from friends and family to handle holiday cards, shopping, or cooking, ensuring a more enjoyable festive season. Remember, the holidays are supposed to be fun!

Set Realistic Expectations

During the holiday season, it's crucial to set realistic expectations. Be reasonable about what you can get done for your clients and allocate time for festivities.

"There's no way of predicting what sort of end of the year you're going to have until you get close to the months of October and November and recognize what needs to be closed before the end of the year," Gottesman says. "The best advice I can give is to give your clients realistic expectations about what is humanly possible to accomplish within that time frame."

You should also set realistic expectations for yourself. Avoid excessive pressure from trying to make everything perfect for others. Take a step back if you must and do what you can.

"You have to recognize that not everything is going to be perfect," Harding says. "You're not going to get everything done. That's life. If you try to micro-manage to get everything done, the stress is just going to increase."

Setting clear boundaries between professional and personal time helps attorneys make the most of the holidays while ensuring that work stays at the office. Remind yourself that you can and will get work done after you've taken some time off.



"I've been trying to learn something every year about how to do a better job at balancing that," Ambrose says. "Setting boundaries and making sure that I'm leaving work at work is important. I try to remind myself that there is time built in for family and personal time, and how important that is."

Make Time for You

Amid the holiday chaos and busy work schedules, it's essential to make time for self-care. Taking moments each day to relax and engage in activities that bring joy contributes to well-being. Prioritizing self-care routines, whether it's a workout or a moment for personal indulgence, helps attorneys stay healthy and resilient during the demanding holiday period.

"I try to get enough sleep and to spend more time with my grandchildren, who make me smile," Gottesman says. "I carve out that time that I need to be with the family so that I don't feel the pressure of not

being there."

When you're feeling stressed, it's easy to let go of healthy habits. Be mindful of this and remember that your mental health and well-being are a priority. You cannot help others if you don't help yourself.

"Over the last several years, I've been working on trying to keep on my own self-care routine," says Ambrose. "Making sure I'm carving out time in my day to work out, or for instance, I could get a facial. I just try to care for my body, making sure I'm keeping my immunities up, staying as healthy as possible, because another big thing around this time of the year is illness – even just a cold – it can sort of unravel everything."

Time for oneself not only benefits personal well-being but can also spark creativity and fresh perspectives, ultimately benefiting your work.

"Part of being an attorney is that you never really put down a case while it's active," Harding says. "Having that separation from the office, you really can think things through, and things will come to you organically in a less stressful environment. The more relaxed you are, the better it is for your clients, your co-workers – everyone."

As you balance work responsibilities and family obligations, remember that there are ways to effectively manage your stress and enjoy "the most wonderful time of the year." By staying organized, asking for help, setting boundaries, and taking time for yourself, you can have a happy and healthy holiday season. ♦

New Hampshire Bar Association Executive Director Position

The New Hampshire Bar Association, an 8,500+ member organization located in Concord, NH, seeks an executive director.



Key responsibilities include:

- Responsibility for oversight and management of all operations, programs, and services of the Bar Association and its affiliate, the New Hampshire Bar Foundation
- Managing a multi-million-dollar budget
- Managing a 30+ member staff and operations

Qualifications:

- Juris Doctorate preferred, but not required
- Alternatively, minimum of master's degree in business administration, communications, public relations, public administration, or related field
- Minimum five years of work experience focused on organizational management, legal administration, non-profit management, business, or membership services
- Solid leadership and management experience
- Excellent interpersonal communications and collaborative skills
- Strong organizational abilities
- Financial and budgetary knowledge

Salary/Benefits:

- The compensation for this position is a salary in the range of \$125,000 to \$175,000, commensurate with experience, plus a competitive employee benefits package.

To apply, please submit a cover letter and resume by January 5, 2024 to NHBA@orr-reno.com

For the full job description, visit nhbar.org/executive-director/
Applications will be kept confidential

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NHBA Endorses ALPS for Small Firms and Solo Practitioners Seeking Malpractice Insurance

By George Moore

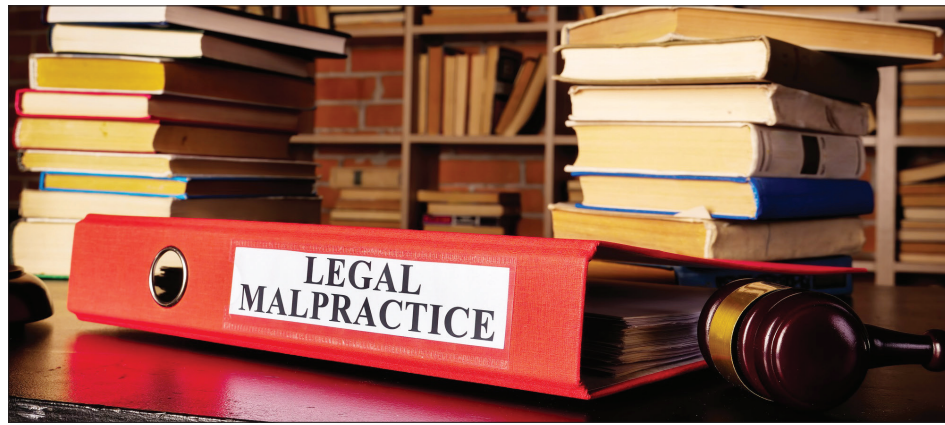
The New Hampshire Bar Association consistently strives to secure member benefit partners well-positioned to save law firms either time or money, ideally both, to make the practice of law easier.

I'm pleased to announce the NHBA has endorsed ALPS, effective December 1, as a carrier recommended to our members. ALPS joins Amity/Brown & Brown as one of two endorsed selections for lawyers seeking legal malpractice insurance. A specialty carrier, ALPS was originally created to meet the legal malpractice needs of small firms and solo practitioners, a community often overlooked and underappreciated by commercial carriers.

Originally created by state bars over 35 years ago under the notion of a "by lawyers, for lawyers" company, I've personally watched ALPS over the last two decades blossom into the nation's largest direct writer of lawyers' professional liability (LPL) insurance. Impressively, ALPS is also endorsed by more state bars than any other carrier nationwide.

ALPS is a strong match for New Hampshire law firms and lawyers. Being a state bar with a large population of solo and small firm practitioners, I've been impressed with their understanding of the needs of these practitioners. They have excellent policy coverage options, a commitment to a positive customer experience, and a deep understanding of lawyers and the legal profession.

In creating this partnership, I've worked closely with ALPS Chief Operating Officer Chris Newbold. He recently



commented to me, "We have great respect for New Hampshire lawyers. We know them to be excellent practitioners, respectful of one another, and collegial – all marks of a great jurisdiction to do business. Given our expertise in working with small firms and solo practitioners, as well as being the endorsed malpractice carrier in neighboring Vermont and Maine, New Hampshire is a natural ALPS fit."

I asked Mr. Newbold to succinctly lay out five reasons why New Hampshire lawyers would be wise to look strongly at ALPS when considering their options. Here were his thoughts:

- *Potential premium savings.* As a direct B2B insurance carrier, ALPS is uniquely positioned to pass along premium savings to customers. Without a third-party agent or broker intermediary, less cost exists within the transition, potentially translating to cost savings for New Hampshire law firms.
- *Purchasing malpractice insurance*

feels hard. Yet, ALPS makes it easy. Short application, fast turnaround times, painless renewal process, knowledgeable representatives. ALPS understands that time is money and lawyers are busy. We continually reimagine the customer experience to make the experience painless. We've been rewarded with industry-leading customer reviews. ALPS is rated 4.9 out of five stars on TrustPilot, an independent customer review service, the highest among LPL carriers.

- *ALPS' commitment to help you become a better attorney.* When it comes to law practice management assistance, ALPS was built to make lawyers better practitioners. We offer innovative and timely risk management content to mitigate future claim risk, offer thoughtful checklists, sample forms, and assessment tools. ALPS will actively share those resources with the NHBA as value-add, turnkey solutions for New Hampshire practitioners.

- *The specialization of ALPS.* ALPS is a niche, experienced LPL carrier, and has built a successful business model focused on small firms and solo practitioners and knows the New England market well with similar endorsements in neighboring Vermont and Maine.
- *The financial strength of ALPS.* ALPS is rated A (Excellent) by AM Best, the nation's leading rating agency for insurance carriers. Ultimately, a carrier's ability to meet its obligation to pay future claims is built on a strong balance sheet. As a law firm's risk transfer partner, ALPS is well-positioned to do so.

It is my belief that the endorsement of ALPS will be of great value to our members. ALPS provides an essential product critical to our mission as a unified bar to protect the public, while providing peace of mind so firms can squarely focus on the needs of their clients.

As with all member benefits, one size doesn't fit all, and Amity/Brown & Brown will continue to provide quality commercial insurance products to our members. When looking for insurance in 2024 members should look at all their options, including our newly endorsed relationship with ALPS.

To learn more about ALPS or Amity/Brown & Brown, or to apply for malpractice insurance, visit our *Vendor Directory* page at nhbar.org/vendor-directory or visit ALPS' dedicated landing page for New Hampshire lawyers at alpsinsurance.com/newhampshire. ♦

A MATCH MADE IN LEGAL

ALPS is the New Hampshire Bar's malpractice insurance provider, founded for lawyers by lawyers.

To learn more about how ALPS can support your NH law firm, visit alpsinsurance.com/newhampshire or scan the QR code below.



To the Members of the New Hampshire Bar Association:

We're writing to the Bar to let you know that our firms support an important project designed to ensure that students in New Hampshire schools learn basic skills in civics and civility as part of their education. Given the divisiveness in our country, which threatens the delicate fabric of our democracy, this project demands our utmost support.

The project aims to launch a nation-wide civility movement. It has been developed by a team associated with the National Center for Competency Based Learning (NCCBL) and its founder, Fred Bramante, former chair of the New Hampshire State Board of Education. It will be launched at an event to take place at the City Auditorium in Concord on January 11, 2024 – a National Presidential Youth Convention. Hundreds of New Hampshire students will attend. Both Governor Chris Sununu and Senator Jeanne Shaheen have endorsed this effort.

The long-term impacts of this project and event include a better understanding of how our country works, the importance of the role that New Hampshire plays in our presidential politics, and the strengthening of our students' civility skills. Our hope is that this will translate into a better state and country for us all.

The January 11 event will involve the New Hampshire Presidential Primary candidates discussing the importance of civics and civility. It will also involve some celebrities

helping to describe and promote the core features of civil interactions and dialogue. It will be streamed to many schools in New Hampshire and beyond. Most important, students will be front and center, engaged in panels, offering their own perspectives, asking questions, and participating in civility learning.

We are asking you to join us in supporting this project and event. Lawyers understand perhaps better than any segment of our society why being able to discuss and resolve the issues of the day in a civil manner is critical to preserving the fabric of our communities, whether in a political, professional, or personal setting.

Some of our firms have committed to making a financial contribution to this project at the firm level, while others have rallied individual law firm colleagues to do so. Regardless of the approach you take, we hope you will join us.

The NCCBL, a 501(c)(3) needs to raise \$100,000 for this project. The January event is timed to align with the New Hampshire Primary and is intended to be the kickoff for an ongoing educational program that NCCBL plans to take to other states around the country. You can also go to nccbl.org/civicsandcivility to learn more.

We hope you can join us.

Steven V. Camerino, CEO, McLane Middleton; Peter F. Burger, President, Orr & Reno; Adam C. Varley, President, Rath, Young & Pignatelli; David W. McGrath, President &

Managing Director, Sheehan, Phinney, Bass & Green; Robert L. Best, Member, Executive Committee, Sulloway & Hollis

To the Editor:

I am writing to offer a correction to the *Bar News* dated October 18, 2023. That issue had a DEI supplement with a timeline of significant milestones. Among the milestones was that in 2015 Emily Rice "becomes the first female US Attorney for the District of NH."

Attorney Rice is a good friend and an excellent lawyer who served laudably in the US Attorney role until the change in administration after the 2016 election. Although she was the first woman ever appointed to serve as US Attorney for the District of New Hampshire, she was not the first woman to serve in that position. My first wife, Gretchen Witt, served as Interim US Attorney in 2001. See en.wikipedia.org/wiki/United_States_District_Court_for_the_District_of_New_Hampshire#U.S._attorneys.

Gretchen was serving as US Attorney on 9/11. After that service, she returned to her usual role as the chief of the Civil Division in the US Attorney's Office.

Corey Belobrow

I suggest three things during the holiday season: First, carve out time most days each week for some form of exercise. Second, stop – yes stop – what you are doing at times and breathe. Just breathe. Take each breath in. Slowly let it out. Stop to focus. Stop to organize yourself and your time. Prioritize what needs to be done. Say no when you need to. Listen to your body. Finally, take real time off. As much as you can, remove yourself from email and all other work stresses when you are off. Make it real time off!

I was at an Attorney Wellness Committee meeting a couple of weeks ago and confessed to those in attendance that I was not living healthily that week. Too much going on. Too many depositions. Too many expert deadlines. Too much Bar stuff. Iron-ic, yes. Healthy, no.

I want you to be healthy. I want you to be well. I want you to handle these issues throughout your life and career better than I do. I hope my personal revelations here allow you to recognize a few things:

First, that you can live a wonderful, largely satisfying life personally and professionally and still have mental health and/or substance misuse issues. Second, help for those issues is often necessary and very often works. Third, help is available.

Finally, don't let personal or professional problems reach a crisis point before seeking help. It is okay to recognize that you have these issues and seek help.

I often find that for most people day-to-day life is often hard. Try to make yours manageable.

Here's to a new year of good health and wellness. Be well all. ♦

EDITOR *from page 2*

Additionally, the New Hampshire Bar Foundation awarded \$1.3 million in IOLTA grants, up 68 percent from the previous year; Talesha Saint-Marc became the first Black federal judge in the state; Paul Chant became the NHBA's 124th president; Governor Chris Sununu passed SB 216, enacting a new civics education law requiring schools to teach civics programs like the We the People program; and ChatGPT passed the bar exam, catapulting artificial intelligence into the spotlight of the legal community.

Some other milestones this year included the New Hampshire Women's Bar Association's 25th anniversary and the University of New Hampshire Franklin Pierce School of Law's 50th anniversary.

On a bittersweet note, this year also saw some major retirement announcements, including (but not limited to – again, please no hate mail) DOVE Coordinator Pamela Dodge, Superior Court Chief Justice Tina

Nadeau, and Supreme Court Justice Gary Hicks.

And then came the hardest news for us staff: NHBA Executive Director George Moore is stepping down early next year.

He has been a strong and supportive leader, an inestimable resource, and a phenomenal liaison between staff, members, and the courts. We will certainly miss his undeniable presence here at the Bar Center, but we are also happy for him. I plan to write a comprehensive profile on George and his esteemed legal career for the January issue.

Last, but – in my humble opinion – not least, perhaps one of the most heartwarming and significant things to happen this year is yours truly becoming editor of the *Bar News*. Okay, so maybe heartwarming and significant is a stretch for anyone else but me, but after reading the next paragraph, you'll have to admit it makes for a wonderful segue.

My ongoing mission to add some levity to the *Bar News* has been a great suc-

cess this year. In addition to the recurring and popular Fictional Lawyers column and the acquisition of Arnie Glick's Jest is for All cartoons, I am happy to announce that the *Bar News* will now have legal-themed crossword puzzles!

The puzzles won't be in every issue – right now we are looking at including one every six months – but the first one appears on page 15 of this issue. These puzzles are created by Attorney James Mulhern, and we thank him profusely for providing them to us.

To wrap up this admittedly lengthy editorial, I want to thank all our members for their continued support of this publication, and to shamelessly solicit feedback and letters to the editor. Let me know what you think of the *Bar News* and send me any suggestions you may have.

I wish you all the happiest of holiday seasons – may your holidays be holiYAYS – and a joyful, healthy, and prosperous New Year. I hope to see you at the Midyear Meeting on February 9. ♦

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Governor Sununu Nominates Judge Melissa Countway to New Hampshire Supreme Court

By Tom Jarvis

On November 8, Governor Chris Sununu nominated Circuit Court Judge Melissa Countway to serve on the New Hampshire Supreme Court. If confirmed, Countway will succeed Justice Gary Hicks, who retired on November 30 due to constitutionally required age limitations, and Governor Sununu will have appointed four of the five justices on the current Supreme Court.

“Judge Countway is a dedicated professional who has served the people of New Hampshire in a variety of roles throughout our justice system for decades,” Governor Sununu said. “Her knowledge and experience on the Circuit Court will be particularly invaluable to her work on the bench to strengthen New Hampshire’s judicial branch and represent Granite Staters fairly.”

Judge Countway has presided over family, probate, and district court cases at the Third Circuit Court since 2017. She also presides over mental health courts in Portsmouth and Plymouth.

She worked on her undergraduate studies at the University of New Hampshire, where she received a bachelor’s degree in mathematics in 1993 and a master’s degree in education in 1994.

In 2002, she earned her JD from the University of North Carolina at Chapel Hill School of Law and began clerking for New Hampshire Supreme Court Chief Justice David Brock.

After almost 10 years in private practice – and accepting many cases through the NHBA Pro Bono Referral Program –



she joined the Alton Police Department as a prosecutor and then served as the Belknap County Attorney until she became a judge in 2017. As a county attorney, she prosecuted numerous felony cases and was reelected three times.

“I am incredibly honored by Governor Sununu’s nomination to the Supreme Court,” Judge Countway said. “As a Circuit Court judge for the last six years, I understand the complexities of the many different case types that come before the court and how the law intersects with New Hampshire citizens’ lives. As Belknap County Attorney I had an active felony trial practice for over six years, and I have also been a small business owner with a focus on real estate law. I understand how

important the judiciary is to the citizens of New Hampshire, and I promise to uphold the State and Federal constitutions and interpret our laws fairly and impartially.”

Judge Countway is a member of the Judicial Branch Diversity & Inclusion Steering Committee, the New Hampshire Police Standards and Training Council, and a board member of both the Alton Housing for the Elderly and the Lakes Region Conservation Trust. She was a Drug Court team member from 2012 to 2017, a member of the New Hampshire Attorney Discipline Office’s Professional Conduct Committee and Hearing Panel from 2004 to 2014, a board member of the New Hampshire Charitable Foundation Lakes Region from 2009 to 2011, and a member

of the Charles C. Doe Inns of Court from 2004 to 2011 and 2021 to 2022. She was also a founding member of both the Alton Business Association and the Alton Centennial Rotary Club.

In 2014, she received the Friend of Recovery Award from Horizons Counseling Center – an award given to someone who stands out as a strong supporter of recovery in the community – for her efforts and accomplishments in the development of the Belknap County Drug Court.

“The thing that is remarkable about her is her ethics and her compassion,” Horizons Counseling Center Executive Director Jacqui Abikoff says. “She hit the ground running with the Recovery Court program and we really saw such evidence of her commitment to ethical practice.”

Abikoff spoke in support of Judge Countway at the Executive Council’s public hearing on the nomination on November 29.

“She will do a wonderful job as a Supreme Court justice because of her flexibility, integrity, and ethical foundation,” Abikoff says. “She will bring a perspective that is going to be an asset to the Supreme Court.”

Before the hearing, Executive Council member Cinde Warmington said, “This nomination impacts every single Granite Stater – today and for decades to come. It is important we take a thorough look at this nominee, as she will be in a position to directly influence both the breadth and endurance of our freedom for generations.”

A confirmation vote will take place in mid-December. ♦



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On the Retirement of Justice Gary Ellis Hicks

By Judge Joseph N. Laplante

To the more senior members of the New Hampshire Bench and Bar, the life journey of Justice Gary Ellis Hicks – from Coos County roots, through law practice in New Hampshire’s business and commercial center in Manchester, and finally to public service as a jurist in the state capitol – is the stuff of Granite State legend.

The Abridged Version

Here is the short version in sentence fragments – just the facts, but legendary nonetheless: A true product of the North Country. Born in West Stewartstown and raised in Colebrook. Colebrook Academy class of 1971, with a summer-of-’70 educational excursion “down below” with the flatlanders in Concord at the St. Paul’s School Advanced Studies Program (ASP). Met his future bride that summer, ASP classmate Patty Garrell, from the one New Hampshire high school that could not have been more different from Colebrook Academy – Manchester’s Central High. After lettering in soccer, basketball, and baseball, and graduating as class salutatorian, off to Bucknell University in Pennsylvania (Class of ’75) for a bachelor’s degree in mathematics.

Then, a preview of his intellectual gifts and leadership skills as the managing editor of the Law Review at Boston University Law School (Class of ’78). Law school admission and success gave Patty confidence that young Gary was marriage material; so, during his 1L year, the couple tied the knot in Manchester and settled there. Hired as an associate by Wiggin & Nourie, then the state’s oldest law firm,



Justice Hicks speaking at the 50-Year Member Luncheon in June 2023. Photo by Rob Zielinski

which grew to over 50 lawyers during his partnership there. Attorney Hicks focused on commercial, toxic tort, and product liability litigation, and his professional reputation and family both grew with the welcome additions of children Rebecca and James, both eventual graduates of Manchester Central, where Patty taught English.

In the 2000s, successive appointments by Governors Jeanne Shaheen and John Lynch to the Superior Court and Supreme Court, respectively. Four grandchildren arrive. Currently the longest serving jurist on our High Court, with a constitutionally mandated retirement in November 2023.

Author’s Bias

I met Justice Hicks in 1990, when, as the hiring partner at Wiggin & Nourie, he offered me the associate position that I accepted on the spot. One of his partners, future Superior Court Judge Richard McNamara, explained to me that “Concord is the political center of our state, and its commercial center is Manchester.” Over his long career in New Hampshire and American law, Gary Ellis Hicks mastered the legal field in both locations – New Hampshire’s dual economic and governmental centers of gravity.

Lawyer

As a practicing litigator, young Hicks

focused on commercial litigation, developing relationships with national profile clients such as GAF Corp., business insurance companies like Chicago Title, conventional carriers like Safety Insurance, and regional construction contractors like Maine Drilling and Blasting. Gary Hicks knew his way around a courtroom. Prominent trial lawyer Philip Waystack (who started his plaintiff’s practice in Colebrook while the future justice was away in law school) recalls trying a jury case in the federal court against defense counsel Hicks before US Magistrate Judge James Muirhead.

“The federal court had a brand-new high-tech evidence presentation system, which worked by bar codes affixed to exhibits,” Waystack says. “I was proud that I had worked hard to figure out how to use it smoothly and was sure I had outmaneuvered Gary by shooting a videotape of the crosswalk where my pedestrian client had been struck by his motorist defendant. This was before video evidence was common, and I was sure my innovative evidence presentation would dazzle the jury, resulting in a large verdict for my client.”

Waystack continues: “That was until Gary stood up for his closing argument, and I realized I was the one who had been outmaneuvered. Gary stood in front of the jury and said, ‘Just imagine, ladies and gentlemen, how different things would have been for everyone here if Mr. Waystack’s client had only done what Mr. Waystack did when he shot that video – if she had carefully looked both ways before stepping out into the street. If she had only

HICKS continued on page 23

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We the People District Hearings Held at the LOB for the First Time in Four Years

By Tom Jarvis and Grace Yurish

On Friday, December 8, the “We the People: The Citizen and the Constitution” (WTP) civics program hosted the initial round of its mock congressional hearings at the Legislative Office Building in Concord for the first time since before the pandemic in 2019.

During the hearings, students from Milford and Hollis-Brookline high schools analyzed and defended positions on six units of constitutional law principles before a panel of volunteer judges comprised of attorneys, judges, and other members of the civics community.

Following the arguments, the volunteer judges posed follow-up questions, allowing students to further demonstrate their knowledge and think on their feet. The judges then gave feedback to the students and scored the teams on various criteria including understanding, constitutional application, reasoning, supporting evidence, responsiveness, and participation.

In an almost clean sweep, Hollis-Brookline High School won five of the six Unit Awards. Lauren Keith, a senior and teaching assistant at Hollis-Brookline, says she is immensely proud of her classmates and all the work they put in.

“The We the People program has been very impactful,” she says. “We’ve learned a lot about the democratic process and our place in this great democracy. It’s much more in depth [than other civics classes], because it has this competitive aspect that kind of motivates people to step up and put in their best work. Plus, the organization of the units, having to write a paper, and the



Hollis-Brookline High School students and their teacher, Trevor Duval, posing with the five of the six We the People Unit Awards they received. Photo by Tom Jarvis

presentational piece works on things we don’t do in our everyday life. We’re learning all these skills that we can actually apply in our everyday life.”

Brought to schools by the NHBA’s Law Related Education (LRE) program, WTP teaches students about the United States government and the Constitution. The curriculum culminates in mock congressional hearings that serve as a showcase of what students have learned from the course.

The program has been taught in New Hampshire schools for 37 years and easily fulfills the requirements of the recently passed Senate Bill 216 – the “More Time on Civics” bill – which will require civics education for elementary and middle schools, as well as civic competency test-

ing for high school students.

“When you look at the components of the program, it aligns very well [with the requirements of SB 216],” says Attorney Ed Philpot – a We the People volunteer judge for more than 20 years. “We have been referring to it as the ‘Easy Button.’ It’s a great answer to the problem that a lot of people have been seeing like all these surveys and statistics about people who can’t name the branches of government. I think this program really touches on that need.”

Attorney Jennifer Eber, chair of the LRE Committee and a We the People volunteer judge, emphasizes the importance of civics education.

“It’s underscored by Senate Bill 216, which made it obvious that we in New Hampshire need to do a better job at teaching our students about civics education,” she says. “This program and these hearings really teach the students about government,

the Constitution, and the Bill of Rights and apply it to not only historical perspectives but to present-day situations.”

LRE Committee Vice Chair Randy Gordon, who also volunteers as a judge at the mock hearings, says the program truly helps students to gain a broader understanding of their roles as citizens.

“If kids and future citizens don’t understand how our government works and what their role as citizens is in the government, then the structure and the framework that we have just doesn’t work,” he says. “Then they also feel powerless in making change. If they see something they don’t agree with or like, by teaching them civics, we teach them exactly how they can go about making that change. This program opens their eyes to what the possibilities are.”

Since 2003, John Stark Regional High School teacher Dan Marcus – who recently received the 2023 Mary Susan Leahy Civics Educator Award – has been teaching the program to his students. This year, he volunteered as a judge for the mock congressional hearings.

“We the People is the most important class students will take in high school – especially right now,” he says. “Kids that take We the People are much more likely to vote, to be engaged, and to understand what’s going on politically and be a part of it. From my personal experience, and from hearing kids who go off to college who tell me that they ace their Intro to Government class, they really get to a very high level. So, they’re going to understand this stuff in a deep way.”

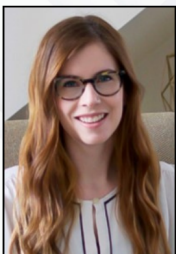
Marcus continues: “We’re not having a great conversation as a country. So, if you have people that are sophisticated enough

WTP *continued on page 29*

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Hollis-Brookline students presenting their argument to the volunteer We the People judges as their teacher, Trevor Duval, takes notes in the background. Photo by Tom Jarvis



Milford High School students (left) receiving a Unit Award from LRE Committee Chair Jennifer Eber and Vice Chair Randy Gordon (right). Photo by Tom Jarvis

NHBA LRE Programs Meet Requirements of SB 216

By Jennifer Eber

August 4, 2023, saw Governor Chris Sununu signing Senate Bill 216, requiring New Hampshire schools to meet requirements for civics education in elementary, middle, and high school grades, thereby reaching all students. As we start the new scholastic year 2024, these civics requirements offer our students an inspiring opportunity to enrich their knowledge.

The New Hampshire Bar Association (NHBA) has provided programming, with time-tested curriculum, that will easily allow educators at all levels to teach civics as required by SB 216. There is no need to reinvent the wheel.

The NHBA, through its Law Related Education (LRE) programs, has partnered for decades with the Center for Civic Education (CCE), a nonpartisan national organization, to offer New Hampshire students the “We the People: The Citizen and the Constitution” and “We the People: Project Citizen” programs. Our schools can and should build on that legacy.

We the People includes a curriculum that has been taught in all 50 states, the District of Columbia, and the territories, since 1987. It offers rigorous applied lesson plans on the US Constitution, the Bill of Rights, and the history and principles of our democratic republic.

Project Citizen, active citizenry at its best, provides a practical first-hand approach to learning about our complex system of government and how to monitor and influence it through public policy issues in their school, community, or nationally. Students use governmental processes to tackle challenges such as recycling, eradicating



High school students engaging in a mock congressional hearing with volunteer judges on December 8 at the Legislative Office Building as part of the We the People program. Volunteer judges facing from left to right: Attorney Nikolas Frye, US Magistrate Judge Talesha Saint-Marc, and Attorney Jessica Kallipolites. Photo by Tom Jarvis

Styrofoam from school cafeterias, or adding a stop sign where needed. The partnership also provides high-quality professional development to participating teachers.

SB 216 requires the civics curriculum to be in place by July 2024. The We the People and Project Citizen programs are already developed and taught, with none of the expense that would be incurred creating a new curriculum. Using it would free up resources to disseminate existing materials to more students and teachers.

New Hampshire schools can leverage the partnership between the NHBA and the CCE to expand efforts that have already brought civics texts, teachings, and exciting and enlightening events to thousands of students.

Among the compelling events that are central to the We the People program, the NHBA conducts annual mock congress-

sional hearings for high school students in December and January, followed by national finals that the CCE hosts each April in Washington, DC. Milford High School represented the Granite State in the national finals in 2023.

The NHBA has a long history of providing and supporting civics education. A solid understanding of constitutional principles ensures students understand how our democracy functions and equips them to better realize our precious democratic ideals. And it all happens through programs that not only meet the civics requirements of SB 216 but are also just plain fun.

But don't take our word for it; just listen to the participants.

Dan Marcus, a teacher at John Stark Regional High School, has been teaching We the People since 2003.

“If you really want your students to

have enduring knowledge, enduring understanding, and enduring skills, We the People is superior,” he says. “I teach a standard civics class and a We the People class. I know from experience those students who take the We the People class, they own all that – the skills, the content – they own it in a way that students who leave my standard civics class don't.”

Attorney Shawn Tanguay, a We the People alum and volunteer, concurs.

“It's great to see so many young individuals having passion for civics, the Constitution, and the government,” he says. “It's fantastic to see that type of interest and dedication.”

Melissa, a We the People student, also praises the program.

“In We the People, I learned more about government than I ever could have in a typical class,” she says. “The excitement of preparing with my classmates encouraged a genuine interest in the founding of our country and current government that has motivated me to stay engaged in current events even after the program.”

The NHBA also offers other civics resources to schools, including the educational book, *Beyond High School: A Guide to Your Rights and Responsibilities*, available to students of every senior class in the state. The NHBA also enlists lawyers and judges to volunteer their time to provide classrooms with visits to include civics lessons.

We owe the next generation nothing less than a solid foundation in civics.

For more information, contact NHBA Law Related Education Coordinator Robin E. Knippers at reknippers@nhbar.org or (603) 715-3259. ♦

#1 in Verdicts and Settlements



IN THE FIRST FIVE MONTHS OF 2023, Lubin & Meyer obtained five consecutive multimillion dollar verdicts totaling more than \$75M. At the same time the firm secured more medical malpractice and personal injury settlements at or above \$1M than any other firm in the region. Among these results is a record-setting \$15M settlement against Boston Children's Hospital that has garnered nationwide attention.

“Year after year, we remain the go-to law firm for medical malpractice and personal injury cases due to our continued success securing record-setting results that compensate victims, protect the public and inspire change.”

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\$28.8M Verdict

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

\$28.8M Verdict

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

\$15M Settlement

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

\$10M Verdict

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

\$4.95M Verdict

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

\$4.65M Verdict

Bunker vs. Dhillon, M.D., et al
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Coming and Going

Sheehan Phinney is proud to welcome Andrew J. Newcombe to the firm, where he will work primarily out of the Manchester office. As a member of the firm's Corporate Group, Newcombe assists with entity formations, contract and employment matters, and a range of other general corporate matters,



including data privacy and security.

Before joining the firm, Newcombe served as a Legal Intern for the United States Attorney's Office for the District of New Hampshire. He's currently an Individual Ready Reserve Officer for the US Army, formerly serving as an active-duty infantry officer from 2014 to 2017.

While at Duke University School of Law, he served as co-director for the Duke Law Veterans Assistance Project, as well as a student attorney for the Community Enterprise Clinic and the Wrongful Convictions Clinic. ♦

LawLine

The New Hampshire Bar Association would like to thank Cooper Cargill Chant for a very successful LawLine event held on November 8, 2023.

Sixty-five calls were taken from counties all over the state on a variety of legal topics including family matters, landlord/tenant disputes, mental health law, probate law, and civil disputes. The NHBA is immensely grateful to all our volunteers for their continued support, patience, 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 to 8:00 pm. The Bar staff forwards the phone calls from the public, so you remain anonymous.

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

Welcome New Admittees

We extend a warm welcome to the attorneys who were recently admitted to the New Hampshire Bar. Congratulations! We wish you the best with your practice and look forward to meeting you at future NHBA events.

November 2, 2023

Meaghan Elizabeth Allard, Casey Danielle Baird, Tyler John Baylis, Oliver David Bloom, Brian Donald Boydston, Meredith Rose Byerly, Clelia Casciola, Seth Martin Corwin, Taylor Candace Davis, Sarah Colleen Deitelhoff, Joshua S. DeYoung, June Francis Dietrich, Joseph Michael Dolciotto, Sarah Elizabeth Fontaine, Michael Evans Gallagher, Diana Kelli Goss, Elizabeth McBride Gumpert, Daniel Raymond Hagan, Shaune Lynn Hickson, Morgan Virginia Hughes, Alexie Marie Johnson, Bernard Alan LaBombard, Matthew Carl Macauley, Haydn Christopher Melton, Ali Zito Meronek, Katherine LeeAnn Miller, Christopher Xavier Morris, Morgan Bernice Muenster, Andrew Joseph Newcombe, Min Ji Nham, Shannon Leigh Nicholson, Abigail Colleen Paul, Zofia Abigail Peach, James Donald Pentuic, Samantha Lauren Perri, Emily Gauksstern Phaneuf, Danielle Nichole Pierson, Claire Elizabeth Remillard, Rebecca Leigh Robison, Luciana Marie Roble, Alexander Steven Ropes, Ali Michelle Rosenblatt,

Alyssa Caroline Scott, Paul Levin Spencer, William Spinola, Joseph David Tremblay, Lindsey Dawn Roseman Valente, Emily Madison Van Auken, Eli Simino Wendell, Steven John Yannacone, Merredith Avery Young, Zachary Tyler Zimish

November 15, 2023

Seth Robert Aframe, Ryan Thomas Allen, Cassidy Elizabeth Almon, Eric Ian Asquith, Kimberly Ann Bacher, Erica Lynn Brody, Graeme Scott Ridgeway Brown, Jason Miles Button, Brandon Lee Campbell, Mansour Michael Chaya, Rachel Nichole Costello, Marc J. Cusano, Milica Gligic Degges, John Michael Donnelly, Elizabeth Ann Doyle, James Cushing Fisher, Anthony William Gray, Christopher Alan Harmon, Michael Ray Harris, Adam James Harrison, Andrew Michael Kroeckel, Ellen Lemire, Phillipa Gage Lilienthal, Mark William Lockwood, Mark Lee Lofgren, Michael Thomas Marshall, Henry C. Metz, Nicole Marie Mundie, Anna Grace Nilles, Margaret Anne O'Connor, Cori Elizabeth Price, Anna Shadae Rodriguez, Michael David Roundy, Eric Thomas Salines, Joshua Doyle Sandler, Eric Timothy Shovein, Carlson Gray Swafford, Helen Elizabeth Witt, Yile Xu

December 5, 2023

Stephanie M. Chesney, Eli S. Wendell

Chief Justice Gordon MacDonald to Chair Task Force on Legal Education and Admissions

On November 27, 2023, National judicial leaders from the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) announced the formation of an 18-month study committee that will examine the state of legal education and bar admission processes in the United States, along with the decline in attorneys dedicating their careers to public interest and public sector practice.

The Committee on Legal Education and Admissions Reform (CLEAR) will make recommendations to state supreme courts for practical reforms that will enhance legal education and diversify bar admission processes where appropriate.

The 12-member CLEAR committee includes nine state supreme court chief justices and three state court administrators. The committee will be chaired by Chief Justice Gordon J. MacDonald of New Hampshire. Chief Justice C. Shannon Bacon of New Mexico will serve as vice chair. A full roster of members is below.

"The American justice system stands at a critical juncture," said Chief Justice Gordon MacDonald. "Our profession is falling short in meeting the public's needs. There are vast legal 'deserts' where too many litigants are forced to confront an unfamiliar legal system without a lawyer. Legal service organizations dedicated to the public interest are unable to recruit and retain qualified attorneys. And many new lawyers are not 'practice ready' upon admission to the bar. These issues contribute to a growing access-to-justice gap and undermine public confidence in our legal system. They must be addressed immediately."

CLEAR will review the current

state of legal education from admissions to law school to admission to the bar, and will focus on three discrete areas:

- First, whether law schools are preparing students to be "practice-ready" upon graduation.
- Second, identifying what is necessary to assess minimum competence to practice law, and identifying alternate approaches to meet such competence.
- Third, factors behind the decline of public-service lawyering.

CLEAR will work collaboratively, in consultation with critical stakeholders from legal education, bar admissions, courts, and the practicing bar from across the country. CLEAR will also look to other professions for best practices in training and licensing. The National Center for State Courts (NCSC), AccessLex Institute, and Thomson Reuters Institute are providing financial and logistical support to CLEAR. A final report is anticipated by June 2025.

The 12 members of the CLEAR committee are: Chief Justice Gordon J. MacDonald, New Hampshire, Chair; Chief Justice C. Shannon Bacon, New Mexico, Vice Chair; Elisa Butler, State Court Administrator, Wyoming; David K. Byers, State Court Administrator, Arizona; Chief Justice Matthew B. Durrant, Utah; Chief Justice Megan Flynn, Oregon; Robert W. Horner, State Court Administrator, Ohio; Chief Justice Steven R. Jensen, South Dakota; Chief Justice Tom Parker, Alabama; Chief Justice Loretta H. Rush, Indiana; Chief Justice Collins J. Seitz, Delaware; and Chief Justice Valerie Stanfill, Maine. ♦

Jest Is For All

by Arnie Glick



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This Holiday Season: Give Yourself the Gift of a Reset

By Penelope Perri

Will you be taking some time off during the holiday season? In the midst of whatever you have planned, setting intentions about what you need physically, mentally, and emotionally is perhaps more important than ever. Consider



how your time off can actually be a reset, how it can be medicine for you.

Have you ever felt, returning to work after a vacation, that you're just as exhausted as when you left? Have you ever felt unavailable to the pleasures of leisure or travel because you're just so very tired? When we're in burnout or on the edges of it, we can end up sleepwalking through life, not just at work, but on our own time, too. We squeeze too much into our vacation time because the accelerated pace has become our new normal.

Burnout can feel like the world presents itself in the form of an endless to-do list. We begin to see people, even the ones we love the most, only in terms of what they need from us: a mundane, repetitive march of "shoulds" and "supposed-to's."

Those of us who are Type-A, high-achiever types, may find that our sense of duty and drive has overridden all other aspects of our being. All the things we've wished for and sought out: a career, home,

even family – coalesce into an endless labyrinth of over functioning. We meet everything in life in terms of what is required of us. Our days became a parade of tasks, which only a checking-off would bring some whisper of satisfaction before we're inevitably onto the next task. We may find ourselves stuck on a "rinse, repeat" cycle on this treadmill, whether at work, home on the weekend, or away on vacation.

Here are some tools to help ensure that you liberate yourself from your treadmill and get what you need from your vacation, long weekend, or any respite.

First, allow yourself to step out of relentless productivity. Plan and block this non-productive time as you would any other commitment. It will take intention and deliberate permission for you to shift into another gear. Purposely set aside time to ask yourself, "what do I need?" If this question stumps you, you're not alone. Many of us are so programmed to take care of others and manage everything around us, this question is a radical one. The answer might not be readily available – that's okay. That's not a signal to jump back into taking-care-of-all-the-people-and-all-the-things mode. Let the question linger in your mind, without an answer, and see what arrives. As you ponder this, consider your emotional needs as well.

This time of year can trigger so many memories and emotions. We may feel losses more acutely, even those we grieved long ago; meanwhile the culture bombards us with imagery of celebration, cheer, and high spirits. Allow yourself to feel and process both positive and negative emotions, with

self-compassion instead of judgment.

You are a living being who gives – and needs – energy. What energizes and replenishes you? Pause there for a moment and ask again. At this time of year, what do you need?

Do you need a break from the relentless pace of your daily life? When you read those words, is there a "yes" resonating through your body? If so, think about where you can alter the pace of some part of your weekend or vacation. Where can you let things slow down, let time open up, and do something slowly? Is there a container of time where you can meander, dabble, putter – with no agenda? If those words are music to your ears, that's a signal to you – create an intentional space of time where the pace is slower.

What brings you joy? Often, it's the simplest things, right there within our reach. If we're too much in our heads, we aren't present to the pleasures around us, and the positive emotions available in savoring them. Many of us have become so addicted to multitasking, we're not fully present anywhere. We can't relax when we do have down time, so we go into autopilot, buffering and distracting ourselves with false pleasures: mindless eating and drinking, shopping, scrolling. These activities masquerade as rest, providing a temporary escape from how we're feeling. They don't replenish us in the long run.

The portals to presence – the portals through which you receive energy – are your five senses. Deploy them intentionally, and they will take you out of your head and into your body. For example, if you're making coffee on your day off, don't just get it done. Dial down the pace and deploy your senses.

Step away from To-Do mode and experience the miracle that is coffee.

Listen to the reassuring hum of water boiling, and that satisfying gurgle of liquid rushing into the mug. Your cup is being filled, literally and figurately. Receive it. Inhale the wonderful smell, connect with it. Wrap both hands around the cup and feel its warmth, warming you. Notice the delicate curl of steam rising; follow it with your eyes. And of course: really taste that first sip.

You can apply this same conscious attention to any activity that you enjoy but usually must rush through on a typical day. Wherever you can, slow down the pace and allow yourself to connect to what's around you. The more you can tune into your senses, the more you signal to your nervous system that you're stepping off the treadmill, that this is a time to refuel.

Turning your attention toward your needs isn't self-indulgent – it's strategic. Consciously attending to your own energy is what allows you to sustain all that you give to others and the world. Your mind and body can't power down into rest and repair without your deliberate permission, and this season is an especially important time to rest, reset, and renew. ♦

Penelope Perri, MSW, CEAP, is a certified life & leadership coach with a practice in Concord. For 15 years, she was a counselor and director of the Employee Assistance Program at Concord Hospital. She helps individuals with life transitions and has created a program to help professionals overcome burnout. To learn more, visit penelopeperri.com.

Welcome

Sheehan Phinney welcomes
Andrew J. Newcombe to the firm.



Andrew J. Newcombe

603.627.8178

anewcombe@sheehan.com

Corporate Law

Before joining the firm, Andrew served as a Legal Intern for the United States Attorney's Office for the District of NH. He's currently an Individual Ready Reserve Officer for the US Army, formerly serving as an Active Duty Infantry officer from 2014-2017. While at Duke University School of Law, Andrew served as Co-Director for the Duke Law Veterans Assistance Project, as well as a Student Attorney for the Community Enterprise Clinic and the Wrongful Convictions Clinic. He is admitted in New Hampshire and the U.S. District Court for the District of New Hampshire.

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LINDSEY DONOHUE, PARTNER

It is with great pleasure that the law firm of Keane & Macdonald, PC announces that Lindsey B. Donohue has become a partner of the firm and that the firm will now be known as Keane, Macdonald & Donohue, PC. Attorney Donohue will continue her practice in the areas of estate planning, business law, and real estate.

Keane, Macdonald & Donohue
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Portsmouth, NH 03801

lindsey@kmdlawyers.com
www.kmdlawyers.com
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Rath, Young and Pignatelli is pleased to announce our new shareholders



Michael K. O'Neil

Michael is a litigator with a broad and varied practice that includes all aspects of commercial, business, administrative, and appellate litigation in state and federal courts. Michael has extensive experience representing all interest-holders in bankruptcy courts, including debtors, creditors, trustees, and committees. Michael received his J.D., *cum laude*, from Boston College Law School.



Alexandria R. Russell

Alex is a business attorney that practices with the Business and Finance, Employment, and Health Care Practice Groups of the Firm. Alex works with clients on a range of corporate and business issues as well as compliance with NH and federal employment laws. Alex graduated from the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law.



James J. Steinkrauss

Jim is a member of the Environmental Practice Group. He advises clients in the areas of environmental due diligence, compliance, waste water and storm water permitting, site remediation activities, shore land protection, and also represents water utility clients in NH and MA. Jim earned his J.D. from Suffolk University Law School.



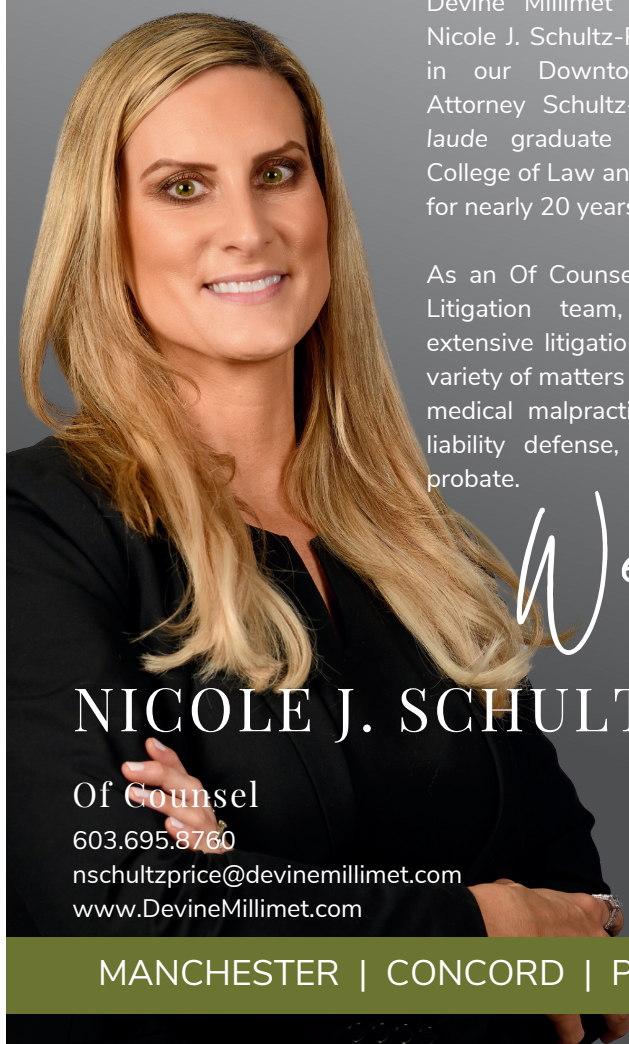
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Devine Millimet is pleased to welcome Nicole J. Schultz-Price to the firm. Located in our Downtown Manchester office, Attorney Schultz-Price is a magna cum laude graduate of Syracuse University College of Law and has been practicing law for nearly 20 years.

As an Of Counsel member of the Devine Litigation team, she will utilize her extensive litigation experience to handle a variety of matters to include healthcare law, medical malpractice defense, professional liability defense, business litigation, and probate.

Welcome!

NICOLE J. SCHULTZ-PRICE

Of Counsel
603.695.8760
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WE ARE PLEASED TO WELCOME MICHAEL L. WOOD AND HIS TEAM AT THE MCSWINEY & WOOD LAW FIRM TO CLEVELAND, WATERS AND BASS.



Based in New London, Michael is a leading estate planning attorney in New Hampshire, with a practice that also focuses on trust administration, probate, elder law and tax. Starting on January 1, Michael will become a shareholder and director of Cleveland, Waters and Bass and will serve as the managing director of the firm's Trust and Estate Department. We will relocate our New London office to McSwiney

& Wood's office at 280 Main Street in New London, with Michael and his staff continuing to serve clients from that office.

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Alert: Many Employee Non-Disclosure and Non-Disparagement Settlement Terms are Now Illegal

By Nancy Richards-Stower and
Debra Weiss Ford



Richards-Stower



Ford



This is the 22nd *New Hampshire Bar News* “debate” over the last 17 years between employment lawyers Nancy Richards-Stower (employee advocate) and Debra Weiss Ford (employer advocate). Here, they discuss the National Labor Relations Board (NLRB) decision *McLaren Macomb*, 372 NLRB No. 58 (2/21/23), and the NLRB general counsel’s Memorandum (guidance) a month later (3/23/23). *McLaren* involved severance agreements offered to furloughed employees which forbade them from disclosing the terms of the agreements and from disparaging the employer.

Nancy: Kool and the Gang’s “Celebration” rings in my ears. Gag Rules are dead! Severance and Settlement agreements can’t contain broad confidentiality or non-disparagement provisions. The NLRB rocks! And, to defense counsel,

with whom I have argued over these past four decades: I told you so. The NLRB decided that it’s pretty hard for gagged employees to discuss improving working conditions. Duh.

Deb: Slow down, Nance. It may not be a great decision for employees either since it may deter employers from entering into settlement agreements. Let’s explain the decision. Section 7 of the National Labor Relations Act (NLRA) applies to *both* union and non-union employers and governs conduct for most non-management employees. The NLRA excludes government employees, agricultural workers, and interstate railroad and airline employees,

and, in most cases, management-level workers. Section 7 guarantees employees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, **and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,**” as well as the right “to refrain from any or all such activities.” (Emphasis added)

Nancy: Supervisors, generally, are not affected by the decision: “‘Supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, dis-

charge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

Deb: *McLaren* makes it illegal for employers to even offer covered employees severance or settlement agreements containing common confidentiality and non-disclosure terms, even when the employee asks for them!

Nancy: The NLRB has not *yet* ruled whether the monetary amounts paid under agreements can be confidential, but there are strong arguments for the sums paid to be public.

Deb: And there are strong arguments for keeping the amounts paid confidential. Employers don’t want to inspire claims to be filed, and employees don’t want their privacy invaded and it may mean that employers will be less likely to settle.

Nancy: The huge impact of *McLaren* is that agreements offered to covered employees can no longer restrict their ability to talk about what happens at their workplace (aka underlying facts). The bottom line is a *fat* bottom line: no facts other than trade secrets can be gagged.

Deb: Nance, you’ve argued that non-disclosure/confidentiality agreements create additional emotional harm for harassment victims by adding more stress to the experiences they suffered; and, that nego-

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Nancy: Prior to *McLaren*, my request to the federal court for an order requiring the employer to claw back such agreements failed. Today, my concern is that the

Debra Weiss Ford is the managing principal at the Portsmouth offices of Jackson Lewis, PC.



Membership Status Changes

*Presented to the Board of Governors on
October 19, 2023*

Active to INACTIVE:

Amorin, Sarah (June 24)
Arcidiacono, Philip (June 3)
Balonon-Rosen (July 13)
Bateman, Margaret (Aug 25)
Bell, Stephen (June 6)
Boisvert, David (June 8)
Bou-Rhodes, Alexandre (July 28)
Brazeau, Brian (July 31)
Carrington, Shirley (June 12)
Cassidy, Kieran (Oct. 3)
Corcoran, Madison (Sept. 4)
Cowan, Marlee (June 22)
Cranford, James (June 9)
Cressey, Sara (June 9)
Crossman, Leonard (June 15)
Deitch, Heather (June 1)
Devitskiy, Anatoliy (July 28)
Dick, James (June 20)
Driscoll, Mary (July 24)
Duffy, Sophie (June 30)
Dussi, Gina (June 23)
Epler, Gary (July 24)
Farmer, Duncan (July 1)
Farrell, Bradford (June 28)
Fietze, David (June 28)
Finbury, Daniel (July 1)
Fitzgerald, Kevin (June 30)
Flaherty, Mark (July 1)
Francek, Chelsea (June 22)
Garvan, Carol (June 21)
Gendron, Grant (July 19)
Gerber, Kaitlyn (June 12)
Gibson, Jennifer (June 30)
Ginsberg, Caleb (July 26)
Groulx, Patrick (June 30)
Hawks, Dustin (July 5)
Henderson, Amanda (June 16)
Hess, Julie (May 29)
Horrock, Victoria (July 1)
Jancarik, Sarah (July 28)
Keenan, Daniel (July 1)
Keyes, Shannon (Sept. 1)
Kueblbeck, Martin (June 12)
Lai, Bernardine (July 17)
Lawlor, Timothy (July 24)
Levine, Andrew (June 13)
Levy, Elyssa (July 31)
Lieder, Jeannie (June 1)
Lipman, Kate (Sept. 20)
MacGee, Amanda (July 1)
Marcotte Bjorn, Elizabeth (May 31)
McCoy, III, James (July 11)
Miran, Alec (June 30)
Mone, Elizabeth (June 6)
Morse, Nicole (June 23)
Nugent, John (July 18)
O'Donohue, Thomas (May 31)
O'Shaughnessy, Audrey (Sept. 1)
Oxenham, Ian (July 31)
Patterson, Jennifer (June 28)

Peaslee, Kimberly (June 16)
Peckham, Michele (July 5)
Peress, Naim (June 27)
Perry, Matthew (July 10)
Pratt, Aaron (July 7)
Richardson, Barbara (May 31)
Rogers, David (July 27)
Russell, Todd (June 13)
Sakowski, Danielle (June 26)
Sanchez, Bailey (July 26)
Schmid, Meredith (June 21)
Schreffler, Philip (June 27)
Schulthess, Stephen (July 28)
Schwartzman, Harrison (July 29)
Scibelli, Anthony (May 15)
Secor, Glen (July 1)
Sirulnik, Andrew (July 29)
Sisson, Edward (June 9)
Srikanthan, Amaresh (Sept. 29)
Thom, Kelly (June 29)
Thomas, Shaun (July 1)
Upton, John (June 13)
Urrutia, Christian (June 19)
Volpe, Richard (June 19)
Washington, Simone (June 15)
Yurchenco, Helen (July 27)
Zipkin, Mitchell (June 15)
Zwetchkenbaum, Marc (June 19)

Active to INACTIVE RETIRED:

Carlier, Patience (June 30)
Cassidy, Kieran (May 15)
Christie, David (July 26)
Collins, Andrea (June 1)
Cramer, Anne (June 6)
Creedon, Richard (July 28)
Devine, Kevin (June 1)
Drooff, Michael (June 26)
Farrell, Kevin (July 26)
Fitzmaurice, Karen (June 28)
Keyes, Robert (June 28)
Kuster, Bradford (June 29)
LaRocque Jr., George (June 3)
McKittrick, Helen (May 30)
Pogust, Glenn (June 29)
Rheaume, Joseph (June 1)
Rondeau, Sharon (July 26)
Slamon, Linda (June 20)
Sowerby, Dwight (June 13)
Stiles, Phillip (July 31)
Windler, Christine (July 28)
Wrigley, John (June 15)

Active to LIMITED ACTIVE:

Berry, Elliott (June 12)
Gillies, Peter (June 9)
Temchenko, Ilya (June 22)

Limited Active to INACTIVE:

Hayes-Snow, Louise (June 30)

Active to RESIGNED:

Patrigani, Maureen (July 27)
Roubini, Sonia (July 29)

Active to SUSPENDED:

Gomez, Danilo (June 21)
McDaniel, Robert (Sept. 19)

Active to FULL-TIME JUDICIAL:

Saint-Marc, Talesha (June 22)

Inactive to INACTIVE RETIRED:

Burdin, William (July 5)
Cline, David (July 10)
Cyr, Janet (June 1)
D'Amico, Peter (June 12)
D'Angelo, Michael (May 30)
Deane, Elizabeth (June 26)
Giesy, Carl (July 20)
Hunt, Patricia (June 1)
Jaques, Richard (June 22)
Mattern, Kenneth (Sept. 5)
Maxwell, Susan (Aug. 17)
Page, Alice (June 19)
Pribis, William (June 1)
Roalsvik, Lisa (Sept. 20)
Shirley, David (June 27)
Slocum, Cynthia (Sept. 9)
Smith, Karalee (June 11)
Tousignant, Alan (June 30)
Vorenberg, Amy (Sept. 5)
Walsh, Teresa (July 5)

Inactive to ACTIVE:

Butterworth, Kenneth (Sept. 1)
Carlier, Laura (Aug. 14)
Courchesne, Christophe (July 6)
Crowley, Claire (June 30)
DesMeules, Matthew (July 18)
Dick, James (Aug. 8)
Edmonds, Brian (Sept. 11)
Gray, Leila (July 1)
Keiper, Caitlin (June 23)
Leonard, Sean (June 14)
O'Brien, Timothy (June 16)
Roche, Deborah (Sept. 20)
Teich, David (July 19)
Villegas, Alfonso (June 16)
White, Cynthia (July 28)
Williams, Finis (Sept. 5)
Wyman, Allison (July 7)

Inactive to RESIGNED:

Betters, Robert (June 1)
Brighton, Joel (Sept. 1)
Cheney, Edward (July 21)
Connors, Rachel (July 1)
Cory, Deborah (June 1)
DiCrocce, Michael (May 1)
Evans, James (May 31)
Flaherty, Katherine (July 1)
Grayck, David (June 30)
Hanly, Joseph (June 30)
Hawkins, Mary (June 30)
Hawthorne, J. Marlin (June 26)
Koneswaran, Sivagowri (June 6)
Lovejoy, Fred (July 30)
Mann, Elizabeth (June 30)
Mason, Benjamin (June 30)
Milne, Andrew (June 30)
Murphy, Christine (July 31)
O'Brien, Sarah (July 31)
Scarlott, Kerry (July 17)
Severs, Mark (June 1)
Shulman, Samantha (July 31)
Townsend, Allan (Aug. 7)
Weikers, Ronald (June 13)
Wichers, Christine (Oct. 6)
Wood, Christopher (June 30)

Inactive Retired to ACTIVE:

Kahn, David (July 28)
Mau, Stephen (Sept. 5)
Maynor, Melanie (Aug. 14)
Wasson, Jeffrey (Aug. 22)

Inactive Retired to RESIGNED:

Bernard, Paul (June 15)
Callen, Jed (July 6)
Carrillo, Lucy (July 18)
Degulis, Joseph (July 15)
Desimone, Beth (July 28)

Dial, Jr., Edward (June 30)
Geiger, Glenn (June 1)
Graciano, Leo (June 30)
Jenkins, Linda (July 31)
Lucas, Tricia (July 31)
MacMullin, Megan (June 30)
Martin, Kristin (July 11)
Moquin, Kevin (July 1)
Mott-Smith, Wiltrud (June 15)
Randall, Douglas (July 3)
Ruddock, Steven (July 10)
Ryan, Kathleen (July 7)
Sharkey, Kevin (June 1)
Silva, Judy (July 1)
Sullivan, Mary (June 6)
Udick, Arlene (June 30)
Wilson, Mary (July 28)
Zych, Linda (June 27)

Inactive Retired to DECEASED:

Hawthorne, Stanley (June 11)

Inactive Retired to ACTIVE:

Dalterio, Maria (June 1)

Military Active to INACTIVE:

Breuder, Philip (Aug. 14)

Military Inactive to MILITARY

ACTIVE:

DeMartino, III, Michael (July 1)

Limited Active to ACTIVE:

Temchenko, Ilya (June 9)

Honorary Active to HONORARY

INACTIVE:

Fitts, David (July 7)
Jordan, David (May 31)
Krans, Jr., Hamilton (June 15)
Oleskey, Stephen (July 1)
Saari, Peter, Hampton (May 5)
Whittum, Donald (Aug. 31)

Honorary Inactive to DECEASED:

Gauthier, Roger (Jan. 25, 2020)
Millham, Peter (July 1)
Roberts, Sanford (Sept. 11, 2022)

Suspended to RESIGNED:

Sheridan, William (June 20)

*Presented to the Board of Governors on
November 16, 2023*

Active to INACTIVE:

Karouni, Kara (Oct. 19)
Keleher, Daniel (Nov. 6)
Edwards, William (11-Oct. 11)
Hawes, Sarah (Oct. 15)

Active to RESIGNED:

Mattioda, Chelsea (Oct. 10)

Inactive to INACTIVE RETIRED:

Holmes, Brigitte (Oct. 2)
Carpenter, Lisah (Oct. 11)

Inactive to ACTIVE:

Cowan, Matthew (Oct. 3)
Omerovic, Samira (Oct. 16)
Lampron, Shawn (Oct. 10)

Inactive to RESIGNED:


Vehslage, Royce (Sept. 1)
Burke, John (Sept. 28)
Spiller, Jamie (Oct. 11)
Conway, Daniel (Oct. 12)

Inactive Retired to ACTIVE:

Mail, Kat (Oct. 4)

Inactive Retired to RESIGNED:

Babin, Roger (July 28)
Hart, Nancy (Sept. 8)
Ritchie, William (Sept. 15)
Walton, Kenneth (Oct. 1)




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Michael Klass Confirmed for Superior Court's New Land Use Review Docket

By Grace Yurish

In response to the growing need to address the state's land use cases, the legislature took a proactive step last year and introduced House Bill 347, which establishes a Land Use Review Docket in the New Hampshire Superior Court. The specialized docket goes into effect on January 1, 2024. A new judgeship has been created for this docket, and Attorney Michael A. Klass was confirmed for the position on November 29, 2023, by a unanimous vote from the Executive Council.

"My cumulative professional experience provides me with a background and set of skills that fulfills the Land Use Review Dockets requirement; that its justice shall be qualified by knowledge and experience in land use and real property law," Klass said at his November 8 nomination hearing. "Moreover, I very much enjoy this type of work."

After receiving his JD from Vermont Law School, Klass was admitted to practice in both New Hampshire and Massachusetts. For two years, he clerked at the Massachusetts Land Court in Boston for retired Justice Alexander Sand, III. Klass then moved to private practice, dealing in civil litigation with a focus on land use and real property matters.

During this time, Klass regularly appeared before local zoning and planning boards on behalf of individuals and companies, represented property owners concerned about land use proposals, and appealed to the courts when needed. In 2017, he joined the Office of Strategic Initiatives where he advised stakeholders on matters of land use planning and worked with officials and others on the land use process, including offering outreach and education on such issues.

Currently, Klass is the sole attorney member of the state's Housing Appeals Board, a Supreme Court-appointed three-person board that hears land use appeals related to housing.

Now confirmed, Klass will join the

Superior Court next month when the new docket goes into effect. Klass will handle all land use cases brought to the court and will sit in Hillsborough North in Manchester.

Initially, his work will focus strictly on these issues, gradually expanding to a more diversified docket based on workload and consultation with court authorities.

"I've had the opportunity to speak to [Klass] on a couple of occasions," says New Hampshire Superior Court Chief Justice Mark Howard. "He sounds – and by his record is very – experienced in these issues. He has experience with these boards and what these cases actually look like. I am very excited to have his expertise in the Superior Court."

In land use planning cases, decisions made by municipal planning and zoning

boards are appealable to the Superior Court. Each year, there are approximately 60 zoning and planning appeals filed. When a case is filed, the court reviews the appealed decisions to determine if they are reasonable and lawful. If they are, the decision is affirmed and if they are not, the case is sent back to the local land use boards to re-assess the matter based on the findings.

As of November, there are 72 pending appeals in the Superior Court. The court is in the process of determining what stage each case is in, and whether those will be assigned to Klass or brought to conclusion by the judges handling them now.

Currently, appealed cases are being handled by Superior Court judges in the various counties where issues arise and can take up to a year to be resolved. The new docket will enhance the current process and more effectively resolve land use issues, with one experienced judge dedicated to them.

"The primary goal for the new docket is to resolve these cases expeditiously," says Justice Howard. "Those goals, for the most part, are set by the legislature

"The primary goal for the new docket is to resolve these cases expeditiously. Those goals, for the most part, are set by the legislature in the statute. The statute lays out what I think is a reasonable but also aggressive timeline for resolving these cases." – Chief Justice Mark Howard



in the statute. The statute lays out what I think is a reasonable but also aggressive timeline for resolving these cases."

The new legislation mandates an expedited timeline for resolving land use cases, emphasizing a conference within 30 days of an appeal's notice, a hearing within 60 days of the certified record filing, and an order within 60 days of the hearing. The aim is to significantly reduce the typical eight-to-12-month timeframe for resolving such cases. With this timeline, cases would be resolved in five or six months, which Justice Howard describes as quick.

The motivation behind this legislation is to resolve cases quickly given

the housing crisis in New Hampshire. According to the 2023 New Hampshire Statewide Housing Needs Assessment, the state falls short of its housing needs by roughly 23,500 units. This has caused a push for development over the last few years, meaning more land use issues are brought forth to the Superior Court. (*Editor's Note: Read more about the housing crisis on page 36.*)

Justice Howard anticipates that not only will these cases be resolved more swiftly, but there will also be more predictability in decision making. It is expected to eliminate inconsistencies that might arise when different judges handle similar issues in various locations across the state.

However, challenges arise, particularly for litigants in distant counties like Grafton, Coos, and Carroll, where traveling to Manchester for hearings can be difficult and costly. The court is considering options, including having Klass travel to these counties for hearings to ensure fairness.

Klass expects to take the bench on January 16, 2024, after completing his work at the Housing Appeals Board.

"I am confident that I will be able to seize the opportunity and quickly transition to efficiently resolving land use appeals in the Superior Court," Klass said. "I'm excited by the opportunity to draw upon the skills I have developed throughout my career to decide matters before me based on the law as applied to the facts of the case, in a fair and expeditious manner." ♦

To: You!
From: The NHBA

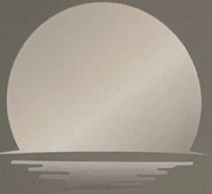


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and a prosperous New Year!

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Dos and Don'ts to Reduce the Likelihood of a Grievance Being Filed Against You

By Brian Moushegian

It is the envelope that many practitioners dread – the one with the Attorney Discipline Office's (ADO) return address on the upper left-hand corner. The reality is, no matter how hard one tries to avoid such a letter, many lawyers will – at one point or another in their career – receive notice that a grievance has been filed against them.



Sometimes, the area you choose to practice in increases the likelihood that a grievance will be filed against you. For example, family law and criminal law are practice areas that lead to a disproportionate number of grievances each year. It is also interesting to note that, in 2022, approximately half of the complaints docketed involved attorneys with more than 30 years of practice. Regardless of the area you practice in or your level of experience, there are certain measures you can take to help reduce the likelihood of a grievance being filed against you.

Do Review the Rules of Professional Conduct

The best way to reduce the chance that a grievance will be filed against you is to



try not to break the Rules of Professional Conduct in the first place. As it may have been years since you have taken Professional Responsibility in law school, it is recommended that you occasionally refamiliarize yourself with the Rules of Professional Conduct, which can be found on the Attorney Discipline System's website, nhattyreg.org.

The most common rule violations leading to disciplinary complaints include Rule of Professional Conduct Rule 1.1 (Competence), Rule 1.4 (Client Communications), and Rule 1.15 (Safekeeping Property). Therefore, in order to reduce the likelihood of a grievance being filed against you, you should pay particular attention to those particular rules.

Don't Take on Cases for Which You Are Unprepared

Rule 1.1 (Competence) requires that a lawyer provide competent representation to a client. Once a lawyer accepts a case, they are presumed to have the necessary competence to handle the matter – regardless of whether it is the first time that the lawyer handled such a matter. A lawyer must be careful when agreeing to represent a client in an area that the lawyer has little experience. For example, if you primarily represent clients in family law matters and a client expresses interest in filing for bankruptcy, you may consider referring the client to a bankruptcy attorney, assuming you have little experience in that field. It is not uncommon for the ADO to receive a grievance against a lawyer based on the lawyer's representation of a client in area where the lawyer lacked experience.

Don't Ignore Your Client's Calls and Emails

Rule 1.4 (Client Communications) requires that lawyers keep clients reasonably informed on the status of their matters, obtain informed consent when necessary, and promptly respond to reasonable requests for information. Each year, the ADO receives multiple grievances against attorneys alleging they have not kept their clients informed about the status of their case or responded to their requests for information. These grievances often allege a failure to return phone calls, emails, or letters.

To avoid communications issues, a lawyer should enact a policy addressing reviewing and responding to communications. If a lawyer will not be available to return messages for an extended period, the lawyer should make sure that an email autoreply or outgoing voicemail message is used to notify clients that the lawyer is unable to respond to the client's email or call immediately.

For an extended absence, a lawyer should include the name of a contact in the voicemail or email autoreply that a client can contact if they need immediate assistance. In circumstances in which the lawyer is unavailable, the lawyer should try to respond to all emails or telephone messages within a reasonable time limit – for example, by the end of the following business day. Setting up and adhering to such office policies will significantly decrease the likelihood of a grievance being filed against a lawyer under Rule 1.4.

Do Review the Supreme Court Rules on IOLTA Accounts

Rule 1.15 (Safekeeping Property) is another common source of complaints

investigated by the ADO. Pursuant to Supreme Court Rule 50(1)(C)(iv), banks which hold IOLTA accounts are required "to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains insufficient funds or shows a negative balance."

Whenever the ADO receives an overdraft notice, the ADO will request from the lawyer records for the time-period in which the overdraft occurred (generally constituting three months of bank statements and monthly reconciliations). It is important that a lawyer reconcile their IOLTA account each month to avoid overdrafts in the IOLTA or otherwise being "out of trust." See New Hampshire Supreme Court Rule 50(2)(C)(vi) (requiring lawyers perform monthly reconciliations of their IOLTA account.)

Failure to perform monthly reconciliations will potentially lead to additional rule violations, including Rule 8.4(c) (Misconduct), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Specifically, if a lawyer fails to reconcile their IOLTA account, as mandated by Supreme Court Rule 50, the lawyer's representation in their annual Trust Account Certification that the lawyer properly reconciled the account may lead to a Rule 8.4 charge.

On Supreme Court Rule 50 and their obligations relating to the lawyer's IOLTA accounts: A failure to adhere to Rule 50's requirements can lead to serious consequences. In addition, lawyers are encouraged to review the New Hampshire ADO Client Trust Account Guidelines, which are available on the ADO's website, nhattyreg.org, as well as watch the ADO's continuing legal education video entitled *IOLTA/Trust Account Compliance: The Big Picture*, which is also available for viewing on the ADO website.

Conclusion

In summary, there are some simple things a lawyer can do to reduce the likelihood of a grievance being filed against the lawyer. Lawyers should carefully consider whether to take on a matter involving a practice area in which the lawyer has little or no experience. In addition, lawyers are encouraged to prepare and follow an office policy that ensures that client communications are reviewed and responded to in a timely manner.

Lastly, lawyers should pay particular attention to Supreme Court Rule 50's requirements for IOLTA accounts and are encouraged to review the IOLTA related materials available on the ADO website. Following the foregoing advice should help all lawyers reduce the chances of a misconduct complaint being filed against them.

To learn more about the Attorney Discipline System, lawyers are encouraged to visit our website, nhattyreg.org, which provides links to the Rules of Professional Conduct; Supreme Court Rules 37 and 37A (setting the procedural rules of the Attorney Discipline System); the Policies and Standing Orders of the Attorney Discipline System, Disciplinary Decisions, and Annual Reports. ♦

Brian R. Moushegian is general counsel at the New Hampshire Supreme Court.

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SMS SOS: The Dos and Don'ts of Texting Clients

By Jeffrey Schoenberger

Texting is such an integral part of American life that we shouldn't be surprised that it has wormed its way into attorney-client interaction. When I was in private practice, for many clients, their cell phone was usually their only phone line, often the primary source of internet connectivity, and unsurprisingly, the center of their communication universe.

From our personal lives, we know that texting is one of the most accessible and efficient means of communication. It is utterly pervasive in society. It's familiar and fast. That makes it easy to fall into the habit of regularly texting clients without fully considering the ramifications and the ways we can take advantage of technology geared towards lawyers and texting.

Do Weigh the Pros and Cons

While you may have a gut reaction one way or the other, take your time and make the best decision for your clients and your firm. Here are some benefits and risks to consider:

Pros: Ease of communication; record of communication; and potential for automation.

Cons: Need for/risk of constant availability; security pitfalls; and potential for messages to be misunderstood.

Don't Rely on Misinformation

Texting clients is divisive among attorneys, with some schools of thought denouncing the practice under any circumstance, and others engaging in it without a second thought. Find a middle ground and question sources provided by absolutists on either side.

Do Decide Case by Case

Decide case by case, even if your general policy leans one way. Make the final decision on texting based on what's best for each client. Perhaps your client works constantly and can be reached only via text during the day. Each case comes with unique circumstances to factor into the equation.

The argument for per-case flexibility lies in the client's expectations, freedom,

and capabilities.

If your client is younger and accustomed to communicating through texting, a text is probably more efficient and more likely to garner a response. While unthinkable in a law firm, I've had clients who rarely checked personal email accounts or did so only when I told them I was sending something. With those client expectations, a blanket "never text" policy hinders representation. Similarly, smartphone penetration in America reached 73 percent of adults in 2021, and every smartphone can text.¹ Depending on your client population, an attorney who "doesn't text" looks behind-the-times.

Second, texting occurs on our most personal, portable, lockable, and concealable computing device. In some practice areas, such as family law, that could benefit your client. It facilitates client communication while minimizing the risk of interception or viewing by an adverse party.

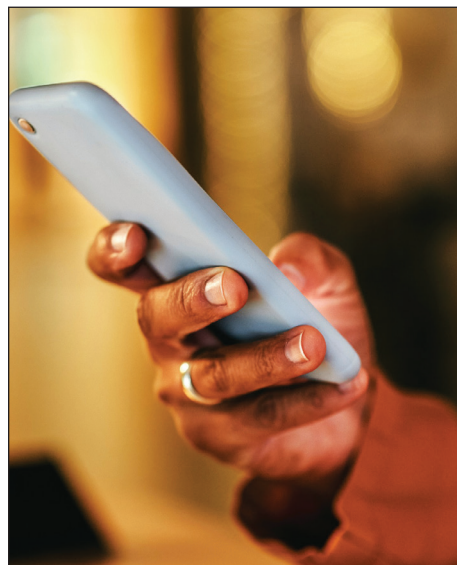
Third, what technology capabilities does your firm have to capture text messages and store them with the rest of the case file? Many attorneys, including myself, are uncomfortable with texting via a personal number. Apart from work/home separation issues, a unified texting solution means everyone in the firm has access to the full scope of client communication. Several case management programs offer forms of text message integration via smartphone apps, giving the client a single texting number while, on the law firm side, operating like a shared email inbox that any firm staffer can triage.

Don't Engage in Complex Legal Discussion via Text

Short messages on complex subjects tend toward miscommunication and misinterpretation. For those of you who are social-media savvy, think of texting in terms of X's, nee Twitter's, old 140-character limit. If you can't say it briefly, consider a phone call or web meeting instead.

Do Secure Your Mobile Device

Take steps to secure your mobile device. Lock your phone with your fingerprint, FaceID, or a complex password. Set up device location and remote wipe via Apple or Google's "Find My" service. Do as much as possible to ensure the safety of both your client's information and your own.



Don't Give Out Your Personal Cell

Aside from the issues mentioned previously regarding work/home balance and maintaining a complete record of client communication, remember that the communication belongs with the matter or case, not you as an individual. Assuming you want the option to break contact should you move firms, or even quit practicing, numerous options exist to avoid giving out your personal cell phone number. Apps like Corvum, Grasshopper, SendHub, SMS for Legal, and Text Request provide enterprise solutions for texting clients. Text Request even lets you text from a landline phone number, like your existing business line.

Do Keep a Record in the Client File

Treat texting just like any other form of client communication. Back up your texts with clients, and store copies in your client's file. You never know when you may need them. If you're in the market for a practice management program, several, such as Clio, integrate with text message vendors or offer text-message-like experiences in their apps. And, if you are using a personal cell phone, programs like *iMazing* can backup client texts for long-term storage in the file.

Don't Text without Discussing It First with Your Client

Review methods of communication as part of your standard intake procedure and spell them out in the engagement agreement. Make sure your client understands any boundaries you choose to implement. ♦

Endnote

1. That number may seem low. It's skewed downward by age cohorts 50-64 (83 percent) and 65+ (only 61 percent). For ages 18-29 and 30-49, 95 percent own smartphones. "Share of adults in the United States who owned a smartphone from 2015 to 2021, by age group," Statista, accessed November 29, 2023, [statista.com/statistics/489255/percentage-of-us-smartphone-owners-by-age-group](https://www.statista.com/statistics/489255/percentage-of-us-smartphone-owners-by-age-group).

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■ MEMBER *from page 1*

with my tuna sandwich to catch up on my emails.”

The Member Center boasts an exclusive and robust Wi-Fi network, and there are charging stations and laptop stands throughout the space. To make use of the space, you need only to schedule time through the receptionist – just as you would when reserving a conference or meeting room – and then check in upon arrival to acquire a key fob for entry.

Once you walk through the entrance to the Member Center, which is located behind the reception area, your eyes are immediately drawn to big windows lining one entire side of the space that provide an abundance of natural light.

Across from the entrance, a huddle area with high-backed chairs, a round table, and laptop stands provides a place for lawyers to talk or check emails. To the right of that, along the wall of windows, is a workstation area that has four carrels, all equipped with charging stations and privacy partitions.

Along the opposite wall – and next to the huddle area – there are four private rooms (referred to as hotels) equipped with electric adjustable desks for lawyers

to make confidential phone calls, meet with another member, or just spend some time alone.

The middle of the Member Center features a hospitality area with a small kitchen space that includes a coffee machine, a refrigerator, a hot/cold water dispenser, a dishwasher, a sink, and a high-top table with six comfortable stools – all lit by a unique light fixture that serves as a focal point for the room.

At the far end of the Member Center, there is a stylish, airy, and soothing lounge area where members can relax with plenty of comfortable seating and periodicals such as the *New Hampshire Bar News* and the *New York Times*.

The idea for a members-only center stemmed from the empty space left behind after the 2021 merger between the NHBA Pro Bono Referral System and the Legal Advice and Referral Center to create 603 Legal Aid.

“Coming out of the pandemic, a lot of people had gone to remote work, and we were hearing a lot about shared office space or people having issues working from home,” NHBA Deputy Executive Director Paula Lewis says. “At the same time, there was an increasing number of members who were using our conference rooms and meeting rooms. One day, our

treasurer Chris Regan called me and said, ‘we have our board meeting in the afternoon, and I have to be in Concord in the morning, but I have no place to go in between.’ He asked to use one of our meeting rooms and that kind of spurred me to think about the empty office space.”

Lewis says the original idea was to create a shared office space and possibly charge members to use it, like some other bars across the country. She brought her idea to Moore and then-Bar president Richard Guerriero. Following some discussion, the idea morphed into a member center that is free of charge.

“Because it’s a mandatory bar, we felt we should be providing as many services as we can for free and not creating cost centers,” Moore says. “So, the model that we developed as things went on was that it would be free to the members.”

When it was time to bring the idea into fruition, Moore and Lewis contracted with Genella McDonald and Janet Harkins of Stibler Associates for the design and Dana Adams of Capital Construction for the construction.

Demolition began in Spring 2023, with a completion date of late summer, but due to supply chain issues, state inspection lags, and furniture delivery delays, things have taken longer than antici-

pated.

Unfortunately, only half the furniture was delivered at the time this article was written. The workstation and lounge areas will not be complete until the second half of the furniture delivery takes place in January.

Lewis says that in addition to the obvious benefits of a members-only center, there are peripheral advantages.

“It also connects our members more with their bar association and with the staff at the Bar,” she says. “It offers the opportunity for our members to get updates from the staff right here at the Bar Center. For example, if a member is interested in the Mentor Program or Lawyer Referral Service, they can talk with [NHBA Member Services Supervisor] Misty Griffith here.”

Lewis says the Member Center will also promote the ever-important collegiality of the New Hampshire Bar because it will give attorneys the opportunity to network and further build the community while they are using it.

NHBA President Paul Chant, who crisscrosses the state a few days a week to attend hearings, depositions, and meetings with clients, says the Member Center will be very helpful to him, especially since it is centrally located in Concord.



One of the private rooms, or hotels, all of which come equipped with electric adjustable desks. Photo by Tom Jarvis



On Thursday, November 16 – before the furniture was delivered – a retirement reception was held in the Member Center for Justice Gary Hicks. From left to right: NHBA Executive Director George Moore, New Hampshire Supreme Court Justice Gary Hicks, and NHBA President Paul Chant. Photo by Caitlin Dow



The center of the room features a high-top workspace with six stools, lit by a unique light fixture. Adjacent to this table is a small kitchen space. Photo by Tom Jarvis



A view of the Member Center from the huddle area during construction. Photo by Tom Jarvis



The workstation area has four carrels with privacy partitions and charging stations. The carrels are among the items of furniture being delivered in January. This is a render from Stibler Associates of what the finished area will look like.

“Twenty-four years ago, I moved from Nashua to the Mount Washington Valley. Since then, I have been the beneficiary of more free conference rooms in the Manchester and Concord areas than maybe any other lawyer in the state,” he says. “This new space at the Bar is outstanding. It’s a place to quietly work, return phone calls, and yes, relax between meetings and hearings. I very much look forward to utilizing it.”

Nashua attorney Cathy Shanelaris, a governor-at-large on the NHBA Board of Governors, says she also looks forward to using the Member Center.

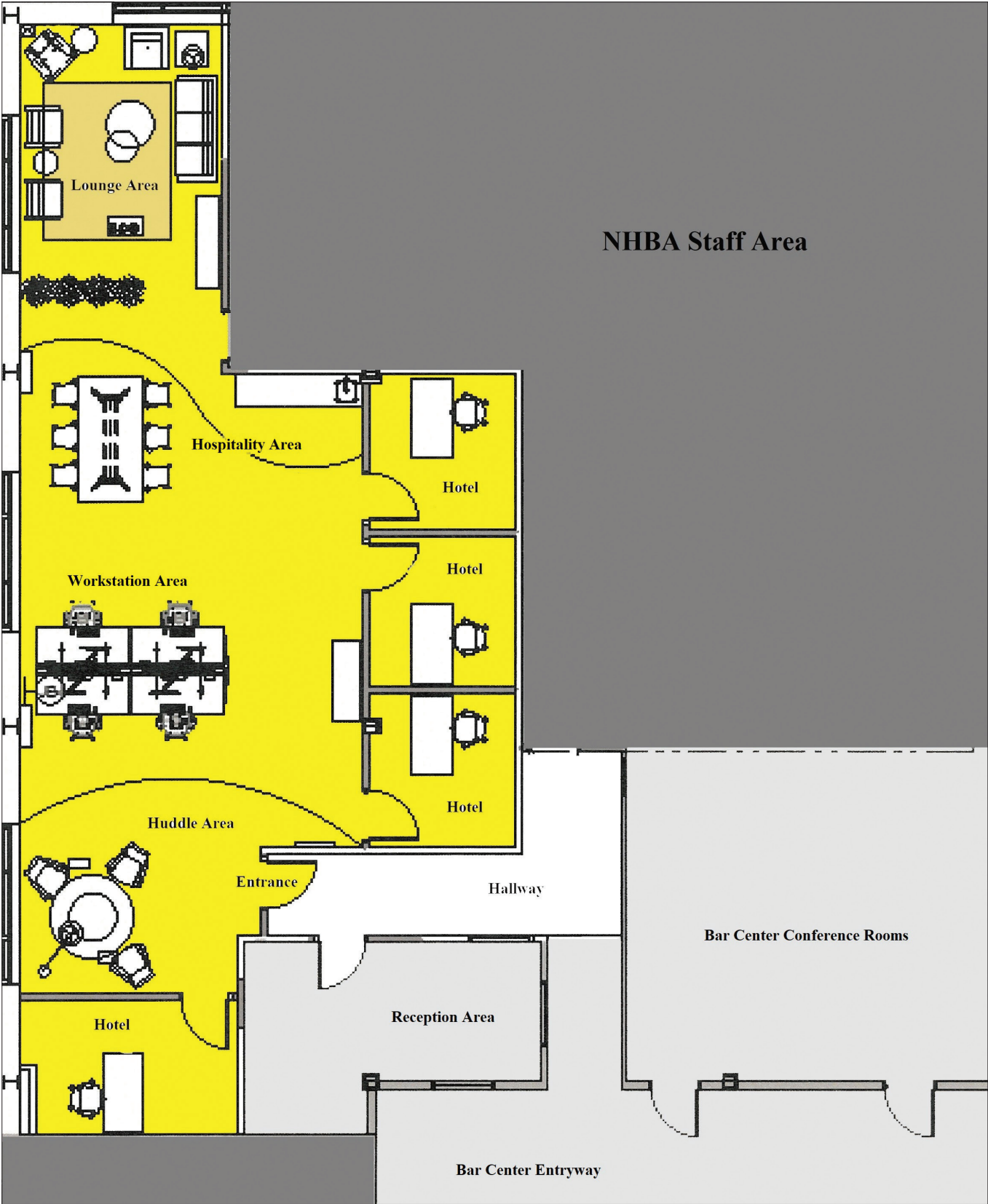
“It’s a really exciting innovation that the Bar Association has implemented,” she says. “For me personally, I can think of a time coming in a couple weeks where I have a meeting in the morning and a hearing in the afternoon in Concord, with a gap of space in between. It will be a perfect spot to go in and have a cup of coffee, check my email, do some work, and then be able to go right to my hearing. I will definitely use the space, and I see it as a really big help and service to members of the Bar.”

On November 16, before the first half of the furniture was delivered, the NHBA Board of Governors held a small retirement reception for New Hampshire Supreme Court Justice Gary Hicks in the space.

Stay tuned for an announcement in January about an open house for the official launch of the NHBA Member Center. ♦

NHBA Construction, Part Two

The next construction project at the Bar Center – phase one of upgrading the seminar room – will begin this month and is expected to be completed in early February. The upgrade includes two-way virtual communication and improved cameras for virtual CLEs, enhanced lighting, an updated media board, and monitors on the columns for members seated in the rear of the room. The lighting will be installed by Capital Construction, and Key Code Media will be handling the digital equipment. ♦



The concept floor plan created by Stibler Associates before construction began. The yellow area is the Member Center.

Superior Court Recognizes Breach of Fiduciary Duty Against State and Contractors in Cases Involving Failure to Protect Children

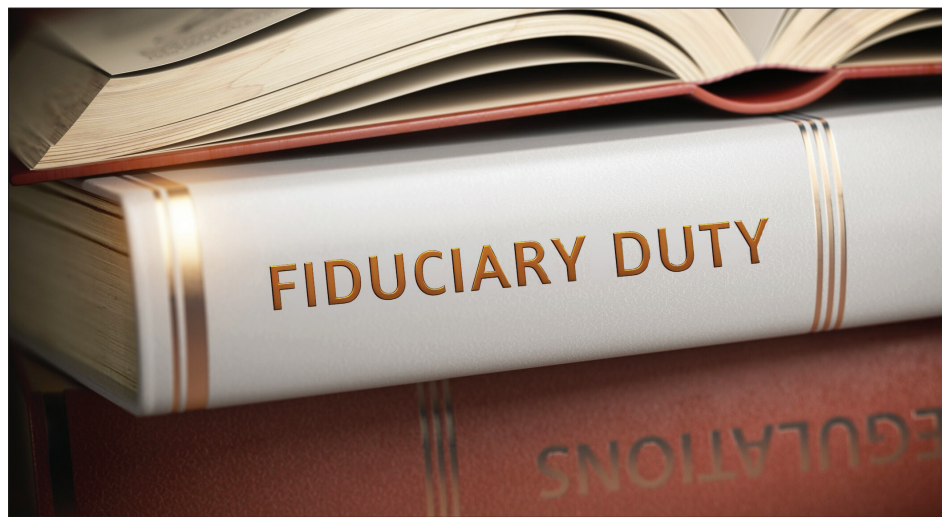
By Michael Lewis

"You can't have it both ways."

The phrase explains two recent cases in which state courts concluded that the power of the government to shape the lives of our children conflicts with the government's desire to avoid responsibility for placing that power in the hands of abusers. One, *Meehan v. State*, 217-2020-CV-00026, slip. op. 10 (Rock. Super. Ct. Aug. 15, 2023) (*Schulman*, J), considered the State's liability for injury caused to children by state employees housed at various state facilities "largely for protective reasons," including the infamous Youth Development Center (YDC).

Another, *Doe #553 v. DHHS*, No. 217-2022-CV-1018, 217-2022-CV-01801, slip. op. 2 (Merr. Super. Ct. Oct. 18, 2023) (*Kissinger*, J.), considered the liability of the State's non-profit contractors, who supply residential housing for a similar population of children "as an alternative to State-operated facilities." Each denied motions by the State and its contractors to dismiss pending civil litigation.

In both cases, the courts held that when the State or its contractors intervene in a child's life by taking custody of a child, that intervention gives rise to duties that exceed those arising from ordinary



negligence. The State and its contractors thus assume a fiduciary role and attending fiduciary duties. *Meehan* at 36; *Doe #553* at 12. The courts held that this conclusion flows from the New Hampshire Supreme Court's (NHSC) decisions presenting under analogous circumstances.

Meehan considered the question of the application of the fiduciary standard at a general level. It observed that the Supreme Court's case law recognizing a fiduciary duty does not turn on a "technical relation created by, or defined in, law," but instead arises from a variety of circumstances in which "a special confidence" is "reposed" giving rise to a special duty. *Id.* at 37 (citing, *inter alia*, *Clark v. Lavey Benefits Solutions, Inc. v. Education Development Center, Inc.*, 157 N.H. 220, 227 (2008)).

Doe #553 echoed this conclusion, and

discussed, at length, the NHSC's decision in *Schneider v. Plymouth State Coll.*, 144 N.H. 458, 462 (1999). There, the Court found that a college owed a fiduciary duty to a student to protect that student from the sexual harassment of a professor. *Doe #553*, at 10.

The *Doe #553* court noted that the NHSC based its decision on the power difference between the faculty and student, the ability of the faculty to control a student's fate through the application of negative sanctions, and the relationship of "trust and deference" that the student-professor relationship entails within the collegiate environment. *Id.* at 11.

From this baseline, the *Doe #553* Court had little trouble analogizing to the even more intimate relationship between a child in residential custody, forced to live under the supervision of a state contractor, and the state's contractor. *Id.* at 12 ("a fiduciary relationship exists between the contractor defendants and the children placed in their care...this includes children placed in the contractors defendants' custody pursuant to RSA 169-B, RSA 169-C, and RSA 169-D."). The Court ruled that "in those situations, the contractor defendants have acquired influence over the children in custody."

The recognition of the fiduciary duty extinguishes arguments serially raised by the State and its contractors that it has no duty to care for children in these circumstances. See *C.M. v. DHHS*, No. 217-2019-CV-00677, slip. op. at 10 (Merr. Super. Ct. Aug. 27, 2021) (*Kissinger*, J.) (recognizing a duty of care to conduct a competent investigation once the state receives a report of suspected child abuse). The *Doe #553* Court therefore was able to make quick work of the state contractors' reliance on

Marquay v. Eno, 139 N.H. 708, 717 (1995) (citation omitted), which defendants rely upon as the principle source of law regarding state-contractor liability.

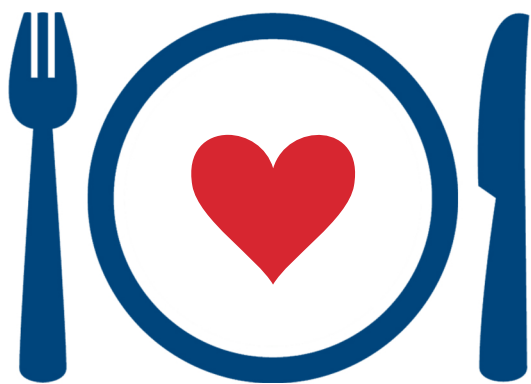
Marquay predated *Schneider*. It examined liability arising from duties primary level schools owed to students. Its analysis was grounded in a discussion of theories of negligence. It recognized duties flowing from negligence arise against a baseline that "a person has no affirmative duty to aid or protect another." *Id.* Cf. *Walls v. Oxford Management, Co., Inc.*, 137 N.H. 652, 657-660 (1993) (landlords do not have a general duty to protect tenants but may accrue a special relationship if it creates the circumstances that increase the risk of harm).

Schneider's recognition of a breach of fiduciary duty cuts through the complexities arising from the negligence in *Marquay* because the recognition of a fiduciary duty raises the baseline obligations flowing between the parties. A fiduciary's duty includes affirmative duties to act selflessly in order to protect the party to whom the duty is owed in the protected party's interests and that duty includes the duty to create and maintain a safe environment. 144 N.H. at 105-06.

These decisions suggest that courts are losing patience with efforts by responsible parties to have it both ways. The *Doe #553* Court's decision, in particular, suggests that the same fiduciary duty may apply to other circumstances in which the state takes custody of a child, and then places that child in a dangerous environment with dangerous private actors. These include circumstances where the state places children with abusive foster settings.

The next court confronted with the next permutation of litigation flowing from New Hampshire's unresolved child abuse and neglect crisis thus may have to consider whether there is any meaningful distinction between a foster family subject to vetting, selection and oversight by the state, and state contractors who provide congregate care giving rise to a fiduciary duty. Cf. RSA 170-E:24, et. seq. (statutory provisions governing placement with foster families); Rev. Part He-C 6446, et. seq. (regulatory rules governing foster family care licensing and oversight requirements). Parties seeking to have it both ways will surely press such distinctions. ♦

Michael Lewis is a shareholder at Rath, Young, and Pignatelli, PC. He is a former state prosecutor.



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done that – just that – none of us would need to be in this courtroom today.’ Gary had taken my own fancy high-tech evidence and turned it right back against me.”

The result was a very meager verdict for the injured plaintiff. (More on that case below.)

The Wiggin law firm grew steadily during Hicks’ tenure there, through the go-go 80s into the bank failures of the early 90s, both resulting in plenty of commercial litigation. Hicks chaired the firm’s litigation department, and made his first steps from advocate to arbiter, developing expertise in mediation and alternative dispute resolution processes, until then-Governor Shaheen tapped him for the Superior Court in 2001.

Trial Judge

Judge Hicks presided primarily in the then-new Hillsborough County Southern District Superior Court in Nashua, during a much-different era when that courthouse often seated four judges and two marital masters. There, he was reunited with Bar classmate Marshall Buttrick, the clerk of the court, who recalls that he and the future justice were the two youngest members of the Bar class admitted in 1978. Buttrick also remembers Judge Hicks distinguishing himself by his collegiality and respect for judicial colleagues, staff, and members of the Bar.

Judge Hicks made two trips to Vologda Oblast, Russia, with the Russian American Rule of Law Consortium, doing his part to expose Russian magistrates and practitioners to American rule of law practices, procedures, and values.

Civic-Minded Citizen and Member of the Profession

Gary Hicks’ public- and civic-service ethos – evident since his late teens when he provided gratis math tutoring to Colebrook Academy students during holiday and summer breaks from Bucknell – gained momentum during his private practice years and expanded when he assumed the bench. His various civic contributions to his adopted city of Manchester, the state of New Hampshire, as well as the Bench and Bar are too numerous to mention exhaustively.

While practicing law, he coached youth sports (soccer and basketball) and administered youth sports programs, often footing the bill for less fortunate athletes unable to pay tournament fees and associated costs. And he didn’t limit himself to only James’ and Becca’s teams; he also volunteered with Special Olympics.

He served on and chaired the New Hampshire Judicial Council, overseeing the state’s indigent defense, and guardianship programs. He spent a decade and a half on the New Hampshire Bar Association’s Lawyers Assistance Committee, and an even longer period as a trustee and sometime president of the New Hampshire Institute of Art, a true passion project for both lawyer Hicks and jurist Hicks, and for which he eventually received an honorary degree.

Gary shared his wife Patty’s love for teaching and students, and especially enjoyed outreach programs where he and other justices visited or held court proceedings at high schools, and internal projects hosting students at the Superior and Supreme Courts. New Hampshire Civics trustee (and Civics 603! instructor) Dina Michael Chaitowitz notes that the justice is “incredibly gracious with his time, al-

ways volunteering to chat with the kids after their mock arguments or mini trials, and the kids enjoy his easy-going, friendly, and engaging style tremendously. He makes civic engagement attainable.”

Former Chief Justice Robert Lynn remembers that Justice Hicks “was really in his element when he would have young people come to the Court for one reason or another. With his open, gregarious personality, it was clear that the kids loved him, as well.

In 2023, the New Hampshire Bar Association honored Justice Hicks with the Frank Rowe Kenison Award for his many intellectual, administrative, and legal contributions to the profession, while the state’s Women’s Bar Association recognized him with its first-ever Judicial Excellence in Gender Equity Award. Earlier professional accolades included the New Hampshire Association for Justice’s 2021 Civil Justice Award, the Philip S. Hollman Gender Equality Award, the Manchester Bar’s Distinguished Service Award, and an honorary induction into the International Society of Barristers.

Favorite Projects

Outstanding among these many examples of service to the community and the legal profession, however, were two of Justice Hicks’ favorites: the Webster Batchelder Inns of Court, and the Saint Paul’s School ASP. Presiding over the Inns of Court meetings at his beloved Puritan Backroom (the son of the North Country really did become a Queen City denizen), Justice Hicks’ omnipresent warmth and good humor were the most important ingredients of the atmosphere so cherished by the Inns membership. Webster-Batchelder Inns-goers enjoyed an extraordinary combination of CLE and collegiality, learning law, procedure, and advocacy while socializing with professional colleagues. Inns members grew to love his interactive introductions at each monthly meeting, where the venerable jurist from the state’s highest court would warmly and personally welcome each guest attendee as if he were welcoming them into his home.

And why wouldn’t he love the Saint Paul’s ASP? After all, he met Patty, his best friend, partner, and wife of 48 years there as a high school student in the summer of 1970. His dedication to the ASP mission – opening the St. Paul’s campus, culture, and faculty to New Hampshire public school juniors each summer – lead to over 20 years of service on its advisory board, currently as the chair of its Nominations Committee.

Appellate Judge

Governor John Lynch put it plainly when he nominated Judge Hicks to the Supreme Court in 2006: “I said, right from the start, that I would be looking for someone with a strong mind and a big heart.”

When the Executive Council promptly confirmed the appointment, the Governor added: “It is clear to me that the Council recognized those qualities in Gary Hicks, and I really do believe he will make an outstanding associate justice of the Supreme Court.”

That prediction was borne out repeatedly over the next 17 years.

Hicks’ unanimous opinion in the famous “green tongue” case, *State v. Blesdell-Moore*, 166 N.H. 183 (2014), received national media attention. There, the Court ruled that an Enfield police patrolman’s roadside request that a motorist stick out his tongue, revealing a green coating and eventually leading to the seizure of marijuana and hallucinogenic mushrooms,

impermissibly extended and transformed the initially routine traffic stop into a drug investigation in violation of New Hampshire’s constitutional provision governing search and seizure.

Chief Justice Lynn recalls Justice Hicks’ prescience in the areas of statutory interpretation and administrative law.

“An issue on which Justice Hicks had very strong views was the limited extent to which courts should give deference to administrative agencies in the agencies’ interpretation of their own regulations,” he says. “Justice Hicks would often remind his colleagues of the language in our case law stating that deference could only go so far, and that it did not mean we could give the agencies carte blanche to do whatever they wanted. In other words, Justice Hicks was ahead of his time in his skepticism of the *Chevron* doctrine (the federal doctrine extending interpretive deference to administrative agencies under many circumstances) and was mostly successful in persuading the rest of us on this point.”

Perhaps even more memorable than the “green tongue” case was a good-natured observation Justice Hicks made in dissent. In *Forster v. Town of Henniker*, 167 N.H. 745 (2015), the Court by a four-to-one vote upheld the Henniker ZBA’s ruling against the petitioner tree farm, ruling that hosting weddings was not a permitted land use in the farm’s zoning district. Justice Hicks disagreed, declaring in this first line of his dissent: “It is abundantly clear that none of my four colleagues have spent a summer in East Colebrook, an area where weddings on farms are customary.”

Temperament

Of course, despite the sharp intellect, sound judgment, civic engagement, and experience-honed wisdom, what Gary Ellis Hicks is best known for is his extraordinary *temperament*. “Temperament” is an overused word and concept in discussions about judges, but in Justice Hicks’ case, “perfect judicial temperament” is almost insufficient. Colleagues and adversaries recognized his extraordinary demeanor long before anyone called him “Your Honor.”

Justice Hicks’ greatest temperament-related strength, as a practicing lawyer, a courtroom judge, and a judicial colleague, is his well-known ability to engender an atmosphere of good faith and “confidence in the process.”

Commenting on his Superior Court nomination, Judicial Council Executive Director Nina Gardner remarked, “Talk about somebody with a judicial temperament! He is a wonderful listener, a person respectful of different points of view.”

Over the course of his career as a lawyer and judge, clients, adverse counsel, and parties alike, as well as the citizens, entities, and attorneys who appeared before him not only knew they were facing an honest adversary or were in the good hands of a capable advocate or fair judge. They also palpably experienced the satisfaction of participating in a dispute resolution process in which both the earlier Attorney Hicks and the later Judge and Justice Hicks invested and exhibited sincere personal faith.

As both advocate and jurist, Gary Ellis Hicks backed up that faith by applying himself, achieving a mastery of the facts and law with a fairness and impartiality that went beyond mere appearances and penetrated every aspect of the proceedings.

Parties and counsel on both sides of litigated disputes experienced that ineffable aspect of the justice’s demeanor that

reassures everyone involved that, “Yes, as unpleasant as this may be, I can and do trust this process. Win or lose, this is a fair, equitable, and just endeavor.” It undoubtedly required different skills and personal attributes during his years as counsel than it did on the bench, but both Hicks the advocate and Hicks the jurist thrived in those settings, and his excellence as a standard bearer for our adversary system benefitted our citizens, our state, and fostered New Hampshire’s unique and enviable legal culture.

Counselor and Advisor

Justice Hicks’ always-measured moderation and reasonableness were indispensable to another role in which he excelled: that of an advisor. As a rookie associate watching a seasoned partner in a day-to-day law practice, I personally witnessed his remarkable bedside manner with all manner of clients, from hard-boiled construction contractors to sophisticated in-house general counsel who had “seen it all,” to bereaved family survivors in their most vulnerable moments, providing sound guidance and perceptive with the kind of sensitivity that engendered trust – trust in their counsel, the process, and the rule of law. By way of example, in that same case described earlier where lawyer Hicks “outmaneuvered” Attorney Waystack, he also secured a post-verdict increased settlement from the insurance carrier that prevented an appeal, and which Waystack considered to be “much closer to fair compensation.”

This capacity served him well as a valued advisor to a succession of New Hampshire Chief Justices who came to rely on his wise counsel, including Chief Justice Linda Dalianis, who recalled, “While I was his colleague, and especially when I was Chief Justice, Justice Hicks was the one I turned to, and trusted, and felt confident that he would do whatever he could to help me with whatever problem I was trying to solve. This doesn’t have anything to do with his wise jurisprudence. If one is responsible for dealing with huge issues, Gary is the kind of person and judge to whom one is fortunate to be able to turn. He sought nothing for himself. He only ever wished to be of assistance to the New Hampshire Judicial Branch.”

This, of course, positioned Gary well during the period from August of 2019 through March 2021 – which included the first year of the COVID-19 pandemic – when the High Court operated with only four justices and without a chief justice. The wisdom and instincts of its most senior associate justice placed the citizens of New Hampshire in the best position possible under unfortunate and difficult circumstances. In the summer of 2023, Justice Hicks spearheaded and then organized the Court’s portrait unveiling honoring Ivorey Cobb, New Hampshire’s first African American jurist, who presided in the Justice’s hometown Colebrook Municipal and District Courts from 1964 to 1981.

The man, lawyer, citizen, and jurist are probably best summed up by trial attorney-turned-businessman Joseph Keefe. The former congressional candidate, asked by the *New Hampshire Sunday News* about judicial nominee Hicks, said it this way: “He has put his time in as a dedicated public servant and community-minded citizen. Gary does not have a big ego. He is not in it for himself. He is dedicated to family and community, state and country, corny as that sounds.”

Corny? Not really. Just accurate, as was Keefe’s final comment: “He’s from Colebrook. I think that’s just how they build them up there.” ♦

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2024 NHBA Award Recipients

Philip S. Hollman Award for Gender Equality:



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William Barry, III
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Helen Honorow
Barry & Honorow

Vickie M. Bunnell Award for Community Service:



Cristina Rousseau
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Outstanding Service in Public Sector/Public Interest Law:



Anna Krasinski
US Attorney's Office



K. Allen Brooks
NH Department of Justice

SCHEDULE AT A GLANCE

(subject to change; we invite you to visit our exhibitors during lunch and designated breaks throughout the day.)

Gender Equality Breakfast

**Registration and Check-In /
Continental Breakfast / Exhibitor
Showcase**

**President's Welcome / Housekeeping
Announcements / In Memoriam /
Practicing Wellness in NH**

**Enhancing the Culture of the Legal
Profession by Embracing
Well-Being and Civility**

**Refreshment Break / Exhibitor
Showcase**

**Unpacking Well-Being in the New
Hampshire Legal Community:
Where We Sit, What's in Play, Where
Should We Go?**

**Business Meeting / Honors and
Awards Luncheon / Dessert in
Exhibitor Hall**

**Practicing Law at the Speed of Light:
Evidence-Based Tips for Building
Resilience and Well-Being**

**Refreshment Break / Exhibitor
Showcase**

**From Algorithms to Applications:
Generative AI in Legal Practice**

**The Future of AI for Lawyers:
Useful Tool or the End of the
Profession?**

**After Hours Networking Social
Hosted by the
New Lawyers Committee
DoubleTree - Penstock Room**

**285 NHCLE Minutes
incl. 45 Ethics Minutes**





CONTINUING LEGAL EDUCATION GUIDE

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

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

FEBRUARY 2024

TUE, FEB 6 – 12:00 p.m. – 1:00 p.m.
Conservation Easements
• Webcast; 60 NHCLE min.

FRI, FEB 9 – 8:45 p.m. – 4:30 p.m.
Midyear Meeting 2024
• 285 NHCLE min., incl. 45 ethics min.
• Manchester – DoubleTree by Hilton

WED, FEB 14 – Time TBD
ADR
• Credits TBD
• Concord – NHBA Seminar Room/Webcast

THU, FEB 15 – 9:00 p.m. – 4:15 p.m.
Collections in New Hampshire
• 360 NHCLE min., incl. 60 ethics min.
• Concord – NHBA Seminar Room/Webcast

MARCH 2024

WED, MAR 6 – 9:00 a.m. – 4:30 p.m.
Employment Law 101
• 360 NHCLE min., incl. 60 ethics min.
• Concord – NHBA Seminar Room/Webcast

FRI, MAR 8 – Time TBD
Estate Administration 101
• Credits TBD
• Concord – NHBA Seminar Room/Webcast

FRI, MAR 15 – 1:30 p.m. – 4:30 p.m.
Trial Practice Series – Procedure
• Credits TBD
• Concord – NHBA Seminar Room/Webcast

WED, MAR 27 – 9:00 a.m. – 3:00 p.m.
Tax Abatements & Exemptions
• 270 NHCLE min.
• Concord – NHBA Seminar Room/Webcast

APRIL 2024

WED, APR 3 – Time TBD
NH Constitution Law
• Credits TBD
• Concord – NHBA Seminar Room/Webcast

TUE, APR 9 – 9:00 a.m. – 4:30 p.m.
Family Law 101
• 360 NHCLE min., incl. 60 ethics min.
• Concord – NHBA Seminar Room/Webcast

FRI, APR 12 – 9:00 a.m. – 4:30 p.m.
Evidence
• 360 NHCLE min., incl. 60 ethics min.
• Concord – NHBA Seminar Room/Webcast

MAY 2024

THU, MAY 2 – 9:00 a.m. – 4:30 p.m.
The Uniform Commercial Code in NH in the Digital Age
• 375 NHCLE min., incl. 30 ethics min.
• Concord – NHBA Seminar Room/Webcast

THU, MAY 9 – 9:00 a.m. – 4:30 p.m.
New Hampshire Insurance Law 101
• 360 NHCLE min., incl. 60 ethics min.
• Concord – NHBA Seminar Room/Webcast

TUE, MAY 14 – Time TBD
Business Litigation
• Credits TBD
• Concord – NHBA Seminar Room/Webcast

Conservation Easements

Thursday, February 6
12:00 p.m. – 1:00 p.m.
60 NHCLE min.

Join us for this one-hour webcast and catch up on conservation easements. Get a refresher on what a conservation easement is, and learn the latest trends.

Topics will include:

- What is legally damaged land?
- Can solar go on conserved land?
- Does an Option to Purchase at Agricultural Value belong in a Conservation Easement?
- What is the Internal Revenue Service looking at lately?

Faculty

Amy Manzelli, CLE Committee Member, BCM Environmental & Land Law, PLLC, Concord

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Collections in New Hampshire

Thursday, February 15

9:00 a.m. – 4:15 p.m.

360 NHCLE min., incl. 60 ethics min.

NHBA Seminar Room/Live Webcast

This program will cover collection law and practice from soup to nuts, beginning with the basics of a collection lawsuit; moving on to discussions of ethics and counselling the client (both creditor and debtor); then the Fair Debt Collection Practices Act, collecting from a probate estate, bankruptcy considerations and finally dealing with special problems.

Faculty

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

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

Randall B. Clark, Attorney at Law, Hollis

Daniel P. Luker, Preti, Flaherty, Beliveau & Pachios, PLLP, Concord

Davi M. Peters, Welts, White & Fontaine, PC, Nashua

Charles R. Powell, III, Devine, Millimet & Branch, PA, Manchester, NH

George H. Thompson, Jr., Welts, White & Fontaine, PC, Nashua

Tax Abatements & Exemptions

Wednesday, March 27

9:00 a.m. – 3:00 p.m.

270 NHCLE min.

NHBA Seminar Room/Live Webcast

Presenters, all experienced land use and real estate attorneys in the State of New Hampshire, will discuss the statutes and case law surrounding New Hampshire's tax abatement process and its tax exemption system, including local applications, appeals of denials, and the litigation of such cases.

Who Should Attend?

Any attorney who advises clients with regard to real estate holdings may find some value in attending this program.

Faculty

Laura Spector-Morgan, Program Chair/CLE Committee Member, Mitchell Municipal Group, PA, Laconia

Derek D. Lick, Orr & Reno, PA, Concord

Eric A. Maher, Donahue, Tucker & Ciandella, PLLC, Exeter, NH

Leigh Willey, CATIC, Concord

Employment Law 101

Wednesday, March 6

9:00 a.m. – 4:30 p.m.

360 NHCLE min., incl. 60 ethics min.

NHBA Seminar Room/Live Webcast

This program will cover a wide range of topics that span the life-cycle of an employee, from issues that arise with interviewing and hiring to termination and unemployment concerns. Our experienced faculty of private sector and government attorneys will also cover many subjects that come up in between, such as enforcement of the National Labor Relations Act, claims of employment discrimination before the NH Commission for Human Rights, risk management in the workplace, state and federal leave laws, plaintiff-specific issues, and ethical dilemmas that arise, among other matters.

Who Should Attend This Program?

Less experienced employment law practitioners will benefit from the broad overview provided. General practitioners, corporate attorneys, in-house counsel, experienced employment law practitioners, and employers will benefit from current updates, the opportunity to pick up new practice tips, and from learning about topics that they have not focused on previously.

Faculty

Katherine E. Hedges, Program Co-Chair/CLE Committee Member, Rath, Young & Pignatelli, PC, Concord

Julie A. Moore, Program Co-Chair/CLE Committee Member, Employment Practices Group, Wellesley, MA

Andrea G. Chatfield, Sheehan, Phinney, Bass & Green, PA, Manchester

JoAnne Howlett, National Labor Relations Board, Hartford, CT

Lauren S. Irwin, Upton & Hatfield, LLP, Concord

Brooke Lovett Shilo, Upton & Hatfield, LLP, Concord

Ahni Malachi, NH Commission for Human Rights, Concord

Terri L. Pastori, Pastori Krans, PLLC, Concord

Michael J. Rossi, Conn Kavanaugh, Boston, MA

Lon E. Siel, NH Dept. of Employment Security, Concord

The Uniform Commercial Code in NH in the Digital Age

Thursday, May 2

9:00 a.m. – 4:30 p.m.

375 NHCLE min., incl. 30 ethics min.

NHBA Seminar Room/Live Webcast

This seminar will combine an overview of the Uniform Commercial Code as actually used in New Hampshire, including trial work, with an expert review of the role of digital technology, controllable records, and the possible roles of crypto currency and NFT's in commerce. Particular attention will be paid to new Article 12, and the use of NFT's and controllable records in secured transactions and bills of lading and the like.

Faculty

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

Joseph Bator, Regional VP, TD Bank

Christopher M. Candon, Sheehan, Phinney, Bass & Green, Manchester

Carolyn K. Cole, Cole Associates Civil Law, PLLC, Hanover

Professor Charles W. Mooney, University of PA Carey Law School (ret.)

Professor William Murphy, UNH Franklin Pierce School of Law, Concord

Andrew J. Newcombe, Sheehan, Phinney, Bass & Green, Manchester

Professor Seth Oranburg, UNH Franklin Pierce School of Law, Concord

Nathan P. Warecki, Nixon Peabody, LLP, Manchester

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

New Hampshire Insurance Law 101

Thursday, May 9
9:00 a.m. – 4:30 p.m.
360 NHCLE min., incl. 30 ethics min.
NHBA Seminar Room/Live Webcast

NH Insurance Law 101 is intended for practitioners of all ages and experience levels who encounter insurance questions and coverage issues in their daily civil practices. The content of the presentations will focus primarily on tort / personal injury litigation and the critical issues of insurance coverage that commonly arise.

Faculty

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

Matthew V. Burrows, Gallagher, Callahan & Gartrell, Concord

Doreen F. Connor, Primmer, Piper, Eggleston & Cramer, PC, Manchester

Iryna N. Dore, Sulloway & Hollis, Concord

Christine Friedman, Friedman Feeney, PLLC, Concord

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

Russell F. Hilliard, Upton & Hatfield, LLP, Portsmouth

Adam R. Mordecai, Morrison Mahoney, LLP, Manchester

Roger D. Turgeon, of counsel, Shaheen & Gordon, Dover

Did You Miss These NHBA CLE Programs? Now Available On-Demand

22nd Annual Labor & Employment Law Update

Original Program Date: September 21, 2023
365 NHCLE min., incl. 60 ethics min.

Federal Research Grants & Agreements

Original Program Date: September 22, 2023
60 NHCLE min.

Developments in the Law 2023

Original Program Date: October 27, 2023
360 NHCLE min. incl. 60 ethics min.

Identifying & Addressing Severe Parent/Child Contact Problems in Parenting & Divorce Cases

Original Program Date: November 16, 2023
385 NHCLE min.

Fastcase: A Comprehensive Guide

Original Program Date: November 29, 2023
60 NHCLE min.

2023 Patent Law Update

Original Program Date: November 30, 2023
60 NHCLE min.

Upcoming CLE Programs By NH Lawyers, For NH Lawyers

Midyear Meeting 2024

February 9, 2024

ADR

February 14, 2024

Estate Administration 101

March 8, 2024

Trial Practice Series-Procedure

March 15, 2024

NH's Paraprofessional Pilot Program

March TBD

20th Superior Court Judicial Forum

March TBD

Lobbying

March TBD

NH Constitution Law

April 3, 2024

Family Law 101

April 9, 2024

Evidence

April 12, 2024

Problems & Pitfalls of Lawyers Trust Accounting

April TBD

UCC

May 2, 2024

Business Litigation

May 14, 2024

Navigating the Healthcare World Update

May 22, 2024

18th Annual Ethics CLE

May 30, 2024

Watch Bar News or our website as more details are forthcoming.
www.nhbar.org/nhbacle

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

■ GEORGE from page 1

of the public will always be a priority of our unified bar.

Who knew we would be struck by a pandemic in March 2020? But we successfully converted to working from home and kept essential services like attorney license renewal operating so that members could continue their work with as little disruption as possible. Professional Development pivoted to producing shorter, fully remote CLE programming so that lawyers could satisfy their professional obligations from home. With hybrid programming here to stay, we are in the process of upgrading our seminar room with new lighting and electronics, so that real-time two-way communications will be standard.

The NHBA operating mission is stated as: "...supporting members of the legal profession and their service to the public and the justice system..." Addressing first the efforts of supporting attorneys in their practices, I am proud of the considerable expansion of these services and programs in the recent past. We continue to provide Fast-case, free of charge, as a legal search engine.

In 2019, I developed a technology consultation service with our partner Affinity Consulting. The first of its kind, members can schedule a live consultation with an expert to assess hardware and software issues, email questions to an expert, watch technology tutorials, and gain tips on improving practice through technology. The Tech-Connect benefit is free.

In 2020, I authored the *NHBA Succession Planning Guide*, complete with fillable forms, to assist practitioners in closing their practices and planning for the future should there be a medical or family emer-

gency. Since 2020, we have adopted nine new member services to enhance different aspects of practice, most recently (as of December 1), adding ALPS as an endorsed direct carrier for malpractice insurance, thereby expanding the products and options available to members.

Finally, with something that feels distinctively like the "New Hampshire Advantage," through the efforts of Misty Griffith, we have developed a robust mentoring program with over 200 such relationships in existence and climbing. Likewise, our Lawyer Referral Service has exploded in volume. In 2023, they have provided more than 8,000 referrals connecting clients with lawyers. Only a few years ago the numbers were less than half that amount. The future certainly does look bright!

Our Constitution states that one of the purposes of the NHBA is "to encourage cordial relations among members of the Bar." Thanks largely to the work of my Deputy Executive Director Paula Lewis, I am happy to report that we are on the cusp of providing an additional member benefit that goes directly to the much-heralded New Hampshire Bar collegiality.

In January (furniture suppliers willing), we will open an all-new members-only area at the Bar Center. This free service creates a bright area where members can stop by between hearings or depositions, catch up

I am proud of the close working relationship we have forged with our judiciary and in particular the collaborative partnership that has developed with our Supreme Court.

on emails, use the four private offices to call clients or others with reasonable privacy, or relax with a newspaper in comfortable seating. There is even a free hospitality area with coffee, tea, soft drinks, and snacks. This presents the perfect central location to catch up with other members and stay connected.

In the same vein, in 2023, we established a standalone 50-Year Member Luncheon for members and their families at the Bedford Village Inn, which was extraordinarily well received.

I am proud of the close working relationship we have forged with our judiciary and, in particular, the collaborative partnership that has developed with our Supreme Court. This strong bond allows both of us to serve the justice system better.

However, let me take my sunglasses off for a minute, and describe an area in which our unified bar could do a better job.

Among the NHBA historical files is all the paperwork surrounding the unification debate between 1969 and 1972. Within those yellow onion-skin copies are open letters from Dave Nixon, Stanley Brown, Bill Phinney, and others advocating the advantages of making membership mandatory. While there were many reasons, a prime driver of that debate was that it would give the Bar a statewide voice about our justice system. Indeed, our mission statement recites that part of our mission is "upholding the unique and valuable role of lawyers as independent counselors and advocates helping preserve a civilized society governed by the Rule of Law."

Respect for our judicial system has severely eroded since I started practicing in the late 1970s. As lawyers, we should be deeply concerned about the ongoing and increasingly disturbing attacks on our judiciary and the perceived fairness of our system of justice. An independent judiciary is essential to ensure the rule of law is respected and endures.

Much of the criticism is bolstered by ignorance but validated by statements of people in public positions or using social media as a platform. Lawyers have a special duty to the public – and the system we serve – to enlighten the lack of knowledge of how the system really works, and to use our skills as advocates to make sure our independent judiciary isn't lessened and diminished on a situational basis.

The Bar should do a better job of speaking out on an institutional basis. Lawyers and judges should be available to speak at public forums to promote the following ideas:

1. Citizens need to respect our court system. They should believe the law will be followed, and that it will be fair and just.
2. Citizens need to trust that judges and juries will perform fairly and impartially.
3. Judges utilize not just knowledge of the law but use their judgment and discretion to craft each case with the attention and consideration it deserves.
4. Courts should be funded so that there are not excessive delays due to too few judges or support staff. People need to understand that the smooth operation of the courts is the mechanism that guarantees our constitutional democracy.
5. Litigants need to believe that appeals are an unbiased review of the law as applied to a particular case and are not a rubber stamp to approve the lower decision.

It is too easy to assume, without evidence, that bias rules the day, that different classes of litigants get different treatment, and the system is broken and unfair.

As lawyers in New Hampshire, we know that is not true. With very few exceptions, the system works. The Bar needs to develop a much more visible and robust outreach to the public to fulfill its obligation. Whatever form it takes, any such program must be aggressively marketed to the public through the municipal associations, the BIA, Chamber of Commerce, religious institutions, schools, and anywhere offering a public platform. It can be in person, or in podcast format. Judges need to be engaged in the effort. The NHBA, historically, has tended to be insular. To be successful, we need to be the opposite – the word must be out there that teams of lawyers and judges are available to shed light on a myriad of subjects within the court system. The danger of not doing so has never been greater.

I am reminded of Martin Luther King's famous warning:

"In the end we will remember not the words of our enemies, but the silence of our friends."

The Bar Association needs to facilitate a much better public dialogue. It should not be the justice system's silent or, at best, muted friend. The Bar should be more vocal and be organized to reassure citizens that the New Hampshire system operates with integrity and fairness!

Now, with my sunglasses back on, I am proud of where I have helped lead the NHBA, and I leave knowing the parts are in place to go on to greater endeavors, and the future is bright. ♦

■ WTP from page 8

to seek out truthful information and then think about it in a meaningful way – I think that's the solution."

Milford High School student Nico Romeri says he learned so much through the program that he didn't know he would need.

"I think that everyone should take this class," Romeri says. "I learned more [in this class] than a regular civics class because you're immersing yourself in it. In regular civics classes, there are a lot of kids who are sleeping in class. [In We the People], you get to specialize in the units, and you learn other things from your peers

and their units, as well."

Both schools will now prepare for the State Finals on January 5 at the City Wide Community Center in Concord. The state champions will then represent the Granite State in April at the National Finals in Washington, DC.

"Civics education is so important as we have our current challenges," Eber says. "I always go home from these days with renewed hope that our next generation really understands and can bring forward the concepts of our democracy in a way that's going to preserve it."

For more information on WTP or to volunteer for future events, contact NHBA Law Related Education Coordinator Robin E. Knippers at reknippers@nhbar.org. ♦



Milford High School students listening to feedback from the volunteer We the People judges as their teacher, Thomas Lundstedt (left), proudly observes. Photo by Tom Jarvis

2024 BAR NEWS AD DEADLINES

Issue Date	Ad Reservation Deadline	Final Ad Copy Due
Jan. 17, 2024	Jan. 2, 2024	Jan. 8, 2024
Feb. 21, 2024	Feb. 5, 2024	Feb. 12, 2024
March 20, 2024	March 4, 2024	March 11, 2024
April 17, 2024	April 1, 2024	April 8, 2024
May 15, 2024	April 29, 2024	May 6, 2024
June 19, 2024	June 3, 2024	June 10, 2024
July 17, 2024	July 1, 2024	July 8, 2024
Aug. 21, 2024	Aug. 5, 2024	Aug. 12, 2024

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provide access to education and employment.”

Evidenced-based programs designed to rehabilitate and decrease recidivism at the New Hampshire State Prison (NHSP) include the Sex Offender Treatment program (SOT) and the Focus Program for substance use disorders. These programs must be completed before inmates are eligible for release. Other programs include education, mental health, volunteering, and work.

Chris Slayback, 52, was convicted in 2014 of aggravated felonious sexual assault and sentenced to a minimum of 20 years in prison. As part of the prison’s workforce, Slayback makes keepsake boxes ranging in price from \$40 to \$150 through the Hobby Craft program at the NHSP in Concord.

“I had wanted to be an artist when I was younger but with life’s obligations I never did,” he says, adding that 65 percent of the sale of products goes to prisoners, 25 percent to the prison, and 10 percent to recreation and entertainment programs. “Now this is something I plan to do for the rest of my life.”

Slayback, who donates a third of his pay from Hobby Craft to the State’s Victim Compensation program, says he tries to demonstrate everything he can to show he is serious about rehabilitation. This includes sitting on multiple committees aimed at rehabilitating prisoners and making staff aware of problems. He is also the charitable events coordinator at the prison in Concord, which has raised over \$13,000, and has worked on a victim impact letter.

The Choose Love Program

Slayback has also completed the Choose Love program. In October 2021, the NHSP began offering Choose Love, which was adopted as part of the State’s Social and Emotional Learning (SEL) curriculum in 2018. The program was founded by Scarlett Lewis, whose son Jesse was killed at Sandy Hook Elementary School in December 2012. The DOC says the program teaches people how to respond with love and compassion in difficult situations.

“Choose Love creates an environment where people can be vulnerable,” Slayback says, explaining many prisoners have never had that chance. “The program changes perspectives by allowing people to express what’s wrong and asking what happened to them. Most guys in here have a lot of anger, and learning that this is a secondary emotion, derived from something else, helps us understand there are different ways to react to situations we confront.”

Choose Love Program Director Shannon Desilets says one unique design of the program is that it is peer-facilitated.

“We wanted them to have autonomy and to be able to choose what lessons they wanted,” Desilets says. “The first graduating class at the men’s facility in Concord didn’t want to stop with 12 or 14 lessons; they chose to do all 19.”

Desilets says she has received numerous positive testimonies from inmates in the program and from family members of those incarcerated. She says she intends to design a program that families can do at home that will coincide with an inmate’s work.

Truth in Rehabilitation

Oliver Hooper, a 52-year-old inmate currently serving a sentence of 50 to 100 years after being convicted of aggravated felonious sexual assault in 2006, says he would like to see more focus on the good work prisoners are doing.



An inmate from the New Hampshire Correctional Facility for Women holding her certificate at the inaugural Choose Love graduation in January 2022 next to DOC Commissioner Helen Hanks (left) and Choose Love founder Scarlett Lewis (right). Photo is a screenshot from a Choose Love YouTube video.

“The DOC does a great job documenting disciplinary tickets but if you’ve completed the Choose Love program or Family Connections Center, it’s not always weighted correctly,” he says. “It leans toward disciplinary aspects.”

In 2018 and 2019, the Resident Communication Committee (RCC) proposed a way to track a term reduction program – Truth in Rehabilitation – that would incentivize residents to actively participate in their rehabilitation through education, employment, programming, and volunteerism.

Unlike the Truth in Sentencing law that takes a more punitive approach to sentencing, Hooper says Truth in Rehabilitation, which has not been approved by the DOC, was created by Slayback with the help of other inmates. It includes a tracking system and point values for rehabilitative efforts weighed against disciplinary tickets that result in scores that can be used to assist with sentence reduction and in parole hearings.

Hooper, who has chaired the Resident Communications Committee for several years, says the NHSP needs to do better documenting inmates’ rehabilitative efforts but have so far failed to implement the Truth in Rehabilitation program.

“Many people are doing right from the time they enter prison, and the RCC wants to chart that good behavior,” he says. “We want quarterly rehab efforts from the get-go. We want a class board, almost like a yearly job performance review. When someone goes up for parole or has a hearing, they may need to show good work.”

Sentence Reductions for Good Behavior

In New Hampshire, prisoners serving a minimum term of six years or more can apply for a suspended sentence reduction 12 months before they have served two thirds of their minimum sentence. The law, 651:20, is a way for prisoners to demonstrate rehabilitation and to reduce their time served.

While helping to craft changes to the law, Slayback argued that prior to 2021 prisoners could not file a motion to suspend until they had served two thirds of their sentence, which resulted in lost time for some.

The timing of an inmate’s assessment for the sex offender program depends on an individual’s sentence, with the intent



Inmates make furniture and keepsakes through the prison’s Hobby Craft and Woodshop programs, which are part of the Correctional Industries Program – mostly known for making the state’s license plates. The items are sold by retailers throughout the state and at events like the Very Merry Holiday Gift Festival (pictured) held Dec. 9-10 in Manchester. The DOC also operates a retail showroom located down the street from the NHSP in Concord. Photo by Scott Merrill

Choose Love

Choose Love Director Shannon Desilets, a member of the Association of Traumatic Stress Specialists and a specialist in Post Traumatic Growth, met Choose Love founder Scarlett Lewis following the murder of Lewis’ son Jesse at Sandy Hook Elementary School. She has been providing post-trauma therapy for the Sandy Hook community for nearly 11 years.

“[Scarlett] would lay on my treatment table and share with me first her vision for her organization,” Desilets says. “When it came to fruition – first and foremost, I’m a mom – I absolutely wanted this proactive and preventative program in my son’s school here in New Hampshire.”

Desilets says Choose Love teaches essential life skills and tools designed to foster compassion and understanding.

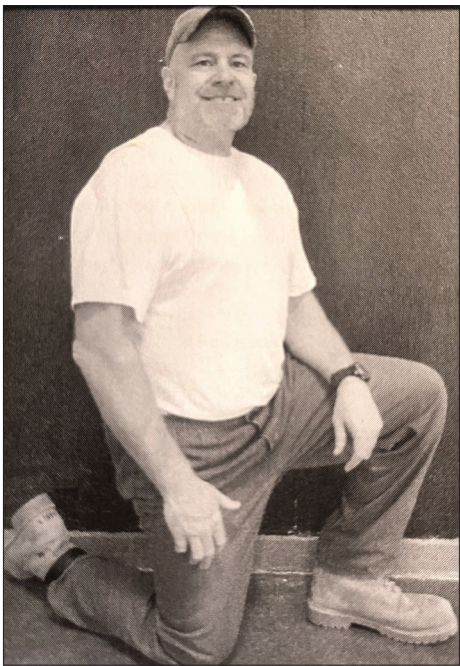
In 2018, after Desilets met with Governor Christopher Sununu and his wife, the program was adopted as part of the Social and Emotional

Learning (SEL) in New Hampshire Schools. The DOC then included Choose Love in its programming after Commissioner Hanks heard Lewis speak briefly about Choose Love during an Executive Council meeting in 2021.

“I shared with Commissioner Hanks more deeply about Choose Love and all that it teaches, and she wholeheartedly embraced this,” Desilets says. “The DOC administration and staff have been some of the most dedicated people I have ever worked with.”

She says inmates have been able to find purpose in their lives, “no matter their backgrounds or the length of their sentence.”

To date, four Choose Love graduating classes have taken place at the women’s facility, two at the men’s, and both have started their next round of classes. Choose Love is also running at the Transitional Housing Units to help the residents integrate back into society. ♦



Oliver Hooper at the NHSP in Concord in 2023. Courtesy Photo

to provide 24 months to complete the program when it is recommended according to a DOC policy and procedure directive for male sexual offender treatment services. In general, it states that individuals are considered eligible when they are within two years of the minimum date.

“The DOC has created an impossible condition for some people,” Hooper says. “If you have a 20-year sentence, they wait until about two years before release to get you into the program. Many guys want to start in on rehab earlier, but the DOC wants people to take it right before they hit the streets.”

DOC Public Information Officer Jane Graham says the DOC does not have any residents with complaints that they are having trouble accessing Sex Offender Treatment (SOT).

“Access to SOT was vetted some time ago through an audit showing that most delays in SOT at that time were due to a resident’s misconduct,” she says. “The Department’s internal audits of access to the Focus program and questions on delays have reaffirmed that significant or repeated institutional misconduct has been the primary barrier to an individual’s timely access to a treatment program.”

While Slayback finds the DOC’s response accurate, he says it fails to address the issue of timing when it comes to suspended sentences.

“If I wanted to apply for my two thirds and a judge tells me I need SOT programing, the only way to get in earlier is if they change the structure of my 20-year minimum sentence,” he says. “I can’t



Choose Love program founder Scarlett Lewis speaking to inmates at the inaugural graduation in 2022. Photo is a screenshot from a Choose Love YouTube video.

get a 651:20 prior to 12 and half years but wouldn’t be eligible for the program until year 17 or 18.”

Attorney Anthony Naro, who represents clients in prison, says he has had clients in Slayback’s situation regarding suspended sentences and others in the Focus program. He says inmates in these situations can petition the court to suspend the balance of their minimum sentence and do treatment on an outpatient basis.

“But then, the question becomes ‘will they then be paroled if the judge grants a motion?’” he says. “That’s a question to be answered.”

Naro’s biggest frustration is that some people are not getting adequate treatment early enough, whether this applies to sex offender treatment or substance use treatment.

“I had a client that stayed over his reduced minimum because he couldn’t get into the Focus program,” Naro says. “What happens in the meantime, is you fend for yourself, and you have to fight off all these demons.”

Hooper says for drug addicts, it takes a couple years to adjust to prison life, and the earlier they can get into a program the better.

“Years three through five would be a good time to get treatment,” Hooper says. “Over time, without treatment, bad habits are reinforced that could be addressed early on.”

Aside from suspended sentences, earned-time credits are another way prisoners can reduce sentences upon completion of various educational and programs.

More than 1,000 sentences were impacted through the earned-time credit program from December 2022 to December 2023.

Graham also points to incentive-based programs which can help reduce sentences. She is involved in the Progressive Pathways program at the New Hampshire Correctional Facility for Women, which is designed to assist residents with self-reflection and rehabilitation based on their individual needs.

Lingering Myths

While people may believe sex offenders have one of the highest recidivism rates in the prison system, Slayback says “this is a total falsity.”

And there’s data to support this.

According to a 2019 US Department of Justice Special Report, “Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-2014),” people convicted of rape and sexual assault have rearrest rates about 20 percent lower than all other offense categories combined.

Naro says finding the political will to provide the best possible rehabilitation treatment, especially for sex offenders, can be difficult.

“That group is one of the least popular groups of inmates at the prison and they can lose their humanity as a result of the crimes they’ve committed,” he says, adding that most will return to society. “That means we recognize that they have redeeming qualities, and they can be rehabilitated.” ♦

Recidivism Numbers

According to the 2018 cohort of the DOC study, 568 out of 1,187 people – including 160 female inmates – returned to corrections facilities over a 36-month period after being released. DOC Public Information Officer Jane Graham says one way of measuring rehabilitation is to look at recidivism rates. Programs involving sex offender treatment, substance use disorders, and educational and vocational programs are designed to provide rehabilitation to hopefully prevent what the DOC calls “returns” in its 2018 study.

From the 2018 cohort, those who returned to correctional facilities fall into two categories: new sentences and probation and parole violations.

Of the 313 people in the 2018 cohort originally sentenced for drug and alcohol offenses, 146 (46.6 percent) returned to prisons. There were 202 people (53.9 percent) who returned because of property crimes, including burglary and shoplifting; and 175 people (45.3 percent) charged with violent crimes, including “any bodily damage to a person,” returned.

Age also matters when it comes to recidivism. The same study shows that the older people get the less they reoffend. The 20 to 29 age range had the highest percentage of returns (53.5 percent), those aged 50 to 59 had a return rate of 34.4 percent, and the return rate for those over 59 was 32.4 percent. ♦

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Business Law and Business Litigation

Federal District Court Clarifies Prioritization of Mechanics' Liens and Construction Mortgages Under New Hampshire Law

By Nicole W. Austin and Christopher M. Candon



Austin



Candon

Where there is construction, there are contractors and there are lenders – both of which generally have attachment interests in the property undergoing construction. Under New Hampshire law, lenders on construction projects may pursue attachment of the property through recording mortgages, including a “construction mortgage,” meaning “any mortgage loan made for the purpose of financing the construction, repair or alteration of any structure on the mortgaged premises where the lien secured by such attachment arises from the same construction, repair or alteration work.” NH RSA 447:12-a.

Contractors, on the other hand, have “mechanics’ liens” at their disposal. A mechanics’ lien is a right of attachment available to anyone performing labor, professional design services, or furnishing materials for more than \$15 to erect or repair a building pursuant to a contract with the building’s owner. NH RSA 447:2(I). Distinctively, mechanics’ liens arise by operation of law at the time that work under a contract first begins – no recording at the outset is required. However, once the contractor finishes their work under the contract, they must “perfect” the mechanics’ lien through a recording, otherwise it expires. See NH RSA 447:9, :10.

Comparing the attachment interests of contractors (and subcontractors) and lenders is how courts determine the order (priority) of who should be paid from debtor-owner assets when those assets are insufficient to make creditors whole. There are several New Hampshire laws



that prescribe rules to determine priority of attachment interests. New Hampshire is a “race-notice” jurisdiction, meaning that a creditor has a senior claim if they record without notice of a prior unrecorded interest. *Amoskeag Bank v. Chagnon*, 133 N.H. 11, 14 (1990); see also NH RSA 477:3-a (New Hampshire’s recording statute).

Unlike in “race” jurisdictions, simply recording first is not enough in New Hampshire. In the case of two interests competing for priority, if a creditor records their interest first but knew or should have known about a prior creditor’s unrecorded interest, the prior creditor’s unrecorded interest would have priority, i.e., the prior creditor would be the “winner” or the “victor” under New Hampshire’s race-notice rules.

New Hampshire also gives mechanics’ liens a qualified automatic priority over construction mortgages under what is known as Section 12-a. NH RSA 447:12-a. If Section 12-a applies, the race-notice rules are irrelevant, and the mechanics’ lien is the automatic “winner.” However, a mechanics’ lien does not have automatic priority over a construction mortgage “to the extent that the mortgagee shows that the proceeds of the mortgage loan were disbursed either toward payment of invoices from or claims due subcontractors and sup-

pliers of materials or labor for the work on the mortgaged premises.” *Id.*

Other statutes provide that if subcontractors provide notice to the property owner that they intend to claim the same lien as the contractor, either before or after the subcontractors’ work begins, the property owner must retain a sufficient sum of money to pay the subcontractors’ claims. See NH RSA 447:5, :6, :7, :8.

In October 2023, the District Court for the District of New Hampshire (McCafferty, J.) issued an order in *UMB Bank, N.A. v. The MacMillin Company, LLC*, 2023 U.S. Dist. LEXIS 185680 (D.N.H. Oct. 16, 2023), answering some nuanced questions under New Hampshire’s statutory scheme. In that case, the MacMillin Company was hired to manage construction of a retirement facility in Keene.

About a month later, in May 2017, the contractor began work, including tree clearing pursuant to a wetlands permit that required work be commenced by June 1 – giving rise to then-inchoate mechanics’ liens on the property. On July 19, 2017, UMB Bank’s predecessor in interest recorded its \$65 million construction mortgage against the property.

Over the next two years, UMB Bank paid the contractor at least \$55 million for labor and materials from the money

loaned to the property owner. During that time, subcontractors also started work on the property – giving rise to mechanics’ liens, as well. In 2019, the property owner stopped paying the contractor due to alleged construction defects, and MacMillin recorded an attachment based on its mechanics’ liens on October 31, 2019, for a total amount of approximately \$5.7 million.

The property owner declared bankruptcy in 2021. Later that year, the bankruptcy court approved a sale of the facility for \$33 million. The contractor and the lender each sought to have their interest prioritized because the sale proceeds would not cover the lender’s \$65 million mortgage and the contractor’s \$5.7 million mechanics’ liens.

The bankruptcy court determined that the contractor was the “winner” under New Hampshire’s race-notice laws, that Section 12-a did not give priority to the construction mortgage, and that the subcontractor’s mechanics’ liens followed the priority of the contractor’s and thus were also senior to the construction mortgage. See *In re Prospect-Woodward Home*, 2023 Bankr. LEXIS 34 (Bankr. D.N.H. January 6, 2023). UMB Bank appealed.

The district court affirmed the bankruptcy court on all but a small point. The court clarified that just because a mechanics’ lien is not eligible for automatic priority over a construction mortgage under Section 12-a (because the lien is qualified), that does not mean the construction mortgage has automatic priority over the mechanics’ lien. A qualified mechanics’ lien may not be able to achieve priority automatically via Section 12-a, but as the court’s order details, the mechanics’ lien could still be the senior claim over a construction mortgage if the lien is found to be the “winner” under New Hampshire’s race-notice rules.

The contractor here did not have automatic priority over the UMB Bank’s construction mortgage because UMB Bank paid MacMillin for some of the work MacMillin performed under the contract, therefore, the applicability of Section 12-a

LIENS continued on page 37

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The Future of Minority ‘Freeze-out’ Claims

By Sean T. O’Connell and
Kirsten J. Allen



O’Connell



Allen



Although the tort of corporate freeze-out has not formally been adopted by the New Hampshire Supreme Court, New Hampshire courts have assumed it exists as a viable claim. The Superior Court Business and Commercial Dispute Docket has held “the assumed existence of the freeze-out claim under New Hampshire law is based on the existence of a fiduciary duty between shareholders in a closely held corporation.” *Ronzio v. Tannariello*, No. 2262019-CV-671, 2020 WL 13663046, at *5 (N.H. Super. Ct. Dec. 11, 2020).

Interestingly, in *Komaridis*, Judge David Anderson, sitting in the Hillsborough North Superior Court, found that the plaintiff pled a corporate freeze-out claim sufficient to survive a motion to dismiss even though the limited liability company members in their operating agreement waived and eliminated fiduciary duties “owed by

the Members ... to the fullest extent permitted by the [Limited Liability Company Act].” *Komaridis v. D’Amelio, et al.* No. 216-2023-CV-00094 (N.H. Super. Ct. Aug. 23, 2023) at *2.

The *Komaridis* court found that defendant’s alleged misconduct as LLC manager forms the basis of plaintiff’s claim. *Komaridis*. No. 216-2023-CV-00094 at *5. Crucially, while the operating agreement waived fiduciary duties the members owed in their capacity as members, the operating agreement kept the duty of loyalty owed in their capacity as managers intact. *Komaridis*. No. 216-2023-CV-00094 at *6.

The *Komaridis* court contrasts its 2020 decision in *Ronzio v. Tannariello*, where

it found no “viable corporate freezeout claim because the shareholders contractually agreed that they would not owe fiduciary duties to each other” in part because “no manager owed a duty of care of the members.” No. 216-2023-CV-00094 at *6 (quoting 2020 WL 13663046 at *5). The *Komaridis* Court stressed that “the continued fiduciary duty owed by managers supports the existence of a corporate freezeout claim here.”

While the facts underpinning a freeze-out claim will vary from case to case, and as pointed out by the court, New Hampshire law has not yet defined what is needed to sufficiently assert such a claim. *Id.* at *7. Ultimately, the *Komaridis* court holds

that one harm sufficient to make a claim for minority freezeout is when a majority shareholder prevents a minority shareholder from doing his job as initially agreed upon “when the value of the shares is only realized through employment.” *Komaridis*. No. 216-2023-CV-00094 at *8.

On the heels of *Komaridis*, we may see more minority members of closely held corporations deprived of the value of their interest or otherwise oppressed by majority members’ advance corporate freezeout claims. Shareholders of closely held corporations or members of LLCs who have already taken steps to waive fiduciary duties owed to shareholders or members may wish to amend their operating agreements or shareholder agreements to waive fiduciary duties to avoid such claims.

In any event, New Hampshire business attorneys should consider suggesting clients review their shareholder or operating agreements and be prepared to assist their clients in considering their options and making changes to avoid unanticipated claims from shareholders/members. ♦

Sean O’Connell and Kirsten Allen practice at the Dover location of Shaheen & Gordon. O’Connell is the chair of the Business Practice Group and has been practicing business and commercial law in New Hampshire for over 25 years. Allen is an associate in the Business Practice Group and has been practicing law for three years, with a focus on business litigation.

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Mentoring in Business Litigation Cases

By Michael J. Lambert

The practice of law is a complex and often difficult endeavor. This is particularly true for business litigators. Not only do we operate in an adversarial setting, but we are also frequently faced with complicated and urgent client needs, some with existential commercial consequences. Understanding clients' business needs, advocating for them throughout litigation, exploring settlement, trying a case to a judge or jury, and handling post-trial motions and appeals requires a variety of skills. These skills come from training; they are developed through experience; and they are learned through observation. Importantly, the skills of most accomplished business litigation attorneys are the product of years of mentorship by a more senior lawyer, which is a vital part of a lawyer's professional development.

Mentorship takes many different forms. For those working in multi-lawyer firms, mentorship often involves a more senior attorney taking a new lawyer "under their wing." New lawyers practicing solo, however, must rely on mentorship from other members of their bar associations, their law school connections, or their network. Whatever the source, effective mentorship



requires effort from both the mentor and the mentee. Mentors need to encourage and underwrite training opportunities, afford new lawyers the opportunity to shadow them during all phases of a case, and ultimately provide chances for them to take ownership of aspects of a case. Young lawyers need to actively seek out mentorship, whether it be from inside or outside of their firm and be persistent in requesting opportunities to learn and practice the nuts and bolts, nuances, and art of handling business litigation cases.

Business litigation presents challenges for effective mentoring for obvious reasons. Law firms cannot bill business clients for associate training, and most business clients do not want an inexperienced lawyer handling important aspects of their case. This is where the distinction between training and mentor-

ing is important. Developing the fundamental skills necessary to be a successful business litigator, at least initially, often must be done apart from business litigation cases. Fortunately, the opportunities to develop those skills through *pro bono* work are abundant. Learning how to interview a client, prepare a witness, argue a motion, take a deposition, try a case, and handle an appeal are all possible through various *pro bono* programs in New Hampshire.

For example, New Hampshire Legal Assistance and 603 Legal Aid partner with lawyers and law firms to provide training to both new and experienced lawyers so that they can assist unrepresented tenants appearing for eviction matters. This gives lawyers an opportunity to meet with clients, assist in pre-eviction negotiations and mediations and, if

necessary, represent the tenants at hearings.

Likewise, lawyers can develop skills critical to business litigation through the Trial Skills Training Academy put on by the New Hampshire Judicial Council and by representing indigent clients in misdemeanor and felony matters. This program provides both training and real-life opportunities to develop critical skills, including managing client expectations and building their trust, handling hearings, negotiating with prosecutors, and preparing for and trying cases.

These are just two opportunities for lawyers to develop and hone skills that are necessary in business litigation, while at the same time providing a valuable service to those in need. There are many other such opportunities, and it is incumbent upon both new lawyers, and those mentoring them, to seek out and take advantage of them.

While mentoring often focuses on the trial skills that new lawyers need to develop, having that be the sole focus often neglects other skills that are critical for successful business litigators. Good mentorship also involves including new lawyers in client interviews and intake, potential conflict issues, meetings with clients, and the development of a case strategy and commensurate budget. Observing how more experienced lawyers handle discovery disputes and interact with opposing counsel is invaluable.

A good mentor will also share their thought process on case strategy, including during mediation, dispositive motions, and

CASES *continued on page 37*



Tim McLaughlin

Sean T. O'Connell

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Practical Considerations for Settlement Agreements in Business Disputes

By Jennifer Parent and
Amanda Quinlan



Parent



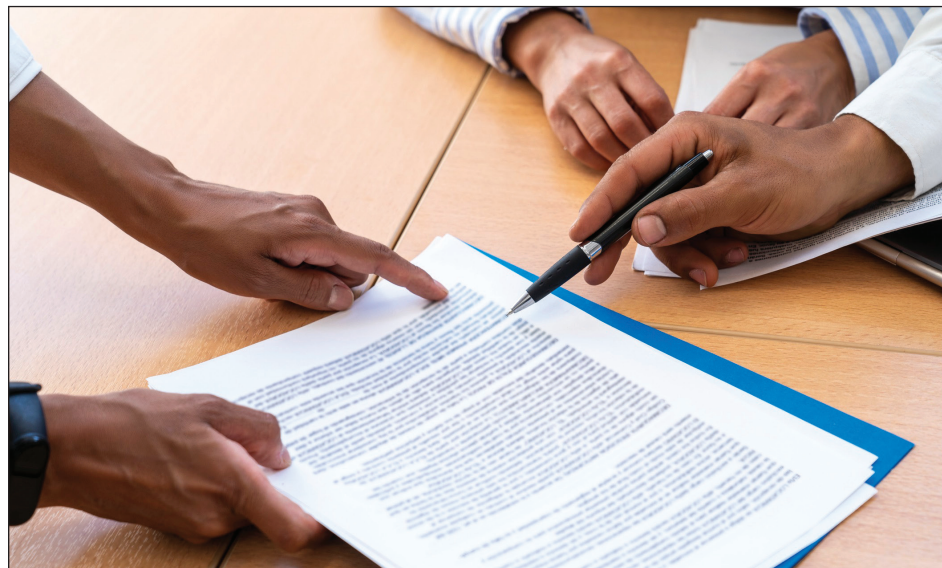
Quinlan

After almost a year of discovery with numerous depositions of corporate officers, document requests, and ESI in a complex commercial dispute, mediation is now officially on the calendar four months out. You have been considering how this case may resolve on a monetary level but have not yet given specific thought as to what provisions should be included in a settlement agreement if mediation is successful.

Each dispute between sophisticated business entities will have its own intricacies that counsel will need to account for when drafting a settlement agreement. Although by no means an exhaustive treatise on settlement provisions in a commercial case, the following provisions should be considered and discussed at mediation.

Confidentiality Clause

For many commercial litigants that



settle a dispute, a key concern is keeping confidential the specific terms of the agreement, including any amount paid in settlement. Many businesses fear that announcing a settlement amount will encourage future litigants to bring suit. You should also consider whether all public disclosures will be precluded under this clause. In certain cases, a short statement explaining the status may be sufficient, such as: "In response to any inquiries or in any communication regarding the conclusion or resolution of this matter, Acme Corp. shall state or indicate only that the matter was resolved amicably."

Confidentiality provisions should include exceptions that allow a party to provide truthful testimony in legal proceedings,

to communicate truthfully with any government agency (like the IRS), or to enforce the agreement. Carve-outs to confidentiality, with limitations on further disclosure, may also include notice to tax and accounting advisors, legal counsel, and boards of directors or shareholders of the corporation if necessary to effectuate the terms of the settlement.

Beyond the confidentiality of the settlement itself, you may also consider additional provisions that keep certain other information confidential that does not pertain to the settlement, such as trade secrets, intellectual property, or other issues that may be or could have been the subject of a protective order during the litigation.

Non-disparagement Clause

A non-disparagement clause will help ensure that any party that might have anything negative to say about the business – including but not limited to any allegations or counterclaims that a party has made against the other business – is stopped from doing so after signing the agreement.

A non-disparagement clause may be mutual and binding on both parties depending on how counsel crafts it. Exceptions to the non-disparagement clause may include ones similar to the confidentiality clause described above. Companies should also consider whether the non-disparagement obligation applies to specific individuals involved in the litigation or others in the corporation.

If the dispute involves a current or former employee, limited non-disparagement provisions are permissible, i.e., provisions that are limited to statements that meet the definition of defamation. Limitations may similarly be in place for confidentiality clauses should the dispute involve a current or former employee. *See McLaren Macomb*, 372 NLRB No. 58 (2023).

Representation Clause

A representation clause expressly provides that neither party has relied on any representations made by the other party (including legal counsel) before agreeing to the settlement besides the representations made in the settlement agreement. This clause may help defend against subsequent allegations

AGREEMENTS *continued on page 38*

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New Hampshire's Housing Crisis – Working Together for a Solution

By Megan Carrier

The Problem

If you've found yourself in the market for a new home recently, you know. Home prices in New Hampshire have reached record-breaking highs. The median sales price for a single-family home in New Hampshire was \$490,000 – 8.9 percent higher than last year. This, coupled with interest rates hovering around six to seven percent, has led many renters who might otherwise consider purchasing their first home to stay where they are.

If you've found yourself in the market for a residential rental unit recently, you know. Logically, if higher home prices and interest rates keep would-be buyers in rental units, fewer rental units will be available for newcomers and those at lower income levels. According to New Hampshire Housing's 2023 Residential Rental Cost Survey Report, the statewide vacancy rate was – as of early 2023 – 0.6 percent (a five percent vacancy rate is considered a balanced market for landlords and tenants).

As dictated by the rules of supply and demand, of course, this limited availability of rental units puts upward pressure on rents. The Cost Survey Report provides that median gross rent for a two-bedroom rental unit, with utilities, is \$1,764 per month; this represents an 11.4 percent increase over last year's number. In order for rent of \$1,764 per month to be affordable – meaning that it represents 30 percent or less of the renter's income – the renter would need to earn over \$70,600 a year, or 137 percent of the estimated statewide median renter income.

This lack of available housing affects not only those who are struggling to find a place to land, but the rest of us, as well. If there is no affordable, available housing, employers will struggle to recruit and retain employees – out of state individuals seeking employment in New Hampshire may be forced to find work elsewhere, and existing New Hampshire residents (particularly younger individuals) may choose to leave the state.

Those who choose to stay and dedi-



cate more than 30 percent of their income towards housing will be less able to participate in the local economy. In addition, the increase in homelessness that frequently accompanies an unstable housing market will place economic pressures on the state and its municipalities.

The Barriers to Resolution

While one could certainly propose various mechanisms to address New Hampshire's housing woes, one option seems the most obvious: create more housing. The trouble is, New Hampshire needs a lot of new housing; New Hampshire Housing estimates that New Hampshire requires 23,670 new housing units in order to meet our current need. We will need almost 90,000 units by 2040.

The development of new housing can be difficult for various reasons. First, many municipalities have adopted zoning ordinances which restrict multi-family housing to certain zones, and sometimes, the land area available for projects in those zones is limited. Other land use regulations may require that multi-family housing projects receive special exceptions or conditional use permits.

In addition to difficulties associated with satisfying the sometimes-strict zoning requirements, multi-family housing projects frequently face staunch opposition from abutting property owners and other members of the community. For example, in more rural areas of the state, there is often a desire to maintain the existing small-

town, rustic feel of the area and, for many, a larger scale multi-family residential project is not consistent with that goal. Others would prefer to see available land area utilized for commercial purposes, feel that the project is not compatible with surrounding land uses, or worry that the project will overburden existing municipal infrastructure (e.g., the schools).

Volunteer members of planning and zoning boards, who are elected by and represent the community, are often convinced to deny approvals for multi-family housing projects based on these, and similar, concerns.

Working Toward a Resolution

Happily, the people of New Hampshire are hard at work exploring various ways to address this problem. Some municipalities are encouraging the development of accessory dwelling units and multi-generational residences, thereby maximizing available land area. Others are exploring modifications to their zoning ordinances which would make it easier for multi-family projects to receive required approvals. Developers, too, are exploring new concepts. For example, some developers have begun constructing micro housing units, which are typically 350 square feet or less in size and incorporate space saving measures and multi-functional furniture.

The State, for its part, has created a number of programs designed to incentivize both developers and municipalities to develop and approve affordable housing

units. For example, the \$100 million InvestNH initiative includes the following four distinct programs:

- \$5 million toward the Housing Opportunity Planning Grants Program, which provides municipalities with funds to study zoning or other regulatory causes of lack of affordable housing and identify and implement changes to regulations in response to the findings.
- \$5 million toward the Municipal Demolition Grant Program, which provides funds to be utilized for the demolition of vacant and dilapidated buildings.
- \$60 million toward the Capital Grant Program, which awards grants to developers/owners of multi-family rental housing to be used for long-term residential rentals in order to address funding gaps caused by inflation, supply-chain constraints, and rising interest rates.
- \$30 million toward the Municipal Per Unit Grant Program, which provides municipalities with an incentive of \$10,000 per unit of new affordable housing they permit.

Additional state-based initiatives include the Affordable Housing Fund and the Housing Champion Designation and Grant Program Fund. The Affordable Housing Fund provides grants and low-interest loans to developers for building or acquiring affordable housing.

The Housing Champion Designation and Grant Program Fund – a new program for which rules are expected to be adopted on or before July 1, 2024 – would provide funding to encourage municipalities to promote affordable housing via board member training, revisions to local regulations, and implementation of additional infrastructure.

Available incentives include funding for infrastructure upgrades (to address concerns that additional housing will overburden existing infrastructure) and per-unit grants for approved affordable housing.

The housing crisis in New Hampshire is daunting, but not unsolvable. If we continue to work together, we will see improvement. ♦

Megan Carrier is co-chair of the Zoning, Planning, and Land Use Practice Group at Sheehan Phinney.



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trial preparation. Allowing new lawyers to shadow, to observe, and to participate in a mentor's thought process throughout the life of a business dispute is critically important to the development of skills necessary to become an effective business litigator.

Mentoring has become more difficult since the pandemic for obvious reasons. Lawyers working from home miss the opportunities for "micro-mentoring" that present themselves daily. Organic interactions happen less frequently and the effort to involve new lawyers in cases becomes logistically more burdensome. Some of the most important skills and instincts young business litigators develop are from just being around and observing more senior lawyers. Less time in the office means less time for these meaningful interactions.

Changes to the way courts are conducting business also deteriorate mentoring opportunities, both structured and informal. Prior to the pandemic, it was common for lawyers to sit in the courtroom watching multiple hearings, or even trials, before their case was called. While there are many benefits to remote hearings, lost is the opportunity to observe other lawyers making arguments to the court, witness distinctive styles, and see what arguments and advoca-

cacy work and do not work, both in general and with particular judges.

Mentorship, both training and shadowing, requires commitment and a consistent, deliberate effort. Mentoring is an investment in the next generation of business litigators, making sure that they have both the skills and the intangibles that they will need to handle sophisticated clients, demanding situations, complex issues, and exacting judges. This requires the mentor to underwrite training and *pro bono* opportunities, to intentionally involve new lawyers in all aspects of the case even though they are not billable, and to share their thinking, thought process and approach throughout the life of a case.

It will also require the mentor to cede the reins where appropriate and give the younger lawyer meaningful opportunities in a case. These are all hallmarks of good mentorship. It is incumbent on young lawyers to take responsibility for finding training and mentorship opportunities and not expect that they will just come to them. Mentorship of the next generation of business litigators is necessary so that business clients can continue to receive the same skill and advocacy that the business litigation bar has provided over the years. ♦

Michael Lambert is chair of Sheehan Phinney's Litigation Department and serves on the firm's Management Committee.

Mentoring has become more difficult since the pandemic for obvious reasons.

LIENS from page 33

was qualified to the extent of those payments (\$55 million). But as the court explained, that did not foreclose MacMillin's mechanics' liens from achieving priority by other means. The district court determined that the bankruptcy court did not err in concluding that MacMillin was the race-notice "winner" in the case. Although the construction mortgage was recorded on July 19, 2017, about two and half years before MacMillin's mechanics' liens were recorded in October 2019, prior to recording its interest, UMB Bank knew about the MacMillin contract, and the wetlands permit which together required certain work to be performed prior to June 1, 2017.

The bankruptcy court found, and the district court agreed, that a reasonable creditor possessing this information would have undertaken a simple observation of the property, which would have revealed the already-commenced tree-clearing work resulting in MacMillin's mechanics' lien. A critical fact supportive this ruling was that MacMillin's contract giving rise to the mechanics' liens in question spanned the full period of its work – work which started before the construction mortgage was recorded. *Cf. In re Moultonborough Hotel Grp., LLC*, 726 F.3d 1, 3, 5 (1st Cir. 2013) (concluding construction mortgage had priority where the mechanics' liens at issue were associated with a second construction contract for which work was not performed until after the mortgage was recorded).

The one outstanding issue that was

remanded to the bankruptcy court was how subcontractors fit into the mix when a subcontractor provides notice under RSA 447:5, :6, or :7 that they have claimed the "same lien" as the contractor, which requires the owner to set aside sufficient funds to discharge its obligations to the subcontractors. NH RSA 447:8. The bankruptcy court determined initially, this would mean that subcontractors also had priority over UMB Bank's mortgage because their liens "followed" MacMillin's, and MacMillin was deemed to have priority over UMB Bank. But the district court did not opine on that issue, ruling instead that the bankruptcy court needed to determine whether the subcontractor's post-work notice under RSA 447:6 was sufficient to grant priority under RSA 447:8 (the bankruptcy court had relied upon a pre-work notice under RSA 447:5 that the district court held the record did not support). ♦

Chris Candon is chair of the Bankruptcy Practice Group at Sheehan Phinney and a Fellow of the American College of Bankruptcy. Nicole Austin is an Associate in Sheehan Phinney's Corporate Department.

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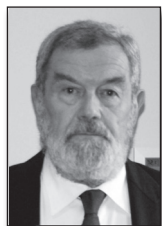
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■ AGREEMENTS *from page 35*

that a party entered into the settlement agreement because the party was fraudulently induced to do so, or fell victim to some misrepresentation, whether that misrepresentation was express or by omission. Similarly, a provision stating that the agreement is the entire agreement between the parties helps ensure that there are no subsequent claims that the party only agreed to the settlement if some other act not described in the settlement agreement was performed. However, if there is a separate nondisclosure or covenant agreement already in place, care needs to be taken to incorporate those obligations should the parties wish to keep them in place after the settlement agreement is signed.

Authorization Clause

Through an authorization clause, individuals signing the settlement agreement represent that they have the authority to sign on behalf of the company-party and bind that company to the terms of settlement. If an individual signs an agreement without the appropriate authority to do so, the agreement may be null and void. This clause is vital to ensure that whoever signs the agreement for your client – and whoever agrees to the settlement terms for your client at mediation – has the clear authority to do so.

Enforcement Provisions

Depending on the circumstances, one party may have reason to worry that they will not receive payment in full from the other party, and might therefore require some type of security to guaranty the payment obligations of the other side. This might require drafting an additional guaranty agreement, as well as other documents depending on the nature of the security (i.e., a mortgage deed,

or even a pledge agreement that pledges membership interest in an LLC).

You should consider a provision spelling out that, if the agreement is violated, a party is not required to prove the allegations of the underlying lawsuit or original dispute. Instead, the party only has to provide sufficient proof that the settlement agreement itself was breached. This also should be considered for any injunctive relief.

Depending on the substantive nature of the dispute, certain tax or jurisdictional issues may arise that involve different states or countries, and you should consider what regulation, oversight, or approvals may be invoked by the settlement, and whether certain payments should be allocated in some manner to categories or locations with this type of issue in mind. By way of example, if a country in the European Union is implicated by the settlement, its regulations governing IT matters are fairly strict and should be accounted for in the agreement.

Settlement of commercial disputes vary depending on the parties and circumstances. Taking the items identified in this short list into consideration ahead of mediation and including them on any term sheet reached at mediation may help guide negotiations and resolution of your client's business disputes. ♦

Jennifer Parent is a director in McLane Middleton's Litigation Department and chairs its Business Litigation Practice Group. She can be reached at jennifer.parent@mclane.com.

Amanda Quinlan is member of McLane Middleton's Litigation Department. She can be reached at amanda.quinlan@mclane.com.

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CIVIL LAW

Jason Boucher v. Town of Moultonborough
No. 2022-500
November 15, 2023
Reversed and Remanded.

- Whether a police officer who has resigned, but is alleging constructive discharge, is required to exhaust administrative remedies before initiating a suit against his employer.

The plaintiff is a former police officer who resigned from his position with the Town of Moultonborough (the Town). Following his resignation, the plaintiff filed suit against the Town, alleging that he was damaged as a result of his constructive discharge. The Town filed for dismissal alleging, among other issues, that the plaintiff had failed to exhaust his administrative remedies. The trial court granted dismissal, finding that the plaintiff had failed to exhaust his administrative remedies.

On appeal, the plaintiff argued that due to the nature of his claim, he was constructively discharged, he was not able to comply with the administrative process outlined by NH RSA 41:48 (the Statute), namely that he was required to request a hearing in front of the Town's Board of Selectmen. The Court agreed with the plaintiff, finding that the Statute did not contemplate the plaintiff's situation, and that he was; therefore, not required to follow the administrative process outlined by the Statute.

The Court reversed the trial court's decision and remanded the case so that the trial court could evaluate the Town's other claims for dismissal in this context.

Lehmann Major List, PLLC, Jason R.L. Major on the brief and orally for the plaintiff. Gallagher, Callahan, & Gartrell, PC, Keelan B. Forey and Charles P. Bauer, on the brief, and Keelan B. Forey orally, for the defendant.

American Civil Liberties Union of New Hampshire v. New Hampshire Division of State Police
No. 2022-0321
November 29, 2023
Affirmed, with a dissent from Justice Bassett.

- Whether the records relating to a former state trooper are subject to disclosure pursuant to NH RSA 91-A (the Right to Know Law), or whether NH RSA 105:13-b (the Confidentiality of Personnel Files Law) exempts their disclosure.

Following termination from the New Hampshire Division of State Police (NHSP), the American Civil Liberties Union of New Hampshire (ACLU) requested, pursuant to the Right to Know Law, records relating to the terminated state trooper. NHSP failed to produce the requested documents within the time period allotted and indicated that it did not plan on doing so in the future. The trial court granted the ACLU's request for disclosure, finding that the documents sought were within the scope of the Right to Know Law and were not categorically exempted by the Confidentiality of Personnel Files Law.

On appeal, the Court reviewed both the statutes at issue and applied the plain meaning of the words used. In doing so, the Court affirmed the trial court's determination that NHSP was misapplying the Confidentiality of Personnel Files Law. The Court found that NHSP had read meaning into the statutes and the Court's earlier decisions that was not there and in so doing, had misapplied the Confidentiality of Personnel Files Law. The Court, in its majority opinion, discussed the purposes of both statutes and found that its reading and application of both statutes in the context of the instant case was not absurd.

Finally, the Court indicated that if the legislature disagreed with its interpretation on how the Right to Know Law addressed personnel files, it was in the best position to clarify those aspects and cited recent decisions from the Court that also addressed the issue.

American Civil Liberties Union of New Hampshire, Gilles R. Bissonnette and Henry R. Klementowicz, on the brief, Gilles R. Bissonnette orally, for the plaintiff. The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Jessica A. King, on the brief and orally for the defendant. Wadleigh, Starr & Peters, PLLC, Donna J. Brown and Michael G. Eaton on the brief for Black Lives Matter Manchester, amicus curiae. Malloy & Sullivan, Lawyers Professional Corporation, Kathleen C. Sullivan and Gregory V. Sullivan, on the brief for Union Leader Corporation and New England First Amendment Coalition, amicus curiae.

Miles Brown, et. al., v. Secretary of State
No. 2022-0629
November 29, 2023
Affirmed, with dissent from Justice Bassett and Justice Hicks.

- Whether plaintiffs' claims of extreme partisan gerrymandering are justiciable under the New Hampshire constitution.

The plaintiffs in this case are registered voters in New Hampshire. They filed suit against the Secretary of State, arguing in three different ways, that the revised New Hampshire State Senate and Executive Council districts violate the New Hampshire Constitution. The Secretary of State moved to dismiss, arguing that the issues presented in the plaintiffs' complaint were non-justiciable political questions. The trial court agreed, and this appeal followed.

On appeal, the plaintiffs made three different arguments as to why the trial court had erred in its determination that the case presented non-justiciable political questions. The Secretary of State maintained its position that the Court lacked jurisdiction over the matter due to the political questions raised.

In its majority opinion, the Court first discussed the jurisdictional issues and noted that the plaintiffs had failed to identify any mandatory constitution provisions that provide a textual basis for resolving the claims before the Court. The Court went on to note that, "...both components of a non-justiciable political question are present in this case." The Court, in its majority opinion, went on to note a lengthy explanation to its determination.

McLane Middleton, PA, Steven Dutton on

At a Glance Contributor



Sam Harkinson

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

the brief, Paul Twomey, on the brief, Elias Law Group LLP, Abha Khanna, Jonathan P. Hawley, Daniel C. Osher, and Aaron M. Mukerjee, on the brief, Jonathan P. Hawley orally, for the plaintiffs. The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Anthony J. Galdieri, Brendan A. O'Donnell, Matthew G. Conley on the brief, Anthony J. Galdieri orally, for the defendant. American Civil Liberties Union of New Hampshire Foundation, Gilles R. Bissonnette and Henry R. Klementowicz, and, American Civil Liberties Union Foundation, Julie A. Ebenstein, on the brief, amicus curiae. Sisti Law Offices, Alan Cronheim on the brief, and, Campaign Legal Center, Mark P. Gaber, Hayden Johnson, Allison Walter, on the brief, amicus curiae.

CRIMINAL LAW

The State of New Hampshire v. Julie Hellinger
No. 2022-0253
November 2, 2023
Vacated and Remanded.

- Whether the trial court erred when it failed to hold a hearing on the defendant's motion to suppress evidence of her statements providing false information, following a stop where the police officer did not have reasonable, articulable, suspicion to commence the stop.

The defendant was charged with disorderly conduct, stemming from her providing false information to a police officer following a traffic stop. The defendant moved to suppress her statements to the police, arguing that the underlying traffic stop was illegal and that the evidence should be excluded pursuant to the Exclusionary Rule. The trial court, without a hearing, concluded that, even if the stop was illegal, the evidence was allowed pursuant to *State v. Panarello*, 157 N.H. 204 (2008) as an exception to the Exclusionary Rule. The defendant took an interlocutory appeal in the issue.

In vacating and remanding the trial court's decision, the Court distinguished the instant case from *Panarello*, finding that *State v. McGurk*, 157 N.H. 765 (2008) was dispositive of the underlying issue. The Court's reasoning seemed to turn the fact that in *Panarello*, the crime that occurred after the illegal search was against police officers, whereas in *McGurk* and in the instant case, the crime was not. The Court held that the trial court erred in denying the defendant's motion without a trial and remanded the case so that the trial court could conduct a hearing to consider the three factors as set forth in *McGurk*.

The Office of Attorney General John M. Formella, and the Office of Solicitor General Anthony Galdieri, Audriana Mekula,

on the memorandum of law and orally for the State. Sakellarios Legal, Olivier Sakellarios on the brief and orally for the defendant.

The State of New Hampshire v. Charles Paul
No. 2022-0106
November 14, 2023
Affirmed.

- Whether the trial court committed reversible error when it allowed admission of the defendant's prior criminal convictions and whether the court erred when it failed to disclose portions of the victim's mental health records.

The defendant was convicted of attempted murder and being a felon in possession of a deadly weapon. Prior to trial, the State filed a motion *in limine*, seeking to impeach the defendant with his prior convictions from 1987 and 1994. The defendant objected to the same, arguing that the convictions should be barred by the Court applying the test provided in NH R. Evid. 609(b). The trial court granted the State's motion, finding that 609(b) was not applicable.

In upholding the trial court's decision, the Court held that, "...when a defendant is confided following an initial period of release on a suspended sentence, the relevant date for purposes of Rule 609(b) is the later of either the date the defendant is released on the suspended sentence or if the suspended sentence is subsequently imposed, the date the defendant is released from confinement for that sentence."

Prior to trial, both the State and the defendant agreed that the trial court should review the victim's mental health records in camera to determine whether any of the records should be released to the parties for use during trial. Following its review, the trial court released some of the records for review by the parties. The defendant also appealed the Court's failure to release certain records. Following a review of the documents at issue, the Court concluded that, pursuant to the standard in *State v. Girard*, 173 N.H. 619 (2020), it agreed with the trial court's determination that none of the non-disclosed documents contained information that was material or relevant.

The Office of Attorney General John M. Formella, and the Office of Solicitor General Anthony Galdieri, Audriana Mekula, on the memorandum of law and orally for the State. Thomas Barnard, Deputy Chief Appellate Defender, on the brief and orally for the defendant.

FAMILY LAW

IN RE: J.H.
No. 2022-0533
November 14, 2023
Affirmed.

- Whether a parent of a child, who is a minor-ward pursuant to a guardianship order, can still be found to be neglectful when they fail to provide care for the child.

J.H. was the minor-ward in a guardianship where his grandmother had been appointed his legal guardian, following the poor care that he had received from

AT A GLANCE continued on page 40

■ AT A GLANCE *from page 39*

his parents. In May 2022, the guardian's boyfriend had an altercation with J.H., resulting in J.H. being physically attacked. Upon disclosure, the Division for Children, Youth, and Families (DCYF) became involved. DCYF attempted to work with the guardian to develop a safety plan, but the guardian was ultimately unable to comply with the plan. DCYF thereafter took custody of J.H.

Upon taking custody of J.H., DCYF contacted the mother of J.H. to determine whether she would be able to take custody of J.H. to provide care while the issues with the guardian were worked out. The mother expressed concerns, in that she had not spoken with J.H. for seven years and that J.H. had previously abused one of her other children and that she had recently given birth to another child that she was concerned with the safety of if she took custody of J.H. The mother additionally reported that she was about to become homeless, and she was; therefore, not "able or willing" to take custody of J.H.

Ultimately, DCYF filed neglect petitions against J.H.'s mother, father, and the guardian. The trial court concluded that the mother had committed neglect within the definition of the statute, concluding that she was not "...able or willing to provide proper parental care or control of the child and...the deprivation [was] not due primarily to the lack of financial means of the parents." The mother appealed, arguing that, due to the existence of guardianship, she could not legally be found to be neglectful and assuming that she could be, the evidence offered was not sufficient. In affirming the trial court's decision, the Court held that, "...despite the existence of a guardianship over the child, a parent retains a residual responsibility to provide safe shelter for the child when informed that the guardian is unable or unwilling to do so." The Court also concluded that the

evidence offered at the hearing was sufficient for the trial court's determination.

The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Laura E.B. Lombardi on the brief and orally for the New Hampshire Division of Children, Youth and Families. The Young Law Firm, Robert Young, on the brief and orally for the mother.

IN RE: H.C.

No. 2022-0257

November 14, 2023

Affirmed, with dissent by Chief Justice MacDonald and Justice Hantz Marconi

- Whether NH RSA 170-C:5 applies to out of state convictions, and in a case where the child was born after the conviction, whether the court erred in finding that termination was in the child's best interest.

In 2017, H.C.'s mother (the Mother) was convicted in Maine for sexually assaulting H.C.'s sibling in 2014 and 2015. H.C. was born in 2015. The Mother was sentenced to a minimum of eight years in prison. At the time of H.C.'s birth, the Mother was already under house arrest on several charges out of Maine. As a result, the Mother's sisters initially became H.C.'s legal guardian, with one of the sister's becoming H.C.'s sole guardian at a later date (the Guardian). In 2020 the Guardian and her husband filed a petition to terminate the Mother's parental rights. Following a three-day hearing, the trial court ultimately concluded that the termination was warranted to NH RSA 170-C:5 (the Statute), and that it was also in H.C.'s best interest.

In affirming the trial court's determination, the Court, in its majority opinion, initially addressed the issue as to whether

the Statute applied to the case where H.C. was born after the Mother's conduct and conviction for sexually assaulting H.C.'s sibling. The Court, in addressing this argument, looked at the definition of "sibling" and determined that it included H.C. Additionally, the Court noted that the Statute did not require that the child, who is the subject of the termination hearing, be born at the time of the underlying assault that gave rise to the termination.

Next, the Court addressed the issue of whether the Mother's Maine conviction was a qualifying conviction since the Statute only listed New Hampshire crimes. The Court, in its majority opinion, concluded that agreeing with the Mother's argument would, "...be both illogical and unjust [.] and concluded that the Statute applied in situations where there was an out of state conviction that would otherwise qualify for grounds of terminating parental rights in New Hampshire.

Finally, the Court, in reviewing the factors that the trial court addressed in finding that termination was in H.C.'s best interest, found that the trial court had adequately done so.

Law Office of Joshua L. Gordon, Joshua L. Gordon, on the brief and orally for the petitioners. John A.M. Hinsman, III, on the brief and orally for the respondent.

GUARDIANSHIP LAW

IN RE: Guardianship of D.E.

No. 2021-408

November 16, 2023

Affirmed in part, vacated in part, and remanded, with a partial dissent from Justice Bassett.

- Whether the trial court had subject matter jurisdiction to review a petition for involuntary admission and whether there was sufficient evidence to warrant a guardianship being issued and whether the appointed guardian was appropriate.

D.E. was involuntarily committed to the New Hampshire Hospital (NHH) pursuant to a lawful involuntary emergency admission, effective as of June 13, 2021 (the IEA). After a hearing on the IEA, the trial court found probable cause for the IEA, and no further IEA was filed. On June 29, 2021, NHH filed a petition for non-emergency involuntary admission (the IA), and also filed a petition for guardianship. The trial court scheduled a hearing on both petitions for July 15 and August 5, 2021. Following a hearing, the trial court concluded that D.E. was to be committed to NHH for a period of two years and that guardianship was necessary.

On appeal, D.E. argued that he was not a resident of New Hampshire, nor was he under arrest or held in protective custody, so the trial court lacked subject matter jurisdiction in hearing the IA. In reviewing the record, the Court concluded that the time required for the IEA and IA was such that D.E. had been illegally detained for two days. The Court found that since the trial court had not addressed the issue of whether D.E. was a resident of New Hampshire, the case would need to be remanded so that the trial court could make that determination.

In addressing the guardianship, the Court reviewed the evidence submitted at the time of the hearing and determined that the trial court had received sufficient evidence to make the legal determination that D.E. presently lacked capacity. In reviewing whether the appointed guardian was

the appropriate person to serve, the Court noted that D.E. had not previously nominated or excluded anyone from possibly serving as their guardian.

The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Laura E.B. Lombardi on the brief for the Petitioner. Brown & Bouchard, PLLC, Cassandra A. Brown, on the brief for the Respondent. G.E., on the brief for the self-represented guardian.

ADMINISTRATIVE LAW

Appeal of Liberty Utilities (Energynorth Natural Gas) Corp., d/b/a Liberty (New Hampshire Public Utilities Commission)

No. 2022-0146

November 15, 2023

Affirmed.

- Whether a utility company can recover costs relating to construction through a temporary rate increase, where the construction was cancelled before its inception.

Liberty is a utility supplier, supplying natural gas to customers in different parts of New Hampshire. It relies on a gas pipeline that is owned by Tennessee Gas Pipeline Co., LLC (Tennessee Co) for its supply of gas that it provides to its customers. Liberty approached Tennessee Co about increasing the amount of gas Liberty could receive from Tennessee Co's pipeline, but when negotiations stalled Liberty opted to determine alternative solutions to its shortage. Liberty then undertook exploration into constructing its own supply pipeline and storage system.

Ultimately, Liberty's executives testified that it paid approximately \$9.1 million in development costs, of which \$7.5 million was spent on engineering, environmental, consulting, internal labor, commission related costs, and land costs. These costs went to fund preliminary designs, environmental assessments, outside consulting services, and options to purchase land, among other things. Before construction began, Tennessee Co offered additional use of its supply system, at a price that was better than the cost of the construction. Ultimately, Liberty opted to stay with Tennessee Co, and forgo its own pipeline. Liberty then requested permission from the Public Utilities Commission to recover the \$7.5 million through a temporary rate increase. The Public Utilities Commission denied the request and this appeal followed.

In denying Liberty's request to recover the costs through a temporary rate increase, the Public Utilities Commission determined that such a rate increase was barred by NH RSA 378:30-a (the Statute). In affirming the Public Utilities Commission's denial, the Court found that, in construing the Statute and the applicable prior rulings, the Statute was unambiguous and applied to Liberty's situation; therefore, barred recovery of the costs at issue.

Pastori, Krans, PLLC, Terri L. Pastori and Ashley D. Taylor, on the brief, Terri L. Pastori, orally, for the Petitioner. The Office of the Attorney General John M. Formella, and the Office of the Solicitor General Anthony J. Galdieri, Christopher G. Aslin, on the brief and orally for the New Hampshire Department of Energy. Donald M. Kreis, on the brief for the Office of the Consumer Advocate.

US Bankruptcy Court Opinion Summary

Chief Judge Bruce A. Harwood has issued the following opinion:

Note: The full text of the opinion below will be available on the Bankruptcy Court's website at www.nhb.uscourts.gov.

Coastal Capital, LLC v. Savage (In re Savage), 2023 BNH 006, issued Nov. 28, 2023 (Harwood, C.J.) (unpublished) (ruling in favor of the creditor with respect to its claim seeking to denying the debtors their discharges pursuant to 11 U.S.C. § 727(a)(5), based on the debtors' failure to satisfactorily explain what happened to funds they received from their company, and ruling in favor of the debtors with respect to the creditor's claims (i) seeking to deny the debtors their discharges pursuant to 11 U.S.C. § 727(a)(2)(A), 727(a)(4)(A), and 727(a)(7); and (ii) seeking to except the creditor's debt from discharge pursuant to 11 U.S.C. § 523(a)(4) and (a)(6)).

Need to schedule a Mediation?

FEBRUARY 2024

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

Fast-track scheduling at www.NHMediators.org

ADM-2022-0031, *In the Matter of Christa B. Shute, Esquire*

On December 12, 2022, Attorney Christa B. Shute was suspended from the practice of law in New Hampshire for her failure to appear at a show-cause hearing on November 1, 2022, to address her untimely compliance with NHCLE requirements. Prior to the date of suspension, Attorney Shute had completed the NHCLE requirements and paid the assessed delinquency fee.

On July 28, 2023, Attorney Shute filed a motion for reinstatement. See Rule 53.4. She is reinstated to the practice of law in New Hampshire, effective immediately.

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

ISSUED: November 29, 2023

ATTEST: Timothy A. Gudas, Clerk



LD-2023-0011, *In the Matter of Kyle A.H. McDonald, Esquire*

On June 30, 2023, the Professional Conduct Committee (PCC) filed a recommendation that Attorney Kyle A.H. McDonald be suspended from the practice of law for a period of one year, with the suspension stayed for one year on the condition that Attorney McDonald comply with certain requirements. The PCC also recommended that Attorney McDonald be ordered to pay the costs associated with the investigation and enforcement of the disciplinary matter. The PCC's recommendation approved a stipulation signed by Attorney McDonald, his counsel, and the Attorney Discipline Office's disciplinary counsel, in which Attorney McDonald agreed that he had violated several Rules of Professional Conduct and further agreed that the appropriate sanction for these violations was a one-year suspension, with the suspension conditionally stayed for one year. Attorney McDonald expressly waived his right to a hearing before the court. In accordance with Rule 37(16), because this matter was resolved by a dispositive stipulation, the court may consider this matter without further notice and hearing.

Based on the parties' stipulation, the PCC found that Attorney McDonald violated the following Rules of Professional Conduct as a result of his having "effectively abandoned" two client matters in litigation:

1. Rule 1.2, which requires a lawyer to abide by the client's decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued;

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

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

4. Rule 1.15, which requires a lawyer to properly maintain and promptly deliver funds to which the client is entitled;

5. Rule 8.1, which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority; and

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

The court has reviewed the PCC's findings and rulings and concludes that they are supported by the record. The court accepts the PCC's recommendation for the appropriate sanction for this misconduct, and concludes that a one-year suspension from the practice of law, with the suspension con-

ditionally stayed for one year, is warranted. The court approves the conditions of the stay, which are set forth in the stipulation. The stipulation also sets forth a procedure to be followed if it is alleged that Attorney McDonald has not complied with a condition or conditions.

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

(1) Attorney Kyle A.H. McDonald is suspended from the practice of law in New Hampshire for a period of one year, effective as of June 30, 2023, with the suspension stayed for one year from that date on the condition that Attorney McDonald comply with the requirements set forth in the stipulation; and

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

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

DATE: November 29, 2023

ATTEST: Timothy A. Gudas, Clerk



LD-2023-0016, *In the Matter of Brian D. Kenyon, Esquire*

On November 13, 2023, the Attorney Discipline Office (ADO) filed a petition for the summary suspension of Attorney Brian D. Kenyon from the practice of law in New Hampshire. The ADO has alleged, among other claims of professional misconduct, that:

(1) Attorney Kenyon is employed by Marshall Law Office (Marshall Law), which is owned by Keri J. Marshall, a former attorney who resigned from the bar while under disciplinary investigation.

(2) Attorney Kenyon is the only attorney who works at Marshall Law.

(3) Attorney Kenyon has violated, and continues to violate, Rule 5.4(d) of the Rules of Professional Conduct by "practicing law in an association or other entity [Marshall Law] owned by a non-lawyer [Keri J. Marshall]."

(4) Attorney Kenyon violated Rules 5.3 and 5.5 of the Rules of Professional Conduct by failing to supervise Keri J. Marshall in a client matter and, instead, assisting in the unauthorized practice of law by her in that matter.

(5) Attorney Kenyon has violated, and continues to violate, Rules 5.5 and 7.5 of the Rules of Professional Conduct by "refusing to remove the Marshall name from law firm signage, letterhead, and invoices."

(6) Attorney Kenyon has violated, and continues to violate, Supreme Court Rule 50 and Rule 1.15 of the Rules of Professional Conduct by his "failure to personally reconcile the IOLTA for Marshall Law monthly, or at a minimum review monthly reconciliations prepared by another, and for his failure to maintain client ledgers for Marshall Law clients."

(7) Attorney Kenyon violated Rule 3.3 of the Rules of Professional Conduct through his "knowingly false representations on his [trust accounting compliance certification] for the period ending May 31, 2023."

(8) Attorney Kenyon has violated, and continues to violate, Rule 8.1(b) of the Rules of Professional Conduct by refusing to provide information requested by the ADO.

The ADO cites Supreme Court Rule 37(9-B)(a)(1) as grounds for suspending At-

torney Kenyon summarily. Rule 37(9-B)(a)(1) authorizes summary suspension when an attorney "has engaged in serious misconduct which poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession." The term "serious misconduct" is defined by Rule 37(9-B)(b) as "any misconduct involving (1) mishandling or misappropriation of client or third party property or funds or (2) any other misconduct which by itself could result in a suspension or disbarment."

Based on the information submitted by the ADO in its petition, to which Attorney Kenyon has yet to respond, the court finds that Attorney Kenyon "has engaged in serious misconduct which poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession." His summary suspension from the practice of law is therefore necessary to protect the public and to preserve the integrity of the legal profession. Accordingly, it is hereby ordered:

(1) In accordance with Rule 37(9-B), Attorney Brian D. Kenyon is immediately suspended from the practice of law in New Hampshire pending further order of this court.

(2) A copy of the petition for summary suspension and of this order shall be served on Attorney Kenyon by certified and first-class mail at the latest address that Attorney Kenyon provided to the New Hampshire Bar Association.

(3) On or before December 11, 2023, Attorney Kenyon may request a hearing on the issue of whether the summary suspension should be lifted. If a request is made, the hearing will be scheduled for December 18, 2023, or sooner. See Rule 37(9-B)(f).

(4) On or before December 12, 2023, Attorney Kenyon shall inform his clients in writing of his suspension from the practice of law and of his inability to act as an attorney, and shall advise them to seek other counsel. See Rule 37(13)(b). Attorney Kenyon shall file an affidavit on or before December 13, 2023, stating that he has complied with this requirement. See Rule 37(13)(d). A copy of the affidavit shall be sent to the ADO.

Pending further order of this court, Attorney Kenyon is assessed for all expenses that may be incurred by the ADO in the investigation and prosecution of this matter.

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

DATE: December 6, 2023

ATTEST: Timothy A. Gudas, Clerk



LD-2023-0018, *In the Matter of Robert M. Waters, Jr., Esquire*

On November 29, 2023, the Attorney Discipline Office (ADO) notified the court that Attorney Robert M. Waters, Jr. has been indicted by a grand jury in the United States District Court for the District of New Hampshire on four felony counts, including wire fraud, theft of government funds, and unlawful monetary transactions. Pursuant to Supreme Court Rule 37(9)(i), "[w]henver an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney." This court has ruled that it may impose an interim suspension pending the resolution of a crim-

ORDERS continued on page 42

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inal charge in accordance with this provision when it is deemed necessary for: (1) for the protection of the public; and (2) the preservation of the integrity of the legal profession. *See Gallant's Case*, 170 N.H. 528, 534-35 (2017); *see also* Rule 37(16)(f). The court finds that, considering the nature of the alleged felony offenses, Attorney Waters's immediate suspension from the practice of law is necessary for the protection of the public and the preservation of the integrity of the legal profession. *See* Rule 37(9)(i) and (16)(d), (f). Accordingly, it is hereby ordered:

(1) In accordance with Rule 37(9)(i) and (16)(f), Attorney Robert M. Waters, Jr. is immediately suspended from the practice of law in New Hampshire on a temporary basis pending further order of this court.

(2) A copy of this order and of the ADO's filing shall be served on Attorney Waters by first-class mail and certified mail, return receipt requested. A copy of this order shall also be sent to the ADO electronically.

(3) On or before December 22, 2023, Attorney Waters may request a hearing on the issue of whether the interim suspension should be lifted; and if he does so, the hearing will be promptly scheduled. *See Gallant's Case*, 170 N.H. at 535.

(4) Attorney Waters is enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed.

On or before December 22, 2023, the ADO shall advise the court if it recommends the appointment of counsel to inventory Attorney Waters's files and to protect the interests of his clients.

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

DATE: December 7, 2023

ATTEST: Timothy A. Gudas, Clerk



In accordance with New Hampshire Supreme Court order dated July 16, 2020, the Court hereby appoints new members and reappoints current members to the Committee on the Judiciary and the Media.

Membership of the Committee

Justice of the Supreme Court;

Senior Associate Justice James P. Bassett

Judge from the Superior Court;

Superior Court Chief Justice Mark E. Howard

Judge from the Circuit Court;

Administrative Judge David D. King

Clerk of the Superior Court;

Kimberly T. Myers, Esq.

Clerk of the Circuit Court;

Larry S. Kane, Esq.

Clerk or deputy clerk from the U.S. District Court for the District of New Hampshire;

Daniel J. Lynch, Esq.

Attorney General of New Hampshire;

Deputy Attorney General James Boffetti

Executive Director of the New Hampshire Public Defender's Office;

Sarah Rothman, Esq.

New Hampshire Judicial Branch Communications Manager;

Av Harris

Manager of Security of the New Hampshire Judicial Branch;

Jason R. Jordanhazy

New Hampshire County Sheriff

Sheriff Domenic M. Richardi

Attorneys specializing in media law:

Jeremy D. Eggleton, Esq., Orr & Reno, PA

Gregory V. Sullivan, Esq., Malloy & Sullivan, LPC

Members of the New Hampshire news media:

Kathy McCormack, *Associated Press*

Daniel Barrick, News Director, New Hampshire Public Radio

Timothy Kelly, Executive Editor, *New Hampshire Union Leader*

Steven Porter, Correspondent, *Boston Globe*

Jonathan Van Fleet, Editor, *Concord Monitor*

Dave Sakowich, Editor, WMUR

James Cole, New Hampshire Photo Journalists Association

Annamarie Timmins, Senior Reporter, *New Hampshire Bulletin*

Howard Altschiller, Executive Editor and General Manager, Seacoast Media Group

At-large delegates:

Professor Sindiso Mnisi Weeks, University of New Hampshire Franklin Pierce School of Law

Tom Jarvis, Publications Editor, *New Hampshire Bar News*

Laura Simoes, Executive Director of the Nackey S. Loeb School of Communications

William L. Chapman, Esq., Orr & Reno, PA

Melanie Plenda, Director, Granite State News Collaborative

Committee Co-Chairs

Representative of the judiciary

Senior Associate Justice James P. Bassett

Representative of the media

Howard Altschiller, Executive Editor and General Manager, Seacoast Media Group

Issued: December 8, 2023

ATTEST: Timothy A. Gudas, Clerk of Court Supreme Court of New Hampshire



Pursuant to RSA 71-B:2, the Supreme Court of New Hampshire hereby reappoints Theresa M. Walker to the Board of Tax and Land Appeals for a three-year term beginning January 1, 2024, and ending December 31, 2026.

Issued: December 8, 2023

ATTEST: Timothy A. Gudas, Clerk of Court Supreme Court of New Hampshire

US District Court Decision Listing

November 2023

* Published

SUBJECT MATTER JURISDICTION; IMMIGRATION

11/20/23 *Raouf v. U.S. Dept. of State*
Case No. 23-cv-302-LM, Opinion No. 2023 DNH 142P

The plaintiff, an American citizen, sued several federal agencies and officials, contending that the delay in adjudicating her spouse's visa application violated the Administrative Procedure Act (APA) and her due process rights. The defendants filed a motion to dismiss, which the court granted in part and denied in part. The court found that the doctrine of consular non-reviewability did not implicate subject matter jurisdiction, and that consular non-reviewability did not preclude judicial review of a claim that immigration officials violated their nondiscretionary duty to adjudicate visa applications. The court further found that the plaintiff had plausibly alleged facts demonstrating standing with respect to the Secretary of State, and that the plaintiff had sufficiently stated an unreasonable delay claim under the APA. However, the court dismissed the plaintiff's due process claim because she did not have a protected interest in the issuance of a visa to her noncitizen spouse. 25 pages. Chief Judge Landya B. McCafferty.

STATUTE OF LIMITATIONS; DISCOVERY RULE

11/06/23 *Jeffrey T. Piampiano, Ch. 7 Trustee of the Estate of Sky-Skan Inc. v. Stuart B. Ratner et al.*

Case No. 22-cv-003-SE, Opinion No. 2023 DNH 139

The plaintiff, the Chapter 7 Trustee for Sky-Skan, Inc., brought malpractice and breach of fiduciary duty claim against Sky-Skan's former attorneys, alleging that they failed in late 2017 to inform Sky-Skan that the IRS had granted a crucial extension related to its federal tax debts which led to Sky-Skan filing for bankruptcy. Although Sky-Skan filed for bankruptcy more than three years before the Trustee brought his claims, the Trustee argued that RSA § 508:4's three-year statute of limitations should be tolled under the discovery rule because Sky-Skan reasonably expected the defendants to notify it if the IRS granted the extension, which would have prevented bankruptcy. The court granted the defendants' motion for summary judgment, noting that even if Sky-Skan reasonably assumed that its attorneys would convey updates regarding the extension, that does not save the Trustee's claims. The court held that there was no evidence or allegation that Sky-Skan could not reasonably have discovered the extension, which there must be for RSA § 508:4's discovery rule to apply. For that reason, and because the Trustee's argument regarding fraudulent concealment was unavailing, the court held that the Trustee's claims were barred by RSA § 508:4's statute of limitations. 18 pages. Judge Samantha D. Elliott.

MOTION TO COMPEL ARBITRATION; DISABILITY RIGHTS

11/07/23 *Miguel Orantes v. DG Retail, LLC d/b/a Dollar General Store*
#21301

Case No. 23-cv-378-SE, Opinion No. 2023 DNH 141

The defendant, retailer Dolgencorp, LLC, commonly known as Dollar General, sought to enforce the dispute resolution provisions in Miguel Orantes's employment contract with Dollar General to resolve his claims of employment discrimination by arbitration. The plaintiff did not dispute the validity of the arbitration agreement but argued that the court should set it aside due to the New Hampshire Commission for Human Rights' favorable probable cause determination regarding his claims. The court, employing the summary judgment standard of review that governs motions to compel arbitration, found that the arbitration agreement was valid and unambiguously covered the plaintiff's disability-based discrimination claims. Therefore, in view of the federal law's strong presumption in favor of enforcing valid arbitration agreements, the court ordered the parties to arbitrate and stayed the case. 6 pages. Judge Samantha D. Elliott.

CLASS CERTIFICATION; OLMSTEAD

11/27/23 *Fitzmorris v. Weaver*
Case No. 21-cv-25-PB, Opinion No. 2023 DNH 144

A putative class of disabled individuals receiving home and community-based Medicaid services through New Hampshire's Choices for Independence Waiver Program sought class certification to challenge the state's allegedly deficient administration of the waiver program under the Americans with Disabilities Act, the Rehabilitation Act, and the Medicaid Act. The court certified a class of "CFI Waiver participants who, during the pendency of this lawsuit, have been placed at serious risk of unjustified institutionalization because Defendants, by act or omission, fail to ensure that the CFI participants receive the community-based long term care services and supports through the waiver program for which they have been found eligible and assessed to need." In doing so, the court concluded that (1) neither the implied requirement of ascertainability nor the implied prohibition against "fail-safe" classes precluded certification of a class, such as this one, seeking injunctive relief under Rule 23(b)(2); (2) the class was sufficiently numerous based on expert evidence indicating that a substantial number of individuals were at risk of institutionalization; (3) commonality was satisfied based on evidence of "common practices" by the state in administering the waiver program, which gave rise to common questions regarding the adequacy of the state's actions; (4) typicality was satisfied, despite the fact that the named plaintiffs' disabilities, service needs, and service delivery models were relatively uncommon; and (5) the requirements of Rule 23(b)(2) were satisfied and the plaintiffs were not required to articulate an injunction that would satisfy the strictures of Rule 65(d) at the class certification stage. 79 pages. Judge Paul J. Barbadoro.

Classifieds

POSITIONS AVAILABLE

ATTORNEY – MANCHESTER LOCATION: Looking for a seasoned New Hampshire Attorney needed to run trust and estate plan signings from our Manchester office. Tired of litigation and want truly appreciative clients? Position is part-time or full-time based upon the right candidate. Send resume to lan at ielmslie@sklawyers.net or sklaw@sklawyers.net.

ATTORNEY – DOVER LOCATION: Looking for a full-time Attorney available to work in our Dover office. Attorney must have 3 years or more in New Hampshire private practice. Current book of business to transfer a bonus concentrating in Estate Planning, Probate, Family Law, and Real Estate. Send resume to lan at ielmslie@sklawyers.net or sklaw@sklawyers.net.

ASSOCIATE ATTORNEY – Busy Manchester law firm seeking Associate Attorney with opportunity for growth and training within practice areas of insurance defense, civil litigation, landlord & tenant, and other select practice areas. Admission to the New Hampshire Bar required, and three years of experience a plus. Compensation commensurate with experience. Please submit resume, cover letter and writing sample to nwright@bkwlawyers.com.

ASSOCIATE ATTORNEY – We are looking for a motivated Associate Attorney with strong work ethic willing to learn and master new areas of law. This position offers the chance for interesting and rewarding work and an opportunity for growth as an expert in a discrete practice area. Associates are given mentored guidance through all tasks and then, significant independence to manage their practice, when ready. This is a wonderful opportunity for a new lawyer to acquire counseling experience, presentation skills and shape their practice. Ideal candidates should be admitted to practice in New Hampshire and possess strong people skills, research and writing skills. We offer a competitive salary and benefits package. Please email resume and cover letter to careersatcbz@gmail.com.

ASSISTANT COUNTY ATTORNEY – The Cheshire County Attorney's Office has an opening for a full-time Assistant County Attorney in the Circuit Court Regional Prosecution Program. Experience preferred. NH Bar membership required. Please submit a cover letter and resume to Kim May, Human Resources Director, Cheshire County, 12 Court Street, Keene, NH 03431.

STAFF ATTORNEY: New Hampshire Public Defender is seeking an experienced trial attorney. Applicants must have a commitment to indigent criminal defense and extensive practical experience. Applicants must be admitted to the New Hampshire Bar or be eligible for immediate admission by waiver. Interested attorneys should submit a resume, cover letter, and a law school transcript (unofficial acceptable) to our Recruiting Coordinator through the Employment section on our website, www.nhpd.org.

REAL ESTATE ATTORNEY – Alfano Law Office, PLLC seeks lawyer with 5+ years' experience handling closings, purchase and sale agreements, leases, financings, and title matters. Flexible arrangement available (of-counsel, associate, remote work). Health insurance, dental insurance and 401(k) available for full-time employees. Please contact Deb Alfano at dalfano@alfanolaw.com or phone 603.715.2543 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 dalfano@alfanolaw.com, 4 Park Street, Concord, NH 03301 or 603.715.2543.

ATTORNEY – The Office of Professional Licensure and Certification (OPLC) is currently looking to fill one open position on the Advisory Board of Court Reporters. Board members attend quarterly meetings at the OPLC and utilize their expertise to make recommendations on rules, requirements, licensing applications, renewals, and complaints. Board members also attend adjudicative hearings on disciplinary matters and make recommendations as needed. For information on applying for a Board member position, visit oplc.nh.gov/interested-becoming-oplc-board-member.

PARALEGAL – Beaupre Law, PLLC, an estate planning and administration firm located in Dover, NH is seeking a full-time Paralegal. The perfect candidate will have experience in estate planning, wills and trusts, probate and trust administration. Knowledge of business formations is also helpful. Must be a self-starter, client-focused, and a high attention to detail. We offer paid time off, a flexible work schedule for some remote work, and a unique opportunity to join a growing law firm. Send resume via email to hr@fullcirclehrco.com.

FULL-TIME PARALEGAL. YDC Claims Administration seeks a full-time paralegal. Qualified applicants should be detail-oriented and be able to work independently and as a team player. Salary range: \$43,056-\$63,122 with state benefits package. Paralegal job description, qualifications and application can be found at www.courts.nh.gov/careers/job-postings, look for job #23-105. Applications accepted until position filled.

COURT SERVICES CLERK – The US Bankruptcy Court for the District of New Hampshire is hiring a Court Services Clerk. Court services clerks perform various functions including maintaining and processing case information, collecting fees, and managing the progression of cases from opening to final disposition. They are responsible for the accurate and appropriate verbatim recording of court proceedings in the courtroom and provide calendaring and courtroom-related assistance as required. For more details and information about how to apply, please visit nhb.uscourts.gov/employment-opportunities.

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Prosecutor

The Town of Derry is seeking a part-time Prosecutor for 25 hours per week to represent the Derry Police Department in all prosecutorial matters.

Reporting to the Prosecutor Supervisor, the Prosecutor represents the Derry Police Department in Circuit Court, conducts arraignments, prepares, and tries misdemeanor, violation, and juvenile cases, represents the State at ALS hearings, prepares felony cases for transmittal to the Rockingham County Attorney's Office, and performs related work.

Membership in good standing in the NH Bar Association and excellent organizational and communication skills are essential. Three years of prosecutorial experience is preferred.

Pay range is \$940 - \$1,215 per week, depending on experience. Interested candidates should submit a cover letter and résumé to humanresources@derrynh.org. Submissions will be accepted until the position is filled. The successful candidate must pass an extensive background check.

For questions about the position, please contact Captain David Michaud at (603) 845-5645.

The Town of Derry is an Equal Opportunity Employer

New Hampshire Bar Association Executive Director Position



The New Hampshire Bar Association, an 8,500+ member organization located in Concord, NH, seeks an executive director.

Key responsibilities include:

- Responsibility for oversight and management of all operations, programs, and services of the Bar Association and its affiliate, the New Hampshire Bar Foundation
- Managing a multi-million-dollar budget
- Managing a 30+ member staff and operations

Qualifications:

- Juris Doctorate preferred, but not required
- Alternatively, minimum of master's degree in business administration, communications, public relations, public administration, or related field
- Minimum five years of work experience focused on organizational management, legal administration, non-profit management, business, or membership services
- Solid leadership and management experience
- Excellent interpersonal communications and collaborative skills
- Strong organizational abilities
- Financial and budgetary knowledge

Salary/Benefits:

- The compensation for this position is a salary in the range of \$125,000 to \$175,000, commensurate with experience, plus a competitive employee benefits package.

To apply, please submit a cover letter and resume by January 5, 2024 to NHBA@orr-reno.com

For the full job description, visit nhbar.org/executive-director/
Applications will be kept confidential

Orr&Reno

Trust & Estate Attorney

Orr & Reno, P.A. is seeking an experienced Trust and Estate attorney, with the ability to assume a leadership role in our Trust and Estate Department. Candidates should have significant experience in estate planning, gift, estate, and generation-skipping transfer tax planning and return preparation, trust and estate administration, and possess a strong academic record and excellent written and oral communication skills. Ideal candidates will have experience working directly with high net-worth individuals and families and their advisors on tax-efficient wealth transfer strategies. Experience in business succession planning is a plus.

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

Please submit a cover letter and resume to:

Orr & Reno, P.A.

Attn: HR Director

PO Box 3550

Concord, NH 03302-3550

Fax: (603) 223-9060

Via email (please send in Word format only)
resumes@orr-reno.com

Litigation Attorney

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Competitive Salary and Outstanding Benefits****

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We are in search of a Vermont-licensed attorney, or one eligible for licensure, with 2-5 years of experience and superior research, writing, and analytical skills. We are willing to consider applicants with other experience levels. As part of our team, you will be tasked with drafting sophisticated motions and legal memoranda on a wide array of civil issues, from employment claims and agricultural regulatory disputes to complex tort litigation and civil rights claims. You'll also actively participate in depositions, motion hearings, trials, and alternative dispute resolution processes.

At Monaghan Safar PLLC, we value the professional growth of our employees, offering a technologically advanced work environment, immersive training and mentoring, and a competitive salary that matches those offered by other leading law firms in Vermont.

Our robust benefits package, designed to rival or exceed those provided to Vermont government and private sector attorneys, includes paid vacation time, a full slate of professional development opportunities, a retirement plan with a generous employer contribution, and health, dental, and vision insurances. Our unwavering commitment to work-life balance is a testament to our dedication to our employees' wellbeing.

If you are a seasoned professional eager to apply your expertise in a team that values collaboration, creativity, and excellence, and if the flexibility of remote work, a competitive salary, and an exceptional benefits package appeal to you, we would be delighted to hear from you. Interested candidates should send a cover letter, resume, and two writing samples to Margie Cain at mcain@msvtlaw.com.

Elevate your career with Monaghan Safar PLLC, where your professional growth, personal wellbeing, and financial success are our prime concerns. We eagerly anticipate welcoming our new team member.



CASA of New Hampshire

Staff Attorney

CASA seeks a staff attorney to act as in-house counsel for CASA of NH staff and volunteers. The CASA Staff Attorney will represent CASA GAL's in court and will provide initial and on-going training for staff and volunteers in all CASA offices on Abuse/Neglect and Termination of Parental Rights proceedings.

Cover letter, resume and salary requirements should be sent via e-mail to Executive Assistant Melissa Desrosiers MDesrosiers@casanh.org

The full job description and qualification requirements can be found at www.casanh.org/jobs

For additional information about CASA of New Hampshire please see www.casanh.org

STAFF ATTORNEY

DOMESTIC VIOLENCE ADVOCACY PROJECT

New Hampshire Legal Assistance (NHLA) seeks a Staff Attorney to work on our Domestic Violence Advocacy Project (DVAP). The Staff Attorney's work will involve representation of victims and survivors of domestic violence, stalking, sexual assault, and human trafficking in protective order and family law cases, as well as through NHLA's Domestic Violence Clinic programs in Manchester and Nashua. The Staff Attorney will also be responsible for occasional community engagement and education work. The Staff Attorney will work out of NHLA's Portsmouth office, and will be responsible for handling work throughout New Hampshire, including the Seacoast, Manchester, and Nashua.

Full position description and application:
<https://www.nhla.org/support/jobs>

DrummondWoodsum

ATTORNEYS AT LAW

Municipal Attorney Manchester, New Hampshire

Drummond Woodsum seeks an attorney with 0 to 2 years' experience to join its expanding municipal practice at its Manchester, New Hampshire office. Our municipal practice group uses a team-based approach to advise town, city, county and other local governing bodies on land use, zoning, environmental, subdivision and land use permitting matters, as well as matters involving New Hampshire's right-to-know law, elections, real estate, property taxation, municipal finance, labor and employment, and litigation. Our attorneys frequently interact with and appear before public officials, both elected and appointed, as well as public boards and councils.

Candidates must have outstanding academic credentials, excellent research and writing skills, a strong work ethic, and the ability to work well on a team. Prior experience in municipal, land use, and/or real estate law is a plus, but not required. To apply, please submit a letter of interest and a resume to hr@dwmlaw.com. No phone calls, please. All inquiries are held in the strictest of confidence.

Drummond Woodsum is a full-service law firm with more than 100 attorneys and consultants providing a wide range of services for our clients, which range from some of the nation's largest corporations to small start-up companies, financial institutions, Tribal Nations and Tribal enterprises, municipalities, school districts, and individuals. We recognize that our greatest asset is our people, so we have intentionally created an environment where personal and professional growth are encouraged and fostered through mentorship and a respect for work-life balance. Drummond Woodsum offers a generous benefits package including a choice of medical plans with wellness reimbursements, life insurance, short and long-term disability insurance, 401(k)/Profit Sharing plan, and more. We look forward to hearing from you.

DrummondWoodsum

ATTORNEYS AT LAW

Labor and Employment Attorney Manchester, New Hampshire

Drummond Woodsum's Manchester, NH office is seeking an attorney to join our labor and employment law practice group. We are a tight-knit team that provides counsel to public and private sector employers, as well as tribal nations. Our team provides labor and employment counseling on all aspects of the employer/employee relationship, including collective bargaining, grievance administration, workplace discrimination, ADA compliance, state and federal wage and hour laws, and workplace misconduct. We also represent clients in state and federal courts, before federal and state agencies, and in labor arbitration. Our team is frequently called upon to provide clients with workplace training.

This position is open to qualified applicants who have excellent academic credentials, research, writing, and analytical skills, and who are highly motivated to learn. We are seeking a candidate who has strong interpersonal skills, and who is able to balance client advocacy with compassion and understanding. Applicants with 1-3 years of prior litigation or employment/labor law experience are preferred, but applicants without prior experience are encouraged to apply, including recent law school graduates. We are invested in the success of all our associates and will provide training, mentoring, and resources to support your development as a labor and employment practitioner. New Hampshire bar admission is not required, but strongly preferred.

At Drummond Woodsum, we have created a firm culture that emphasizes devotion to serving our clients, collaboration and collegiality, and a respect for work-life balance. In addition to the firm being a great place to work, we are also fortunate to be based in northern New England, one of the most beautiful areas of the country.

Drummond Woodsum offers a competitive compensation and benefits package, including competitive medical and dental insurance, a generous profit-sharing retirement contribution, paid parental leave, contributions to your HSA, STD/LTD, and professional development. We are committed to diversity and inclusion in our hiring practice and encourage qualified candidates of all backgrounds to apply for the position. To apply, please send your cover letter and resume to hr@dwmlaw.com. All inquiries are held in the strictest confidence. No phone calls, please.

Prosecutor

Overview: Position provides professional legal services to the City primarily as a Police Prosecutor with some civil/municipal work as assigned by the City Attorney; as a Prosecutor, advising the Police Department and Legal Department on criminal matters and representing the State on behalf of the City of Portsmouth Police Department in Circuit Court on adult and juvenile misdemeanor and violation level offenses, as well as felony arraignments, probable cause hearings and bail hearings, and city ordinance violations. Specifically for the City Attorney's Office, drafting pleadings in land use appeals cases, drafting legal memoranda, responding to public records requests, and reviewing contracts.

Qualifications: A candidate for this position must have a Juris Doctor Degree from an accredited law school and be admitted

to the New Hampshire Bar Association. Experience is a plus, but not required. Candidate must have thorough knowledge of criminal code, motor vehicle code, juvenile code, Department of Motor Vehicles Rules and Regulations, Rules of Evidence, Circuit Court Rules, and Criminal Procedure Rules as well as familiarity with relevant case law, strong research and writing skills, and the ability to effectively assess, prepare for, and prosecute cases in a court of law.

Salary range: Salary range for this position is \$77,898.76 - \$94,686.43. This is a non-union position.

Please see full posting here: <https://nh-portsmouth.civicplushrms.com/CareerPortal/JobDetail.aspx?RequisitionId=126074&SourceId=7165>

LITIGATION ATTORNEY

Welts, White & Fontaine, PC is seeking an attorney with 0-4 years of experience to join our busy team as a litigation associate. Founded in 1978, Welts, White & Fontaine, PC, is the largest Nashua-based law firm and represents individuals and businesses in a wide range of practice areas.

This position offers the chance for interesting and rewarding work and an opportunity for growth. Our litigation practice includes commercial and business disputes, personal injury law, appeals, family law, and real estate litigation. Associates are given significant autonomy — when ready — to manage their own caseload, acquire courtroom experience, and shape their practice.

Ideal candidates should be admitted to practice in New Hampshire and possess strong research and writing skills. We offer a competitive salary and benefits package. The firm has no billable hour requirements for associates and has flexibility for some remote work.

Please e-mail resume and salary requirements to Veronica Hamilton at vhamilton@lawyersnh.com.



WELTS, WHITE & FONTAINE, P.C.
ATTORNEYS AT LAW



ALFANO
LAW, PLLC

Alfano Law, PLLC is a boutique property rights firm focusing on roads, easements, commercial real estate, litigation, real estate tax abatement, estate planning and probate. The firm has offices in Concord, Bedford, Keene and Portsmouth. Successful candidates may work remotely or in one of our offices. We are looking to hire for the following positions:

- **“Seasoned” Litigator** - Experienced 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 away from handling cases personally 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.

Inquiries, please reach out to Paul Alfano at palfano@alfanolaw.com

- **Civil Litigation Attorney** – Litigator with 5+ years' experience handling trials, motions and discovery. Familiarity with real estate a plus.

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

- **Real Estate Attorney** – Commercial real estate attorney with 5+ years' experience handling purchase and sales, leases, financings, zoning, titles, closings, and LLCs.

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

Candidates must have practiced primarily in New Hampshire.

Benefits include:

- Health Insurance (full-time)
- Dental (full-time)
- 401K (full-time)



NEA-NH Hiring Staff Attorney

The National Education Association-NH, New Hampshire's largest educator's union, is seeking applicants for the position of Staff Attorney. Experience practicing labor, employment, education and/or administrative law is helpful but not required. Job responsibilities include but are not limited to litigating matters in state and federal courts, administrative agencies, and arbitrations on behalf of NH educators and local unions and providing legal advice, research, and consultation to union field representatives and union leaders. Those with a strong interest in working on behalf of public educators and uplifting public education are encouraged to apply regardless of previous experience.

Must be a member in good standing of the New Hampshire Bar Association.

Salary range is \$118,012-\$166,055. Generous benefits include health insurance, defined benefit pension, paid time off, and union contract.

For full job description contact
Paula Gailing pgailing@nhnea.org.

NEA-NH is an equal opportunity employer

PROSECUTOR: Attorney I, City of Manchester

Full-Time, 40 Hours Per Week, Intermittent Remote Work as Duties Permit

Rate of Pay: Annual Salary Range \$72,143-\$102,858 plus competitive benefits package

The Prosecutor primarily prosecutes misdemeanor cases in the 9th Circuit Court in Manchester investigated and charged by the Manchester Police Department (MPD), handling cases from arraignment through final disposition.

Responsibilities include:

Working under the guidance of the Supervisory Prosecutor with a team comprised of a total of seven prosecutors, two of whom are full-time domestic violence prosecutors, and another of whom handles juvenile matters exclusively. The City uses a modern, digital case management system, working in conjunction with the MPD record management and body-worn camera technologies to meet the highest standards of excellence.

Required Special Qualifications

- Graduation from an accredited college or university with a Juris Doctorate degree;
- Some experience in municipal law operations, including some prosecutorial experience.
- Admission to the New Hampshire Bar; and
- New Hampshire driver's license or access to transportation.

Essential Physical Abilities

- Sufficient clarity of speech and hearing or other communication capabilities, with or without reasonable accommodation, which permits the employee to communicate effectively;
- Sufficient vision or other powers of observation, with or without reasonable accommodation, which permits the employee to observe a wide variety of written material in both electronic and hardcopy form;
- Sufficient manual dexterity with or without reasonable accommodation, which permits the employee to operate a personal computer and related equipment;
- Sufficient personal mobility and physical reflexes, with or without reasonable accommodation, which permits the employee to have access within both the general office environment and to all applicable areas of the court system.

To Apply Please Visit:

<https://www.manchester.nh.gov/Departments/HumanResources/Employment>

The City of Manchester is an Equal Opportunity Employer



Full-time Attorney

The landscape of the practice of law in New Hampshire has changed in recent years and caused many attorneys to reevaluate their career path. Attorneys seeking greater fulfillment in their professional lives have found themselves in a system that often measures their worth by billable hours instead of how many people they help or lives they change. If that resonates, please read on. There is no other job in the legal profession quite like that of an OPG attorney.

The Office of Public Guardian (OPG) is a private, non-profit corporation dedicated to providing guardianship and advocacy services to legally incapacitated adults, including those challenged by developmental disabilities, mental illness, dementia or traumatic brain injury. The organization is unique and the work both challenging and personally and professionally rewarding. Every day, OPG's dedicated staff makes a difference in the lives of some of the state's most vulnerable citizens.

OPG's legal services department is tasked with supporting OPG's mission by representing the organization and its clients throughout the state. Working alongside guardians, client resource specialists, and estate and trust managers in a collegial environment, OPG attorneys protect the human and legal rights and civil liberties of each individual we serve.

The work is never routine but is consistently challenging and rewarding. The ideal candidate is experienced in the areas of guardianships, trusts and estates, state and federal benefits, and landlord/tenant law.

Benefits include a competitive salary, 12 paid holidays, hybrid work opportunities, company paid life insurance, health and dental insurance, short term and long term disability, paid time-off, 403(b) retirement plan with employer contributions, travel reimbursement and use of an on-site fitness center.

To view the full job description, visit our website at www.opgnh.org and click on the "Careers" link. If interested, please send a cover letter and resume to info@opgnh.org by December 4th.



ATTORNEY

RANSMEIER & SPELLMAN P.C. is seeking a Trusts & Estates attorney with 2-5 years of experience. Ideal candidates should have experience in estate planning, and trust and estate administration. Candidates should possess a strong academic record with excellent written and oral communication skills. The ability to work with individuals, families, and financial advisors with respect to a wide range of financial planning and probate and trust administration matters is an essential part of this position.

At Ransmeier & Spellman P.C., we are committed to delivering high-quality legal services while maintaining a collaborative and collegial work environment for our employees. The firm offers a competitive compensation and benefits package commensurate with qualifications and experience, a commitment to a strong work-life balance and the option for some remote work. Interested candidates should **submit a cover letter and resume to Jeffrey Rabinowitz, Esq. at gblodgett@ranspell.com**

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COOPER
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ATTORNEYS AT LAW

North Conway NEW HAMPSHIRE

Cooper Cargill Chant, northern NH's largest law firm, serving clients in New Hampshire and Maine, is looking for two attorneys to join our vibrant firm. Our firm distinguishes itself by providing sophisticated counsel to a growing local, regional, and national client base, while balancing lifestyle opportunities afforded by our North Conway location. We offer competitive compensation and a strong benefits package.

COMMERCIAL ATTORNEY:

Cooper Cargill Chant seeks an associate attorney with 1-3 years of corporate and transactional experience to provide counsel to closely held businesses, lenders, and the resort community. The ideal candidate will have strong credentials and an ability to work effectively with clients, colleagues, and the community. Temporary relocation housing at Cooper Cargill Chant expense will be provided if necessary.

PROBATE AND TRUST ADMINISTRATION ATTORNEY:

Cooper Cargill Chant seeks an associate attorney with 0-6 years to provide counsel for Probate and Trust Administration matters. The ideal candidate will have strong interpersonal and managerial skills. Temporary relocation housing at Cooper Cargill Chant expense will be provided if necessary.

Please send letter of interest and resume to Hiring Partner
Leslie Leonard at lleonard@coopercargillchant.com.
For further information, visit www.coopercargillchant.com

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

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.nhfirst.nh.gov/lawtaprd/xmlhttp/shorturl.do?key=8AT> 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 Corporation Counsel City of Nashua

DEPARTMENT: Legal

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

AFFILIATION: Unaffiliated

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

PRIMARY DUTIES

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

QUALIFICATIONS

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

APPLICATION PROCEDURE

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

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



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ASSISTANT COUNTY ATTORNEY

SCOPE OF POSITION:

Seeks justice with professionalism, excellence and pride, consistent with the New Hampshire Rules of Professional Conduct, American Bar Association and National District Attorney's Association guidelines, as a criminal prosecutor with a concentration in Superior Court.

ESSENTIAL JOB FUNCTIONS:

- Acts as counsel for the State of New Hampshire in criminal matters.
- Works closely with Victim/Witness Coordinators to ensure that all witnesses/victims are properly informed, prepared and supported throughout the prosecution process.
- Presents investigations and cases to the Grand Jury.

REQUIRED EDUCATION AND EXPERIENCE

- Juris Doctor from accredited law school.
- Must be admitted into the New Hampshire Bar Association.

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

Status: Full Time/Exempt

Submission Requirements:

Employment application and resume required.

Apply Online:

<https://www.governmentjobs.com/careers/rockinghamnh>

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