

## From Shifting Sands to Solid Granite: Afghan Judge Geeti Roen and Her Family Have Safely Arrived and Need Support

By Tom Jarvis and Grace Yurish

In the spring of 2022, New Hampshire Supreme Court Justice (NHSC) Anna Barbara Hantz Marconi began to organize what is now the New Hampshire Coalition for Resettlement of Afghan Women Judges (the Coalition) – a volunteer group of highly motivated and philanthropic judges, lawyers, and teachers recognized by the National Association of Women Judges (NAWJ). Their goal is to assist the International Institute of New England (IINE) with providing essential support to women judges and their families who were evacuated from the threat of the Taliban in Afghanistan through the efforts of the NAWJ, the International Association of Women Judges (IAWJ), and the US Department of State.

Thanks to the endeavors of the Coalition, one such judge, the Honorable Geeti Roen (along with her husband, Dr. Ziaurahman Roen, and their three children) was safely relocated to New Hampshire in December 2023.

“Getting the family here was mostly due to the efforts of the NAWJ and the IAWJ but our support group played a big part in that it gave the ongoing efforts a



The Roen family sitting on the couch in their new home in Manchester, New Hampshire. From left to right: Mehrsa Roen, Dr. Ziaurahman Roen, Kyanoush Roen, Judge Geeti Roen, and Kiyomars Roen. Photo by Tom Jarvis

goal,” Justice Hantz Marconi says. “Just the fact that we were here gave the working groups support and a push to kind of get it done. It was a lot of hurry up and wait for us but now, with the family arriv-

ing, it’s like the starting gun. We have concrete goals and can put together a needs list. It’s a more manageable, tangible project.”

The seeds of the Coalition began

when NHSC Justice James Bassett attended a virtual panel discussion about the Afghan women judges, presented by Duke University School of Law. After hearing from him about the efforts of the IAWJ, Justice Hantz Marconi got in touch with IAWJ member and retired Vermont judge Patricia Whalen.

“I spoke to Patti about a judge who had previously arrived in Vermont, named Anisa Rasooli, who was the Ruth Bader Ginsberg of Afghanistan,” Justice Hantz Marconi says, adding that Rasooli was the first woman to sit on the Supreme Court of Afghanistan. “She had resettled in Vermont and there was a second judge slated for Vermont – Judge Geeti Roen – and we wanted to try to host her in New Hampshire. Jackie Waters from the Judicial Branch and I worked with retired Judge Brenda Murray from the NAWJ to get the ball rolling and then Judge Ellen Christo got involved. We also have great support from lawyers and the law school. For fundraising, the Coalition partnered with the New Hampshire Women’s Bar Association and the New Hampshire Bar Foundation.”

ROEN *continued on page 26*

## NHBA Prison Series: Parole and Prison Reform

By Scott Merrill

A person in New Hampshire who violates the conditions of their parole is very often referred to by the New Hampshire Department of Corrections (DOC) as a “Community Failure.” For those seeking prison reform, terms like this can say more about a system that sets people up for failure by not addressing their needs – including substance misuse and mental health treatment – than the individual.

Joseph Lascaze, campaign manager for the American Civil Liberties Union of New Hampshire’s Smart Justice Campaign, says the term “community failure” doesn’t do justice to the difficult challenges parolees often confront on the outside – like finding transportation to court hearings or a mental health provider – or the rehabilitative paths they chose to receive parole in the first place.

“Failure is stopping and not continuing,” he says. “Everyone has had setbacks, but failure is giving up. Parole is about progress, not perfection.”

Lascaze, who was released from the New Hampshire State Prison (NHSP) in July 2019 after serving more than 13 years for armed robbery, began cataloging different barriers and challenges people seeking parole were facing while he was still incarcerated.

“People need resources to succeed,” he says. “Imagine a doctor who says their patients suffering from mental illnesses are community failures because they had one episode. That’s the lens the parole department is using for people who they say, ‘can’t adapt to the community.’ Based on the current tools and resources that are available, yes, they’re failing.”

PRISON SERIES *continued on page 28*

## PRACTITIONER PROFILE

### Robin Melone: A Heavy Lifter In and Out of the Courtroom

By Kathie Ragsdale

She has represented some of the most notorious defendants in the state, has taken on the governor and attorney general for their comments about a jury decision, and has won some of the most prestigious awards that her Bar colleagues offer.

But Robin D. Melone is a heavy-weight in more ways than one.

The woman can also deadlift 250 pounds.

“I’m a challenge taker,” says Melone, who joined the Concord firm of Pastori Krans on January 1.

The former public defender and long-time criminal defense lawyer grew up “all over the place,” including 15 years in West Virginia, before enrolling at Wesleyan College as a music major. But she



felt out of place at the rural, Christian school and transferred to Mount Holyoke College in Massachusetts, a move she calls “the best thing I ever did.”

“The exposure to people, ideas, and open conversations really shaped my willingness and ability to ask vulnerable questions, which I think makes me a good attorney,” she adds.

Two professors at Mount Holyoke had strong influences on her, includ-

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# Midyear Meeting 2024: A Premier Opportunity

First, I would like as many of you as possible to reach out to George Moore and thank him for his service to your Association over the last five years. George accomplished much, including writing a wonderful succession planning book for New Hampshire lawyers, keeping the Bar budget well under control (no Bar Association fee increase since 2009), and providing steady, resourceful, and directed leadership to Bar staff and Bar leaders. George well deserves a healthy and full retirement after his service to the Bar and his long service to Devine Millimet. We wish George and his wonderful wife, Ellen, all the best.

George has also been terrific at guiding and directing the presidents of the Bar in putting together programming for the Midyear Meeting. This year, I think we can offer a home run of a program, which is made up of two parts: The morning will be focused on lawyer wellness and the afternoon on artificial intelligence and the law.

I am personally most excited about the talk we will be having with Dr. Larry Richard of LawyerBrain, LLC. Dr. Richard is a former big-city civil litigation lawyer who turned to the study of psychology – specifically of lawyers. Dr. Richard knows who we are, where we come from, and what makes us tick. In knowing what makes us tick, he has a particular expertise in why so many lawyers develop the wellness issues they carry with them.

Additionally, we have Chris Newbold, the chief operating officer of ALPS. Chris oversees malpractice claims nationally, many of which involve lawyers who are in personal crisis due to wellness issues. We also have the Chief Justice Beth Walker of

## President's Perspective



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

the West Virginia Supreme Court of Appeals, who has done extensive work in attorney well-being. What these folks have to say will, I promise you, be very valuable.

The afternoon is full of AI. That's right: The future. But the future is now. Joshua Weaver, director at the Texas Opportunity & Justice Incubator, will address the existing potential of current AI programs for lawyers, and what the future (and even near future) will hold. This will be followed by a panel discussion with Colin Zick of Foley Hoag and John Weaver of McLane Middleton, moderated by Bob Lucic of Sheehan Phinney, chair of the Bar Association's Special Committee on Artificial Intelligence. Ethics credits will also be provided in discussion of the perils of AI, and the ethical responsibilities each of us faces when we use AI.

The cost for the Midyear Meeting cannot be beat. It is only \$125 for a full day of CLEs, with lunch, and the premier opportunity of the entire year to see colleagues and friends. Sign up now and come on out.

Finally, as you look at your 2024 calendar, please block out the weekend of June 7-9 for the Annual Meeting. This year, the event will be held at the Grand Summit Hotel at Attitash in my beautiful Mount Washington Valley.

The Valley offers a wonderful variety of family-friendly and adult-friendly activities. One primary reason we chose the Grand Summit this year, rather than one of the old grand hotels, is affordability. It is a completely different cost structure. We want young families to venture up, enjoy the season, get their kids outdoors on a hike, a bike ride or walk on the tame Mount Washington Valley Rec Path, or some of the gnarliest mountain biking around.

For adults, get out on a golf excursion, shop at our famous outlets, and visit local distilleries or breweries with live music in the afternoons (inside and out). If Old Man Winter sticks around, you might even be able to venture up to the base of Tuckerman's Ravine and watch the skiers take on the headwall.

An aside: My professional future changed 25 years ago, when in the lobby of the Grand Summit, I was saying goodbye to then-Bar President Randy Cooper, following a Bar leadership retreat. I commented to him how lucky he was that he didn't have to travel home:

"You are lucky you don't have to go home," I said. "You are home."

A couple of weeks later, Randy called and asked, "could we ever get you to come up here?" And I did. And so should you.

Come on up! My life was made better by that weekend, and so too may yours. Take care all. ♦

## Hon. Gary Hicks Elected President of Children's Law Center Board

The Children's Law Center of New Hampshire, a legal services nonprofit dedicated to improving outcomes for at-risk children, is exceptionally proud to announce that Hon. Gary Hicks has joined its board of directors and was promptly elected to serve as board president.

Justice Hicks retired from the New Hampshire Supreme Court as its senior associate justice on November 30, 2023. He was a Superior Court judge before his 17 years on the state's highest court, and before that a commercial



litigator with Wiggin & Nourie – then one of New Hampshire's largest law firms – for 23 years.

Justice Hicks is the former chief of the American Inns of Court Leadership Council and the recipient of many awards, including the New Hampshire Access to Justice Commission's Civil Justice Award in 2021

and the New Hampshire Bar Foundation's Frank Rowe Kenison Award in 2023.

On January 24, 2024, he will receive the first Judicial Excellence in Gender Equity award from the New Hampshire Women's Bar Association.

A Colebrook native, Justice Hicks is a member of the Advisory Board of the St. Paul's School of Advance Studies. He is also actively engaged in recruiting private and public-school students from diverse, multicultural backgrounds to pursue careers in the law. ♦



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# George Moore: Looking Back on a Born Leader

By Tom Jarvis

*Note: When George announced that he would be stepping down, my immediate thought was to write an article to honor him and to illustrate what a notable leader he has been – not only at the Bar Association, but in the entire legal community. When I pitched it to him, he was apprehensive. He was concerned that it would appear self-serving, since I work for him. I assured him that I would make it clear he did not commission me to write this article. That's George for you. Even though he quite deserves it, he does not seek public acclamation. But let's give it to him anyway.*

New Hampshire Bar Association Executive Director George Moore has been leading and mentoring others ever since becoming co-captain of both the basketball and baseball teams while attending Riverhead High School in New York.

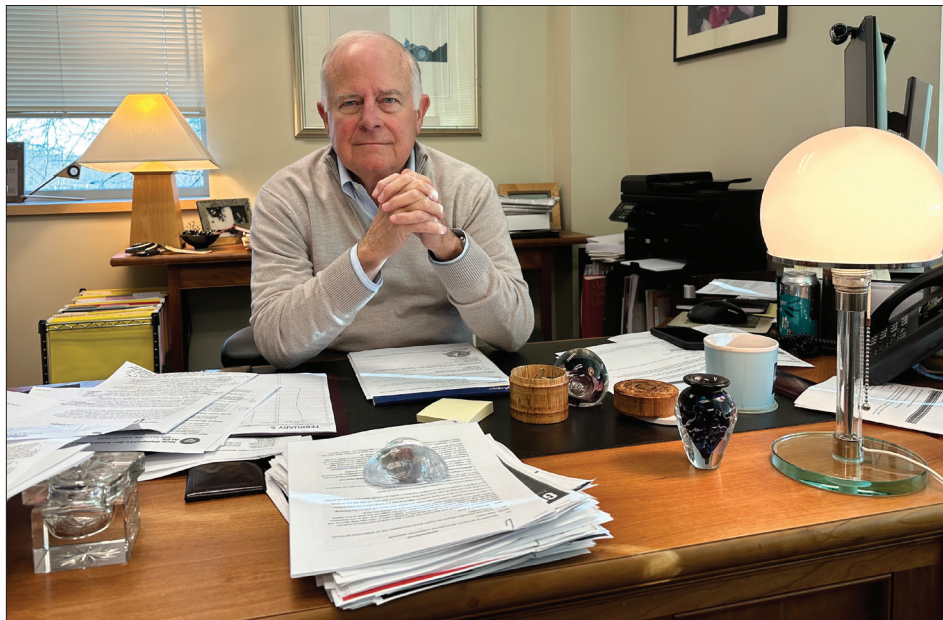
For the past five and a half years, he has led the NHBA staff in becoming a high-functioning team, working more cohesively with the New Hampshire Supreme Court (NHSC) than ever before.

Following his announcement that he will be stepping down in early 2024 – even though we are uncertain where his future leads – we can look back on this natural leader and his distinguished career thus far.

As an undergraduate of St. Lawrence University in upstate New York, Moore was an English major and played a little basketball. Later, he was elected president of the student body and to the National Leadership and Academic Honor Society, Omicron Delta Kappa. After graduating in 1970, he applied to and was accepted into several law schools. However, amidst the ongoing conflict in Vietnam, President Richard Nixon changed the draft rules for new graduate school deferments.

"My original plan was to go to law school and then join the Army as a lawyer," Moore says, explaining that he owed the US Army four years due to a full ROTC scholarship. "But I couldn't get the deferment. So, in the summer of 1970, I got active-duty orders."

After boot camp and advanced training, he received a duty assignment at an environmental medicine laboratory in Massachusetts, where he was a detachment commander of the test subjects in a study involving acute mountain sickness. He received orders to deploy to Vietnam, but his commanding officer deemed him "mission essential," so the orders were canceled. As a result, he got to climb the Continental Divide with a large group of test subjects and



NHBA Executive Director George Moore sitting at his desk in his office at the Bar Center. Photo by Tom Jarvis

scientists.

Following a subsequent assignment in Thailand, and as a courier delivering top-secret documents to various locations, he received a second deployment order to Vietnam. However, just before shipping out, he was diverted to the Second Infantry Division on the DMZ in Korea because President Nixon decided to phase down the number of in-country troops in Vietnam. There, he commanded a company of approximately 150 men in an elite battalion which was the only American unit still on the line.

Moore eventually earned the rank of captain before his discharge in 1974, confirming once again that he becomes a leader wherever he goes.

"The good news was I was in such a remote location and the nature of duty was such that I couldn't spend money even if I wanted to," Moore says. "Everything was subsidized by the government, so I saved everything I made as a captain in the Army and that paid for a year and a half of law school."

Moore attended the Washington and Lee University School of Law in Virginia – the only law school he had previously been accepted to that kept his application on file during his time in the military. There, once again ascending to a role of leadership, he was elected to run the school's law review as editor-in-chief.

While taking the New Hampshire Bar Review course, Moore met Ellen Arnold. The two remained friends as their paths crossed several times throughout their careers. Arnold went on to become counsel

to Governor Judd Gregg, who later nominated her to become a District Court judge. After hanging up her robe, she became a partner at McLane Middleton and later an associate general counsel at Dartmouth College. She was also an NHBA president in 2008.

Years later, while serving on a Supreme Court committee together, the two got to know each other more and eventually married in 2014.

After earning his JD with honors in 1977, Moore began working at Devine Millimet as a trial lawyer under the direct supervision of the eminent E. Donald Dufresne.

"Don Dufresne was one of my mentors," Moore says. "I became awed by his abilities, and I learned so much from him. He was one of those people that's a real presence in the courtroom and is smarter than everybody else in the room, but he would never let you know that. He wasn't ostentatious by any stretch. To the extent that I have any trial skills, I learned a lot more from Don Dufresne than I learned from law school about the art of lawyering."

According to his colleagues, trial skills were something Moore possessed in abundance.

"George was a tremendous trial lawyer – one of the best," retired NHSC Justice Gary Hicks says. "He was always able to see through issues that weren't necessarily clear and get to the bottom line to try or resolve a case."

A second mentor for Moore was former NHSC Chief Justice John Broderick.

"I tried a ton of cases with John and always came away amazed at his abilities," Moore says. "Every trial was a learning experience."

Justice Broderick was a new partner when Moore joined the firm as an associate and was only doing trial work.

"I became his official mentor, but that only lasted a short time because he and I became dear friends," says Justice Broderick. "He was really gifted, insightful, and smart about cases and people. He is an extremely interesting person, and he really had the rhythm of a trial. I think he didn't really need to learn much from me. We worked together on many cases with and against talented lawyers – and all of us learned from each other. Even though I was his mentor, it never felt that way to me. It felt like we were equal colleagues."

Justice Broderick adds: "I think the world of him. He's a very good human being and cares about the public good and giving back. He's the kind of lawyer that we could use more of, to be honest."

Moore eventually earned his way into leadership once again as a senior equity shareholder at Devine Millimet, where he became a mentor himself for several prolific members of the Bar, including Attorney Jonathan Eck, Catholic Medical Center CEO and President Alex Walker, and Superior Court Judge Dan Will.

"George was as good a mentor as anybody could ask for," Judge Will says. "I owe him so much. He gave me so many opportunities and was so supportive along the way. He is extremely intelligent, and he was a gifted trial lawyer. As a young lawyer, I always sort of had this – I call it my pantheon – this group of people in my mind, lawyers who were senior to me who handled themselves like I wanted to handle myself and who were accomplished at a level that I wanted to be accomplished. I found myself constantly thinking, 'what would that person do in this situation?' George has been one of those people for me over the years – a little bit of a North Star for me."

Jonathan Eck, immediate past president of the Bar, agrees that Moore was a great mentor and trial lawyer.

"I found George to be a wonderful mentor," Eck says. "He's someone who trains and guides junior attorneys well but doesn't micromanage. He gave me the opportunities to develop and improve my skills and he was a valuable teacher both by example and through constructive feedback. He was a very skilled trial lawyer

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## Medical Malpractice



# The National Popular Vote Interstate Compact: Equal Protection and Vote for President

By Michael Lavin

As of December 2023, 16 states have passed similar legislation known as the National Popular Vote Interstate Compact (NPVIC). The compact will require each member state to award its electoral votes to the presidential candidate who receives the greatest number of popular votes in all 50 states and the District of Columbia. Within each of those states, the compact will have no binding legal effect until any number of states whose sum equals 270 electoral votes enacts the legislation.

The Equal Protection Clause of the Fourteenth Amendment invalidates the NPVIC because the compact treats similarly situated voters of separate jurisdictions differently when both cast votes for presidential electors in winner-take-all jurisdictions. Specifically, the NPVIC conditions the weight accorded a vote in one jurisdiction exclusively on the cumulative votes of all other jurisdictions to effect more political relevance to certain states.

## Equal Protection Legal Standard: Invidious Discrimination

The case *Williams v. Rhodes* states intentionally dissimilar treatment occurs "... only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." Though the US Constitution has granted explicitly to the states the power to appoint electors for President under Article II, Section I, *Williams* established that "these granted powers are always subject to the limitation that they may not be

exercised in a way that violates other specific provisions of the Constitution."

The standard established by the US Supreme Court for equal protection under the Fourteenth Amendment regarding the right to vote permits the states to make classifications and does not require them to treat different groups uniformly. Classifications, however, must not arise from "invidious discrimination."

## Bush v. Gore

Two relevant concepts regarding right to vote enunciated by the Supreme Court in *Bush v. Gore*, puncture a hole in the rationale for the NPVIC: "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."

Furthermore, the Court added: "The right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

In *McPherson v. Blacker*, the Supreme Court recognized that an individual citizen "has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college." Thus, a statewide popular vote for President of the United States triggers a state requirement to pro-

vide equal protection.

The Supreme Court articulated that specific legal principle further in *Bush*: "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter."

## Plausible Scenarios Under the NPVIC in 2024

Previous elections demonstrate the inherent invidious discrimination that would have resulted had the NPVIC operated in the respective elections. In 2020, Al Gore earned more popular votes than George Bush, Jr. in 2000. Colorado, now a member state in the NPVIC, would have pledged its electors for George Bush. Connecticut, also a member state, would have pledged its electors for Al Gore.

The terms of the NPVIC would have treated the presidential electors pledged by direct election of the people under a winner-take-all election authorized by Article II of the Constitution in Colorado different from a vote for a presidential elector for Al Gore elected directly by the people in a winner-take-all jurisdiction. The NPVIC would have nullified all Bush votes in Colorado because the compact conditions the determination of which slate of electors to certify based solely upon the aggregate vote accumulated by candidates in all 50 states.

The election of 1968 illustrates the impact of the NPVIC had it been in effect during that election. Third-party candidate George Wallace earned 45 electoral votes, though he registered 46 on account of a faithless elector. The NPVIC would have invidiously discriminated against voters who supported Wallace and Democratic candidate Hubert Humphrey. Similarly, the NPVIC would have invidiously discriminated against Perot voters in 1992 had he earned the most votes in a winner-take-all jurisdiction.

Prospects for viable third-party presidential candidates in 2024 are far more likely than either 1968 or 1992. The group No Labels intends to win ballot access in all 50 states. Other political parties and individuals, such as The Green Party and Robert F. Kennedy, Jr., have made substantial steps toward achieving electoral viability. Speculation has arisen surrounding a campaign by former congressional representative Liz Cheney (R-WY).

## NPVIC in New Hampshire

New Hampshire has addressed the NPVIC in prior legislative sessions. In 2019, the House Election Law Committee in the legislature voted unanimously against a proposal to abolish the electoral college. The following year, the same committee controlled by Republicans proposed HB 1531. The bill would have prohibited the release of the number of votes cast in the general election for President of the United States until the meeting time for presidential electors had passed in all states. In other words, the bill sought to frustrate the purpose of the NPVIC.

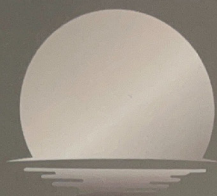
Two factors provide a plausible scenario under which New Hampshire voters may be subject to provisions of the NPVIC in November 2024. First, candidates for president in 2024 of parties other than Republican or Democratic must submit two sets of documents to the Secretary of State: A form declaring an intention to run by June 14 and 3,000 certified nomination papers – 1,500 from each of the state's two congressional districts – by September 4, 2024. Second, the legislature will have several months to assess an increasingly less uncertain political landscape. Of course, the bill would remain subject to a veto by Governor Sununu.

## Solution: Constitutional Amendment

The NPVIC would intentionally disregard all votes legally cast for all but one candidate by nationalizing the body in the US Constitution – the Electoral College – specifically designed to represent the states in the election of the President. The proper remedy, a constitutional amendment to eliminate the Electoral College, would acknowledge the US Constitution as the supreme law of the land. A compact among states raises legal questions to circumvent the amendment process raises questions of law and political motivation.

Furthermore, a successful amendment process would remain federal in character by representing states, account for regional differences, and reflect a national consensus. Supporters have either knowingly masked their political objectives in legal arguments or truly cannot distinguish between them.

They should heed the instructions provided in *Williams v. Virginia State Board of Elections*: "...we are of the opinion that a compulsory compliance with their demand or any other proposed limitation on the selection by the State of its presidential electors would require a Constitutional amendment." ♦



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# Still Broken: State Supreme Court Declines to Rule on Longstanding Residential Placement Issue

By Elizabeth C. Trautz

In 2022, I authored a law review note titled *Broken Promises: The Granite State's Return to the Institutionalization of Children with Disabilities*. The article chronicled the deinstitutionalization movement, New Hampshire's adoption of RSA 171-A as a replacement for the Laconia State School, and the ensuing misinterpretation of that statute by the Department of Health and Human Services (DHHS). At its core, however, the article sought to place readers in the dilapidated homes of impoverished single mothers serving as full-time caregivers to their severely developmentally disabled sons and daughters ages 18 to 22.

The image I've just described is not uncommon. As of the most recent Statewide Census by Disability, approximately 456 Granite Staters ages 18 to 22 qualify for special education and related services under a coding of autism or intellectual disability. These individuals receive educational services through their local school districts, but often reside with wearied single parents who are struggling to make ends meet while serving as the young adults' primary caretakers.

When the parent reaches exhaustion or is otherwise unable to provide shelter, supervision, or care, the young adult faces institutionalization, abandonment, or homelessness. To make matters worse, the child neglect statute, RSA 169-C, cannot be invoked if the neglect first arises after the child has reached age 18.

The solution to this longstanding

problem is contemplated by RSA 171-A, New Hampshire's "services for the developmentally disabled" statute. That law requires DHHS and its area agencies to provide "care, habilitation, rehabilitation, treatment, and training" as well as "service coordination, community living arrangements, employment and day services, and supports to families of individuals with developmental disabilities."

Unfortunately, DHHS routinely directs its area agencies to decline community-based residential services (such as placements in specialized foster homes and group homes) to young adults who are eligible for developmental services but are still in school. Based on its interpretation of RSA 171-A, DHHS believes that local school districts (and their taxpayers) should be primarily responsible for the residential placement of individuals who have not yet graduated or exited school – even when their needs for residential placement are purely non-educational.

The Disability Rights Center of New Hampshire (DRC-NH) challenged this interpretation in the case of *Verrill v. Commissioner of DHHS*. The original complaint, filed on August 7, 2020, sought a declaration that DHHS's failure to provide community-based residential placement to 19-year-old Janessa Verrill violated RSA 171-A. The Merrimack County Superior Court agreed, finding that DHHS was misapplying the statute by denying services to eligible individuals due to their enrollment in school. See *Verrill ex rel. Verrill v. Comm'r Lori Shibinette*, No. 217-2020-

CV-00382, 4 (N.H. Super. Ct., Oct. 26, 2021) (order).

Moreover, it disavowed DHHS's statutory interpretation as "invalid and unlawful." *Id.* at 7. Accordingly, the Court ordered DHHS to "render appropriate home and community-based services to Ms. Verrill as soon as practicable . . ." *Id.* at 5.

Still unwilling to accept its responsibilities under RSA 171-A, DHHS then appealed to the Supreme Court of New Hampshire. Attorney Jennifer Eber of DRC-NH and Attorney Gerald Zelin of Drummond Woodsum teamed together for the oral argument. Attorney Zelin also submitted an impassioned amicus brief on behalf of 22 school districts. But on November 17, 2023, the Supreme Court issued a gut-wrenching order: it evaded addressing the validity of DHHS's policy by declaring the case moot because the plaintiff, Ms. Verrill, had aged out of special education.

In New Hampshire, however, "the question of mootness is not subject to rigid rules; it is regarded as one of convenience and discretion." *Bleiler v. Chief, Dover Police Dept.*, 155 N.H. 693 (2007).

Thus, state courts may nonetheless hear a mooted case "where there is a pressing public interest involved, or future litigation may be avoided." See *id.* at 695. There is an unequivocally pressing public interest in a definitive ruling that DHHS's practice of denying community-based residential placement to individuals based on their enrollment in school is unlawful. As the Merrimack County Superior Court pointed out:

"The Court finds that Ms. Verrill's successful action *confers a substantial benefit upon the general public*. By obtaining a declaratory judgement that the Department's practice of denying services to eligible individuals is unlawful, *the public is directly benefited*. Eligible individuals enrolled in school will now be able to properly receive appropriate services as contemplated by RSA 171-A. In particular, the explicit policy that "persons with developmental disabilities and their families [are to] be provided services that emphasize community living and programs to support individuals and families, beginning with early intervention" is served due to Ms. Verrill's successful action. *Verrill* (N.H. Super. Ct. Oct. 26, 2021) (order) (emphasis added).

While Janessa Verrill aged out of eligibility for special education and related services in January 2023, according to the same Statewide Census referenced above, over 4,000 Granite Staters currently qualify for special education based on autism or an intellectual disability. As students with severe developmental disabilities outgrow their parents' ability to care for them and apply for community-based residential placements, DHHS will continue to deny such services to this population.

When the State Legislature adopted RSA 171-A, it made a promise to provide community-based residential services to all eligible developmentally disabled individuals, including those ages 18 to 22. The Supreme Court's November 17, 2023 order gave DHHS the greenlight to continue breaking this promise. ♦

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# Melissa Countway Confirmed as Associate Justice of the New Hampshire Supreme Court



Associate Justice Melissa Countway being sworn in by Chief Justice Gordon MacDonald at the New Hampshire Supreme Court. Photo by Brian Eddy

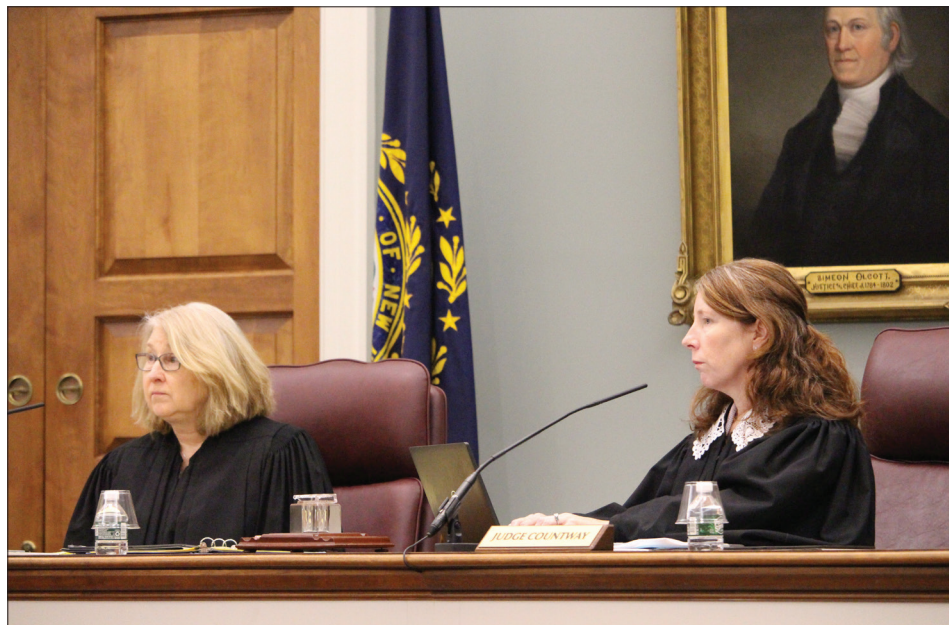
By Grace Yurish

On December 20, 2023, Third Circuit Court Judge Melissa B. Countway was confirmed in a four-to-one vote by the Executive Council to serve as an Associate Justice of the New Hampshire Supreme Court. This appointment, which took effect January 2, marks a transition following the retirement of Justice Gary Hicks due to constitutionally mandated age limitations. With this confirmation, Justice Countway becomes the fourth justice appointed to the current Supreme Court by Governor Chris Sununu.

"I'm thrilled that she was picked to be my replacement, absolutely thrilled," Jus-

tice Hicks said in a recent interview. "She's a solid lawyer, a solid thinker. And one of the things we do on the Supreme Court is we kind of oversee what all the other judges do. So, I oversee her work and it's been spot on ever since she began working in the Circuit Court."

Justice Countway attended the University of New Hampshire, where she received her bachelor's degree in mathematics and her master's degree in education. Upon graduation, she began working as a middle school math and science teacher in Alton. She then moved to North Carolina, where she continued to teach but eventually decided to take a different career path and went to



Justice Countway hearing a case on her first day on the Supreme Court bench, seated next to Justice Anna Barbara Hantz Marconi. Photo by Brian Eddy

law school.

In 2002, she earned her JD from the University of North Carolina at Chapel Hill School of Law, signaling the beginning of a legal career that would eventually lead her back to her roots in Alton, where she established her own practice, Alton Law Offices.

The evolution of her legal career continued in 2010 when she transitioned to serve as a prosecutor for the Alton Police Department. Her prosecutorial experience was further enhanced in 2011 when she assumed the role of Belknap County Attorney, demonstrating her commitment to public service.

These experiences, she explains, have

provided her with a broad perspective and nuanced understanding of conflicts that find their way into the courtroom.

"I'm passionate about justice and helping people feel like the justice system works, that it's fair, and that the courts are a resource for people," Justice Countway shares. "The court system is about resolving conflicts and it's a part of our government that is very important. It's really gratifying as a judge to feel like we are providing a service to people to help them within their family conflict or community conflict. Even criminal cases are a type of conflict resolu-

COUNTWAY continued on page 22



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NEW HAMPSHIRE BAR ASSOCIATION  
**2024 Midyear Business Meeting**

Friday, February 9, 2024  
11:30 am

DoubleTree by Hilton Downtown, Manchester, NH  
President Paul W. Chant presiding

**AGENDA**

1. Call to Order
2. Approval of the Minutes of the Annual Business Meeting – Friday, June 22, 2023
3. Old Business
4. New Business

Vote on Proposed changes to Bylaws – Article IX, Section 6 (g)

The proposed language accurately reflects the practice of our Lawyer Referral Service. The LRS supervisor may put referrals to a panelist on hold but only the committee has the authority to suspend or remove a panelist.

**ARTICLE IX**

(g) Committee on Lawyer Referral Service. This committee shall provide advice, recommendations, and support to staff concerning the development and operation of all NHBA sponsored lawyer referral programs. This committee shall ~~review decisions to suspend or remove panelists~~ **have exclusive authority to suspend or remove panelists** and review petitions from potential panelists who have been denied membership. The committee shall also provide guidance and support for the NHBA LawLine program and the NHBA participation in ABA Free Legal Answers program.

5. Adjournment

NEW HAMPSHIRE BAR ASSOCIATION  
**2023 Annual Business Meeting**

Thursday, June 22, 2023  
3:00 pm

AC Hotel Portsmouth by Marriott, Portsmouth

**DRAFT MINUTES**

President Jonathan Eck presiding

**Call to Order**

Jonathan Eck called the meeting to order at 3:02 pm

Secretary's Report – Draft Minutes of the 2023 Midyear Membership Business Meeting for approval

**ACTION**

On Motion to approve the minutes. Passed.

**Old Business**

None

**New Business**

Vote on Proposed NHBA Bylaws Change

- Vote on change to Article VI – Section 1.

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

**ARTICLE VI**

Nomination and Election of Governors and Officers

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

Motion to accept the Bylaws change as presented. Passed.

**Adjournment**

The meeting was adjourned at 3:06 pm.

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**\$28.8M Verdict**

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

**\$28.8M Verdict**

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

**\$15M Settlement**

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

**\$10M Verdict**

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

**\$4.95M Verdict**

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

**\$4.65M Verdict**

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

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# Hollis-Brookline High School Named ‘We the People’ State Champions

By Grace Yurish

On Friday, January 5, at the City Wide Community Center in Concord, Hollis-Brookline High School secured first place at the state finals of the “We the People: The Citizen and the Constitution” (WTP) civics education program, triumphing over two-time state champions Milford High School.

The WTP program is brought to New Hampshire schools through the NHBA’s Law Related Education (LRE) program.

With a 37-year presence in New Hampshire Schools, WTP imparts knowledge about the United States government and Constitution. Throughout the academic year, students engage in critical thinking, research, and writing on various constitutional law principles to defend during mock congressional hearings.

The program aligns with SB 216, the “More Time on Civics” law, mandating civics education for elementary, middle, and high schools, along with civic competency testing for high school students.

“WTP encourages more rational thinking and reasoning than traditional civics classes,” says LRE Coordinator Robin E. Knippers. “It’s not just memorizing facts, it’s actually doing and learning. It’s doing the research and learning how to do research. It’s an immersive program. The students must dig deep, and it stays with them their entire lives. They don’t forget We the People.”

During the state finals, both teams presented arguments on six units of Constitutional law to a panel of judges comprising attorneys, judges, and civics volunteers. Among the judges was New Hampshire



Hollis-Brookline students and teacher celebrate their win as they pose with LRE Committee Chair Jennifer Eber (far left), LRE Committee Vice Chair Randy Gordon (second from far right), and NH Education Commissioner Frank Edelblut (far right). Photo by Grace Yurish

Education Commissioner Frank Edelblut.

After each unit, judges asked follow-up questions, providing students the chance to further express their understanding. The judges offered feedback and scored the teams based on understanding, constitutional application, reasoning, supporting evidence, responsiveness, and participation.

LRE Committee Chair Jennifer Eber and Vice Chair Randy Gordon addressed

the crowd before revealing that Hollis-Brookline High School had clinched the 2024 WTP State Champions title. In the district hearings, held on December 8, Hollis-Brookline earned five out of six unit awards for their performance.

“It’s their win. All I do is show them, and they get there themselves,” says Hollis-Brookline WTP teacher Trevor Duval. “This is my AP Government class, so these are kids who naturally want to study this stuff. I do what I can and I coach them where I can. But at the end of the day,

they’re the ones that do the work, they’re the ones that do the research, they’re the ones that ask questions, and this is all them. They make me look good.”

As state champions, Hollis-Brookline students are eligible to represent New Hampshire at the National Finals held in Washington, DC in April.

For more information about WTP or to volunteer for future events, contact NHBA Law Related Education Coordinator Robin E. Knippers at [reknippers@nhbar.org](mailto:reknippers@nhbar.org).



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Volunteer judges (L-R) Attorney Craig Donais, Attorney Donna Daneke, and New Hampshire Education Commissioner Frank Edelblut hearing arguments from Milford High School students. Photo by Grace Yurish

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### NHBA Welcomes Dr. Colene Arnold as Speaker at the 2024 Gender Equality Breakfast on February 9

#### By the NHBA Gender Equality Committee

The New Hampshire Bar Association's Gender Equality Committee (GEC) is pleased to introduce Dr. Colene Arnold as our keynote speaker at the 2024 Gender Equality Breakfast on February 9. The GEC is dedicated to addressing gender discrimination, advocating for fairness and equality, and driving positive change within the legal profession. Each year at our annual breakfast, we aim to shed light on the path to better and more equitable treatment for all members of the legal profession.

For the 2024 Gender Equality Breakfast, we are venturing into new territory by welcoming Dr. Colene Arnold, a distinguished and compassionate gynecologist

committed to women's health. With extensive experience in gynecology, Dr. Arnold has devoted her career to delivering comprehensive care and personalized treatment to women. Beyond her clinical expertise, she is a dedicated advocate for women's health issues.

Dr. Arnold will enlighten us on the unique health challenges women may endure during their careers, including managing menstrual discomfort, navigating pregnancy-related risks, addressing maternal health concerns, handling lactation at work, and adapting to the changes that come with perimenopause and menopause.

Our goal is to empower members of the Bar with insight and knowledge to support women, promote inclusivity, and foster a healthy work-life balance.

Our tradition of hosting thought-provoking discussions continues with past guests, including trailblazing figures like the Honorable Nancy Gertner and the Honorable Bobbie Hantz Marconi, who shared their experiences and highlighted women's ongoing challenges by sharing their professional journeys. Joseph Keefe of Pax World Funds spoke to inspire law firms to invest in companies with gender-diverse boards to empower women in leadership and improve firm performance.

The year prior, former Massachusetts Lieutenant Governor Dr. Evelyn Murphy, founder of the WAGE Project, encouraged us to examine our hiring and compensation processes to ensure equitable hiring and pay, a crucial step in closing the gender wage gap within the legal community. Last

year, Judge Susan B. Carbon recounted her career-long work promoting gender equality, identified how far we had come, and reminded us that we still face hurdles that impede women's advancement. These conversations fuel our unwavering commitment to gender equality and diversity.

As we continue to invite diverse and enlightening speakers from various backgrounds, our shared mission remains crystal clear: advancing equality. We'll also present the Philip S. Hollman Award for Gender Equality to Kathleen Peahl at the breakfast. Join us at the 2024 Gender Equality Committee Breakfast during the Midyear Meeting – an opportunity to learn, share, and grow together. This will be a great event that you will not want to miss! Register now at [nhbar.org](http://nhbar.org). ♦

### Volunteers Sought for 'A Lawyer and Judge in Every School' Program

The New Hampshire Bar Association's "A Lawyer and Judge in Every School" program pairs judges and attorneys with classrooms statewide to explore issues related to law, rights, and the responsibilities of citizenship. Judges and attorneys present on a range of topics depending on the presenter's interests and the audience's grade level.

The Law Related Education (LRE) Committee of the Bar Association has lesson plans for all ages, allowing students from first grade through twelfth grade to learn something new from a

member of the Bar. Elementary school students can learn about negligence through spilled coffee and contracts through sharing candy bars. Middle school students can learn about the basics of negotiation and the different parts of a trial. And high school students can learn about lawmaking and anti-bullying legislation.

The LRE Committee invites judges and attorneys to participate in this valuable program in May 2024. Through the Law Day webpage, [nhbar.org/civics-education/law-day](http://nhbar.org/civics-education/law-day), members of the Bar can volunteer to present at schools; schools can sign up to

participate in the program; and judges, attorneys, teachers, students, and members of the public can learn more about the program.

Last year's Law Day theme was "Cornerstones of Democracy: Civics, Civility, and Collaboration." This year, the American Bar Association has chosen a theme of "Celebrate Voices of Democracy" and the LRE Committee is considering focusing on the 26<sup>th</sup> Amendment.

Although many judges and attorneys will present at schools on Law Day in May, the LRE Committee would love to know

about all members of the Bar presenting at a school, regardless of when the presentation happens. School presentations can be reported through a link on the Bar Association's Law Day webpage.

If you are interested in presenting at a school, or know of a teacher or school administrator who might want to know more about the program, please contact NHBA LRE Coordinator Robin E. Knippers at [reknippers@nhbar.org](mailto:reknippers@nhbar.org) or (603) 715-3259. With your help, 2024 will be the best year yet for "A Lawyer and Judge in Every School." ♦

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NEW HAMPSHIRE

# BAR FOUNDATION NEWS

## Julie Smiley Appointed as Bar Foundation Associate Executive Director

By Tom Jarvis

The New Hampshire Bar Foundation is pleased to announce Julie Smiley as the new associate executive director. In her role, she will serve as a liaison between the Bar Foundation's board of directors, the NHBA, and its members. She is also responsible for managing IOLTA funds, funds held with the New Hampshire Charitable Foundation, and other donated and/or awarded funds.

Smiley most recently worked as a housing advocate and property manager at the Front Door Agency in Nashua, where she managed its security deposit loan program and served as property manager for affordable housing units. While there, she instituted an Advocacy Committee, leading and training the board of directors in legislative efforts, and initiated a bill to limit rental application fees.

"A strong belief in social justice has motivated my philanthropic and professional endeavors," Smiley says. "I am thrilled to join an organization where equal access to justice is the driving force. I'm looking forward to working with the Board of Governors to build the Bar Foundation's capacity to bolster civic education and access to justice here in New Hampshire."

Smiley grew up in Wolverhampton, a city in central England known in the 18<sup>th</sup> century for its metal manufacturers and was the location of the first working Newcomen Steam Engine in 1712. In 1927, it was the first British town to introduce automated traffic lights. However, according to Smiley, the city's more recent distinction is less admirable.

"Wolverhampton was voted the most miserable town in England – twice," Smiley says.

After graduating from the University of Wolverhampton with a degree in social policy and sociology (known



Julie Smiley working diligently in her new office at the New Hampshire Bar Center. Photo by Tom Jarvis

here as a bachelor's degree in social work), as well as a minor in philosophy, she moved across the pond to the United States before even picking up her diploma. (They mailed it to her mom.)

After working for a year as a teacher's aide at Crotched Mountain Rehabilitation Center, her visa expired, and she returned to the Sceptered Isle. There, she provided support for emotionally and behaviorally challenged adolescent boys until she was able to return to America, the home of apple pie (which is an ironic moniker considering apple pie actually originated in England).

In Massachusetts, she continued putting her social work skills to use: First, at WCI in Waltham assisting

people with profound deafness and other disabilities with activities of daily living and employment opportunities – where she became "functionally fluent" in American Sign Language. Then, with Infusion Nurses Certification Corporation in Norwood – the only nationally accredited certification for infusion nursing – as a certification manager.

It was around this time that Smiley developed a penchant for legislative advocacy work. In 2018, she joined Moms Demand Action for Gun Sense in America as the membership lead, training and supporting local volunteers in legislative advocacy efforts and liaising with legislators in support of efforts to reduce gun violence.

In 2022, she initiated HB 1139 with the help of a state representative and testified in its support. The bill, which requires eyeglass prescriptions to contain interpupillary distance when requested by the patient, passed that same year. The idea for legislation was borne out of her frustrations in dealing with her ophthalmologist. She wished to purchase cheaper glasses online but needed to know her pupillary distance to do so. The doctor refused to disclose it, forcing her to purchase more expensive glasses through their office.

The following year, with the help of state representative Ellen Reid, she initiated another bill, HB 283, that recently passed a House floor vote. If passed, pending Senate deliberation, the bill would limit the rental application fees charged by a landlord as part of the rental application process for a residential property.

"Who knows what I'll get a bee in my bonnet about next," she says. "I've just always had a calling to want to help people and make a difference."

Smiley is an avid hiker – having so far climbed 43 of the 48 "4,000-footers" in the state – and lives in Amherst with her husband and their two sons. ♦

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## Want to Be Stress-Free? Think Again

By Amy Wood

Attorneys often tell me they want to get rid of stress. In fact, most would prefer to banish it entirely so that they can produce better work and be happier. And I always respond to that desire by saying that the problem is not stress but the *amount* of stress. I lay it out like this:



Too little stress = boredom, apathy, stilted motivation.

Too much stress = exhaustion, sickness, burnout.

The right amount of stress = achievement, resilience, good spirits.

More clearly, doing well and being fulfilled is easier when you have a little fire under you. The excitement of challenges is what keeps you focused and engaged and lets you learn and grow and build confidence. If the end goal isn't compelling enough, progress will be uninspired and sluggish. Too much pressure to get somewhere fast, and the mind and body can break down and give out.

The key to getting your stress level to where you want it to be – propelling not crushing – is to prioritize replenishing intermissions to consistently function in ways that make you competitive. Overuse your assets and you lose your edge. Here's where you need to incorporate resets if you want to lawyer at your finest:

**Reset between work sessions:** Just like muscles need rest between physical workouts to come back stronger, you need respite from mental exertion to return to your work with renewed vigor. A good general practice is to take a five-minute break per 90-minute period of taxing work, particularly if you are sitting in front of a screen. And I want to emphasize that word "break" as in "breaking away," actually getting up, walking around, doing something altogether different from the work you're putting aside. Maybe do a few

stretches, refill your water bottle, grab a healthful snack. Better yet, go outside, look up at the sky, absorb the air around you, take in whatever greenery you see. Being outdoors, just for a few minutes, even in the middle of an urban environment, is the most potent way to ready yourself for your next 90-minute round.

**Reset at midday:** A mini-break every hour and a half isn't enough if you're working all day. A lunch break is essential too, so that you can let your body and brain enjoy some diversion. Taking enough mid-day time out to fortify yourself with a meal, perhaps tending to your personal to-do list, or maybe taking a short walk will poise you for a productive afternoon. Better yet, enjoying lunch with a friend or colleague is an excellent way to feel more connected and encouraged as you go about your day.

**Reset after work:** Your evening should be about unspooling your thoughts and taking the load off, then getting enough sleep to wake up refreshed. So put your work aside and know that it will be there in the morning. Then do what allows you to let go, process your day, and be ready for the next one. The important thing here is to gradually segue into bedtime by doing things that are more relaxing than they are stimulating. You might watch some feel-good TV, read an absorbing book, engage in easy conversation, or take a stroll around your neighborhood.

**Weekly reset:** If you want to hit the ground running in top form on Monday mornings, you need to take back your weekends. And using Saturday and Sunday

for what they are intended means rewarding yourself for getting through another work week. Weekends are your opportunity to get away from your Monday through Friday routine and do what is restful, enlivening, and novel. Depending on the week you just finished, you might want to: revel in solitude, celebrate a birthday, take a nap, visit a museum, check out a new restaurant, get your hair cut, socialize with loved ones, tackle a domestic project, play a sport. Mix your weekends up in whatever ways appeal to you. And make sure to go on a day trip or weekend away once in a while so that you can treat yourself to a change of scenery.

**Annual reset:** From my experience, attorneys who take a real bona fide vacation – two weeks away from home with no work – every year are more successful than other attorneys all the way around. So, if

you're thinking right now that you're too busy for a vacation, think again, because not taking vacations is a bad move professionally and personally. Recovery periods throughout your workday, after your workday, and on weekends will absolutely help you to be happier and healthier and more dynamic, but it's the annual recovery that takes your well-being and performance to a whole new level. To ensure that rest and recovery periods happen, it's important to book them into your schedule. And what's cool about that is the more alluring an upcoming break is to you, the more motivated you will be as you work your way up to it. Whether it's an afternoon treat or a trip abroad, make your recovery plans tempting enough to look forward to and they will keep you directed and all-in. Always having an enticing re-set to look forward to, knowing there really is some kind of end in sight, makes it easier to get through even the most pressing demands of lawyering. ♦

Maine-based psychologist Amy Wood, Psy.D. helps attorneys be happier and more productive through coaching, training, and consulting. She is currently writing a book called *Lawyer Like an Athlete*, to be published by the American Bar Association in 2024. For more information about Dr. Wood, go to [amywoodpsyd.com](http://amywoodpsyd.com).

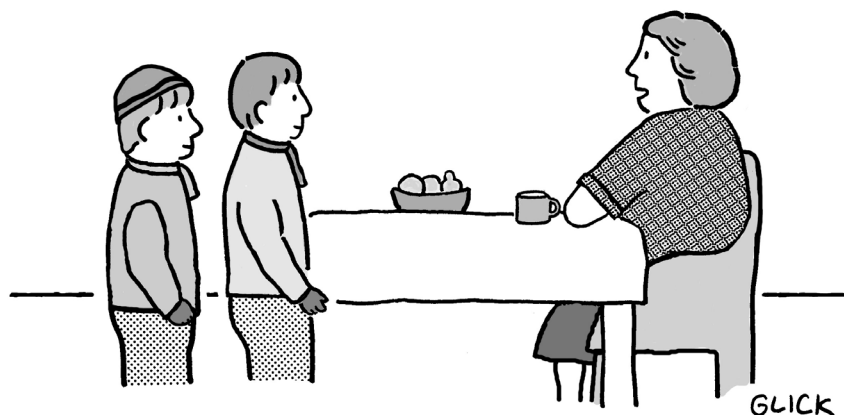
Originally published in Maine Bar Journal Vol. 38, 3/2023 p. 112, this article is reprinted with permission from the Maine State Bar Association.



Jest Is For All

by Arnie Glick

### Wintertime Advice from Mom, the Personal Injury Lawyer



GLICK

"Have fun playing outside, kids, but stay away from any unnatural accumulation of snow and ice."



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Devine Millimet is pleased to welcome the team of Ambrogi Law Office to the firm. Bringing a combined 61 years of experience and being a staple in the Manchester area, attorneys Ambrogi, Jin, and Lamarre are an exciting and mutually beneficial addition to the Wills, Trusts, and Estates and Elder Law practice areas of the Devine Millimet team of professionals.



SARAH AMBROGI

Sarah is a graduate of University of California at Los Angeles School of Law, with over 30 years' experience.

She can be reached at 603.695.8761 or via email at sambrogi@devinemillimet.com



SARUNNA JIN

Sarunna is a graduate of the UNH Franklin Pierce School of Law, with nearly 20 years' experience.

She can be reached at 603.695.8763 or via email at sjin@devinemillimet.com



REBECCA LAMARRE

Rebecca is a graduate of Quinnipiac University School of Law, with 10 years of law firm experience.

She can be reached at 603.695.8762 or via email at rlamarre@devinemillimet.com

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Robin has been practicing law since 2004, and is admitted in New Hampshire and Massachusetts. She received the 2020 Champion of Justice Award and the 2021 Marilla M. Ricker Award.



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Emily is a member of the firm's Corporate Group. She represents companies across the business lifecycle, from guiding founders at the earliest stages, to assisting with equity and debt financings through the growth stages, to negotiating later-stage exits. Through Sheehan Phinney's Boost for Startups program, Emily helps startups with their most critical legal needs and connects them with valuable resources.

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Nicholson Law Firm is proud to announce the addition of Attorney Tracy M. Culberson to the firm where he will continue to concentrate in the areas of complex and contested adult guardianships, probate litigation, and estate administration. Tracy joins the firm after serving as General Counsel to the NH Office of Public Guardian for the past nine years where he fought to protect and preserve the rights and dignity of adults under guardianship.

Tracy has previously served as the head of the NH Attorney General’s Elder Abuse and Financial Exploitation Unit, an Assistant County Attorney, and solo practitioner. His unique skillsets are a natural fit for Nicholson Law Firm, which prides itself in providing the highest quality client service. Please contact Tracy today for any guardianship referrals.

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### WADLEIGH STARR & PETERS

announcing the retirements of:



#### Kathleen Peahl

Kathleen has been with the firm for 34 years. She represented both private and public sector employers, including counties, school districts, hospitals and healthcare providers. We can’t imagine the halls of Wadleigh without Kathy’s presence. Best of luck in the future.

### WADLEIGH STARR & PETERS

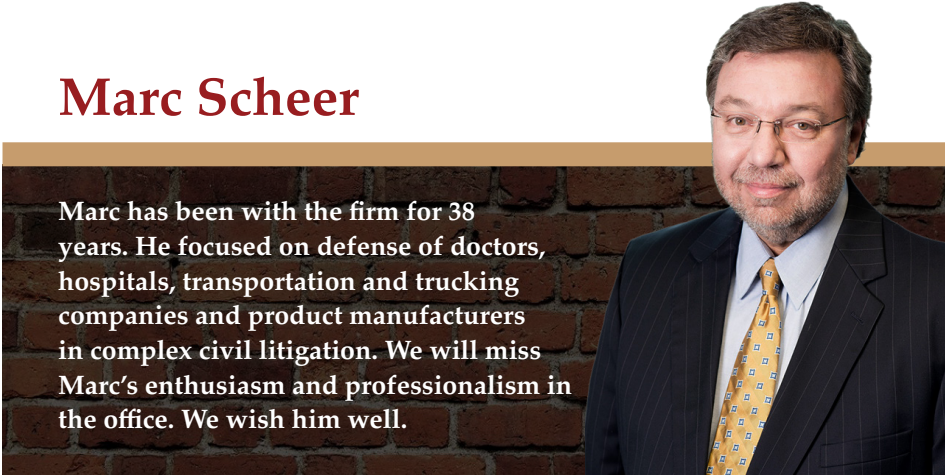
is pleased to announce:



#### Jeffrey Odland as Member of the Firm

Jeff joined the firm in 2021 and focuses on criminal defense, civil litigation and white-collar criminal defense. He practices in state and federal court. In addition to a busy trial practice, Jeff represents clients on appeal and in post-conviction litigation. He is admitted to New Hampshire and New Hampshire Federal District Court.

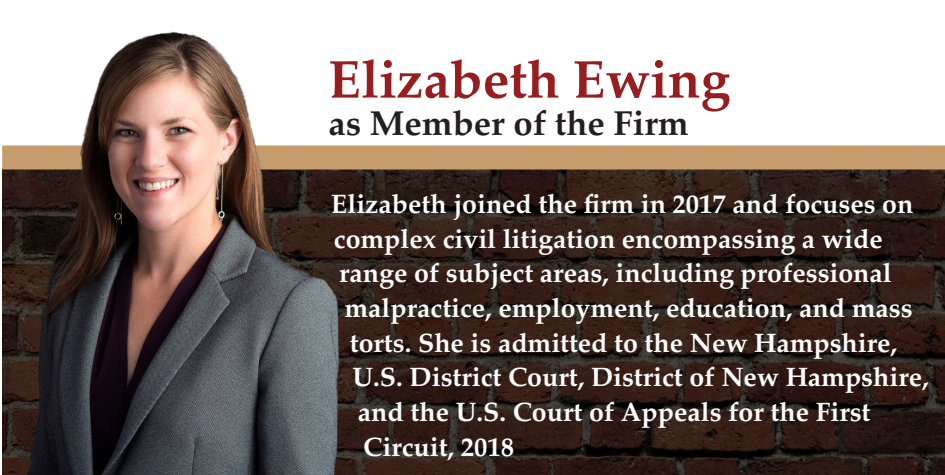
#### Marc Scheer



Marc has been with the firm for 38 years. He focused on defense of doctors, hospitals, transportation and trucking companies and product manufacturers in complex civil litigation. We will miss Marc’s enthusiasm and professionalism in the office. We wish him well.

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#### Elizabeth Ewing as Member of the Firm



Elizabeth joined the firm in 2017 and focuses on complex civil litigation encompassing a wide range of subject areas, including professional malpractice, employment, education, and mass torts. She is admitted to the New Hampshire, U.S. District Court, District of New Hampshire, and the U.S. Court of Appeals for the First Circuit, 2018

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Stephen E. Borofsky



Andrea Amodeo-Vickery



Christopher A. Bandazian

# SERVING NEW HAMPSHIRE WITH HEART

## Shaheen & Gordon Welcomes the Attorneys of Borofsky, Amodeo-Vickery & Bandazian

Shaheen & Gordon is excited to welcome Attorneys Stephen Borofsky, Andrea Amodeo-Vickery, and Christopher Bandazian to the firm as “of counsel.”

Borofsky, Amodeo-Vickery & Bandazian started out as The Legal Clinics in 1978. The Legal Clinics was the first law firm in the state of New Hampshire to concentrate on serving the legal needs of middle-income people and was involved in ushering in many new practices that have become standards in the legal industry, including written fee agreements, flat fees, and standard legal forms. The firm was renamed Borofsky, Amodeo-Vickery & Bandazian, P.A. in 2001, with a growing focus on serving clients’ needs related to personal injury, workers’ compensation, and other civil litigation matters.

We are proud to recognize Borofsky, Amodeo-Vickery & Bandazian’s decades of impressive casework and contributions to the legal profession. Together, we’ll continue to build a legacy of the highest-quality legal work delivered with sincere compassion to clients throughout New Hampshire and beyond.

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James Callahan



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Lauren Breda

# ANNOUNCING FIVE NEW PARTNERS

## At the Heart of Our Firm

**Attorney Jim Callahan**

Jim joined Shaheen & Gordon in 2023 after building a successful practice representing businesses, financial institutions, and real estate clients in New Hampshire and Massachusetts. His wealth of knowledge is invaluable to clients as he advises them on planning, operational, and transactional matters, including leasing, land use and development, mergers, acquisitions, divestitures, and reorganizations.

jcallahan@shaheengordon.com  
(603) 924-4999  
20 Depot Street, #220 | Peterborough, NH

**Attorney Joseph Cherniske**

Joe joined Shaheen & Gordon in 2022 after spending a decade as a state prosecutor. He focuses his practice on criminal and DUI defense, representing clients charged with serious misdemeanor and felony crimes. He has established a reputation as a skilled and aggressive litigator.

jcherniske@shaheengordon.com  
(603) 225-7262  
107 Storrs Street | Concord, NH

**Attorney Lyndsay Robinson**

Lyndsay joined Shaheen & Gordon in 2022 and focuses her practice on family law, estate planning, and probate administration. She is a compassionate advocate for her clients who goes above and beyond to help those in need. She was recognized with the Robert E. Kirby Award and the Bruce Friedman Pro Bono Award in 2023.

lrobinson@shaheengordon.com  
(603) 546-0004  
191 Main Street | Nashua, NH

**Attorney Andrew Piela**

Andrew joined Shaheen & Gordon in 2022 with nearly three decades of experience in private practice. He focuses on family law, civil litigation, and appellate work and brings an unmatched depth of knowledge to bear for his clients to ensure their peace of mind.

apiela@shaheengordon.com  
(603) 546-0004  
191 Main Street | Nashua, NH

**Attorney Lauren Breda**

Lauren joined Shaheen & Gordon in 2022 after gaining over a decade of court experience both behind the scenes as a law clerk and in trial as a public defender. She has represented over a thousand clients facing charges ranging from driving offenses to homicides. She puts her heart into every case to get the best result for clients.

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# LawLine Volunteers Assisted Nearly 700 Callers in 2023

By Anna Winiarz

On December 13, 2023, attorneys and staff at Rousseau Law and Mediation sat patiently waiting for the flood of phone calls from Granite Staters seeking legal advice. Over the course of two hours, they were able to field 61 calls regarding a variety of legal matters from every county in the state of New Hampshire, as well as some callers from out-of-state. Those two hours marked the final LawLine event for 2023.

As we reflect on this past year, the New Hampshire Bar Association would like to thank all the volunteer attorneys, staff members, assistants, and office managers who aided in the 12 successful LawLine events held in 2023. The NHBA is immensely grateful for your continued support, patience, and participation in this valuable public service each month.

Throughout the 12 LawLine sessions this year, volunteers from 19 firms and three individual attorneys (see sidebar) were able to respond to a total of 678 calls. For many callers, the legal matter they call to discuss could be their first introduction to the legal system and the first attorney they've ever spoken with. Though the legal

matters our volunteers respond to change each month, there are some areas of law that tend to make up most of the questions asked during each LawLine event. In 2023, the top three areas of law with the most need were family, probate, and landlord/tenant.

Other types of questions included court procedure, documentation for court cases, and whether an attorney would classify their legal matter as a worthwhile case. Providing answers to the public about the

more procedural side of their legal matters promotes another goal of LawLine, which is to educate the public about New Hampshire's legal system while assisting them with their own legal matters.

Many of the calls handled this past year originated from the southern part of the state. The three counties with the largest number callers in 2023 were Hillsborough County with 161 calls, Rockingham County with 131 calls, and Merrimack County with 109 calls.

## LawLine Volunteers for 2023

Alfano Law  
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Pastori Krans  
Paul Maggiotto  
Ransmeier & Spellman  
Rousseau Law and Mediation  
Sam Donlon  
Smith-Weiss, Shepard, Kanakis & Spony  
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Ward Law Group  
Wescott Law

Since the inception of the LawLine program, its volunteers have assisted more than 16,800 callers in all counties in the state, and even some out-of-staters with legal matters based in New Hampshire.

LawLine sessions have adapted over time to suit the needs of the callers, as well as the attorneys who participate. An event once held in a single conference room around a shared group of communal phones has now become a multi-firm approach, using a phone relay system, with volunteer firms all over the state. The hope is for this valuable public service to continue to grow and support the public for many years to come.

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

Volunteers are sought for the upcoming 2024 LawLine events. Please consider helping out and making a major difference this year with a minimal time commitment. For more information, or to volunteer, please contact NHBA Lawline Coordinator Anna Winiarz at [awiniarz@nhbar.org](mailto:awiniarz@nhbar.org). ♦

## Narrow the Justice Gap – Volunteer for NH Free Legal Answers

### NH Free Legal Answers Honor Roll

Thank you to the following attorneys who answered at least one question on the New Hampshire Free Legal Answers portal in 2023. By giving of your time and legal talent, more than 500 low-income individuals received much-needed free legal advice.

Paul Alfano  
Stephanie Annunziata  
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Amy M. Cann  
Michael R. Chamberlain  
Kristina A. Cournoyer  
Martha L. Davidson  
Michael J DiRusso  
Craig S. Donais  
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James Shepard  
Tony F. Soltani  
David M. Stamatis  
Jonathan S. Teller-Ellsberg  
Jennifer E. Warburton  
John A. Wolkowski

By Misty Griffith

New Hampshire Free Legal Answers (NHFLA) is a virtual legal advice clinic offered in partnership with the ABA Free Legal Answers. The program provides free access to advice and information about civil legal matters for low-income individuals. The most prevalent types of questions relate to family law or housing matters. There are also many questions about employment law, debts and purchases, constitutional rights, and wills/inheritance.

NHFLA clients post questions on the NHFLA portal where volunteer attorneys select questions and provide anonymous online advice. Participants may ask follow-up questions. However, there is no expectation of a long-term client obligation. The ABA offers malpractice insurance for the limited scope of volunteer attorneys answering questions on the NHFLA website. Notable for its flexibility and convenience, the NHFLA program is ideal for access-minded attorneys at all stages of their careers.

"Free Legal Answers is the easiest and most convenient way to fulfill our pro bono

obligations," L. Jonathan Ross of Primmer, Piper, Eggleston, and Cramer shares. "I often access the website during my lunch time to answer questions within my practice area. The time involved is reasonable and the positive responses from those who submitted questions is rewarding. I recommend participation to all members of the NHBA. Helping those of limited means with civil litigation issues is part of our professional responsibility."

Stephanie Annunziata of Shaheen and Gordon also appreciates the ease of NHFLA.

"Volunteering for the New Hampshire Free Legal Answers Program has allowed me to assist dozens of individuals across the state, without ever leaving my office," she says. "Due to my hectic schedule, it is not always easy to find the time to dedicate to pro bono and volunteer work. Since the program is accessible at all hours of the day, I can answer questions and assist whenever I find some free time. That's another benefit of the mostly 'one and done' nature of the assistance attorneys provide via the program. I can easily respond to a few questions when I have the availability, without worrying that I will end up with an overloaded schedule down the line."

Annunziata adds: "The people who post questions are extremely appreciative of the answers they receive. A lot of times, they are already within arms-length of the solution to their problem. By providing them with a personalized roadmap to navigate the process, volunteers really get to help make the judicial system more accessible."

Last year, 855 questions were posted on the NHFLA portal with 515 questions answered by our volunteer attorneys. We would love to increase the number of volunteers so that fewer questions go unanswered. If you would like to learn more or volunteer, visit our website [nhbar.org/volunteer-for-free-legal-answers](http://nhbar.org/volunteer-for-free-legal-answers) or contact NHBA Member Services Supervisor Misty Griffith at [mgriffith@nhbar.org](mailto:mgriffith@nhbar.org) or (603) 715-3227 for more information. ♦

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## Thank You to Our 2023 *Bar News* Contributors

The NHBA, its Editorial Board, and the *Bar News* team would like to thank the 171 contributors who helped make this publication a success in 2023. We are infinitely grateful to you for your invaluable literary contributions and for your continued support of this publication. Your gift of time resulted in better and stronger issues throughout the year, and the overwhelming positive response from your peers on each issue of the *Bar News* is a testament to your indispensable efforts.

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If you would like to write an article for the *Bar News*, whether it's for a practice area, information technology, wellness, opinion, or other story, please contact NHBA Publications Editor Tom Jarvis at [tjarvis@nhbar.org](mailto:tjarvis@nhbar.org) or (603) 715-3212. ♦

### The *Bar News* Crossword

by James P. Mulhern

Here are the answers to the *Bar News* Crossword from the December 2023 issue (Vol. 34, No. 7). Look for the next puzzle in the June 2024 issue. Did you fully solve the crossword? Tell us how you did or give feedback at [news@nhbar.org](mailto:news@nhbar.org).

These puzzles are created by James Mulhern, a partner at Mulhern & Scott, PLLC. He practices in trusts and estates, tax, and appellate litigation. He has written many crossword puzzles for the *New York Times* and now the *Bar News*!



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## Businesses Need to Become Privacy Law Compliant

By Cameron G. Shilling

Privacy is the newest frontier in cybersecurity. The European Union sparked the movement in 2018 with the adoption of the General Data Protection Regulation. Other countries followed suit, some of the more prominent being the United Kingdom, Canada, Australia, and China.



Although federal privacy bills in this country have all stalled, states rapidly filled the void. California led in 2020 with the California Consumer Privacy Act. That initiative then spread across the country. Twelve other states now have privacy laws: Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Oregon, Tennessee, Montana, Texas, Utah, and Virginia.

Privacy laws apply across borders, so a business can be subject to laws adopted in other states and countries. For example, if the business has a facility or employees in those places, it will likely be subject to their privacy laws. Similarly, if a business provides meaningful products or services to residents of such states or countries, it may be subject to privacy laws adopted there.

Given the expansive geographic reach of privacy laws and the growing number



of states and countries with them, many of our clients already need to comply. Moreover, privacy bills are currently pending in numerous state legislatures, including New Hampshire, Massachusetts, and Maine. Thus, many purely local New Hampshire business will become subject to such regulations if and when our State adopts a privacy law.

Complying with privacy laws entails the following four step process:

1. Conduct a privacy assessment.
2. Create a privacy policy and implement appropriate notice of and consent to it.
3. Create a privacy rights request webpage, and a management structure and internal procedure to fulfill privacy rights requests made by individuals.
4. Empower a privacy officer, train employees about privacy and cybersecurity law compliance, and (if the business handles sensitive personal information) prepare a data privacy impact assessment (DPIA) report.

### Privacy Assessment

The primary purposes of a privacy assessment are to identify all personal information and sensitive personal information that the business handles, all points at which it collects such information, and the functionality that it will use to deliver notice of its privacy policy and obtain and record consents from individuals. This process involves gathering information not only from personnel who manage the organization's information technology infrastructure, but also doing so with management and other key sales, marketing, customer service, finance, and other operational personnel.

### Privacy Policy and Notice and Consent

A privacy policy accurately describes how the business handles personal information and sensitive personal information, including whether such information is disclosed to unaffiliated third parties for use in marketing to individuals, and informs individuals about their privacy rights and the mechanisms to exercise them. Privacy laws require businesses to provide certain notice to individuals, which is typically accomplished by delivering the privacy policy or a link to it at the initial acquisition of personal information, and when the business collects additional or meaningfully different types of personal information.

Privacy laws also require businesses to obtain consent in some situations, including to make certain disclosures of per-

sonal information, use information in ways that are not permitted by privacy laws, and collect and use sensitive personal information, such as health information, information about children, and information about sensitive characteristics like race, national origin, religion, political affiliation, and sexual orientation or identity. Consent can be secured only by expressly informing individuals about the organization's privacy practices, and then obtaining an affirmative act of consent and recording and retaining records of such consent.

### Honoring Privacy Rights Requests

Fulfilling privacy rights requests can be the most daunting step to comply with privacy laws. It is daunting because businesses are unaccustomed to altering their activities or information use and management practices based on preferences of individuals, and because they often lack centralized mechanisms to do so. To effectively fulfill privacy rights requests, an organization should empower a privacy officer with authority and responsibility for the process, create a webpage and email address and phone number for individuals to use to exercise their privacy rights, and design and implement a methodical procedure outlining the steps the organization will take to address privacy rights requests.

### Management, Training, and DPIAs

The last steps to comply with privacy laws are to create a management structure for cybersecurity and privacy, and train employees about it. Also, if the business handles sensitive personal information, it must prepare a DPIA report. The primary purposes of such a report are as follows.

- Identify the standard(s) used for the privacy assessment.
- Summarize the scope of and process for that assessment.
- Identify all personal information and sensitive personal information handled by the business, all uses of it, and the legal bases for such activity.
- Map the flow of the organization's collection and use of such information, including all internal and third-party systems used to do so.
- Identify the employees, vendors, services providers and other third parties responsible for handling the information.
- Identify risks to the privacy and security of the information, the safeguards implemented to mitigate those risks, and any additional steps to further do so.
- Classify the levels of mitigated risks.

Privacy and security of personal information is a critical societal and business issue. Individuals are rightfully interested in managing their personal information. Businesses are also rightfully interested in using the information they have to serve customers and generate revenue. Privacy laws balance those interests. Given the expansive scope and increasingly widespread adoption of these laws, businesses should act now to comply with them. ♦

*Cameron Shilling is a director in McLane Middleton's Litigation Department and also founded and chairs the firm's Cybersecurity and Privacy Practice Group. He can be reached at [cameron.shilling@mclane.com](mailto:cameron.shilling@mclane.com).*

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## Practice Pointers – Navigating the E-Filing Center for Superior Court Filings

By Leslie C. Nixon, Karen A. Gorham,  
and David Landry



Nixon



Gorham



Landry

In an effort to provide attorneys with practice guidance and advice, the Committee on Cooperation with the Courts is having members write an article with information and practice tips from the different court types across the state. Below is some general information about the Superior Court e-filing system, as well as practical tips for avoiding rejections and what to do if a filing is rejected.

### The Basics – What is E-Filing?

E-filing was introduced to the New Hampshire Superior Court system in 2018. In addition to the existing Rules of the Superior Court, new Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing were enacted and are found on the Judicial Branch website: [courts.nh.gov/supplemental-rules-superior-court-new-hampshire-electronic-filing](https://courts.nh.gov/supplemental-rules-superior-court-new-hampshire-electronic-filing). E-filing is available for all civil and criminal cases and is mandatory for lawyers. It is accessed from the Judicial Branch website, [courts.nh.gov/resources/electronic-services](https://courts.nh.gov/resources/electronic-services).

You must create an account and provide a credit card number to which all filing fees will be charged. Once you have done that, you can log in to either file documents or to view the docket for a case which has been filed. You can access the case by the docket number or the party's name. When you click on the link for Superior Court – Attorneys you are given the option to either e-file or to go to the Case Access Portal.

Unlike the federal court's e-filing system, the Case Access Portal allows you to view and download documents without charge. If a case has been closed, you can view the case summary, but if you want to access the pleadings, you must go to the courthouse where the case was filed and use a kiosk to view and print the documents you want.

Clicking on the option for e-file allows you to either view your past filing activity or create a "New Filing." Viewing filing activity allows you to see in chronological order every case filing performed in your account, including the fees which have been charged.

### Court Staffing for E-Filing Process

All filings first go to the Information Center in Concord. It is staffed by a manager, assistants, and a Superior Court expert. None are attorneys, but all have extensive training. Any questions about e-filing should start there. The next level is the E-Filing Center, located in the Hillsborough County North courthouse. All civil filings are sent there after they have been accepted, until after returns of service have been filed, and thereafter to the court which has jurisdiction. The phone number is (855) 212-1234

### The E-Filing Process

The "New Filing" page gives you the option to start a new case or file into an existing case. E-filing can take place 24 hours a day, on weekends and holidays as well as weekdays. Once submitted, a record is created of the time and date it is submitted. An option available when you are starting a new case is to create a template, which is most useful for cases which require repeated filings of the same documents for different parties. Since that is an unusual situation, it will not be discussed in this article. The process for submitting single filings is relatively user-friendly, and completing each step sequentially leads you to the next. The initial view displays four sections – Case Information, Party Information, Filings and Fees – you are not able to proceed until each section is completed and you have clicked "save changes."

### Case Information and Party Information

You will need to input the name and address of each party and identify its status – plaintiff or defendant. The names of opposing party's counsel, or telephone numbers for the parties are not required. When you reach the step of filing the Lead Document, you can upload it from your computer files; it must be saved in pdf format.

### Filings

Completing the Filings section will open a new section, Service Contacts; you must add at least one email address to allow the Court to serve documents – these can be manually created or input from firm service contacts you have already created. Your name and email address should always be listed, and you can add the names of other lawyers or assistants who will be working on the case with you. The contacts for other parties will be added when counsel file their appearances.

### Fees

This must be completed even if your filing does not require payment. Once you click "Save Changes" in this section, you are prompted to either save the filing as a draft or submit it – which can take place after you click "Summary."

Congratulations! You are finished filing your document – you think. Unfortunately, most of us are by now all too familiar with having our filings rejected. This is particularly problematic when you are filing something on or near a deadline, but the benefit of e-filing being available on weekends or after hours is also a risk – you do not receive instant feedback if there has been an error in the filing, and a filing may be rejected after a deadline has passed. The next few sections will address special filing circumstances and how to handle them.

### Filing Documents with Attachments

Any attachments which are part of the pleading being filed, such as exhibits, must be included with the pleading in a single pdf document. However, an attachment which

is a pleading that will stand on its own must be filed separately, as it will be assigned a separate identification number in the court's docket. A common reason for filings being rejected is that the original pleading and the new pleading to which it refers, for example a Motion to Amend a complaint, and the proposed amended complaint are filed together in a single pdf document. Another example is a Motion to allow a surreply; the proposed surreply must be filed separately. However, you do not have to initiate a new filing process to file such attachments. They can be filed as part of the same "envelope"; after entering the service contacts and clicking "save changes" for the initial pleading, return to the Filings section and click on "add filing" to repeat the process for any subsequent filings. If there is an error in any of the documents filed, only that one will be rejected.

### Emergency Motions/Issues

*Ex parte* motions must be filed using the "ex parte motion" code in the Filings section. I am advised that some lawyers were using this code to expedite having the court act on other types of motions, such as an assented-to motion to continue filed shortly before a scheduled hearing. These types of pleadings will be rejected. If you file such a motion and want to avoid having to appear for the hearing, you can call the Information Center at (855) 212-1234. The representative you reach will check to see if your pleading has been submitted, then forward it to the E-filing Center, which forwards it to the court where the case has been filed. Understandably, this may not allow enough time for the pleading to be acted on, particularly if it is filed at the end of the day, so attorneys must be prepared to go to the hearing. At the courthouse you can check in with the clerk's office to make sure the pleading has been received and ask that it be brought to the judge's attention and ruled upon.

### Disposition After Filing

All filings go first to the Information Center (formerly known as Call Center). There they are reviewed by staff, including, if necessary, the Superior Court filing specialist. Upon receipt, you will receive an email that your filing has been submitted, but only after review will you receive an email confirming that it has been accepted. If it is not accepted, you will receive an email explaining the deficiency, with a phone number to call to discuss any con-

cerns or disputes. This of course is the most frustrating aspect of the e-filing process for attorneys.

### Time-Sensitive Rejected Pleadings

In most cases, rejection of pleadings is little more than an annoyance which creates more work. However, when pleadings are filed close to a deadline, such as a statute of limitations or time limit for objections, a rejection can be fatal. Although not covered by a specific rule, if a pleading has been rejected for technical reasons and must therefore be corrected and refiled, Superior Court justices have ruled that the initial submission date is the date of legal filing. However, you may need to litigate the issue in order to establish that in your case. An example was a complaint I filed that named several individual defendants and their employers, but did not include an address for some of the individuals, even though it was the same as their employers, for whom an address was provided. The pleading, filed on a Friday after hours but within the statute of limitations, was rejected the following Monday, and I filed a corrected. The Court denied the Motion to Dismiss, ruling that the initial pleading should have been accepted (noting that the e-filing system itself requires you to input an address for each party).

### Multiple Notices from the Court

A frequent complaint is that our email inboxes are filled with multiple notices from the courts for a single pleading. This can be addressed by managing "notifications," accessed by clicking on the icon of a person on the upper right of the "filer dashboard," which you reach after first logging in. Clicking on that leads you to "manage notifications"; you can uncheck those which are superfluous, such as "filing submitted." As to those notices which you have elected to receive, you can uncheck yourself as a service contact when you file the document, and you will only receive one email from the court. Another common complaint is that we have to go through the fee process for every filing even if a fee is not being charged. This is a step which comes from the vendor and cannot be changed by the court. However, it does have the benefit of automating fees, and sparing us the work of looking up the appropriate fees for every pleading. ♦

*Leslie C. Nixon owns the Nixon Law Firm. Karen A. Gorham and David Landry work at the New Hampshire Superior Court.*

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ing one who was an attorney and “really helped me understand what I could do as an attorney,” she says.

She went on to Suffolk University Law School and, upon graduation, straight to the public defender’s office in Manchester, where she spent 10 years.

“My time as a public defender was hands-down the highlight of my career – challenging and infuriating but also rewarding,” Melone says. “Social justice work is really mission-driven, and it still really defines the work that I do.”

After leaving the office, she did a brief stint at a small law firm before opening Melone Law in Nashua as a solo practice from 2015 to 2018, doing largely criminal work. She joined Wadleigh, Starr & Peters in Manchester in 2018, again focusing on criminal law, representing both defendants and victims.

Many of her clients have been the stuff of headlines, including Owen Labrie, the St. Paul’s School student who sought a new trial after being convicted on misdemeanor sexual assault and other charges, as well as Theodore Luckey, who pleaded guilty to killing two men at a Bedford hotel in 2021.

Oftentimes, representing a defendant in high-profile criminal cases makes you “the second most hated person in the courtroom,” Melone acknowledges. “As defense attorneys, we become the surrogates for the public’s vitriol about our clients... I can’t take it personally.”

But the cases she remembers best are not of the banner headline variety – like the young woman who stole from a grocery store because she had run out of food

stamps, or the elderly woman accused of a misdeed that was likely dementia-related. Getting good results in such cases has been the most rewarding, Melone says.

“It’s never been just a job for me,” she says. “I really value the lives I’m able to impact.”

She has also represented clients on both sides in Title IX proceedings at colleges and schools and is trained in trauma-informed investigation techniques for handling in-house investigations of sexual assault or harassment at businesses and educational institutions. She is also a DOVE attorney.

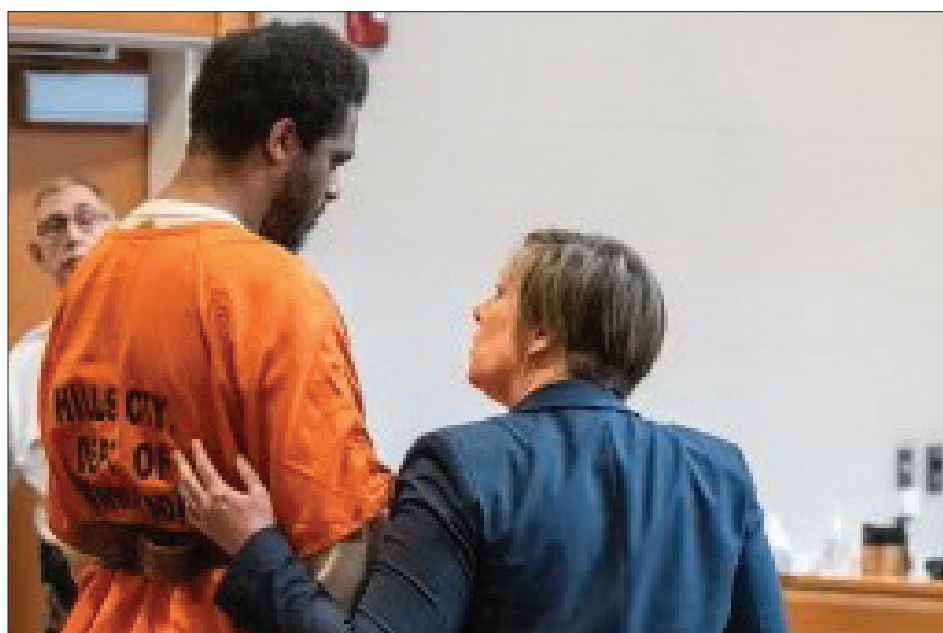
Criminal defense lawyer Tony Sculimbrenne, of Gill and Sculimbrenne in Nashua, has known Melone since law school and turns to her “for a different and thoughtful perspective on an issue,” he says. “I value her opinion and counsel deeply.”

Likewise, former Wadleigh, Starr & Peters colleague Jeffrey D. Odland, who has known Melone for 15 years, says she has a gift with clients and is “compassionate and authoritative simultaneously.”

“Robin takes on high-profile, high-stress cases and handles them all with the utmost professionalism,” he says. “In the meantime, she has been a force behind several bar organizations and has supported and mentored countless attorneys.”

Shaylen Roberts, assistant county attorney in the Merrimack County Attorney’s Office, says she finds herself feeling “simultaneously anxious and relieved” when she learns Melone will be opposing counsel in a case.

“I am anxious because of her skill level, attention to detail, work ethic, and vast litigation experience – but I am relieved because she is an outstanding col-



Robin Melone confers with client Theodore Luckey during a hearing. Photo by Jeff Hastings

league: a straight shooter, an empath, a trustworthy adversary... and she has great shoes,” she adds. “Robin is an excellent role model for women in the Bar and makes a point to extend a hand to new, ambitious attorneys to offer support, guidance, and insight; and I am so grateful to be able to practice alongside her and learn from such a force.”

Melone is past president of the New Hampshire Association of Criminal Defense Lawyers and was outspoken during her time in that office. When truck driver Volodymyr Zhukovskyy was acquitted in the 2019 deaths of seven motorcyclists in northern New Hampshire and Governor Chris Sununu and Attorney General John Formella said the “fallen seven” had not received justice, Melone publicly took them to task, saying their words showed “a lack of respect for what the jurors endured.”

She was given the 2020 Champion of Justice Award by the New Hampshire Association of Criminal Defense Lawyers for her criminal defense work and her “outstanding service to the organization or the community.”

The New Hampshire Women’s Bar Association honored her with its 2021 Marilla M. Ricker Achievement Award for her professional excellence and her work advancing opportunities for other women in the legal profession. The same year, she was named a Fellow of the American Bar Association for her leadership in the profession and service to society.

Melone also does work for the New Hampshire Lawyers Assistance Program, which helps members of the profession deal with addiction, depression, and personal or professional crisis.

“I just committed to being giving with my time to newer attorneys or older attorneys because I feel like what I do is hard,” she says, adding that she particularly identifies with women lawyers juggling work and motherhood, “figuring out how to be a parent in a job that is, at times, all-consuming.”

Saying “it’s time for me to take a break from criminal work,” Melone is now concentrating on her investigative practice and pursuing new opportunities in employment and family law at Pastori Krans.

She lives in the Boston area with her husband, two children, and dog, and when not working, likes to bake, garden, spend time outdoors, and lift weights at the gym. Her main lifts are over 200 pounds and her deadlift, 250.

“There’s something really gratifying about pushing yourself and coming out the other side,” Melone says. “I want to be an 85-year-old woman who’s able to get on the floor and put my shoes on, a goal that’s not work-related.”

She would like to enlist other Bar members in what she terms “a call to public service.”

“If you’re able to volunteer and do pro bono work, please do it,” she says. “It’s so rewarding and so valuable.” ♦



Robin Melone lifting weights at the gym. Courtesy Photo



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Search for “NH Bar” to keep up-to-date.

## Notice of NH Law Office Being Victim of Scam

Please be advised that a New Hampshire law office (NH Law Firm) appears to have been the victim of a scam. The NH Law Firm served as the closing agent for the purchase and sale of property (Property) that was scheduled for foreclosure. To reduce any potential deficiency, the seller of the Property hired a real estate agent who, in turn, contracted with a short sale agent. The short sale agent worked directly with another law office, which represented the bank holding the mortgage (Mortgagee) and had scheduled the foreclosure.

Once a buyer was found, the short sale agent provided, via email, the NH Law Firm with payoff instructions, including wiring instructions. The NH Law Firm had regularly communicated with the short sale agent and the email

received appeared legitimate.

However, it now appears that someone hacked into the short sale agent’s email system and obtained the original email from the Mortgagee to the short sale agent. The hacker/third party then changed the wiring instructions and released the email to the NH Law Firm, which believed that it was wiring the payoff proceeds to the Mortgagee.

In reality, the payoff proceeds were wired to the hacker/third party. There does not appear to have been a breach of the NH Law Firm’s computer system. Based on all the foregoing, New Hampshire law firms serving as closing agents in similar transactions should be aware of this scam in order to take any and all precautions to avoid a similar scam. ♦



who was always comfortable and in command in the courtroom. He was likable to juries and respected by judges and was excellent at developing and presenting his theory of the case.”

While at Devine Millimet, Moore litigated many high-profile cases including two eminent domain trials: one with Jonathan Eck involving a real estate developer in Windham that came back with a \$13.5 million verdict for his client and another that resulted in a very rare finding of ulterior purpose against the government entity who took the land.

Moore also recalls a lender liability case in the 1980s, which involved a real estate development in New Boston.

“It was a two-and-a-half-week trial in front of Linda Dalianis when she was a Superior Court judge,” Moore says. “My client was First New Hampshire Bank. The jury was out for two days, and we had offered a million dollars. Then, an executive showed up in person from the mother bank in Europe and was very anxious about the jury. He had us up the offer to \$1.6 million but the plaintiff decided to wait to hear what the jury would say, thinking they would get a lot more. But the third day out, the jury came back with a defendant’s verdict.”

Aside from his professional endeavors, Moore has a passion for cooking. He attended Le Cordon Bleu School in France in 1996 and is known to his close friends as quite the chef.

“George so appreciates fine cooking,” says Attorney Russ Hilliard, whom Moore met in 1977 just after law school. “He’s an excellent chef and a perfectionist when it comes to food preparation. He’s also quite knowledgeable about wines. He and I both stumbled upon our favorite drink at the same time a few decades ago, which is a Perfect Manhattan.”

In 1999, Moore became the 100<sup>th</sup> president of the NHBA during the impeachment inquiry of the NHSC justices. During his tenure, he conducted extensive collaboration between the Bench, Bar, and press, testified before state legislature on the impeachment, and played a role in developing the Judicial Selection Commission.

Subsequently, Moore served as president of the New England Bar Association and on the board of directors of both the Legal Advice and Referral Center and New Hampshire Legal Assistance. He also co-chaired the NHSC Committee on Alternative Dispute Resolution and was a member of the New Hampshire Judicial Council and the Professional Conduct Committee.

In 2017, he ironically received the E. Donald Dufresne Award for Outstanding Professionalism from the NHBA.

After working at Devine Millimet for more than 40 years, Moore decided to apply for the position of executive director of the NHBA in 2018 following Justice Broderick’s suggestion that he consider it.

“He told me there were a lot of things that need fixing at the Bar and that [the NHSC] just had a commission on what the Bar needs to be doing,” Moore says, explaining that the NHSC had concerns about how the Bar was running and that there wasn’t much of a connection between the two entities.



George Moore and his wife Ellen Arnold. Photo by Rob Zielinski

“George was well-respected by both the judicial branch and other lawyers, and he had a great respect for the profession,” Justice Broderick says. “Being a trial lawyer is particularly stressful and after a while it really takes something from you. So, I knew he wanted to do something else. I thought he’d be perfect in that spot and I think he largely has been.”

Attorney David McGrath was the Bar president and chair of the selection committee for the executive director position at the time.

“We saw a lot of qualified applicants for the position, but George stood out among the rest of them,” McGrath says. “We as a committee felt fortunate to have George as a candidate. He is very smart, and we knew he would bring a lot of energy to the job. He also understands the legal system given his background, and his people skills are excellent – which was an important aspect of the position.”

McGrath continues: “All the things that we anticipated that George would bring to the position, he did. He’s been an outstanding executive director of the Bar, and we have all benefited immensely from his tenure.”

As executive director, Moore strengthened the connection between the Bench and the Bar.

“When I took over this job, there was some relationship building that needed to be done,” Moore says. “And part of the role of the executive director both then, now, and into the future is maintaining a close liaison with the Supreme Court. As a unified bar, we are under their supervision, we need to be working in conjunction with them, not at cross purposes. I set out to make that a priority and it’s worked. I think we’ve accomplished an excellent working relationship, and I think that will go into the indefinite future with folks that are on the Court now.”

Justice Hicks, who sat on the NHSC during Moore’s tenure until he retired this past November, concurs.

“There had been years of tension for some reason [between the Bench and Bar],” says Justice Hicks. “George instantly perceived that he could resolve almost all of that and he did. He was obviously well-respected as a lawyer by the Court, and I think that carried the day because relations absolutely improved.”

Moore also accomplished several other

things as executive director, including overseeing a successful merger in 2021 between the NHBA Pro Bono Referral Program and the Legal Advice and Referral Center to create 603 Legal Aid, and the creation of the new NHBA Member Center.

“George has been an effective executive director because he cares about our profession and cares about the people in it,” says Jonathan Eck. “I’ve admired his ability to anticipate the needs of lawyers, his skill in navigating complicated matters, and his knowledge of how our bar association can best serve its members and then executing that plan.”

Russ Hilliard agrees with the sentiment.

“Having George, a seasoned lawyer both in court and helping to manage a large law firm, was just such a tremendous gain

for the Bar,” he says. “He was such an asset and kept the Bar focused on what was important to New Hampshire lawyers.”

Judge Will – who was a Bar president during Moore’s tenure as executive director – says Moore’s stepping down coinciding with some major 2023 retirements seems like the end of an era.

“As all these folks are retiring off – like George, Gary Hicks, and others – it’s a meaningful transition,” Judge Will says. “It’s a loss to the Bar Association of people that were in a lot of ways larger than life to those of us who were young lawyers coming in underneath them. It’s worth reflecting on some of these leaders and giants in the Association – like who they are, who they were, and what it means as they move on.”

Moore announced he will step down in early 2024 and has not yet declared any definitive plans going forward.

“I don’t see myself going back into private practice right away but I’m going to keep doing things, whether it’s consulting work, mediation work, or board work,” he says. “If you feel you’ve got something to give to organizations – that you can make a positive benefit – it’s a lot better than sitting around watching TV.”

Whatever Moore decides to do, he will likely excel at it and take the reins of leadership as he has done since he was a teenager. After all, he is a born leader.

“You never know what you’re getting into in a job when you take it, but for me, [the executive director position] has been a very rewarding job that tapped a bunch of resources that were different than what I was using in law practice,” he says. “It’s been a very challenging but very fulfilling job, and I don’t regret a minute of it.” ♦

## 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 31, 2024 to [NHBA@orr-reno.com](mailto:NHBA@orr-reno.com)

For the full job description, visit [nhbar.org/executive-director/](http://nhbar.org/executive-director/)  
Applications will be kept confidential



# Students at French Pond School Perform Mock Murder Trial Based on Characters from *The Outsiders*

By Grace Yurish

On December 19, 2023, French Pond School (FPS), a middle school in Woodsville, New Hampshire, witnessed a unique blend of education and reality as students transitioned from the classroom to the Grafton County Courthouse. Immersed in the world of S.E. Hinton's novel, *The Outsiders*, they embarked on a hands-on learning experience that went beyond traditional methods.

FPS takes a distinctive approach to education, prioritizing applied learning to instill enthusiasm in students. Thematic units, such as the Social Justice Unit centered around Hinton's novel, integrate critical thinking, literature, analysis, math, science, and social studies. The goal is not just academic understanding but the cultivation of a genuine love for learning.

*The Outsiders*, set in 1960s Oklahoma, delves into societal divisions between the Greasers, considered outsiders, and the privileged Socs (short for Socials). A major part of the storyline revolves around Greaser Johnny Cade being charged with the murder of Soc Bob Sheldon. Complementing their literary journey, FPS students explored the intricacies of the American justice system and courtroom protocol, guided by professionals in the law.

The culmination of their learning unfolded at the Grafton County Courthouse. Students assumed roles such as defense attorneys, prosecutors, defendants, and witnesses, reenacting pivotal events from



French Pond School staff and students from the mock trial. Back row (L-R) are: Tyler, Gavin, Shayden, Evan, Trey, Charlene Broom, and Landyn. Front Row: Trish Griswold, Gabe, Wyatt, Connor, Jacob, and Karissa Fadden. Courtesy Photo

the novel. To enhance their understanding, a pre-trial tour of the courthouse and jail provided insights from an incarcerated individual, emphasizing the importance of making good choices.

Community involvement enriched the performance, with professionals like New Hampshire Circuit Court Judge Sandra Cabrera presiding over the trial. Stepping out of their comfort zones, students brought the characters to life, presenting arguments before the judge and a mock jury composed of community volunteers.

Students came prepared in their roles and followed the standard court procedure. The clerk announced the case, swore the jury in, and read the charges. Both the prosecution and the defense made arguments and called witnesses to enhance their case theory.

Judge Cabrera says, "Their goal – and I think they really stuck to their goal – was to learn about the three branches of government, to emphasize the judicial system, and to learn about courtroom procedures, the art of persuasion, framing an

issue and making that issue clear, and developing a position on a social issue."

After jury deliberations, the clerk read the verdict which found the defendant Johnny Cade not guilty of first-degree murder (an experience that Johnny Cade in Hinton's novel unfortunately didn't live to see), emphasizing the lack of evidence supporting premeditation. This verdict marked the culmination of an immersive learning experience that bridged literature, legal insights, and real-world application.

"Everybody seemed very ready and like they received a thorough education on what to expect," Judge Cabrera says. "It was a really fun experience because I could see the kids enjoyed it. They were nervous, but they clearly were learning."

As the students progress through the novel, they will show their understanding through a literary analysis. The unit will conclude with a viewing of Francis Ford Coppola's 1983 movie adaptation, providing a comprehensive exploration of *The Outsiders*.

FPS's innovative education model integrates academics with real-world experiences. Beyond the boundaries of traditional learning, students emerge not only with a deep comprehension of the novel but also with practical insights into the legal system, honed public speaking and writing skills, and an appreciation for professional etiquette. This approach demonstrates the essence of a well-rounded education at French Pond School, allowing the students to – as Johnny Cade would say – stay golden. ♦

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## ■ COUNTWAY from page 6

tion. I think if I can help people feel like they have an opportunity to be heard and have a fair experience with the justice system, that's the most important piece of it."

Justice Countway is the first circuit court judge to serve on the state's highest court.

"I think if anybody has the capability and experience to jump from the Circuit Court to the Supreme Court...that would be Melissa Countway," Executive Councilor Joseph Kenny said at the confirmation hearing. "She has the respect of her community, the respect of the Chief Justice, and the respect of law enforcement – and there were many letters of support. I have a feeling that she's going to be a bright addition to the state Supreme Court."

The nomination hearing on November 29 provided a platform for supporters to share their thoughts on Justice Countway's qualifications and character. New Hampshire Supreme Court Chief Justice Gordon MacDonald emphasized the value of her experience as a circuit court judge, sharing her potential to enhance the collective work of the Supreme Court.

"The perspective and experience of a judge who has been sitting on the Circuit Court for these years will be invaluable to our work," said Chief Justice MacDonald. "...the court is strengthened by a strong

work ethic and attention to detail. I've seen this in Judge Countway firsthand. We've had several opportunities to work together over the years and in whatever the context, she's always been exceedingly well prepared, thoughtful, and engaged."

Former Superior Court Chief Justice Tina Nadeau echoed these sentiments, underlining Justice Countway's confidence, decisiveness, and understanding of the circumstances faced by the people appearing before the court.

"I feel confident she is going to deliver quality, intelligent, and hardworking efforts

in the Supreme Court and I strongly support her," Justice Nadeau shared.

In the Circuit Court, decisions are made by a single judge overseeing individual cases. In 2022, the Circuit Court had approximately 95,000 cases filed statewide, and Justice Countway handled over 3,000 of

them alone.

In contrast, the Supreme Court handled just under 800 cases during the same period. The transition to the Supreme Court promises a shift in dynamics for Justice Countway, who expresses excitement about collaborating with fellow justices on cases and the opportunity to engage in more comprehensive research to craft thoughtful orders.

"I am honored and humbled to be confirmed and having the trust of the Governor and the Executive Council and the approval of the judicial selection committee," she says. "I am really excited to begin." ♦





# 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

**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.**  
**Taming the Paper Tiger - The Essentials of Motion Practice**  
• 165 NHCLE min., incl. 30 ethics min.  
• 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 – 9:00 a.m. – 3:15 p.m.**  
**Business Litigation**  
• 310 NHCLE min., incl. 45 ethics min.  
• Concord – NHBA Seminar Room/Webcast

**WED, MAY 22 – 9:00 a.m. – 4:30 p.m.**  
**Navigating the Health Care World Update**  
• 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

## Taming the Paper Tiger – The Essentials of Motion Practice

**Friday, March 15**

1:30 p.m. – 4:30 p.m.

165 NHCLE min., incl. 30 ethics min.

NHBA Seminar Room/Live Webcast

Motions are the lifeblood of nearly every lawsuit. Whether to file a particular motion calls for a combination of legal strategy, judgment, and drafting skill. The same is true of Objections to Motions. A diverse panel will discuss the fundamentals of motion practice, including motions to dismiss, to compel discovery, for sanctions, and for summary judgment. A reception will follow the seminar.

This seminar will be useful to any practitioner whose practice involves handling lawsuits, whether regularly or only occasionally. It will be beneficial both to lawyers in their early years of practice and to those with many years of experience.

### Faculty

**Joseph D. Steinfeld**, Program Chair/CLE Committee Member, Law Office of Joseph D. Steinfeld, Keene

**Scott H. Harris**, McLane Middleton Professional Association, Manchester

**Kimberly Kirkland**, Reis & Kirkland, PLLC, Concord

**Viktoriya A. Kovalenko**, Grafton County Superior Court, North Haverhill

**Hon. Elizabeth M. Leonard**, Belknap County Superior Court, Laconia

## 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

## 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

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



## Family Law Basics

**Tuesday, April 9**

9:00 a.m. – 4:30 p.m.

360 NHCLE min., ethics TBD  
NHBA Seminar Room/Live Webcast

This full-day program will consist of presentations on the major topics of a typical family law case. Topics to be discussed include: Starting a Divorce Case/Procedure; Discovery Techniques; Parenting Rights/GALs; Financial Affidavits; Child Support/Alimony; Property Division; Domestic Violence; and Tips from a Family Court Judge.

### Faculty

**Sara B. Crisp**, Program Chair/CLE Committee Member, The Crisp Law Firm, PLLC, Concord

**Tracey G. Cote**, Shaheen & Gordon, Concord

**James V. Ferro, Jr.**, Ferro Law & Mediation Group, PLLC, Manchester

**Nicole A. Forbes**, Orr & Reno, PA, Concord

**Heather E. Krans**, Pastori Krans, PLLC, Concord

**Crystal M. Maldonado**, Shaheen & Gordon, PA, Manchester

**Katherine J. Morneau**, Morneau Law, Nashua

**James A. Rabinowitz**, Ransmeier & Spellman, PC, Concord

**Catherine E. Shanelaris**, Shanelaris & Schirch, PLLC, Nashua

## 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, Manchester

**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

## 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

## Business Litigation

**Tuesday, May 14**

9:00 a.m. – 3:15 p.m.

310 NHCLE min., incl. 45 ethics min.  
NHBA Seminar Room/Live Webcast

This CLE will cover a variety of topics pertaining to business litigation including non-competition and non-solicitation agreements; trade secrets; computer forensic issues; electronic evidence issues; ethical issues in business litigation; related criminal and government investigation issues; and a business court update.

### Faculty

**Arnold Rosenblatt**, Program Chair/CLE Committee Member, Hinckley, Allen & Snyder, LLP, Manchester

**Hon. David A. Anderson**, NH Superior Court

**Anna B. Cole**, Drummond Woodsum, Manchester

**Michael J. Connolly**, Hinckley, Allen & Snyder, LLP, Manchester

**Joseph Morelli**, Director of Forensics, Cimplifi, Philadelphia, PA

**Jennifer L. Parent**, McLane Middleton Professional Association, Manchester

**Edward J. Sackman**, CLE Committee Member, Bernstein, Shur, Sawyer & Nelson, PA, Manchester

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



The efforts of the Coalition are part of a collective response to a humanitarian crisis, striving to provide refuge for those who risked everything for justice and equality in a nation now gripped by fear and uncertainty.

In the wake of the United States' withdrawal from Afghanistan, the once hopeful vision of a stable and thriving nation shattered as the Taliban swiftly seized power, once again, in Kabul on August 15, 2021. What was meant to be an end to America's longest war resulted in a terrifying turn of events. The consequences have been dire – economic collapse, a surge in violence, and widespread human rights violations.

Among the most affected are Afghan women, whose hard-fought rights and freedoms have been robbed by the takeover of the Taliban. This is evident in the harsh restrictions placed on them: mandated full-body coverings, the need for a male chaperone in public, and the denial of education and work opportunities. Afghan women judges, once champions of justice and equality, now face the most danger.

Judge Roen earned her law degree from the Faculty of Law and Political Science at Kabul University in 2007 and entered a two-year judiciary internship program held by the Supreme Court of Afghanistan. There, she trained under Judge Anisa Rasooli.

In 2009, she began her career as a judge at the Primary Court of Kapisa Province and was later promoted to the Panjshir Province Appellate Court, where she presided over cases involving national security and violence against women and children. She continued this role passionately until 2021, when she was forced to abandon her



The Roen family arrived at LaGuardia airport in New York on November 16. Courtesy Photo

entire life and home.

For 20 years, judges like Roen worked with the IAWJ to promote the rule of law in countries around the globe and to support women entering the legal profession. But as the Taliban regained control, decades of progress were erased, and their lives were put at risk. As Kabul began to fall, the Taliban released male prisoners who were often incarcerated for crimes against women and families. Women judges were frequently the ones who sentenced them, making them a target of revenge.

"Two judges were assassinated right away and other women judges were going into hiding very quickly," says Pamala Custer, a social studies teacher and member of the Coalition. "This was tactical on the part of the Taliban. These men who had been incarcerated wanted revenge against

the women who historically had not been in power to make such decisions in their society and had done so."

Judge Roen and her husband say they will never forget the fear they felt during those first few days.

"When the invasion in Kabul happened, I was in my office in Panjshir, which is almost two hours away," Judge Roen says. "The director of the court came and said Kabul collapsed and I need to go home to my family there."

She traveled back to Kabul, seated in the back of a car with her face covered, pretending to be a lady going to market. Once reunited with her family, they fled to Kapisa to seek temporary sanctuary with other family members. They later learned that the Taliban ransacked their home and burned her court down.

"We had a P1 status and were told to go to back to Kabul to take a plane from the airport to the United States," Judge Roen says. "We had to enter the airport through a water tunnel with sewage water but then there was some fighting and an explosion that killed 118 people, including some US soldiers and my husband's cousin. Then the Taliban started firing and telling people to go away. We felt it was impossible to go any further with the kids, so we went back and waited for a call. We had to go back and forth from relatives' houses – never in one place. After two months and 10 days, we received a call from the IAWJ."

So far, the IAWJ, collaborating with other organizations and groups, has helped to evacuate more than 200 Afghan women judges.

"There were 254 judges in Afghanistan that wanted to evacuate," IAWJ member and former Vermont judge Patricia Whalen says. "The total number of women judges in Afghanistan was 270 but some were elderly or sick and didn't feel they could evacuate – and a few had already made other plans for evacuation. We've gotten more than 200 out but there are 48 judges still left there. There are also 18 in Pakistan and a number of others stuck in 'lily pad' countries around the world."

In addition to her extensive work with the IAWJ, Whalen serves as a project director for the Vermont Afghan Judicial Education Program, a cultural exchange and legal education program for Afghan women judges.

"These women took on the rule of law and were ready to die for the principles we work for every day just for a salary," she says. "They took the worst assignments – jobs that men were afraid of – sitting on violence against women cases, terrorism cases. They put ISIS and Taliban people in jail. They were fearless. They had a vision

of a country that was not ruled by corruption and violence and were committed to getting those things out of their country. And now they have a target on their back."

Leaving Afghanistan was just the first step on a long road to the US for the Roen family, though. The plan was for them to fly out of Mazar-i-Sharif to the United Arab Emirates (UAE), where they would stay for three weeks before boarding a plane to the US or Canada. However, they trekked the eight hours to Mazar-i-Sharif only to find that their flight had been canceled.

"We were scared, and we were in an uncertain situation," says Judge Roen's husband Zia (short for Ziaurahman), who was a doctor of internal medicine and professor at Alberoni University in Kapisa. "We lost our home and everything and now we are in this suspended condition. But luckily, after two or three days, we arranged for a new flight, and we went to the UAE."

Unfortunately, the sands of uncertainty would continue to shift beneath the feet of the Roen family as their three-week stay in the UAE turned into two years and 20 days.

When they arrived, the five of them were assigned to a room inside a large building and were told they were not allowed to leave the premises. After about a month, they were finally allowed to go outside into a common area between the buildings but were still confined to the complex.

"They just kept telling us our case is pending," Judge Roen says. "They didn't tell us what was happening, and we were not allowed to go anywhere. Every time they knocked on the door – always at midnight – and brought us for a medical examination or somewhere, the anticipation increased. We were waiting second by second because your neighbor would get a knock at midnight and get a flight to the US, but you, in the same case with the same conditions, still had to wait. There were 12,000 people in that camp, and we were in the last 300. So, when you see 11,700 people leaving but you're not, it was difficult."

While interned at the refugee camp, Judge Roen served as a liaison for her fellow refugees, acting as a spokesperson and using her negotiation and diplomacy skills to help resolve problems with their UAE hosts and to facilitate the relocation efforts of other women judges. Whalen believes this is part of the reason the Roen family was made to stay there for so long, as she was needed.

"Geeti was a natural person to be a liaison," she says. "She was quite remarkable. I was so impressed with her incredible leadership skills and her calm resilience. It also helped a lot that her husband is fluent in English. They are very organized folks."

Judge Roen's husband Zia shares that during their time in the UAE, many refugees, overcome with anxiety and despair, sought psychiatric help. For others, the hopelessness was too much.

"One girl, two young men, and two women attempted suicide," he says. "There was so much uncertainty. Three other people died waiting for their case. One of them was the Afghanistan Supreme Court leader. He died from a heart attack. He was the most important person [from the Afghanistan government], after the president, and even for him they said they don't know when asked what the status is."

Zia continues: "When we had the final medical exam, and we were told that we would be going to the US – all [our] kids started dancing. They were so happy. But then we had to wait another 35 days. We counted every second of this 35 days. My kids kept asking 'why aren't we going?' I was near to becoming crazy."

ROEEN *continued on page 27*



**NHAJ's 24th Annual Family Law Forum**  
**will be held Friday, February 2, 2024, 9am-4pm**  
**Grappone Center in Concord**

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We are pleased to announce the  
**Judges Panel** will return to this year's CLE.

Our panelists will include:

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**Hon. Polly L. Hall**  
**Hon. David J. Burns**  
**Hon. John T. Pendleton**

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additional program details

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On November 16, the Roegen family finally touched down on American soil at LaGuardia Airport in New York. They were brought to stay in an Airbnb rented for them by the Vermont resettlement agency until they could be officially transferred to New Hampshire.

The family then traveled by bus from Burlington to Manchester, where they were met by members of the Coalition and representatives from the IINE – one of two New Hampshire resettlement agencies. The IINE put the family up in a hotel for two days until a furnished apartment the agency secured for them was ready. By mid-December, the Roegen family moved into their new home in the Granite State.

“I think it’s hard for us to imagine,” says Circuit Court judge and Coalition member Ellen Christo. “I think most judges look at it like you work hard to get to that position in life – it’s usually a well-respected position – and suddenly, you’re ripped out of your job, your home, and your family in one fell swoop. All of a sudden, you’re a refugee and all that you’ve worked for is gone in an instant.”

Judge Christo adds: “To try to uphold the rule of law under the most difficult circumstances and then losing everything because of that is pretty intense. There are things we can do as colleagues around the world to help soften the blow a little bit, at least in the resettlement part – to open the door and welcome a fellow colleague from



On Thursday, January 4, the New Hampshire Supreme Court and the Vermont Supreme Court hosted a welcoming ceremony at Hanover High School. Pictured: Judge Geeti Roegen (right) and Judge Anisa Rasooli (left) speaking to an auditorium of approximately 500 dignitaries, students, and others as Chief Justice Gordon MacDonald and Chief Justice Paul Reiber look on in the background. See article this page for more. Photo by Tom Jarvis

another part of the world.”

The Roegen family is grateful for all the help and support the IAWJ, NAWJ, and the Coalition have thus far provided, and are happy to be living in the Granite State.

“New Hampshire is a good place, a comfortable place – a place we deserve after being in that prison [the UAE refugee camp] for two years,” Judge Roegen says. “We need this calm and comfortable place

with kind people. Our kids were out of school for so long and they are so happy to be in school. They miss school when it’s the weekend or a holiday.”

Zia agrees and adds that they are thankful to have “the very best and supportive team of friends here.”

“We were given this opportunity to come here, and we want to prove that we have the capacity to improve for ourselves

and be independent,” he says. “We are getting help now, but one day we hope to be able to help others who came here in our situation.”

With his medical background and fluent English, Zia hopes to quickly find employment in the medical field. Judge Roegen is exploring opportunities at the UNH Franklin Pierce School of Law and Dartmouth College.

The IINE is providing for the initial immediate needs of the Roegen family, but the Coalition and volunteers are filling in the gaps where additional support and resources are needed. More of the family’s needs will be determined as they settle in.

At this time, monetary donations will make the biggest impact. The family will need money for all basic living essentials such as rent payments, clothing, food, transportation, technology, school supplies, and everything else a family starting over in a new country may need.

The New Hampshire Bar Foundation is collecting donations to support the Roegen family, which can be made at [nhbar.org/new-hampshire-bar-foundation/support-resettlement-of-afghan-judges-in-nh](https://nhbar.org/new-hampshire-bar-foundation/support-resettlement-of-afghan-judges-in-nh).

The Coalition is also seeking volunteers who are willing to assist Judge Roegen’s family with applying for benefits and state identification, moving furniture as more is acquired, and to provide rides for the family on an as-available basis. If you are interested in helping with any of these, please email [supportafghanjudges@nhbar.org](mailto:supportafghanjudges@nhbar.org). ♦

## New Hampshire and Vermont Supreme Courts Welcome Two Afghan Women Judges

By Tom Jarvis

On January 4, approximately 500 dignitaries, high school students, lawyers, media, and others attended the welcome reception at Hanover High School for Afghan women Judges Geeti Roegen and Anisa Rasooli, held by the Supreme Courts of New Hampshire and Vermont.

The two distinguished guests resettled in New Hampshire (Roegen) and Vermont (Rasooli) after evacuating from their homes in Afghanistan with their families to escape the Taliban.

The event started with the Pledge of Allegiance and the National Anthem, sung by Hanover High School Chorus, the Footnotes. Each speaker warmly welcomed Roegen and Rasooli and gave brief remarks about their plights and arduous journeys to New England.

Speakers included: New Hampshire Supreme Court Chief Justice Gordon MacDonald, Vermont Supreme Court Chief Justice Paul Reiber, New Hampshire US Senator Jeanne Shaheen, Vermont US Representative Becca Balint, New Hampshire Supreme Court Justice Anna Barbara Hantz Marconi, Circuit Court Judge Ellen Christo, International Association of Women Judges member and former Vermont judge Patricia Whalen, and New Hampshire Coalition for Resettlement of Afghan Women Judges member and social studies teacher Pamala Custer.

“Despite the challenges in Afghanistan, today is a celebration of Justice Rasooli and Justice Roegen,” Senator Shaheen said at the event. “We are so excited to have them in Vermont and New Hampshire. The life stories of Judge Rasooli and Judge Roegen include courage, perseverance, and resilience – and they are an inspiration to us all. Access to education is fundamental to ensuring that all children have opportunities to thrive, and that all



Speakers at the event from left to right: New Hampshire Supreme Court Justice Anna Barbara Hantz Marconi, Vermont US Representative Becca Balint, IAWJ member and retired judge Patricia Whalen, Judge Anisa Rasooli, Judge Geeti Roegen, New Hampshire US Senator Jeanne Shaheen, Circuit Court Judge Ellen Christo, New Hampshire Supreme Court Chief Justice Gordon MacDonald, and Vermont Supreme Court Chief Justice Paul Reiber. Photo by Av Harris

communities can harness the potential of their citizens. Countries and societies that empower women tend to be more stable – they experience less conflict, and women are actively contributing more to their families, their communities, and their countries. This is a significant piece of what we should be thinking about as we look at our future foreign policy. This is the vision that Judge Rasooli and Judge Roegen and countless other Afghan women brought to their responsibilities in Afghanistan.”

Chief Justices MacDonald and Reiber presented proclamations to the guests of honor.

“Your honor,” Chief Justice MacDonald said to Judge Roegen. “We are deeply inspired by your commitment to education and training, your efforts in seeking justice for all (particularly with women and children survivors of abuse and violence), your extraordinary courage and persever-

ance – and that of your family – in the face of threats and violence and so many challenges in the last two years, and your devotion to upholding the rule of law. On behalf of the Supreme Courts of New Hampshire and Vermont, federal judges, and lawyers in both of our states, it is a great honor to welcome you and your family to our community. We look forward to learning from you, and from your family. And may your example guide us and inspire us in all our collective efforts to seek justice and uphold the rule of law.”

Judge Roegen, who studied under Judge Rasooli at the Supreme Court of Afghanistan, addressed the room through an interpreter.

“I am overwhelmed to see this welcoming and see everyone here supporting us, it has brought tears of hope and happiness into my eyes,” she said. “I come from a country where work and education are

banned for women, and in general, being a woman is a sin and illegal. We tried our best to stand shoulder-to-shoulder with the male companions of our country and stand for the rights and freedom for Afghan women. But unfortunately, we lost everything, all 20 years of achievements – everything was taken away from us overnight. Since arriving in the US in November, we have been greeted with such warmth and respect, and I feel that humanity is still alive, and there are so many here fighting for women’s rights and human rights.”

After Judge Roegen and Judge Rasooli spoke, they fielded questions from some students at Hanover High School. During the questions, the two briefly embraced after Judge Roegen mentioned how proud and thankful she was to have studied under Judge Rasooli. Before reuniting in the US in November, the two had not seen each other since before Kabul fell in 2021. ♦



## New Hampshire Ranks Higher Than National Average for Parole Violations

In November 2023, the Committee to Study the Long-Term Impact of the New Hampshire Adult Parole System (the Committee) stated in its final report that the state's criminal justice system is the default system for handling the pervasive and ongoing mental health and substance misuse crises.

The Committee – which includes New Hampshire State Senator Rebecca Whitley (chair), Joseph Lascaze, and others – was created following the passage of SB 251 in June 2023, which called for the Committee's establishment.

According to data from the Council of State Governments Justice Center (CSG), 60 percent of New Hampshire's prison admissions for parole and probation violations are due to supervision violations despite data from the DOC showing the prison population has decreased (this number reflects first-time and repeat offenders). This is compared to 45 percent of state prison returns nationwide.

"Using this data, we really wanted to understand why that percentage is so high and to make recommendations that will create better outcomes for people under supervision," says Whitley, who is also chair of the New Hampshire Senate Judiciary Committee. "In addition to providing better outcomes for people, we want to make sure our communities are safe and that we are spending taxpayer dollars wisely. We heard startling numbers regarding how much it costs for [the DOC] to be the default mental health and substance misuse system."

### Parole Violations Cost the State Millions of Dollars

According to a 2021 DOC report, the average cost to keep someone in prison annually in the Granite State is \$54,386 and it costs about \$603 per year to supervise someone on probation or parole.

One of the CSG's findings shows a small number of people with complex behavioral health-related concerns who are



"cycling through" the county jails. These "high utilizers," as they are referred to by the CSG, were 2.5 percent more likely to be arrested for parole and probation violations.

The costs associated with this group of "high utilizers," which make up nine percent of the prison population, were approximately \$25,436,527 or 29 percent of prison costs for fiscal years 2019 and 2021. The CSG found that the estimated total cost of high utilizers between those fiscal years was \$93,705,131 in terms of Medicaid spending.

"The CSG data suggests that our higher level of probation and parole violations is likely indicative of our state's issue with responding to substance misuse and mental health needs in the community," Whitley says, explaining the Committee recommends creating a transparent picture of why people return to prison. "This is really important for any sort of reform."

Other recommendations discussed in the Committee's report include the need for more structure in the parole system when weighing and evaluating factors associated with parole board decisions to grant or deny parole.

"There is a fair amount of discretion given in that system," Whitley says. "I think there was clear consensus that we need more defined guidelines."

New Hampshire Parole Board Chair

Roger Phillips, who provided expert testimony to the Parole Committee, says other states like California have gone to what they believe is a more objective system where they rate each person on a scale of one to four.

"There are all sorts of criteria for parole board members to meet," he says. "That would be a very lengthy and extreme process to use in New Hampshire."

### Parole Board Cases and Recidivism

New Hampshire ranks high compared to other states that grant parole. In 2023, 73 percent of those who went through the parole hearing process were approved, 12 percent were denied for having disciplinary tickets or other reasons, and others had their cases continued or postponed because they had not met necessary criteria.

"One of the major documents required is the behavioral health discharge summary," says New Hampshire Parole Board Director Jay Mackey. "If that is not present, the board members have a hard time trying to make a decision as to what these individuals need when they parole out into the community."

On December 22, 2023, there were 1,657 people on parole in New Hampshire according to Phillips. The number of parole board cases has decreased from 2,311 in 2018 to 1,750 in 2023.

One reason for the decrease could be lower incarceration rates overall for the last 10 years, Phillips explains.

"And of course, that was especially true during COVID times when trials weren't happening as regularly," he says.

New admissions at the NHSP have currently run between 850 to 890 over the past three years. This is compared to about 1,400 several years ago.

Mackey says the decrease in the state's prison population and parole cases could also reflect the rise of programs such as the drug court and other diversion programs.

"COVID brought about a lot of different ways to sentence people," says Mackey, who has worked for the DOC for 24 years. "Instead of incarceration, they're put on probation and this process has stuck because we're not seeing the numbers increase for intakes – and I don't think we ever will. When I started with the prison, I think Strafford County was the only county that had a drug court."

Mackey says he is conducting a study for first-time parolees released from a sentence in 2022 and that so far, the rate is 30 percent.

"We are not looking at parole violators that have been re-released," he says. "Higher rates of recidivism come from those parole violators. Our study is just on those be-

ing released for the first time."

Phillips says one of the myths about the parole board is that it can extend punishment.

"We are not a punishing agency," he says. "We are here to decide whether a person is eligible for parole. If they meet the criteria, and they are eligible for parole, they should be paroled. When the court indicates someone has completed their minimum sentence, and if they've done all they can in terms of rehabilitation, they should be released."

### Are Prisoners Being Set Up to Fail?

CSG data shows that despite a high percentage of people being paroled in New Hampshire, many are returning. One reason for this, according to CSG Senior Policy Analyst David D'Amora, is the parole board's structure.

In August, D'Amora told the Committee that on a national level, one of the problems with parole boards is that "they are law-enforcement oriented instead of using a case management model."

The question that then arises is whether reincarceration is the solution for technical violations, D'Amora said. (*See sidebar on this page.*)

Releasing prisoners into the community is always a risk, Lascaze says, but finding solutions for the root causes of behavior must be addressed if the system is going to work effectively for people. A big part of this, he explains, is understanding the experiences of those who have been through the system. Challenges for prisoners released on parole range from financial literacy and connecting with medical and mental health services, to figuring out transportation for work or court hearings.

"All of these things are common barriers we always hear about – and they are real challenges," Lascaze says. "In New Hampshire specifically, transportation is a big challenge. There's no public transportation system in New Hampshire."

Rehabilitation programs for those needing substance misuse treatment are limited due to a lack of Licensed Alcohol and Drug Abuse Counselors (LADAC) and other staff, Phillips says.

"In the past, all levels of care were addressed but now only the most severe level is being addressed," he says, explaining this level of care can cause long setbacks – up to six months – for inmates as they complete FOCUS programming required for parole. "The Parole Board changed the time from six months to 90 days. They can now be released into a facility at a lower level and take courses on tablets."

Lascaze says resources are needed to help with behavioral health and to foster social growth, as well.

"In a correctional facility, people are often socially stunted," he says, recalling his own struggles with certain situations after his release. And in the context of recidivism for parolees, "This is a huge concern."

Lascaze explains that administrative parole status is the preferred status for parolees because they are required to check in only once a year and can be digitally monitored at the discretion of a probation and parole officer. He believes these individuals should be allowed to have their parole terminated because their risk, he says, is very low.

### Prison Reform In 2024

Whitley says Lascaze's insights and personal experience on the Committee have been invaluable.

"He's phenomenal," she says, adding that decriminalizing behavior that is related to mental health and substance misuse is a key priority in 2024. "Instead of criminaliz-

## Probation and Parole

*Probation* is a sentence ordered by the court which allows an offender to remain in the community with supervision and guidance of a probation/parole officer (PPO), under such conditions as the court may impose. For each offense, the period of probation cannot exceed five years for a felony and two years for a Class A misdemeanor.

*Parole* is a conditional release from state prison which allows an inmate to serve the remainder of the sentence outside the prison. To be eligible for parole, inmates must complete the minimum sentence ordered by the court and must show increasingly responsible behavior while in prison.

For individuals to remain on probation or parole in the community, they must comply with several conditions established by the court or the Adult Parole Board. When an offender does not follow the rules, a determination is made by the PPO about the best

way to improve compliance. The PPO may issue verbal or written warnings or may report the violation to the sentencing court or parole board.

In circumstances requiring immediate action, the PPO or police may arrest the offender, or may request that an arrest warrant or capias be issued by the court or the Adult Parole Board.

At a violation (or revocation) hearing before the court or parole board, the PPO must present evidence to prove the offender violated the required conditions. Due process rights apply, and the offender (or attorney) may dispute the evidence.

Offenders who violate the conditions of probation or parole may be incarcerated in prison or county houses of correction. Intermediate sanctions, such as home confinement, are also available to promote public safety and provide restrictions necessary to control offenders. For a full list of community-based punishments visit [nh.gov/nhdoc/sitemap](http://nh.gov/nhdoc/sitemap). ♦



ing drug use, the idea is to not saddle people with significant felony records when really what they need to do is go into treatment.”

Whitley is proposing a bill, SB 570, focused on first-time possession.

According to CSG data, Black people are four times more likely to be arrested for marijuana possession than White people, despite relatively equal use.

“The same is true with arrests overall,” Whitely says, explaining that while Black people make up about 1.8 percent of the state’s population, they comprise 5.8 percent of all arrests and 6.6 percent of all drug arrests in 2020. “So there really is a racial justice issue, and a lot of our work is making sure that our drug laws and other laws are not being enforced with that racial bias.”

### Moving Beyond Community Failure

In 2022 and 2023, 67.4 percent of parole revocations were termed community failures. Lascaze and others on the Committee believe many of these “failures” are being used for non-arrestable offenses such as associating with other felons or those on parole, and they highlight a lack of community options for parolees who should also be part of the process.

Lascaze stresses the importance of hearing inmates’ stories and their challenges.

“Commissioner Hanks made some exceptions to allow individuals who were working with the Smart Justice Program to work together in what was kind of like a mentorship program and people were opening up about their experiences,” he says. “They were relating to others who had been through the same life experiences who knew what they were going through.”

He describes the experience of an individual he worked with who had been incar-

cerated for 15 years.

“He had never seen his birth certificate in his life – never even seen his social security card,” Lascaze says, explaining the difficulties this posed in finding work. “We had to figure out that whole process.”

Lascaze says the last he knew, the man was back in custody.

“He got established, had a girlfriend and a place to live, and then things fell apart because he wasn’t getting the substance misuse treatment he needed because of Medicaid issues,” he says. “Once he stopped treatment, he got back into using.”

Phillips says addiction is a brain disease that often overlaps with mental health challenges.

“People must have the tools to get in touch with the adverse consequences of their challenges. If they don’t, they’re not going to change,” he says.

If the goal is for parolees to live an acclimated life, the only solution is to provide inmates with every possible tool and resource for success the state can provide, Lascaze says.

“I think that New Hampshire is waking up and seeing that we need to do something,” he says. “We cannot keep using reincarceration as the answer to everything. I’m very optimistic that we’re going to see some results.”

Whitley says the Committee’s 2023 final report only scratches the surface.

“This issue is quite complex,” she says. “A bill is being proposed in 2024 to extend the Committee’s work due to the connections that were found between mental health and parole violations.” ♦

*The next and final article of the NHBA Prison Series will focus on life after release from prison.*

## Suspended Sentences

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.

Prior to 2021, those seeking 651:20 status couldn’t file a motion to suspend until they had served two thirds of their sentence; this resulted in people not actually getting out at two thirds of their minimum sentence due to the time required to complete the application process.

The flow of the parole pipeline – determined in large part by the availability of mandatory classes – favors those with lower minimum sentences, says Joseph Lascaze. He explains that individuals in the NHSP system are prioritized for parole based on the time remaining on their minimum sentence and that resident-to-facilitator-ratios can impact an inmate’s ability to receive mandatory classes.

Lascaze says a person sentenced to two years in NHSP for a first-degree assault who is required to take anger management classes would be given priority over someone with a longer sentence who has

already served five years. And this, he adds, can lead to bottlenecks in the system and sometimes affects a person’s ability to utilize a suspended sentence.

“That person [with the shorter minimum] is going to be prioritized even though the other person who has already been there for five years may be mentally more prepared and more ready to accept what the program offers, and it could have more of an impact on their behavior because they’re ready to learn,” he says. “This is opposed to the person who’s only coming in with a two-year sentence who may say, ‘I’m going to get out in two years anyway.’ They may not be ready or at that point in time to accept the tools being given.”

Lascaze adds that a bottleneck occurs when people who are ready to be returned to the community are being stopped from returning.

“The priority isn’t to make sure the 651:20 works as efficiently as it possibly could, it seems,” he says. “There’s not enough movement. And you don’t have enough halfway houses and transitional centers for people to go to when they are ready.” ♦

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# Criminal Law

## The Avalanche of Digital Evidence

By Ted Lothstein, Richard Guerriero, and Oliver Bloom



Lothstein



Guerriero



Bloom

Google geofence warrants. Forensic examinations of smartphones to look at users' calls, messages, social media, and browsing activities. Audio and video from police-worn body cameras. Digital enhancement of audio and video. Commercial, governmental, and even residential surveillance video. Artificial intelligence. None of these existed when the partners in our firm started practicing law, yet our associates never knew a world without them.

These are the new and not-so-new technologies that have wrought major changes for criminal practitioners in the last 15 years. The modern criminal practitioner must constantly learn new technologies and how they can be used and misused. We must adapt to an ever-increasing workload due to the explosion in the amount of information available in every case. And we must address the perception that these new forms of evidence are irrefutable and that the percentage of cases that are actually "triable" to a jury is shrinking rapidly.

Case files for defense lawyers and prosecutors are far more voluminous and complex than in past decades for three simple reasons: smartphone evidence, surveillance and body camera evidence, and subpoena or search warrant responses from massive technology companies. Smartphones came out in the 2000s. Within a few years, they revolutionized the world.

By 2014, Chief Justice Roberts wrote in *Riley v. California* that our phones are no longer merely for making voice calls, but rather, they are minicomputers documenting every moment of our lives. Smartphones contain evidence that never

before existed and provide means to commit crimes that could not have been committed, at least not easily, before.

Our phones contain direct evidence of our voice calls, text messages, social media activity, location data, internet browsing history, video viewing, video recording, contacts, calendars, and many other kinds of information. Recently, far more law enforcement agencies have adopted body camera technology, with the result that even minor cases involve huge amounts of data from bodycam audio/video files.

The case files which we thought were "large" files 15 years ago – files with 5,000 to 10,000 pages – now seem entirely manageable. The volume of discovery these days is on a different scale and requires different solutions. At a minimum, criminal practitioners need robust search tools, like dtSearch, and, in some cases, tools like Relativity and Casepoint, to locate the "needles in the haystacks" of discovery.

In most cases, working with paper discovery alone is no longer practical. "Bringing the file to court" now means having internet access at court or a notebook computer with large capacity storage, or most of the time, both. Essentially limitless cloud storage and very high-capacity portable storage are essential.

Many police investigations now include subpoenas to multiple service providers, along with the collection of surveillance video, to stitch together a map and timeline of the locations, activities, and messaging of every person of interest in the case. This is true not only in high-profile felony cases, but increasingly even in relatively small cases.

We had a case where the police gathered home and commercial surveillance video, used it to identify a suspect, and then threatened to subpoena geolocation data to solve the mystery of who committed a theft of items worth less than \$1,000. All the police had to do was tell the suspect



they would subpoena the geolocation data if he or she didn't tell the truth.

Thus, now more than ever, criminal practitioners must learn how to identify and challenge law enforcement methods that sometimes misuse and exaggerate the capabilities of new technologies.

For example, in a motor vehicle accident case, the prosecution sought to introduce the testimony of a detective who viewed surveillance footage that captured the vehicle in motion just before the accident, measured distances between landmarks in the video footage, timed how long it took for the vehicle to travel between the landmarks, and used this data to provide an estimate of the speed of the suspect's vehicle just before the crash.

To counter this proposed testimony, we retained an expert who helped us challenge and discredit the methods used by the detective. We learned that timestamps on video, even if accurate in terms of the time of day, do not report accurately the time gap between "frames," which can be variable throughout the video; and that the still-frame images have artifacts that can misrepresent the actual location of a rapidly moving object. The expert we worked with demonstrated that the detective's estimate of the speed of a moving vehicle from surveillance video did not employ generally accepted scientific methodologies for obtaining measurements from video images.

Of course, the overarching impact

of the new kinds of evidence and the unprecedented volume of discovery is that lawyers must work longer and harder on every case. It is not an understatement to say that most cases involving smartphone and body-camera evidence are now taking two to three times as long to prepare for negotiation and trial. This reality of modern practice has directly contributed to the indigent defense crisis, the shortage of prosecutors, and the rising costs of hiring a private criminal defense attorney.

Finally, as smartphone, internet, and surveillance technologies proliferate, we have observed the criminal justice system change in another fundamental way: there are fewer disputable facts, or, at least, that is the perception. There has been much talk in the last decade of 'the vanishing jury trial.' For example, in federal courts in 2022, only 2.3 percent of criminal cases were tried to a jury.

Surely, one factor driving down the number of jury trials in criminal litigation is that in our surveillance society, with smartphones tracking our every movement, there is more evidence of every person's activity. Maybe a person could just turn off their phone, but even that might be evidence. In a recent case, law enforcement pointed to the continuous use of a smartphone before and after the alleged crime, but no activity during the time of the crime, to show the efforts of the defendant

*EVIDENCE continued on page 33*

# MCLANE MIDDLETON

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## Goodbye Felonies First, Hello Probable Cause Hearings

By Tony Naro

On June 24, 2022, Governor Sununu signed into law HB 1597, marking an end to Felonies First, a law which directed all felony prosecutions to begin in the Superior Court. To effectuate this, HB 1597 made several changes to the current statutory scheme.



HB 1597 inserted a new section under RSA 490-F, granting the district divisions of the circuit courts jurisdiction to arraign defendants charged with a felony offense. The law further provides that the district division may hold what is known as a probable cause (PC) hearing to determine two things: (1) whether there is probable cause to believe the felony offense(s) was committed, and (2) whether there is probable cause to believe the defendant committed the offense. If PC is found, the matter is bound over to the Superior Court for further proceedings.

HB 1597 amended RSA 592-B:1 to eliminate the Superior Court's exclusive jurisdiction over felony complaints and lower-level offenses related to those felonies. This means that under the law, the Superior Court and Circuit Court have concurrent jurisdiction over felony com-



plaints. However, the New Hampshire Supreme Court amended Rule of Criminal Procedure 3 to provide that all complaints shall be filed with the Circuit Court and eliminated all procedures related to Superior Court felony complaints – including striking the phrase “Superior Court complaint” from the definitions. So, while the courts technically have concurrent jurisdiction over felony complaints, the rules require that felonies begin in the Circuit court.

This is a major shift in our criminal system for everyone, including law

enforcement, prosecutors, defense attorneys, correctional facilities – particularly county jails – and the courts. In 2019, there were 8,766 felonies filed, the majority of which were filed in Superior Court. That's a lot of cases. And now, instead of those cases being filed with one of 10 superior courts, they will be filed in one of our 31 circuit courts.

This change in the law means there needs to be a good deal of communication and coordination between the courts, prosecutorial agencies, law enforcement agencies, the New Hampshire Public De-

fender, and the private criminal defense bar. Thankfully, this communication has been taking place and will be ongoing. The biggest logistical problem will be arraigning persons charged with felonies who have been placed in custody. Incarcerated defendants will not be transported to court for their arraignment as they had in the past. This means that attorneys, largely public defenders, will have to find ways to confidentially communicate with their client prior to being arraigned to apprise them of the allegations and prepare for a bail hearing absent an agreement.

Remember, there are 10 county jails and 31 circuit courts in the state. That presents logistical hurdles not only for the Public Defender, but also for the courts. Each jail is likely only going to have the ability to accommodate one court at a time. While each court will have a set time for videos, there could still be serious backlogs for video arraignments. This may also put attorneys in a position where they are not afforded an adequate opportunity to consult with their clients.

Additionally, defendants who require the services of an interpreter will face additional hurdles. From the people I spoke to, it appears, for the most part, that interpreters will not be available at the jails and/or courthouses for in-person translation. Remote translations services will make it incredibly difficult, if not

HEARINGS *continued on page 34*

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**Donna J. Brown, Member**

*Admitted in New Hampshire and Massachusetts*

Donna is a partner whose practice focuses on state and federal criminal law with a focus on jury trial work, White Collar criminal defense and post-conviction litigation. Donna is a compassionate and creative lawyer with over 30 years experience in criminal defense. Prior to joining Wadleigh, Donna was a public defender for over 25 years. Donna has received numerous awards including the NHACDL Champion of Justice Award, the Manchester NAACP Service Award, the Bruce Friedman Pro Bono Award and was recently named as a 2023 “Lawyer of the Year” in Manchester, NH for White Collar criminal defense by *Best Lawyers*.



**Jeffrey D. Odland, Member**

*Admitted in New Hampshire and Massachusetts*

Jeff specializes in criminal defense, civil litigation and white-collar criminal defense. He practices in state and federal court. Jeff also represents clients on appeal and in post-conviction litigation. Since 2008, Jeff has represented thousands of New Hampshire residents. A skilled trial lawyer, Jeff has brought serious cases to verdict, resulting in favorable verdicts for his clients. He has trained other lawyers in trial skills, the rules of evidence, constitutional law and the art of cross-examination. Jeff currently serves as the President of the New Hampshire Association of Criminal Defense Lawyers as well as a member of the Federal Court Advisory Committee.



**Michael G. Eaton, Attorney**

*Admitted in New Hampshire*

Michael Eaton graduated from UNH Franklin Pierce School of Law in 2019. Before joining WSP, Mike interned at the VT Supreme Court, the NH Supreme Court, and the ACLU of NH. Mike already has more appellate experience than many seasoned attorneys, having briefed and/or argued a variety of appeals before the NH Supreme Court and the First Circuit. He also has experience in White Collar criminal defense and has assisted with trials, numerous postconviction matters, and dispositive motions in state and federal court. His pro bono work has focused on racial justice. He is now taking his own cases.



**Emily E. Peterson, Attorney**

*Admitted in New Hampshire*

Emily joined the firm in 2022. Prior to joining the firm, she interned with the New Hampshire Judicial Council, the 9th NH Circuit Court in Nashua and for a criminal defense firm in Exeter, NH. Emily was a summer associate at Wadleigh in 2021.

Emily earned her law degree at UNH Franklin Pierce School of Law where she was a member of the Daniel Webster Scholar's Honors Program.

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## It May Be Time to Revisit the Wiretap Statute

By Steven Endres

In 1732, British Physician Thomas Fuller published a compilation of proverbs titled *Gnomologia: Adages and Proverbs; Wise Sentences and Witty Sayings, Ancient and Modern, Foreign and British* (321 pp., London:

Barker and Bettesworth Hitch). The proverbs are numbered; number 943 reads: "Be you never so high, the law is above you." Proverb 5813 states: "Words are but wind; but seeing is believing."

Unfortunately, it seems like we live in an increasingly skeptical society, which is reflected in the courtroom with an increasingly skeptical trier of fact, whether that be judge or jury. When we think of "evidence" that something occurred, we tend to think of proof in the form of physical evidence or video, not merely testimony. Presumably this is one reason for the proliferation of body-worn cameras; we do not want to hear testimony about police interactions, we want to see it for ourselves.

This applies to all witnesses. I was saddened to listen to a hearing in which a woman was seeking a restraining order against her abuser. After she testified, the judge essentially asked: do you have any actual evidence that this happened?



## Enter the Smartphone

According to a 2021 fact sheet from the Pew Research Center, 97 percent of Americans own a cellphone of some kind, and 85 percent of Americans own a smartphone. The vast majority of smartphones have the ability to take photographs, record video, and record audio. With image sensors getting smaller (yet better) and the computing power of smartphones allowing sophisticated image enhancement in real time, photos and video taken on modern smartphones rival the quality of photos and video taken with expensive professional cameras.

According to the Japanese-based Camera and Imaging Products Association, worldwide camera shipments dropped by 93 percent between 2010 and 2022, due in large part to casual photographers relying on their smartphones instead of "point and shoot" cameras. Essentially, we live in

a world where almost every person on the street has a camera in their pocket and the ability to make high-quality recordings of what they see or hear.

The costs and barriers of recording are so low that it makes sense that if a person is trying to prove something, especially in court, that person should record it, right?

## The Wiretap Statute

RSA 570-A, which appears under Title LVII, the now mostly repealed "Public Justice" laws, addresses "Wiretapping and Eavesdropping" and was first adopted in 1969. The language of the statute generally mirrors the language of Title III of the Federal "Omnibus Crime Control Act of 1968." The statute itself makes it a Class B felony if, without the consent of all parties, a person "intercepts" any "telecommunication or oral communication."

It is also a Class B felony to "disclose" or "use" any such intercepted communication. Oral communication is defined as "any verbal communication uttered by a person who has a reasonable expectation that the communication is not subject to interception, under circumstances justifying such expectation."

The statute goes on to make it a misdemeanor for a person to intercept a telecommunication or oral communication "when the person is a party to the communication..." Unlike the felony section, which further prohibits disclosure or use, the misdemeanor section only prohibits interception.

So, if you are secretly recording a conversation between two unwitting individuals, it is a felony, but if you are secretly recording a conversation between yourself and another it is a misdemeanor. If you disclose or use a secretly recorded conversation between two unwitting individuals, it is a felony; however, if you disclose or use

a secretly recorded conversation between yourself and another it is not an additional crime.

The wiretap statute does not generally address video recording, but video recording with accompanying audio has the potential to run afoul of the wiretap statute. The chapter contains its own exclusionary rule. RSA 570-A:6 creates a prohibition on using "Evidence of Intercepted Telecommunications or Oral Communications." It says that "no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury... if the disclosure of that information would be in violation of this chapter."

Some judges have interpreted this exclusionary rule to only apply to felony interceptions in cases without the consent of all parties, because the exclusionary rule itself only applies if the "disclosure" would violate the chapter, and only disclosure of communications without the consent of all parties violates the chapter. These judges have said that since disclosure of a misdemeanor interception is not a crime, the statutory exclusionary rule does not apply.

Other judges have read the exclusionary rule more broadly, prohibiting the courtroom use of any intercepted communications. At this point, the New Hampshire Supreme Court has not weighed in on which application is correct.

## Reasonable Expectation that the Communication is not Subject to Interception

To be a violation of the wiretap statute, the intercepted communication must be one in which the speaker has a reasonable expectation that the communication is not subject to "interception," and the circumstances must justify that expectation. Interception means more than just recording, it means the "aural or other acquisition of, or the recording of, the contents of any... oral communication through the use of any electronic, mechanical, or other device."

When you think about the ubiquitous nature of cameras, microphones, and the "internet of things" nowadays, do you ever really have a reasonable justification to believe that what you say is not being "intercepted?"

As I sit alone at my desk writing this

STATUTE *continued on page 33*

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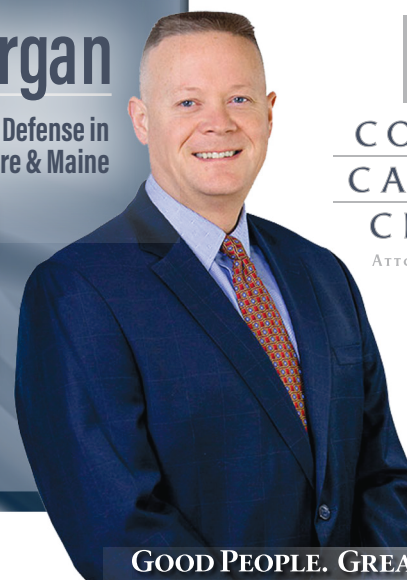
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■ **STATUTE** *from page 32*

article, when I say out loud: “Hey Siri, do I need a coat today?” I hear a familiar ding and my phone tells me the current temperature. This is because the electronic device sitting on my desk is constantly engaging in the acquisition of oral communications; and because I know this, I do not have a reasonable expectation my communications are not subject to “interception,” even as I sit alone in my house.

I may have a reasonable belief what I say is not being recorded, but in a world where many household items are voice activated, from virtual assistants to thermostats, televisions, and even kitchen faucets, I cannot have a reasonable expectation that what I am saying is not being “intercepted” when I know those devices are in my vicinity, constantly “listening” for a command.

### The Problem

Crimes like domestic violence often occur behind closed doors and have the potential to turn into “he said/she said” situations. Domestic violence victims are often told by their abusers that if they call the police, they will be the one arrested. We want victims to be safe and to seek help.

One of the ways the court system can help ensure victim safety is through the issuance of appropriate protective orders. When considering a protective order, we want the court to have the best accurate information. Both petitioners and respondents may assume a recording is the best evidence. If a person is threatening you

what better evidence than a recording of exactly what the person said? If you are the one being accused of threatening, you may also want a recording of exactly what was said. If a person is abusing you, what better evidence than a video of the abuse occurring?

Unfortunately, a quick Google search for “wiretapping and domestic violence” reveals numerous victims throughout the country who have been arrested and charged with violating wiretap statutes for attempting to document their abuse.

No victim should ever hesitate to call the police because they fear that they will be arrested for violating the wiretap statute.

In late 2021, the New Hampshire Supreme Court established a multidisciplinary task force to conduct a systemic review of domestic violence cases in the New Hampshire court system. The task force released a report in March 2022, which recommended that stakeholders approach the legislature about amending the wiretap statute to allow a domestic violence survivor to record the abuser without his or her consent and to allow the recording to be admitted into evidence.

A bill was introduced in early 2023, which would have amended the wiretap statute to allow a person to make a recording “for the purpose of obtaining evidence to document an act of domestic violence...” However, the bill was found inexpedient to legislate.

The Governor’s Commission on Domestic Violence, Sexual Assault, and Stalking continues to analyze and seek

suggestions for possible amendments surrounding the wiretap statute.

It is difficult to amend the wiretap statute to allow recording by victims of crime because that is not really what the statute ever sought to prevent. The wiretap statute was written in the late 1960s to prevent people from recording telephone conversations or using some type of “bionic ear” to listen into people’s private conversations.

If the trier of fact thinks “seeing is believing,” then it should not run afoul of the wiretap statute to record a crime which is occurring against you; and the wiretap statute should not bar the trier of fact from hearing competent relevant evidence. Even as a seasoned prosecutor, hearing or seeing a recording of crime occurring first hand is often far more impactful than reading a police report or talking to a witness months later.

In New Hampshire, we should critically examine the wiretap statute and what it means in a world where what you are saying is constantly being intercepted by electronic devices. We should litigate the parameters of the exclusionary statute, and perhaps we should figure out a way to amend the statute so that victims of crime are able to show the trier of fact what they have endured. ♦

*Steven Endres is an Assistant County Attorney at the Merrimack County Attorney’s Office. He served on the New Hampshire Supreme Court’s Domestic Violence Task Force.*

■ **EVIDENCE** *from page 30*

to avoid detection. Our smartphones reveal information about us even when powered down.

Yet, even as police push to expand their use of new technologies to aid their investigations, the tech platforms sometimes push back, perhaps because of concerns expressed by average citizens. Just last month, Google announced that it was changing how it collected and stored users’ location data, unilaterally extinguishing a powerful law enforcement tool, the geofence warrant. Nonetheless, even as one form of digital evidence about our daily lives becomes less accessible, another will surely take its place soon. ♦

*Ted Lothstein and Richard Guerriero are partners at Lothstein Guerriero, PLLC, a firm that represents people and organizations that are facing a legal crisis – criminal defense in state and federal court, professional licensing disciplinary proceedings, civil stalking and domestic violence restraining orders, and appellate litigation. Richard and Ted both spent many years at the New Hampshire Public Defender before entering private practice and have a combined 68 years of criminal litigation experience. After interning for two summers, and graduating from University of Michigan Law School, Oliver Bloom joined the firm as an associate in November 2023.*



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## ■ HEARINGS *from page 31*

impossible, to have confidential communications with one's client during the proceedings, let alone prior to the arraignment and bail hearing.

My concerns are heightened with the bail reform bills passed on January 4, 2024. For example, SB 248 would withhold immediate bail for those accused of 12 violent crimes. The Judicial Branch reports that in 2021 there were 5,312 cases that contained at least one of the charges listed in the bill, and currently more than half of these case filings do not result in incarcerated arraignments. That means we are looking at potentially 2,600 or more additional incarcerated arraignments than anticipated when HB 1597 was passed into law.

The lack of e-filing in criminal cases in the circuit courts could pose a barrier to the courts efficiently processing felonies for incarcerated persons. The stakeholders, however, appear to have found a possible solution. According to a few people I spoke to, courts will allow email for the filing of complaints, PC affidavits, bail orders, waivers of arraignment, and waivers of the PC hearing. While not a replacement for e-filing, this will enable the court to process cases in a more efficient manner.

While we have amazing court staff, and stakeholders are working diligently to identify potential problems with the reintroduction of PC hearings and the end of Felonies First, there will inevitably be growing pains. The key to success will be maintaining a positive attitude and working together to overcome these issues.

The New Hampshire Supreme Court has also made changes to the Rules of Criminal Procedure to account for the change in the law. Some of the most important changes are as follows:

- Rule 3
  - All complaints, felony/misdemeanor/violation, must begin in the Circuit Court.
- Rule 6
  - The court must hold a PC hearing within 10 days following the arraignment of a defendant in custody. If the defendant is already in custody on another offense and not held on the new felony charge(s) the hearing only needs to be held within 30 days of the arraignment.
  - If a defendant is not incarcerated, the PC hearing must be held within 30 days of arraignment. While affording more breathing room than the 10-day window for incarcerated persons, courts that are considering putting felony arraignments on for specific days each month need to be mindful of the risk that they will have more PC hearings to schedule than they have court time to accommodate those hearings and could face motions to dismiss (without prejudice) should the hearings not occur within the timeframe set by the rules. Quick data point: prior to Felonies First, in 2015 there were 6,672 PC hearings.
  - If the defendant is indicted prior to the PC hearing and the indictment references the Circuit Court docket and charge ID, there will be no PC hearing. Absent that, unindicted fel-

ony complaints in the Circuit Court will require a PC hearing, waiver of hearing by the defendant, or nolle prosequi by the State.

- If there are misdemeanors or violations that are directly related to the felony complaint, those accompanying charges will be sent to the Superior Court upon a finding or waiver of PC the felony complaint(s). Likewise, if there is a finding of no PC, the Circuit Court will retain jurisdiction over the misdemeanors and violations.
- As always, a finding of no PC will not prevent the State from seeking an indictment.
- Rule 12
  - The rules do not require production of discovery in felony matters, including for misdemeanors and violations related to the felony. Whether defense attorneys will successfully fashion arguments for pre-hearing discovery under due process is to be determined, but it is certainly an issue that will present itself quickly.
  - Speaking of discovery, HB 1597 also repealed RSA 592-B:6, which afforded defendants awaiting indictment the same rights to discovery as those already indicted. ♦

*Tony Naro is a criminal defense and domestic relations attorney at Bernazzani Law, PLLC, in Nashua. Prior to entering private practice, Tony was a public defender for over a decade, working as a trial attorney in Rockingham County, Hillsborough County, and as an assistant appellate defender in Concord. He can be reached at [tony@bernazzanilaw.com](mailto:tony@bernazzanilaw.com).*

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# Health Law

## New Hampshire Looks at Solutions for Barriers to Discharge

By Courtney Tanner, Brooke Belanger, and Caroline Lavoie



Tanner



Belanger



Lavoie

Jane just celebrated her 73<sup>rd</sup> birthday in the hospital. The nurses and other members of her care team did their best to make the day feel special. They decorated her hospital room. They put a candle in her meal and sang to her. No family or friends came to visit. At that point, Jane had been sitting in the hospital for nearly 200 days. She remains in the hospital not because of a complicated medical condition, but because there is nowhere safe for her to go. Jane suffers from dementia and is unable to live alone.

Jane has been on the list for a bed in a long-term care facility for nearly six months, but there are no long-term care beds available. Even if a bed became avail-

able, she does not have insurance to pay for it. Jane has health insurance through Medicare; but Medicare does not pay for long-term care, so Jane must apply for Medicaid Long-Term Care coverage to supplement her health insurance.

In addition, due to her dementia and for her own safety, Jane requires someone to make decisions for her. The hospital staff tried diligently to find a family member willing to serve as a surrogate decisionmaker for Jane. Unsuccessful, the hospital went to the Probate Court to request that a guardian be appointed for Jane. Once a guardian is appointed, the guardian can then complete the paperwork for long-term care Medicaid coverage, act as decision maker for Jane, and allow for a safe discharge to a long-term care facility. Unfortunately, these processes will mean a longer length of stay in the hospital than is clinically necessary.

In the meantime, the nurses bring in clothes for Jane to wear so that she does not have to wear a hospital gown, a crocheted blanket delivered by a hospital volunteer

sits on the bottom of her bed, and the LNAs have hung up pictures of the mountains. The team is trying to give Jane as much attention as they can in between their work caring for the acute care patients in the unit, but Jane should be in the appropriate setting for her needs. Everyone deserves community-based care as soon as it is clinically appropriate.

### Barriers to Discharge

In hospitals across New Hampshire, there are patients, like Jane, in an inpatient bed who are medically cleared for discharge but unable to leave the hospital. These lengthy, non-medically necessary hospital stays are caused by a number of barriers to discharge. These barriers impact not only patients unable to leave the hospital but also patients whose care may be delayed due to lack of inpatient bed availability.

In September 2023, 19 acute care hospitals in New Hampshire participated in a point-in-time survey conducted by the Foundation for Healthy Communities looking at patients on a single day who were medically ready to be discharged but could not leave the hospital. The survey found that 130 patients remained in the hospital despite being medically cleared for discharge. These patients could not leave the hospital for a variety of reasons ranging from lack of bed availability in a long-term care or

skilled nursing facility, lack of community-based resources, or delays securing long-term care insurance coverage. At the same time, 47 patients remained in Emergency Departments waiting for a bed in an inpatient unit. Fifty-nine percent of the patients unable to return to the community or another safe place were over the age of 65.

### Workforce Challenges & Creative Approaches to New Solutions

Healthcare workforce shortages existed before the COVID-19 pandemic. However, the pandemic exacerbated the pre-existing workforce challenges. According to New Hampshire's Economic and Labor Market Information Bureau, private sector employment has grown by approximately one percent since the beginning of the COVID-19 pandemic while healthcare employment has decreased by 1.2 percent. At the same time, healthcare roles were three of the four most in demand occupations in 2022.

Multi-disciplinary coalitions are working diligently to rebuild a robust healthcare workforce in the state. For example, New England College is partnering with Dartmouth Health, Concord Hospital, Catholic Medical Center, and Elliot Hospital to create a pipeline for LNAs to earn nursing degree college credits while working and

SOLUTIONS *continued on page 38*

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# Transfer/Discharge Protections are Key When Home is a Long-Term Care Facility

By Judith K. Jones and  
Cheryl S. Steinberg



Jones



Steinberg



New Hampshire has the distinction of being the second “oldest” state in the country. As New Hampshire’s aging population grows, practitioners will increasingly encounter questions about patient rights, including the rights of those living in long-term care settings such as nursing homes or assisted living facilities. Protections that restrict the transfer/discharge of long-term care residents are codified in both state and federal law.

The New Hampshire Office of the Long-Term Care Ombudsman investigates transfer/discharge complaints. Our state’s Long-Term Care Ombudsman, Susan Buxton, understands that for those living in a long-term care facility, the facility is that person’s home.

“Legal protections are in place to protect against unnecessary transfer/discharge,” she explains. “The decision to

move a resident should be initiated only if all other options and planning strategies have been exhausted.”

State statutory transfer/discharge law is found in RSA 151:19,21,25,25-a and 26. RSA 161-J includes consumer protections that apply to residential care and supported residential care facilities. State regulations for residential care, supported residential care and certified nursing facilities are at He-P 804, He-P 805, and He-E 802, respectively. Noncertified nursing facilities are regulated under He-P 802. Federal rights protecting individuals living in certified nursing facilities are at 42 CFR Subpart B, and transfer/discharge protections are at 42 CFR 483.15.

Whether a resident is protected under state law, federal law, or both, depends on how the facility is licensed. Identifying which legal protections apply to a specific facility can be confusing since common terms like assisted living, rest home, and

memory care are not defined in New Hampshire’s licensing law, RSA 151.

One way to determine how a specific facility is categorized and licensed is through a facility list prepared by the Bureau of Health Facilities Administration, which can be accessed at [dhhs.nh.gov/documents/health-facilities-listing](https://dhhs.nh.gov/documents/health-facilities-listing).

The Bureau is the oversight agency for all health care entities licensed under RSA 151:2. Additional information on licensed health care facilities can be found on the Bureau’s website at [dhhs.nh.gov/doing-business-dhhs/licensing-certification/health-facilities-administration](https://dhhs.nh.gov/doing-business-dhhs/licensing-certification/health-facilities-administration).

New Hampshire law categorizes and licenses the most common types of long-term care facilities as either residential care, supported residential care, or nursing facility. Residential care facilities serve individuals who require a minimum level of supervision and health care. Supported residential care facilities serve individuals who may require

services from a licensed health care professional. Both types are typically advertised as “assisted living” facilities. Nursing facilities are distinguished from residential care and supported residential care facilities in that they provide nursing services complex enough to require 24-hour supervision.

Both state and federal transfer/discharge protections apply to individuals who live in nursing facilities that accept Medicare or Medicaid, categorized as “certified” nursing facilities. State law applies to settings licensed as residential care, supported residential care and nursing facilities that do not accept Medicare or Medicaid (noncertified nursing facilities). New Hampshire currently has 73 certified facilities and seven noncertified facilities. While state law incorporates many of the federal standards, federal law is more comprehensive and provides additional rights, including the right to an administrative hearing. Legal protections generally become more rigorous as the level of care provided increases.

A transfer is defined as the movement of a resident to another licensed facility, and discharge is defined as the movement of a resident to a non-licensed setting (e.g., returning home). A separate but related resident protection is the right to a “bed-hold” during a temporary hospital stay. A facility must provide a ten-day bed-hold, or hold open a resident’s bed, when the resident is temporarily absent from the fa-

PROTECTIONS *continued on page 38*

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# A ‘NIED’less Expansion of Liability for Negligent Infliction of Emotional Distress in Malpractice Cases

By Jonathan A. Lax and  
Katie A. Mosher



Lax



Mosher



which will broadly expand the potential liability of medical professionals.

## Corso and the Establishment of the Foreseeability Test

The *Corso* plaintiffs were parents of a young girl who was severely injured after a car hit her in front of their home. The mother heard a “terrible noise,” looked out the window, and saw her daughter lying in the street. The father heard his wife’s screams and ran outside where he saw his injured daughter. The parents asserted claims against the negligent driver for their own emotional injuries caused by the accident. Recognizing the importance of mental well-being and the value of “freedom from mental distress,” the Court adopted the three-factor foreseeability test established by the California Supreme Court in *Dillon v. Legg*, 441 P.2d 912 (Cal. 1968).

This test evaluates whether it is foreseeable that a bystander would be emotionally harmed by a negligent defendant by assessing their physical proximity to the victim, their relationship to the victim, and the extent that they contemporaneously observed

or experienced the accident. *Dillon*, 441 P.2d at 920 (describing the spatial, relational, and temporal proximity factors).

Applying these factors, the *Corso* Court held that, even though the parents had not witnessed the accident, because of their familial relationship with their daughter, their physical proximity to the accident, and their contemporaneous perception of the accident, their emotional distress was foreseeable. Notably, the Court explained that it had not adopted the *Dillon* factors earlier out of concern for “the threat of remote and unexpected liability.” *Corso*, 119 N.H. at 656. The *Corso* Court chose to adopt these factors, finding that they would “not lead to unlimited liability,” if applied narrowly. *Id.* at 656-659.

## Nutter and the Medical Malpractice Context

Not long after *Corso*, the Court in *Nutter v. Frisbie Memorial Hospital*, 124 N.H. 791 (1984), applied these factors to deny recovery in a medical malpractice action. The *Nutter* plaintiffs were parents of a baby girl who was diagnosed with pneumonia by her pe-

diatrician. Just days later, while being cared for a babysitter, the baby became acutely ill and was transported to the hospital, where she died. Upon arriving at the hospital, the parents were told of her death and taken to see her body. They did not learn of the defendant’s alleged negligence and its role in causing their daughter’s death until later. The trial court certified to the Supreme Court the question of whether the parents could recover damages for their emotional distress resulting from the defendants’ alleged medical malpractice, even though they were not present when their daughter became acutely ill or when she died.

The Supreme Court answered the certified question in the negative, concluding that the parents were not “close enough to experience the accident firsthand.” *Nutter*, 124 N.H. at 795-96. Specifically, the Court found that hearing of their daughter’s death, seeing her body, and later learning about the gravity of the alleged malpractice, did not make their emotional distress claim foreseeable. *See id.* at 795-96 (denying recovery “if the plaintiff sees the accident victim at a later time, or if the plaintiff is later told of the seriousness of the accident”).

Despite the tragic circumstances and reasonable response to the loss, the Court found that “pain at the death, illness, or injury of a loved one is an emotional cost borne by everyone living in society. The law intervenes only when the plaintiff bears an unusual or aggravated burden.” *Id.* at 795. For

NIED continued on page 38

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## ■ PROTECTIONS *from page 36*

cility for medical care and pays for the period of absence. If the temporary absence is longer than ten days or the facility does not receive payment, the resident has the right to return to the next available bed. The temporary absence becomes an official transfer/discharge if the facility refuses to allow the resident to return and the facility is responsible for starting the formal transfer/discharge process.

A transfer/discharge is lawful only in limited circumstances: when required for the resident's welfare or that of other residents, if the facility ceases to operate or for nonpayment. The basis for the transfer/discharge must be documented in the resident's record. If the proposed transfer/discharge is for medical reasons, or the wel-

fare of the resident or other residents, the record must include documentation from a physician or an advanced registered nurse practitioner. Discharge planning, including identifying the location that has agreed to accept the resident, must be done prior to the transfer/discharge.

Facilities are also required to comply with comprehensive advance written notice requirements. The written notice provided prior to a proposed transfer/discharge must include the basis for the transfer/discharge, the effective date, the location to which the resident will be transferred or discharged, hearing rights, and contact information for the State Long-Term Care Ombudsman and the Disabilities Rights Center-NH. The resident must receive the notice at least 30 days prior to the proposed transfer/discharge, with some exceptions that allow for a ten-day notice period. Delivery

of the notice must be documented in the resident's record and copies of the notice must be sent to the State Long-Term Care Ombudsman and the Disabilities Rights Center.

In addition, long-term care facilities are all required to provide prospective residents with written information that includes a description of the circumstances in which a transfer/discharge may occur, situations in which the client's needs would exceed what the facility could provide, and the responsibility of the facility in transitioning the individual to another location.

Residents of certified nursing facilities have the right to an administrative appeal with the Department of Health and Human Services Administrative Appeals Unit, and the resident may not be transferred or discharged prior to the hearing if an appeal is filed within 20 days of the resident's receipt

of the notice. Residents in other long-term care settings have the right to appeal the transfer/discharge to the probate or superior court and the court filing automatically stays the transfer/discharge.

Although the law provides significant resident protections, attorney representation ensures these resident rights are more fully protected. Advocates with New Hampshire Legal Assistance are well versed in transfer/discharge law; practitioners interested in handling cases are welcome to contact Cheryl Steinberg, the Director of the NHLA Justice in Aging Program at [csteinberg@nhla.org](mailto:csteinberg@nhla.org). ♦

*Judith Jones is the former director of NH-LA's Senior Citizens Law Project, now known as Justice in Aging Project. Cheryl Steinberg is the current director of NHLA's Justice in Aging Project.*

## ■ SOLUTIONS *from page 35*

earning a paycheck as LNAs in hospitals.

Additionally, the Endowment for Health has supported the founding of HealthForce NH. This initiative will promote solutions to healthcare workforce challenges by engaging, collaborating with, and soliciting input from partners, employers, higher education, policymakers, funders, the public, groups representing historically under-served populations, and other stakeholders.

It is the hope that initiatives such as HealthForce NH and practicum-based educational programs will help rebuild the healthcare workforce, across the care continuum to ensure that Granite Staters can access timely care in the right place at the right time.

### 2023 Legislative Efforts to Address Barriers to Discharge

The 2023 New Hampshire Legislature made historic investments in the state's healthcare ecosystem. After working together, provider groups identified what each respective group would need in a Medicaid rate increase to cover the cost of care and retain their workforce. The result of that collaborative work was more than \$134 million in targeted rate increases for community providers, including long term care and assisted living facilities, home care services, care management, private duty nursing, and behavioral health providers.

Hospitals made an affirmative decision to not seek a rate increase, acknowledging investments made in community providers would help patients receive the appropriate level of care when they need to be discharged.

### 2024 Legislative Efforts to Address Barriers to Discharge

As the 2024 New Hampshire legislative session kicks off, healthcare advocates are rolling up their sleeves to continue to work on this issue. Majority Leader, Senator Sharon Carson, is leading the charge with SB 185. Originally introduced by Senator Sue Prentiss, this bill was intended to provide resources to patients who are clinically ready to be discharged from the hospital but who need additional support in order to live safely back in the community.

Senator Carson will propose establishing a study committee to identify policy levers to ensure patients have access to community level of care when clinically appropriate.

It is the hope that by bringing stakeholders such as New Hampshire Depart-

ment of Health and Human Services, health care providers, Office of Public Guardian, the Disability Rights Center, and other patient-focused organizations to the table, together we can identify and forge efficient pathways to leverage support for some of New Hampshire's most vulnerable citizens. ♦

*Courtney Tanner, JD, MSW, is the Senior Director of Government Relations at Dartmouth Health. Brooke Belanger, JD, MAT, is the vice president of Financial Policy and Compliance at the New Hampshire Hospital Association. Caroline Lavoie, MS, is the Senior Director of Health Information and Analytics at the New Hampshire Hospital Association & Foundation for Healthy Communities.*

## ■ NIED *from page 37*

the law to intervene in these circumstances, would "impose more liability than any defendant could reasonably foresee, and more than any court has yet recognized." *Id.*

Therefore, the *Nutter* Court found that expanding *Corso* would "create a potential cause of action in every parent who learned, by any reasonable means, of his or her child's negligently inflicted death or injury, and as a result suffered emotional injury manifested by physical symptoms." *Id.*

Since *Nutter*, the Supreme Court continued to endorse the *Corso* test, making clear that, "the line drawn in *Corso* unqualifiedly

requires a contemporaneous sensory perception of the *accident*, and not . . . a perception of the *injury* sustained." *Wilder v. City of Keene*, 131 N.H. 599, 603 (1989) (emphasis in original).

This line has been appropriately relied on by numerous trial courts that dismissed negligent infliction of emotional distress (NIED) claims in medical malpractice cases because the plaintiff family member did not contemporaneously perceive the defendant's negligent act or failure to act and immediately observe its impact on their loved one. *See, e.g., Brauel v. White*, 1997WL33446690 (N.H. Super.) (Nadeau, J.); *Harvey v. Haan*, 2004 WL5307223, (N.H. Super.) (McGuire, J.); *Bernard v. Cendron et al.*, 2003WL26562923, (N.H. Super.) (Vaughan, J.).

### The Court's Analysis in *Chartier*: Abandoning Proximity

The 2023 *Chartier* decision fundamentally alters the three-factor foreseeability test established by *Corso* and makes recovery for a NIED far more likely in medical malpractice cases. In *Chartier*, the plaintiff's wife had knee surgery. In two post-operative physical therapy appointments and at a follow-up visit with her surgeon, the wife complained of calf soreness, a symptom of deep vein thrombosis (DVT). She was told calf soreness was a normal postoperative complaint and no testing was performed to rule out a DVT.

Twelve days after the surgery, while being driven by her husband, she had difficulty breathing and lost consciousness twice. Her husband attempted to drive her to an urgent care, which was closed, before calling an ambulance. He followed the ambulance to the

hospital, where he observed unsuccessful attempts to revive her. He learned later that her death was attributed to a pulmonary thromboembolism.

The trial court dismissed the plaintiff's emotional distress claim, holding "the time between the negligent act and [his] injury is simply too attenuated to recover for [NIED]." *Chartier*, 175 N.H. at 606.

The Supreme Court vacated this ruling. In expanding the availability of bystander recovery claims, the majority opinion focused on the term "accident" and its relation with the alleged "negligent conduct." The Court held that "accident" in this context "refers to a sudden, unexpected, and shocking event involving serious physical injury to a third party." *Chartier*, 175 N.H. at 609.

While the majority left proximity out of their analysis, Justice Bassett's dissent relied upon it. Finding proximity underlies *Corso*'s approach, Justice Bassett explained that a court must look at the factual context of an emotional distress claim to determine if there was a "relatively close connection in both time and geography between the negligent act and the resulting [emotional] injury." *Chartier*, 175 N.H. at 611 (Bassett, J., dissenting) (quotation omitted). However, if "the plaintiffs did not perceive the act, only the resulting injury to the loved one," the claim is too attenuated and cannot be foreseeable to the defendant, and thus, is not compensable. *Id.* at 613.

### The Potential Lasting Impact of *Chartier* on Bystander Recovery in Malpractice Contexts

As a result of the majority's expansion

of emotional distress claims, Justice Bassett closed his dissent with this prescient warning:

"The new paradigm will not only affect the medical profession, but any business, trade, or profession in which the consequences of negligence – the harm to a loved one – could cause emotional injury to a family member days, weeks, months, or years after the negligent conduct. As a result of the court's opinion in this case, and its failure to vigilantly police the boundaries of *Corso*, manufacturers, homebuilders, tradespeople, architects, engineers, lawyers, medical providers, and other professionals will have vastly increased exposure to liability for bystander claims for negligent infliction of emotional distress." *Id.* at 616 (Bassett, J., dissenting) (citations and quotations omitted). ♦

*Jonathan Lax is a shareholder/director at Gallagher, Callahan & Gartrell, PC. He is an experienced civil litigator and healthcare lawyer, who specializes in defending professional negligence claims against medical providers and hospitals and representing medical professionals in investigations by state licensing agencies.*

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December 2023

## Administrative Law

***Appeal of New Hampshire Department of Environmental Services (New Hampshire Waste Management Council), No. 2022-0690***

***Appeal of North Country Environmental Services, Inc. (New Hampshire Waste Management Council), No. 2022-0691***  
**December 28, 2023**  
**Reversed**

- Whether the New Hampshire Waste Management Council erred in concluding that the Conservation Law Foundation (CLF) had standing to challenge a Department of Environmental Services permitting decision where only two of CLF's members allegedly would be harmed by the decision.
- Whether the New Hampshire Waste Management Council erred in interpreting RSA 149-M:11, V(d) to require that a "capacity need" for a proposed waste management facility exists only if a shortfall exists during the entire operating life of the facility.

In March 2020, North Country Environmental Services, Inc. (NCES) applied to the New Hampshire Department of Environmental Services (DES) for a permit to expand its landfill in Bethlehem. NCES proposed operating the project, called Stage VI, to extend the facility's operating period from 2021 to 2026. DES approved the application and issued a permit to NCES. In so doing, DES determined that in 2026 there is a projected shortfall in existing permitted disposal capacity to accommodate the total quantity of New Hampshire waste projected to be generated statewide, and Stage VI would thus satisfy a need for disposal capacity given that it would operate through 2026.

The Conservation Law Foundation (CLF) appealed DES's decision to the New Hampshire Waste Management Council (Council), seeking to have the permit issued to NCES deemed unlawful and unreasonable. Following a two-day merits hearing, the Council issued an order signed by the presiding Hearing Officer that granted CLF's appeal in part and remanded the decision to grant a permit, ruling that DES "acted unlawfully in finding the NCES Facility provided a substantial public benefit" pursuant to RSA 149-M:11, III(a) and V.

In short, the Hearing Officer concluded that DES erred in granting NCES a permit because Stage VI was proposed to operate for six years, but the first five years of the facility's operation would occur during a period without any shortfall.

After their motions for reconsideration were denied, NCES and DES appealed to the Supreme Court.

The Court first considered and rejected NCES's argument that CLF lacked standing to appeal DES's permitting decision to the Council. Even though only two CLF members would allegedly be harmed, the statute and regulations providing for standing to appeal DES's permitting decisions contain no requirement that all of an organization's members, or any specified quantity or proportion of them, must suffer harm. Nor do the regulations for three other environmental councils within DES. As such, the Court concluded that the Hearing Officer did not err in ruling that CLF established standing based on harm to two of its members. The Court also concluded that the Hearing Officer did not err in denying NCES's request for an evidentiary hearing on this issue, based on the sworn statements from CLF's two affiants describing the adverse effects that they experience as a result of living close to the Bethlehem landfill.

Next, the Court engaged in a lengthy analysis of RSA 149-M, which governs the management of solid waste, and particularly the meaning of "capacity need" under RSA 149-M:11, V(d). Under RSA 149-M, DES may not issue a permit unless it determines that the proposed solid waste facility provides "a substantial public benefit." In making that determination, DES must consider, *inter alia*, "[t]he short- and long-term need for a solid waste facility of the proposed type, size, and location to provide capacity to accommodate solid waste generated within the borders of New Hampshire, which capacity need shall be identified as provided in paragraph V." RSA 149-M:11, III(a). In turn, RSA 149-M:11, V provides a four-part inquiry by which DES shall "determine the state's solid waste capacity need," the fourth of which requires that DES to "[i]dentify any shortfall in the capacity of existing facilities to accommodate the type of solid waste to be received at the proposed facility for 20 years from the date a determination is made under this section." RSA 149-M:11, V(d).

The Hearing Officer had concluded that a "capacity need" for a proposed facility exists only if a shortfall exists during the *entire* operating life of the facility. Given that NCES anticipated operating Stage VI from 2021 to 2026 without a shortfall occurring until 2026, the Hearing Officer thus ruled as a matter of law that no capacity need exists. The Court disagreed.

While NCES and DES put forth different interpretations of RSA 149-M:11, V(d) on appeal, the Court ultimately agreed with DES's argument that the statute provides the agency with discretion when determining whether "a capacity

## At a Glance Contributor



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need for the proposed type of facility" exists. In so holding, the Court explained that the existence of a "capacity need" for a proposed facility is a discretionary determination that DES must make if it projects that a shortfall will occur within the twenty-year statutory planning period. According to the Court, this interpretation comports with the purpose of the statute, as it best enables DES to meet its obligation to "provide for the solid waste management needs of the state and its citizens" and "ensure that adequate capacity exists within the state to accommodate the solid waste generated" within New Hampshire. *See* RSA 149-M:11, I(a), (b). Accordingly, the Court concluded that DES acted lawfully in issuing the permit, and it reversed the Council.

The Court's decision here is significant in two regards. On one hand, by rejecting DES's and NCES's arguments about CLF's standing based on a small number of its members, the decision potentially provides organizational plaintiffs with greater access to challenge DES's administrative actions where there is sufficient evidence of individual harm. On the other, the Court's decision emphasizes that DES has flexibility and discretion to determine the existence of a capacity need and, therefore, how to address a projected shortfall under RSA 149-M:11, V(d), giving wide latitude to DES in its permitting decisions.

*John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (K. Allen Brooks, senior assistant attorney general, and Joshua C. Harrison, assistant attorney general, on the brief, and Mr. Brooks orally), for the New Hampshire Department of Environmental Services. Cleveland, Waters and Bass, PA, of Concord (Bryan K. Gould, Cooley A. Arroyo, and Morgan G. Tanafon on the brief, and Mr. Gould orally), for North Country Environmental Services, Inc. Conserva-*

*tion Law Foundation, of Concord (Heidi H. Trimarco and Thomas F. Irwin on the brief, and Ms. Trimarco orally), for Conservation Law Foundation.*

## Criminal Law

***The State of New Hampshire v. Nestor Roman, No. 2022-0557***  
**December 28, 2023**  
**Affirmed**

- In a case charging the defendant with five counts of sexual assault, whether the trial court erred in ruling that the defense had opened the door for the State to introduce the testimony of a nurse who performed a Child Advocacy and Protection Program (CAPP) examination of the victim.

On June 25, 2019, the victim was playing video games in her bedroom when the defendant, her grandfather, entered the room and began touching her breast and inner thigh over her clothing. The victim and her mother, the defendant's daughter, went to the police station to file a report, at which time the defendant also arrived to turn himself in. The victim subsequently disclosed another incident of abuse, and she later disclosed that the abuse had actually begun much earlier, when she was in elementary school. As a result, a nurse performed a Child Advocacy and Protection Program (CAPP) examination of the victim.

In June 2022, 12 days before the defendant's rescheduled trial, the State filed an amended witness list that for the first time included the nurse who had performed the victim's CAPP examination. The defendant moved to exclude the nurse's testimony because her addition to the witness list was untimely, which the trial court (Delker, J.) granted.

During trial, the State called the lead detective assigned to the victim's case, who testified that he collected medical records during the investigation, including records from the victim's CAPP examination per normal practice, although he did not discuss the results or findings of that CAPP examination. On cross-examination, however, defense counsel questioned the detective about the nurse's findings from the CAPP examination. This caused the State to argue that the defense had opened the door for the nurse to explain her findings. The trial court

AT A GLANCE continued on page 40

## NH Supreme Court Orders

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

Note: The full text of the opinion below will be available on the Bankruptcy Court's website at [nhb.uscourts.gov](http://nhb.uscourts.gov).

*In re Prospect-Woodward Home*, 2023 BNH 007, issued December 26, 2023 (Harwood, C.J.) (unpublished) (amending *In re Prospect-Woodward Home*, 2023 BNH 001, upon remand from the District Court, Civ. No. 23-cv-0326-LM (D.N.H. Oct. 16, 2023), to clarify the Court's statements concerning RSA 447:5-8 and, pursuant to the court's separate order of even date, reserving for another day the issue of whether RSA 447:8, rather than RSA 447:12, provides the rule of decision regarding how the sale proceeds reserve is to be distributed to the mechanics' lienholders).

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ruled that by introducing the detective's testimony that there had been a CAPP examination, the State did not open the door to any otherwise inadmissible evidence, but that the defense had introduced hearsay by questioning the detective about the nurse's specific findings and, therefore, the defense had opened the door to the nurse's testimony regarding the likelihood of specific types of injuries observed when a child is sexually abused.

Defense counsel was allowed to depose the nurse the following morning before trial resumed, and the State then called the nurse to testify as an expert in pediatric nursing, specifically in the area of child abuse and maltreatment. The jury eventually convicted the defendant on one count of aggravated felonious sexual assault (AFSA) for engaging in a pattern of sexual assault, two counts of attempted AFSA, and two counts of misdemeanor sexual assault. The defendant appealed to the Supreme Court.

The Supreme Court affirmed the trial court's evidentiary rulings. Specifically, the Court explained that the opening the door doctrine comprises two doctrines governing the admissibility of evidence: (1) The first, which the Court has described as the doctrine of "curative admissibility," arises when inadmissible prejudicial evidence has been erroneously admitted by one party, and the opposing party seeks to introduce other evidence to counter the prejudice. (2) The second, which the Court has described as the doctrine of "specific contradiction," applies more broadly to situations in which a party introduces admissible evidence that creates a misleading advantage for that party, and the opposing party is then permitted to introduce previously suppressed or otherwise inadmissible evidence to counter the misleading advantage.

In either scenario, the fact that the "door has been opened" does not permit all evidence to "pass through" because the doctrine is intended to prevent prejudice and is not to be subverted into a vehicle for the introduction of prejudice.

In this case, the Court concluded that the trial court did not err in ruling that the State *had not* opened the door. With respect to the defendant's argument under the specific contradiction doctrine, the Court concluded that the State's introduction of the fact that a CAPP examination had occurred and that medical records were generated as a result of that examination, as described by the detective, without more detail, did not give rise

to a "misleading advantage" that required rebuttal. In addition, the Court rejected the defendant's argument relating to the curative admissibility doctrine, given that the trial court's pre-trial order only prohibited the State from calling the nurse as a fact witness to testify about statements made by the victim during the examination; it did not prohibit the parties from introducing any evidence that medical records were generated during the CAPP examination or that any such an examination had occurred.

On the other side of the coin, the Court also concluded that the trial court did not err in ruling that the defendant *had* opened the door. In particular, defense counsel's cross-examination of the detective specifically inquired about the significance of the nurse's observations documented in the medical records, even though the nurse had been precluded from testifying by the court's pre-trial order. As such, under the curative admissibility doctrine, the nurse's testimony was essential to rebut the prejudice caused by the defense's cross-examination. Moreover, the trial court had explicitly limited the nurse's testimony only to the extent necessary to rebut the unfair advantage gained. Accordingly, the defendant failed to carry his burden of establishing either that the trial court's ruling was an unsustainable exercise of its discretion or that it was clearly untenable or unreasonable to the prejudice of his case.

While practitioners may colloquially refer to the concept of "opening the door," the Court's decision makes clear that this concept should not be generalized too broadly at trial. As the Court explained, the two separate opening the door doctrines are invoked by different types of evidence: curative admissibility is triggered by the erroneous prior admission of inadmissible evidence, while specific contradiction is triggered by the introduction of misleading admissible evidence. Rather than generically asserting that opposing counsel has simply "opened the door," practitioners would be well-advised to specify which of the two doctrines applies and walk through the analysis step-by-step in each instance to ensure the trial court has a fulsome record to support its evidentiary rulings on appeal.

*John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Robert L. Baldridge, attorney, on the brief and orally), for the State. Wadleigh, Starr & Peters, PLLC, of Manchester (Donna J. Brown on the brief and orally), for the defendant.*

## NH Supreme Court Orders

### R-2023-0008 In re December 13, 2023 Report of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. **At any time before 11:00 am on December 21, 2023, members of the Bench, Bar, Legislature, Executive Branch, or public may file with the clerk of the Supreme Court comments on the proposed rule amendments set forth in Appendix B.** Comments on any of the other proposed rule amendments (i.e., those set forth in Appendices A, C, D, E, and F) may be filed on or before February 12, 2024.

In accordance with Rules 3 and 4 of the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing, comments should be submitted through the Supreme Court's electronic filing (e-filing) system into case no. **R-2023-0008**, using "Rules Docket Entries" as the Filing Type and "Comment on Rule" as the Filing Subtype. The address of the Supreme Court's e-filing system is: [ctefile.nhecourt.us](https://ctefile.nhecourt.us).

The e-filing system is also accessible through the Electronic Services page of the New Hampshire judicial branch website: [courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non](https://courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non). Prior to registering with the e-filing system, attorneys should review the Quick Guide – Registering as an Attorney E-Filer; nonlawyers should review the Quick Guide – Registering as a Nonlawyer E-Filer. The Quick Guides are available on the Electronic Services page.

Persons who electronically submit a comment into case no. **R-2023-0008** will be able to view all other comments through the "Case Search" functionality of the e-filing system. Registered e-filers who wish to use the e-filing system to view the previously submitted comments of others before submitting a comment of their own should call the clerk of the Supreme Court (603-271-2646) and ask to be added to the case's "E-File User Access" list, which will then provide them with viewing access through the "Case Search" functionality.

Persons who are unable to submit their comments electronically may mail or deliver them to the clerk at the New Hampshire Supreme Court, 1 Charles Doe Drive, Concord, New Hampshire 03301. All comments, whether submitted electronically or in paper, will be available for public viewing at the computer kiosks located in the lobby outside the clerk's office of the Supreme Court building. They will also be posted for public viewing on the following webpage: [courts.nh.gov/resources/committees/advisory-committee-rules/supreme-court-requests-public-comment](https://courts.nh.gov/resources/committees/advisory-committee-rules/supreme-court-requests-public-comment).

The language of the proposed rules changes and background regarding the proposals may be found in the December 13, 2023, Advisory Committee on Rules Report, which is available at: [courts.nh.gov/resources/committees/advisory-committee-rules/reports-court](https://courts.nh.gov/resources/committees/advisory-committee-rules/reports-court).

Copies of the December 13, 2023, Advisory Committee on Rules Report are also available upon request submitted to the clerk of the Supreme Court. The current rules of the New Hampshire state courts are available at: [courts.nh.gov/re-](https://courts.nh.gov/re-)

### sources/court-rules.

The Supreme Court is requesting comments on recommendations to amend the following rules:

#### I. Supreme Court Rule 41

This proposed amendment, from committee docket # 2022-014, would establish criteria for petitions seeking Supreme Court approval of an organization under RSA 292:1-a (voluntary corporations formed for the purpose of providing professional legal services to the poor). A subcommittee submitted a report to the committee; the subcommittee's report is available at: [courts.nh.gov/resources/committees/advisory-committee-rules/committee-materials-docket-number](https://courts.nh.gov/resources/committees/advisory-committee-rules/committee-materials-docket-number).

The language of the proposed amendment as recommended by the committee is set forth in Appendix A.

#### II. New Hampshire Rules of Criminal Procedure 1 – 19

This grouped set of proposals, from committee docket # 2023-12, would amend the New Hampshire Rules of Criminal Procedure to reflect the repeal of "felonies first" and the return of felony complaints to circuit court in the first instance on and after January 1, 2024, and make other changes.

The language of the proposed amendments as recommended by the committee is set forth in Appendix B.

#### III. New Hampshire Rule of Criminal Procedure 11(c)

This proposed amendment, from committee docket # 2022-007, would permit conditional guilty pleas and establish procedures related to conditional guilty pleas.

The language of the proposed amendment as recommended by the committee is set forth in Appendix C.

#### IV. New Hampshire Rule of Criminal Procedure 15(b)(3)

This proposed amendment, from committee docket # 2023-009, would require that motions *in limine* in superior court be filed ten calendar days, rather than five calendar days, before the final pretrial conference.

The language of the proposed amendment as recommended by the committee is set forth in Appendix D.

#### V. Circuit Court – Family Division Rule 3.3

This proposed amendment, from committee docket # 2023-013, would ensure that discovery is provided to counsel for the juvenile upon receipt of an appearance and that the voluntary needs assessment is included as mandatory discovery for juveniles in delinquency proceedings.

The language of the proposed amendment as recommended by the committee is set forth in Appendix E.

#### VI. Circuit Court – Family Division Rule 3.13

This proposed amendment, from committee docket # 2023-013, would add a new rule governing the titling of pleadings in delinquency matters.

The language of the proposed amendment as recommended by the committee is set forth in Appendix F.

Date: December 14, 2023

ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

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◆

Pursuant to Supreme Court Rule 38-A(2), the Supreme Court designates Attorney Erin Creegan, General Counsel for the New Hampshire Judicial Branch, to serve as the Secretary to the Advisory Committee on Judicial Ethics, replacing Attorney Francis C. Fredericks.

Issued: December 15, 2023  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

◆

Pursuant to RSA 491:7-b (eff. July 1, 2023), the Supreme Court hereby establishes in the Superior Court a Land Use Review Docket. The Land Use Review Docket shall have jurisdiction to hear appeals from decisions of local land use boards, which shall include appeals from municipal planning boards, zoning boards, historic district commissions, and conservation commissions. The Land Use Review Docket may include the decisions of other local land use boards in accordance with an Administrative Order issued by the Chief Justice of the Superior Court in consultation with the Chief Justice of the Supreme Court and the presiding Superior Court justice of the Land Use Review Docket. The Land Use Review Docket shall not include appeals of decisions by State agencies.

The presiding justice of the Land Use Review Docket may be assigned to any other matter within the jurisdiction of the Superior Court or sit by designation on any other courts in the same manner as any other associate justice of the Superior Court as determined to be necessary by the Chief Justices of the Superior and Supreme Courts.

The Chief Justice of the Superior Court, in consultation with the Chief Justice of the Supreme Court, may issue such Administrative Orders as may be necessary to carry out the purposes of RSA 491:7-b.

Issued: December 18, 2023  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

◆

Pursuant to Part II, Article 73-a of the New Hampshire Constitution and Supreme Court Rule 51, the Supreme Court of New Hampshire adopts the following amendments to court rules.

- I. Supreme Court Rule 50(2)(C)(i)**  
*(This technical amendment corrects a typographical error in Rule 50(2)(C)(i).)*
1. Amend Rule 50(2)(C)(i) as set forth in Appendix A.
- II. New Hampshire Rules of Criminal Procedure**  
*(These amendments reflect the repeal of “felonies first” and the return of felony complaints to circuit court in the first instance on and after January 1, 2024, and make other changes.)*
1. Amend the Preamble as set forth in Appendix B.
2. Amend Rule 2 as set forth in Appendix C.
3. Amend Rule 3 as set forth in Appendix D.
4. Amend Rule 4 as set forth in Appendix E.
5. Amend Rule 5 as set forth in Appendix F.
6. Amend Rule 6 as set forth in Appendix G.
7. Amend Rule 7 as set forth in Appendix H.
8. Amend Rule 8 as set forth in Appendix I.
9. Amend Rule 9 as set forth in Appendix J.
10. Amend Rule 10 as set forth in Appendix K.
11. Amend Rule 12 as set forth in Appendix L.
12. Amend Rule 15 as set forth in Appendix M.
13. Amend Rule 17 as set forth in Appendix N.
14. Amend Rule 19 as set forth in Appendix O.

**Effective Date**

The amendments to Supreme Court Rule 50(2)(C)(i) and to the New Hampshire Rules of Criminal Procedure shall take effect on January 1, 2024.

Date: December 22, 2023  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

◆

In accordance with Supreme Court Rule 37(3)(a), the Supreme Court appoints Attorney Richard C. Gagliuso and Attorney Robin D. Melone to the Professional Conduct Committee for three-year terms commencing January 1, 2024, and expiring December 31, 2026.

The Supreme Court also appoints Peter J. Kiriakoutsos to the Professional Conduct Committee for a term commencing

ing January 1, 2024, and expiring March 31, 2025. He is appointed to serve the remainder of Sarah Clauss’s three-year term. Upon the commencement of his term on the Professional Conduct Committee, Peter J. Kiriakoutsos shall cease to be a member of the Hearings Committee. See Rule 37(3)(b).

Issued: December 22, 2023  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

◆

Pursuant to Supreme Court Rule 37(4), the Supreme Court reappoints Attorney Brooksley C. Belanger, and appoints Attorney Kathleen Broderick and Attorney Mona Movafaghi, to the Hearings Committee of the Attorney Discipline System for three-year terms commencing January 1, 2024, and expiring December 31, 2026.

The Supreme Court designates Attorney Brooksley C. Belanger to serve as chair of the Hearings Committee, and designates Attorney Stephanie K. Annunziata to serve as vice chair of the Hearings Committee, commencing January 1, 2024.

Issued: December 22, 2023  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

◆

In accordance with Supreme Court Rule 37(5)(a), the Supreme Court reappoints Kelly G. Lewis and Stephen

Bartlett, and appoints Attorney Margaret R. Kerouac, to the Complaint Screening Committee for three-year terms commencing January 1, 2024, and expiring December 31, 2026.

The Supreme Court designates Kelly G. Lewis to continue to serve as vice chair of the Complaint Screening Committee.

Date: December 22, 2023  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire

◆

The Supreme Court of New Hampshire, pursuant to RSA 490:4, directs that proceedings in every State court in New Hampshire may be suspended on Friday, February 9, 2024, to facilitate continuing judicial and legal education and to accommodate any judges’ meetings being held in conjunction with the midyear meeting of the New Hampshire Bar Association. A judge or other judicial officer may decide not to suspend proceedings if the judge or judicial officer and the lawyers on a case do not plan to attend the midyear meeting, or if the judge or judicial officer, in his or her discretion, decides that the efficient administration of the court or ensuring justice in a particular case compels that a case be scheduled for a hearing or trial, or that a hearing or trial continue to be litigated, on that day.

Issued: January 4, 2024  
ATTEST: Timothy A. Gudas, Clerk of Court  
Supreme Court of New Hampshire



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December 2023

\* Published

Class Certification

12/29/23 *Brown, et al. v. Saint-Gobain Performance Plastics Corporation, et al.*  
Case No. 16-cv-242-JL, Opinion No. 2023 DNH 156

The plaintiffs in this case moved to certify a class of property owners whose household water sources were purportedly contaminated by the toxic emissions of a manufacturing facility in Merrimack, New Hampshire. The named plaintiffs asserted claims for trespass, nuisance, negligence, and negligent failure to warn against two defendants: Saint-Gobain Performance Plastics Corporation, the owner and operator of the facility since 2000, and Gwenael Busnel, the facility's general manager during the relevant time period.

The court certified the class as to liability issues under the trespass, negligence, and negligent failure to warn claims, upon concluding that the defendants' liability under these causes of action is predicated on predominantly common issues that can be resolved jointly across the class, including the defendants' actions in emitting toxic chemicals and their subsequent efforts to investigate, mitigate, and warn the potentially affected population; the hazardous nature of the chemicals emitted; and the geographical scope and foreseeability of groundwater contamination.

The court denied certification as to the

nuisance claim, however, because it necessarily turns on individual assessments of the harm experienced by each putative class member, making class treatment of these issues unmanageable.

The court further concluded that damages issues – particularly their allocation – cannot be determined on a class-wide basis, since they vary based on factors including the extent of contamination attributable to the Saint-Gobain facility in the ground-water sources for individual property owners, each individual's duration of residence at the relevant property, the effects and timing of mitigation efforts, and specific inconveniences and discomfort experienced by each putative class member. The court accordingly decided to bifurcate the trial moving forward, with the first phase focused on the defendants' liability, and the second phase focused on damages. 55 pages. Judge Joseph N. Laplante.

Environmental Law

12/6/23 *Sierra Club, Inc. v. Granite Shore Power, LLC, et al.*  
Case No. 19-cv-216-JL, Opinion No. 2023 DNH 149\*

This case required the court to assess a power plant operator's compliance with a National Pollutant Discharge Elimination System permit issued by the Environmental Protection Agency in 1992. The subject power plant, Merrimack Station, is located on the western bank of the Merrimack River in Bow, New Hampshire. When in operation, the Station draws water from

the Merrimack River, which it uses to cool and condense the steam it produces while generating electricity. The Station then discharges the heated water through a cooling canal back into the river. The plaintiffs in this case, Sierra Club, Inc. and Conservation Law Foundation, Inc., alleged past and ongoing violations of five provisions in the operative NPDES Permit. The court conducted a bench trial on the plaintiffs' five remaining claims, which spanned roughly fourteen days. Upon weighing the evidence, including expert witness testimony and relevant findings and rulings made by the EPA, the court concluded that the plaintiffs did not sustain their burden of proving violations by a preponderance of the evidence. The court accordingly ruled in the defendants' favor on all five claims. 87 pages. Judge Joseph N. Laplante.

Expert Testimony

12/29/23 *Brown, et al. v. Saint-Gobain Performance Plastics Corporation, et al.*  
Case No. 16-cv-242-JL, Opinion No. 2023 DNH 155

The plaintiffs in this environmental case allege that their household water sources were contaminated by the toxic emissions of a manufacturing facility in Merrimack, New Hampshire. The parties submitted expert reports to support their positions on class certification and the merits. Alongside their briefs on class certification, the parties also moved to exclude the opinions of various experts under Federal Rule of Evidence 702. Upon reviewing the parties' submissions and hearing oral argument and live testimony, the court largely denied these motions, with a few limited exceptions. Certain, specific opinions of some of the experts were excluded insofar as they exceeded the scope of their areas of expertise or constituted legal conclusions. The court also granted the defendants' Rule 702 motion as to one of the plaintiffs' experts because the plaintiffs did not object to this portion of the motion. 51 pages. Judge Joseph N. Laplante.

Trusts & Estates; Statutes of Limitations

\*12/4/23 *Gray v. Gray*

Case No. 22-cv-560-LM, Opinion No. 2023 DNH 146 P

The plaintiff sued his brother in his brother's capacity as trustee of a trust established by their father, bringing claims for breach of fiduciary duties. The defendant moved to dismiss on statute of limitations grounds. The court found that, even assuming the plaintiff's claims were brought outside the applicable limitations period set forth in RSA 564-B:10-1005, his claims were timely pursuant to the savings statute, RSA 508:10. Although a provision of RSA 564-B:10-1005 states that the statute of limitations may not be tolled absent court order or an agreement of the trustee and the beneficiaries, the court determined that RSA 508:10 did not operate to toll statutes of limitations, but rather provided a grace period to refile an action after the limitations period has run. 23 pages. Chief Judge Landya B. McCafferty.

Statutory Interpretation; New Hampshire Driver Privacy Act

\*12/19/23 *Pamela Smith v. Home Depot U.S.A., Inc.*  
Case No. 23-cv-294-LM, Opinion No. 2023 DNH 152 P

The plaintiff brought a putative class action against Home Depot alleging that Home Depot violated two provisions of the New Hampshire Driver Privacy Act (RSA 260:14, IX(a) and (b)) by transmitting information on Smith's driver's license to a third party without her consent. Home Depot moved to dismiss, arguing that the Driver Privacy Act did not prohibit its alleged conduct. The court agreed with Home Depot. With respect to RSA 260:14, IX(a), the court found that Smith's driver's license, kept in her own possession, was not a "department record" as that phrase was used in the statute. With respect to RSA 260:14, IX(b), the court found that Smith's driver's license did not constitute a "motor vehicle record" as that phrase was defined in the statute, and that Home Depot did not "offer" her license to a third-party in violation of RSA 260:14, IX(b). 15 pages. Chief Judge Landya B. McCafferty.



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Seeking Applicant for the New Hampshire Board of Bar Examiners

The New Hampshire Supreme Court seeks applications from qualified members of the New Hampshire Bar to fill one position on the Board of Bar Examiners. The board oversees the bar admission process pursuant to New Hampshire Supreme Court Rule 42(I). In addition to oversight responsibilities, the applicant will be involved in grading the New Hampshire Uniform Bar Examination.

The appointment is for a three-year term and is renewable. Applicants must be active members of the New Hampshire Bar with at least five years of legal practice experience. Applicants should have a well-developed understanding of the ethical issues presented by membership in the Bar and an interest in legal education and requirements for admission.

Committee members attend at least one board meeting per year and serve on one of three subcommittees of the board: testing, eligibility, and testing accommodations.

Applicants may obtain an application form by downloading it from the New Hampshire Supreme Court website, or by requesting it New Hampshire Supreme Court Office of Bar Admissions General Counsel Sherry M. Hieber at (603) 224-8806 or [shieber@nhoba.org](mailto:shieber@nhoba.org). Please direct any questions to Ms. Hieber and send a completed application and resume to her by email. Applications should be received no later than February 2. Thank you.



POSITIONS AVAILABLE

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

**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](mailto:careersatcbz@gmail.com).

**STAFF ATTORNEY:** New Hampshire Public Defender is seeking an experienced trial attorney. Applicants must have a commitment to indigent criminal defense and extensive practical experience. Applicants must be admitted to the New Hampshire Bar or be eligible for immediate admission by waiver. Interested attorneys should submit a resume, cover letter, and a law school transcript (unofficial acceptable) to our Recruiting Coordinator through the Employment section on our website, [www.nhpd.org](http://www.nhpd.org).

**ATTORNEY** – Long established Downtown Manchester law firm seeking to fill vacant attorney position for Family Law practitioner. Position offers competitive salary, benefits and a relaxed work environment. Preferred experience is 3+ years of family law practice. If interested, please submit your curriculum vitae to [NHAttorneyPosition@gmail.com](mailto:NHAttorneyPosition@gmail.com).

**PARALEGAL** – Busy Manchester law firm is accepting resumes for a family law paralegal. Candidates with family law experience preferred. Must be organized, detail-oriented, and able to work in a fast-paced environment. We offer a competitive salary and benefits package. Please send resume and salary requirements to [rebecca@cindyclarklaw.com](mailto:rebecca@cindyclarklaw.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](http://www.courts.nh.gov/careers/job-postings), look for job #23-105. Applications accepted until position filled.

BUSINESS OPPORTUNITY INVITED

**SOLO KEENE FIRM WITH OFFICE CONDOMINIUM FOR SALE** seeks merger/acquisition by larger firm interested in a Monadnock Region presence. Please reply to: [businessopportunity246@gmail.com](mailto:businessopportunity246@gmail.com).

REFERRALS

**LAWYER REFERRAL SERVICE – MODEST MEANS PROGRAM** – Narrow the justice gap and still earn fees. The NHBA Lawyer Referral Service Modest Means Program needs more attorneys. This vital reduced-fee program provides access to justice for people with limited income who don't qualify for pro bono programs but can't afford standard attorney fees. It is free to sign up, and there is no obligation to accept any referral. To learn more or sign up visit <https://www.nhbar.org/join-lawyer-referral-service> or contact LRS at (603) 715-3235 or email [lrsreferral@nhbar.org](mailto:lrsreferral@nhbar.org).



Real Estate Associate

Commercial real estate attorney with 5+ years' experience handling purchase and sales, leases, financings, zoning, titles, closings, and LLCs.

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.

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

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

Inquiries, please reach out to Paul Alfano at [palfano@alfanolaw.com](mailto:palfano@alfanolaw.com)

LAW FIRM ACCOUNTING/ OFFICE MANAGER

Ten attorney, Salem, NH law firm with a staff of six non-attorneys seeks an experienced Office Manager to manage the overall financial & administrative operations of the firm, including client billings, cash receipts, accounts payable, payroll & related reporting, cash flow analysis, bank reconciliations, trust accounting, financial & tax reporting and 401(k) administration. The Office Manager is also responsible for the overall management of the firm's physical facilities.

Please send cover letter, resume' & salary requirements to Soule, Leslie, Kidder, Sayward & Loughman, PLLC, 220 Main Street, Salem, NH 03079 or to [lperry@soulefir.com](mailto:lperry@soulefir.com).

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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 31, 2024 to [NHBA@orr-reno.com](mailto:NHBA@orr-reno.com)

For the full job description, visit [nhbar.org/executive-director/](http://nhbar.org/executive-director/)  
Applications will be kept confidential



## 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](mailto: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.

## 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](mailto:hr@dwmlaw.com). All inquiries are held in the strictest confidence. No phone calls, please.

# 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

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Concord, NH 03302-3550

Fax: (603) 223-9060

Via email (please send in Word format only)  
[resumes@orr-reno.com](mailto:resumes@orr-reno.com)



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## 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](mailto:lleonard@coopercargillchant.com).  
For further information, visit [www.coopercargillchant.com](http://www.coopercargillchant.com)



## Litigation Attorney

**\*\*Experienced Litigation Attorney Wanted at Monaghan Safar PLLC  
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Monaghan Safar PLLC, a dynamic and prestigious law firm in Burlington, is seeking a dedicated and experienced Litigation Attorney. With the advantage of a compensation package competitive with other top-tier law firms in Burlington, a benefits package equal to or surpassing those offered to Vermont government attorneys, and the potential for remote work, this role offers an unparalleled opportunity for legal professionals aiming to advance their career while enjoying a rewarding work-life balance.

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](mailto: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.



## 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](mailto:vhamilton@lawyersnh.com).



WELTS, WHITE & FONTAINE, P.C.  
ATTORNEYS AT LAW

## 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](mailto:MDesrosiers@casanh.org)

The full job description and qualification requirements can be found at [www.casanh.org/jobs](http://www.casanh.org/jobs)

For additional information about CASA of New Hampshire please see [www.casanh.org](http://www.casanh.org)



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## North Conway NEW HAMPSHIRE

### PARALEGAL (F/T)

**Cooper Cargill Chant, northern NH's  
largest law firm, serving clients in  
New Hampshire and Maine, is looking for an  
Estate Planning/Litigation Paralegal.**

#### IDEAL CANDIDATES WILL OFFER:

Strong attention to detail; excellent technical and interpersonal skills; sound judgment; ability to prioritize and balance several projects and practice areas simultaneously; solid written and verbal communication skills. Responsibilities will include drafting and preparing motions, pleadings, documents, and correspondence; maintaining case files, scheduling appointments, appearances, and hearings; preparing trial notebooks and assisting in trial settings; preparation and review of discovery packages, answers to interrogatories and production requests; and maintaining effective communication with clients.

Cooper Cargill Chant offers a comprehensive benefits package, excellent salary, and an opportunity to join a terrific, supportive team. The Firm will provide training.

Candidates should submit a resume with a cover letter to

**Office Manager, Bridgid Anderson, at [banderson@coopercargillchant.com](mailto:banderson@coopercargillchant.com).  
[www.coopercargillchant.com](http://www.coopercargillchant.com)**

## SEEKING DYNAMIC LITIGATION ASSOCIATE

PASTORI | KRANS  
ATTORNEYS AT LAW

Pastori | Krans, a growing litigation firm located in a beautifully restored historic Downtown Concord, NH building, walking distance to the N.H. State House, restaurants, and shops, is seeking to add a litigation associate to its dynamic and award-winning team.

Voted one of the "Best Companies to Work for" by Business NH Magazine for the last two years and a "Top Women-Led Business" for the last five years, Pastori | Krans is committed to investing in its team's professional growth and development, and provides excellent mentorship, training, and opportunities to work on sophisticated and challenging legal matters. This position requires NH bar admission.



Send resume to:  
[blandry@pastorikrans.com](mailto:blandry@pastorikrans.com)

All inquiries are  
held in strict confidence.



## PROSECUTOR: City of Manchester, NH

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 prosecutes misdemeanor domestic violence cases investigated and charged by the Manchester Police Department (MPD), handling cases from arraignment through final disposition.

### Responsibilities include:

Responsibilities include working under with a team of seven prosecutors, two of whom staff the Domestic Violence Unit. The City uses a fully-digital case management system, working in conjunction with MPD record management and body-worn camera technologies to meet the highest standards of excellence.

### Essential Physical Abilities

- Prosecutes criminal cases;
- Engages in trauma-informed interactions with victims of domestic violence, in collaboration with victim advocates;
- Collaborates with other City attorneys to evaluate and improve performance for future work;
- Attends meetings, conferences, workshops and training sessions to become and remain current on the principles, practices and new developments with respect to victimcentered, trauma-informed prosecution practices;
- Thorough knowledge of criminal law;
- Ability to communicate effectively with others, both orally and in writing;
- Ability to perform a wide variety of duties and responsibilities with accuracy and speed under the pressure of time-sensitive deadlines;
- Ability and willingness to quickly learn and put to use new skills and knowledge brought about by rapidly changing information and/or technology;
- Integrity, ingenuity and inventiveness in the performance of assigned tasks.

### Required Special Qualifications

- Graduation from an accredited college or university with a Juris Doctorate degree;
- Some prosecutorial experience;
- Admission to the New Hampshire Bar; and
- New Hampshire driver's license or access to transportation.

### To Apply Please Visit:

<https://www.manchester.nh.gov/Departments/HumanResources/Employment>

The City of Manchester is an Equal Opportunity Employer

## 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](mailto: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

## ASSISTANT COUNTY ATTORNEY

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

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

### JOB DESCRIPTION:

- Under the general direction of the County Attorney, the Assistant County Attorney will draft complaints and pleadings.
- Researching pertinent case law, decisions, and legislations.
- Present investigations and cases to the Grand Jury; conduct Bench trials, Jury trials and all required hearings related to the assigned caseload in the Superior and/or District Courts.
- Must be able to handle multiple tasks, meet deadlines, be organized, have communication

skills, and able to negotiate. Must be an effective team member.

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

### Benefits:

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

Please send cover letter, resume, and references to Deputy County Attorney Emily Garod at [egarod@co.strafford.nh.us](mailto:egarod@co.strafford.nh.us).



## Staff Attorney

The Office of Public Guardian (OPG) is a private, mission driven, non-profit corporation dedicated to providing guardianship and advocacy services to legally incapacitated adults, primarily due to developmental disabilities, mental illness, dementia or traumatic brain injury. The organization is unique and the work is both challenging as well as 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 supports OPG's mission of protecting the legal and human rights as well as the civil liberties of over 1100 Granite Staters by representing the organization and its clients throughout the state. OPG Staff Attorneys work alongside guardians, client resource specialists, and estate and trust managers in a collegial environment conveniently located in the South End of Concord. OPG Staff Attorneys routinely attend court hearings statewide as well as hearings at New Hampshire Hospital, and draft simple and complex pleadings. Staff Attorneys are a valuable resource for staff grappling with challenging fact patterns, financial arrangements and risk management.

The ideal candidate is experienced in the areas of guardianships, trusts and estates, state and federal benefits, and landlord/tenant law and possesses excellent oral and written communication.

Total compensation is competitive and hybrid work schedules are welcome.

To view the full job description, visit our website at [www.opgnh.org](http://www.opgnh.org) and click on the "Careers" link. If interested, please send a cover letter and resume to [info@opgnh.org](mailto:info@opgnh.org) by February 12th.

## 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](http://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/xmlhttpshorturl.do?key=8AT> or visit Candidate Space ([nh.gov](http://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](mailto: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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### SCOPE OF POSITION:

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### 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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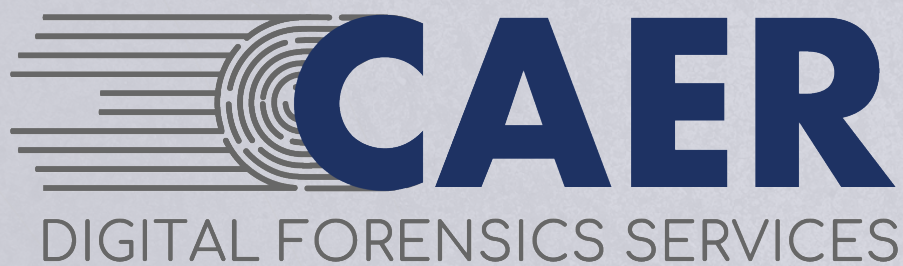
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Feb. 21, 2024	Feb. 5, 2024	Feb. 12, 2024
March 20, 2024	March 4, 2024	March 11, 2024
April 17, 2024	April 1, 2024	April 8, 2024
May 15, 2024	April 29, 2024	May 6, 2024
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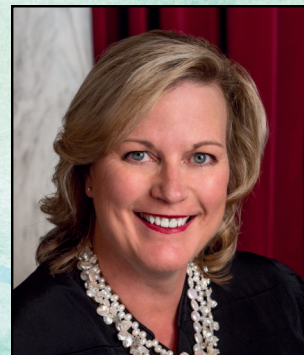
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## SCHEDULE AT A GLANCE

### Gender Equality Breakfast

### MYM 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

#### Keynote Speaker:

Chief Justice Beth Walker, Supreme Court of Appeals of West Virginia  
(Introduction by Chris Newbold of ALPS)

### Refreshment Break Exhibitor Showcase

#### Panel Discussion:

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

#### Panelists:

Paul Chant (President, NHBA), Chris Newbold (ALPS), Jill O'Neill (NHLAP), Dr. Molly Rossignol, and Chief Justice Beth Walker (Supreme Court of Appeals of WV)

### Business Meeting Honors and Awards Luncheon

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

#### Keynote Speaker:

Dr. Larry Richard, LawyerBrain LLC

### Refreshment Break Exhibitor Showcase

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

**Keynote Speaker:** Joshua Weaver, Director, Texas Opportunity & Justice Incubator (TOJI)

**Panel Discussion:** The Future of Artificial Intelligence for Lawyers – Useful Tool or the End of the Profession?

#### Panelists:

Robert R. Lucic, John F. Weaver, Joshua Weaver, and Colin J. Zick

#### Networking Social

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## MEET OUR KEYNOTE SPEAKERS & PANELISTS

### Chief Justice Elizabeth D. Walker

*Supreme Court of Appeals of  
West Virginia*

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

Beth Walker is the Chief Justice of the Supreme Court of Appeals of West Virginia. She was elected to the Supreme Court of Appeals in West Virginia in 2016 – becoming the first justice in the state to be elected in a non-partisan race – and was confirmed as chief justice in January 2023. She is longest-serving member of the Court.

She is the chair of the West Virginia Task Force on Lawyer Well-Being, which promotes cultural change in the legal profession to prioritize wellness among lawyers and judges and better serve clients. She has spoken around the country at several CLE programs about well-being and encourages lawyers to prioritize their physical and mental health.

She is also a co-host of the *Lady Justice: Women of the Court* podcast, which discusses the judicial branch and often focuses on well-being and civility in the legal profession.



### Paul W. Chant

*Cooper Cargill Chant*

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

Paul Chant is a partner with Cooper Cargill Chant and the current president of the NHBA. He was named as New Hampshire's top lawyer for personal injury in 2015 and has been involved in personal injury and insurance matters for over 35 years.

He has served as president of the New Hampshire Association for Justice Board and as chair of the New Hampshire Bar Foundation. He is a current member of the State Access to Justice Commission and serves on the CASA-NH Board of Directors. He is also a member of the NHBA's Workers' Compensation Law Section.

Three of his four primary goals as NHBA president are being advanced at the 2024 Midyear Meeting: Gaining a better understanding of the challenges and changes that AI brings to the profession, increasing wellness for lawyers and judges, and delivering the best possible Continuing Legal Education programs.



### Chris Newbold

*ALPS Corporation*

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

Chris Newbold is the chief operating officer and executive vice president of ALPS Corporation and ALPS Malpractice Insurance. He is a recognized nationally for his roles as a strategic planning facilitator to bar associations and bar foundations and his leadership work to transform the legal profession's approach to well-being.

He has been at the strategic epicenter of the well-being movement since its launch and recently concluded a one-year term as president of the Institute for Well-Being in Law – an organization he helped found in 2020 – the nation's foremost think tank associated with putting well-being as a core centerpiece of professional success.

He is a co-chair of the National Task Force on Lawyer



Well-Being and has served on the American Bar Association's Working Group to Advance Well-Being in the Legal Profession. He is also the co-host of the *Path to Well-Being in Law* podcast and was also co-author of the 2016 report *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*.

### Jill O'Neill

*New Hampshire Lawyers  
Assistance Program*

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

Jill O'Neill is the executive director of the New Hampshire Lawyers Assistance Program and serves on the NHBA's Special Committee on Attorney Wellness. She is a mental health professional with more than 20 years of experience serving individuals and families seeking recovery services from mental health conditions, substance use disorders, and other co-occurring disorders.

Her background includes training in trauma-informed care and practice, motivational interviewing, illness management and recovery, the Zero Suicide Model, integrated dual disorders treatment, and various other evidenced-based practices. She is also the co-facilitator of the New Hampshire Justice-Involved Veteran Task Force and was awarded the 2016 New Hampshire National Alliance on Mental Illness Annual Award for making a substantial difference in the criminal justice system to better support individuals experiencing mental health conditions.



### Dr. Molly Rossignol

*New Hampshire Professionals  
Health Program*

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

Dr. Molly Rossignol is the medical director of the New Hampshire Professionals Health Program and the director of the New Hampshire Lawyers Assistance Program Commission. She has practiced addiction medicine since 2015 and frequently speaks about addiction, reducing stigma, and promoting the reality of recovery.

She has been on the Governor's Healthcare Task Force for Substance Use Prevention, Treatment, and Recovery since 2008 and was appointed to the Therapeutic Cannabis Medical Oversight Board in 2019.



### Dr. Larry Richard

*LawyerBrain LLC*

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

Dr. Larry Richard is the founder and CEO of LawyerBrain LLC, a consulting firm that serves premier law firms and corporate legal departments in the areas of leadership, change management, teams and collaboration, talent selection and development, feedback, motivation, and lawyer resilience and well-being.

He is recognized as the leading expert on the psychology of lawyer behavior. In addition, he is an expert in helping law firms and legal departments to improve organizational functioning and to build a strengths-based culture.





A graduate of the University of Pennsylvania Law School, he was a litigator for ten years before earning his PhD in psychology from Temple University. Since then, he has gathered and analyzed personality data on thousands of lawyers and consulted with hundreds of legal providers on a wide range of complex behavioral issues.

Known for his ability to distill cutting edge scientific principles into actionable recommendations for improving lawyer performance, Dr. Richard is a frequent presenter at professional conferences and an in-demand keynote speaker, as well as a highly sought-after consultant and the trusted advisor to the leaders of the world's most successful law firms and corporate legal departments.

#### Joshua Weaver

*Texas Opportunity & Justice Incubator*

#### Keynote Speaker: From Algorithms to Applications: Generative AI in Legal Practice

Joshua Weaver is a coach, attorney, technologist, and entrepreneur currently serving as the director of the Texas Opportunity & Justice Incubator (TOJI), a State Bar of Texas initiative facilitating sustainable legal practices in underserved communities.

Recognized for legal innovation, he advanced Baylor Law's distinguished programs and provided tech consultancy. As a legal innovator, he is dedicated to improving the practice of law by helping attorneys leverage better tools and strategies.

A nationally sought-after speaker, he addresses the confluence of law and technology, focusing on AI, cybersecurity, privacy, emergent legal technology, access to justice, disaster preparedness, and legal practice automation. He champions the belief that lawyers can achieve professional autonomy and deliver outstanding service by redefining traditional legal processes with modern tools.



#### Robert R. Lucic

*Sheehan, Phinney, Bass & Green, PA*

#### Panelist: The Future of Artificial Intelligence for Lawyers – Useful Tool or the End of the Profession?

Bob Lucic is the chair of the NHBA Special Committee on Artificial Intelligence. He has over 30 years of complex commercial litigation experience, including administrative agency proceedings, arbitrations, jury trials, and appellate practice involving both multi-national corporations and small businesses.

He serves a wide range of manufacturing clients, including robotics, aerospace, defense, and high-tech companies, as well as national, state, and municipal governments. His practice focus includes patent and trade secret litigation, environmental litigation, stockholder and partnership disputes, and investor disputes. He also provides strategic counseling to industrial clients and small businesses.

He also serves as an at-large Member of the New Hampshire Bar Association Board of Governors and serves as co-chair of the Committee on Cooperation with the Courts.

#### John F. Weaver

*McLane Middleton*

#### Panelist: The Future of Artificial Intelligence for Lawyers – Useful Tool or the End of the Profession?

John Weaver is chair of McLane Middleton's Artificial Intelligence Practice Group and serves on the NHBA's Special Committee on Artificial Intelligence. His practice includes conducting risk assessments of AI systems, advising clients concerning AI policies and best practices, and counseling clients regarding emerging legal and practical issues in AI.

He also serves on the steering committee for the American Bar Association's Artificial Intelligence & Robotics Na-



tional Institute and is the chair of the committees organizing artificial intelligence conferences at the Boston Bar Association and Massachusetts Continuing Legal Education in 2024.

He is the author of *Robots Are People Too: How Siri, Google Car, and Artificial Intelligence Will Force Us to Change Our Laws*, a contributing writer at *Slate*, focusing on legal issues implicated by AI and autonomous devices, and a columnist for and member of the board of editors of *The Journal of Robotics, Artificial Intelligence & Law*.



#### Colin J. Zick

*Foley Hoag, LLP*

#### Panelist: The Future of Artificial Intelligence for Lawyers – Useful Tool or the End of the Profession?

Colin Zick is a partner with the law firm, Foley Hoag LLP, where he serves as co-chair of its Privacy and Data Security Practice Group. He counsels clients ranging from the Fortune 1,000 to start-ups on issues involving information privacy and security, including compliance with state, federal, and international data privacy and security laws and government enforcement actions.

He also frequently provides counsel on health care, life sciences, technology, and consumer-facing clients on issues involving information privacy and security (including the GDPR, CCPA, CPRA, HIPAA, and other federal and state data privacy and security laws, privacy policies, cloud security, cyber insurance, the Internet of Things, and data breach response). He speaks regularly on a variety of subjects relating to privacy and security.



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## PRESIDENT'S AWARDS

### Vickie M. Bunnell Award for Community Service

#### Cristina Rousseau Rousseau & Ross, PLLC

*This award was instituted in 1998 to honor the memory of Vickie M. Bunnell ("A Country Lawyer") and to applaud the community spirit that is a hallmark of our profession. It is presented to an attorney from a small firm (four or fewer attorneys) who has exhibited dedication and devotion to community by the giving of their time and talents, legal or otherwise.*

Cristina Rousseau was born and raised in Quito-Ecuador. She first came to the US as an exchange student in 1989 and became a citizen in 2000. She has been committed to helping the underrepresented Spanish community in New Hampshire and refugees seeking asylum. She worked closely with the Multicultural Center in Manchester to provide legal access to the Spanish-speaking community.

She also traveled to Texas to the Dilley Detention Center as a volunteer to work with women and children asylum seekers. Immediately prior to the COVID-19 pandemic, she was cleared by the US and Mexican government to serve as a volunteer in Tijuana, Mexico with project *Al Otro Lado* to help refugees who had been denied entry to the US. Unable to travel to Mexico, she became a court-appointed special advocate for children in New Hampshire and strives to provide a voice for abused and neglected children and youth.

Cristina also gets involved in local events for the benefit of veterans and their families. She has served on the New Hampshire Association for Justice's board as a minority delegate and she is currently serving on the NHBA Special Committee on Attorney Wellness.



### Distinguished Service to the Public Award

#### William H. Barry, III Barry & Honorow, PLLC

*This award is presented to the nominee who best exhibits service to the public on behalf of the administration of justice.*

William "Bill" Barry, III is a partner at Barry & Honorow, PLLC, in Nashua along with his wife, Helen Honorow. He is a third-generation member of the NHBA, after his grandfather, William H. Barry, and his father, Hon. William H. Barry, Jr. He graduated from the College of the Holy Cross with an AB in Economics and later received his JD from St. Louis University Law School in 1984.

Bill has supported Nashua charities and other non-profit organizations for many years, serving on various boards and committees. This includes serving as president of the Rotary Club of Nashua, president of the Nashua Soup Kitchen and Shelter, trustee of Rivier University, and trustee of the Southern New Hampshire Medical Center, to name a few.

He and his wife Helen were named Nashua Chamber of Commerce Citizens of the Year in 2020.



#### Helen G. Honorow Barry & Honorow, PLLC

*This award is presented to the nominee who best exhibits service to the public on behalf of the administration of justice.*

Helen Honorow is a partner at Barry & Honorow, PLLC, in Nashua along with her husband, William Barry. She received her bachelor's degree in Spanish with a certification in human services and education from Washington University and later earned her JD from St. Louis University Law School in 1984. She began her work as an attorney at the US Department of Housing and Urban Development as a litigator before establishing her current firm.

Helen has supported Nashua charities and other non-profit organizations for several years, serving on various boards and committees. This includes service as a member and past president of the Rotary Club of Nashua, chair of Community Projects Committee, secretary of Housing Committee Gateways Community Services, and trustee of the Southern New Hampshire Hospital, to name a few.

She and husband Bill were named Nashua Chamber of Commerce Citizens of the Year in 2020.



Visit the Midyear Meeting page for more information:  
[nhbar.org/nh-bar-associations-midyear-meeting-2024](https://nhbar.org/nh-bar-associations-midyear-meeting-2024)

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## COMMITTEE AWARDS

### Award for Outstanding Service in Public Sector/Public Interest Law

#### Anna Krasinski

United States Attorney's Office,  
District of NH

*The Public Sector/Public Interest Law Award is presented to a member of the Bar, or an organization employing eligible members, with at least five years of service in government, military, law enforcement, or public interest law services (including prosecution, public defense, legal advocacy in low-income communities, or for individuals with disabilities at a nonprofit organization), or at another nonprofit organization.*



Anna Krasinski is an Assistant US Attorney in the Criminal Division of the US Attorney's Office for the District of New Hampshire. As a federal prosecutor, the primary focus of Anna's work is on violent crimes and firearm offenses within the community. She has tackled complex case on topics such as domestic extremism and child exploitation, securing convictions in spite of factual, legal, witness-related, and victim-related difficulties.

Previously, Anna served as New Hampshire's Project Safe Neighborhood Coordinator, working with law enforcement and local leaders to identify neighborhood-specific crime issues. In 2023, she helped organize the state's first-ever Hate Crimes Forum, where prosecutors, law enforcement officials, and community leaders raised awareness about hate crimes and identified resources for communities to heal from such incidents.

Anna's commitment to public service carries over into her personal life: in 2019, she obtained her New Hampshire foster parent license and has since fostered two children, including an infant currently in her care.

#### K. Allen Brooks

Environmental Protection Bureau

*The Public Sector/Public Interest Law Award is presented to a member of the Bar, or an organization employing eligible members, with at least five years of service in government, military, law enforcement, or public interest law services (including prosecution, public defense, legal advocacy in low-income communities, or for individuals with disabilities at a nonprofit organization), or at another nonprofit organization.*



Allen Brooks is chief of the Environmental Protection Bureau (EPB) in the New Hampshire Office of the Attorney General (OAG).

During his tenure, and in collaboration with many friends and colleagues at the OAG, he has helped resolve cases against ExxonMobil related to contamination from the gasoline additive MtBE, Volkswagen for the unlawful installation of emission "defeat devices," American Electric Power for acid rain originating from Midwestern power plants, Monsanto for PCB contamination, and many others.

Allen performs other duties as required such as determining the ownership of the Mt. Washington summit or serving as Counsel for the Public before the Site Evaluation Committee. Currently, the EPB is attempting to address statewide PFAS contamination in drinking water.

He graduated from the University of Massachusetts with a BS in Geology in 1996 and from Southern Illinois University School of Law in 1999.

### Philip S. Hollman Award for Gender Equality

#### Kathleen Peahl

Wadleigh, Starr & Peters, PLLC

*This award is presented by the NHBA Gender Equality Committee honoring Judge Hollman's efforts as a stalwart advocate for gender equality in the legal system. It is awarded to the recipient who has taken initiative in matters of gender equality and has been a role model exhibiting dedication to promoting respect and fair treatment toward all members of the judicial system.*



She is a partner at Wadleigh, Starr & Peters in Manchester, where she has practiced since graduating from Boston College Law School in 1989. She represents both private and public sector employers, including municipalities, school districts, hospitals, and healthcare providers, providing advice on a wide range of employment and personnel issues.

Kathleen was the managing partner of Wadleigh, Starr & Peters from 2017 through 2021. She was on the board of directors and served as secretary of ALFA International, a global legal network, and served as chair of ALFA Women's Initiative Practice Group. Kathleen is currently on the board of directors and serves as treasurer of the Boys and Girls Club of Greater Nashua.

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## PRO BONO AWARDS – PRESENTED BY 603 LEGAL AID

**L. Jonathan Ross Award:** *This award was named for Jon Ross in 1988 to recognize his work on the state and national level to mobilize bar leaders to support civil legal services for the poor along with his unsurpassed leadership and dedication to pro bono legal services.*

### Rory Parnell

Rory Parnell is a partner at Michels & McKay. He serves as vice chair of 603LA, co-chair of the 603LA Pro Bono Committee, and serves on the 603LA finance and executive committees. He also serves as president of The Bridge Project, a 501(c)(3) non-profit that helps those in the communities of Lincoln and North Woodstock.

Rory is a strong and vocal proponent of pro bono in New Hampshire and his leadership and dedication to pro bono legal services is a model for attorneys statewide.

Shortly after his admission to the Bar in 2012, Rory took his first pro bono case. Since then, he has taken 54 cases, logging over 430 hours of donated time. In 2013, he was named a Pro Bono Rising Star, and further committed himself to expanding pro bono by joining the Board of Directors at the then New Hampshire Pro Bono Referral Program. He has also received the 2017 Robert Kirby Award for his signifi-



cant contributions to the Bar and the 2020 Distinguished Service to Pro Bono Award.

In 2021, Rory was part of the transition team that helped the Pro Bono Referral Program and the Legal Advice and Referral Center merge, and he ushered in the era of 603 Legal Aid (603LA) as a founding member of the Board of Directors. He also serves on the NHBA's Lawyer Referral Service Committee and participates in the Free Legal Answers program.

**Distinguished Service to Pro Bono:** *This award is presented to a person or organization who has provided consistent support to the Pro Bono Program over many years. This award aims to recognize the unsung heroes of the Pro Bono Program.*

### Nicholas Brodich

Nick Brodich took his first pro bono case in 1999, and since then he has assisted 47 individuals across a wide spectrum of legal issues, donating over 250 hours of his time in direct representation. This time does not include the hours he spent over the years helping 603 Legal Aid set up successful criminal record annulment clinics, opening up a pathway for low-income individuals to clear their criminal records and improve



their opportunities for housing, education, and employment. Nick regularly mentors law students and new lawyers and instills in them the spirit of public service and using the power of being an attorney to help those who need it the most.

Nick began his legal career with the New Hampshire Public Defender in the fall of 1988 and remained there for six years before going into private practice. He has been with Tarbell & Brodich, PA, since 2007.

His current practice primarily consists of criminal defense matters, both at the circuit courts and the superior courts, as well as motor vehicle administrative law and domestic violence proceedings. He is also regularly involved with probation and parole hearings.

### Joseph Prieto

Joe is a lifelong resident of New Hampshire and a graduate of the University of New Hampshire School of Law in 2001. Joe began his legal career as a trial attorney with the New Hampshire Public Defender. In 2011, after 10 years at the Public Defender, Joe opened his own practice and has focused primarily on criminal defense, landlord-tenant, family, and collections cases. When Joe went into private practice, he continued to try to balance the scales of justice in favor of low-income individuals by joining the pro bono panel. Joe has volunteered at pro bono criminal record annulment clinics, assisting nearly 20 individuals. In 2023, Joe donated over 120 hours assisting one client in annulling over 60 criminal charges from his record. On the side, Attorney Prieto has spent time as an adjunct professor at NHTI and UNH as well as a member of the Manchester Zoning Board.



### Mark Anderson

While pro bono at 603 Legal Aid is focused primarily on attorneys who volunteer their time in the interest of closing the access to justice gap, it is important to recognize our non-attorney volunteers who do so much to improve the lives of low-income individuals. To this end, Mark Anderson is a prime example of how non-attorneys, in this case a Certified Public Accountant, can do so much to advance the goals and mission of



603 Legal Aid and improve outcomes for our clients.

In 1994, Mark started his private practice which continues to this day. He began volunteering his accounting skills in 2005 with the IRS VITA (Volunteer Income Tax Assistance) Project and continued that work until 2010. It was this work that that opened his eyes to the value of tax skills, especially for lower-income folks. In 2013, Barb Heggie, the Supervising Attorney of 603 Legal Aid's Low-Income Taxpayer Project, recruited Mark to expand his pro bono work.

Since joining the panel in 2013, Mark has assisted 18 taxpayers in finding their way out of IRS problems, donating over 167 hours of his time. Mark is also very involved in the immigrant community, helping recent immigrants, especially refugees, with all matters that they face, including green card and citizenship applications, and directing them to 603 Legal Aid when legal problems become apparent. Mark's dedication to improving outcomes for low-income taxpayers facing daunting odds and the overwhelming bureaucracy of the IRS is incredible.

**Rising Star Award:** *Rising Stars make valuable contributions during their first five years as attorneys and help ensure that the Pro Bono Program fulfills its commitment to equal justice for the low-income and disadvantaged throughout the Granite State.*

### Kolbie Daemon

Kolbie is an associate in the Tax Department of McLane Middleton. In this role, Kolbie advises individuals, families, and fiduciaries on estate and income tax planning and wealth preservation strategies. Kolbie began her pro bono practice with the Low-Income Taxpayer Project in 2019, mere months after joining McLane, and since then has donated over 125 hours of her time helping low-income taxpayers with their IRS controversies.

Kolbie was an instrumental piece of the LITP's placement of nine cases with McLane in the fall of 2023. Tax law is complicated, the IRS is difficult to navigate, and low-income individuals are at a significant disadvantage when it comes to dealing with these problems. While Kolbie is still early in her career, the fact that she has shown dedication to providing pro bono services to these individuals the entire time she has been practicing is commendable.



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### SOLACE is Where You Find It... With Our Members

SOLACE (Support of Lawyers/Legal Personnel All Concern Encouraged) helps with the immediate unmet needs of those who have suffered a significant loss, illness, or injury. Individuals eligible for assistance through this program include attorneys, judges, courthouse employees, firm employees, and families of anyone in the NH legal community.

Requests are evaluated on a case-by-case basis by the SOLACE program chair.

If the request meets the program's criteria, the affected individual/family will be contacted for permission to send out an e-mail on their behalf to NHBA members. Members using SOLACE may request, and be assured of, anonymity.

To submit a request, visit [nhbar.org/solace](http://nhbar.org/solace).





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### Exhibitors



## Learn More About the NHBA by Visiting Our Exhibitor Booths at MYM 2024

In addition to numerous informative CLE speakers, multiple award ceremonies, and a post-event social at the DoubleTree Hilton's Penstock Room (sponsored by the New Lawyers Committee but all lawyers are welcome), there will be multiple exhibitor booths featuring products and services to help you better manage your practice. A number of these booths will be devoted to NHBA services, including the following:

#### Law Related Education (LRE)

The NHBA is committed to improving civics instruction in schools through its LRE programming. Students need civics and social studies instruction to better prepare them for participation as citizens. Programs include "We the People: The Citizen and the Constitution," "We the People: Project Citizen, A Lawyer & Judge in Every School," and Beyond High School: A Guide to Your Rights and Responsibilities. These programs would not be possible without the assistance of volunteer attorneys. Stop by the LRE booth to find out how you can help.

#### Lawyer Referral Service (LRS)

The NHBA's LRS made more than 8,000 referrals to our attorney panelists in 2023. Joining LRS is a great way to build your client base and increase your revenue stream. You tell us what types of cases you want; we provide you with prospective clients. The LRS Full-Fee Program helps you increase your business while charging your regular rates. If you are looking to give back while still earning a reduced fee, the Modest Means Program helps bridge the justice gap for moderate- to lower-income residents. LRS also administers the New Hampshire Free Legal Answers online legal advice portal and the monthly LawLine legal advice hotline. Drop by the LRS table to learn more.

#### Member Services

Take full advantage of the benefits your NHBA membership provides. Members have access to a wide range of free member services and valuable discounts to enhance your practice at every stage of your career. One of our most popular

member services is the Mentor Advice Program (MAP) which connects new or new-to-New Hampshire attorneys with an experienced mentor for professional guidance. Our free TechConnect benefit provides consultations with legal technology experts, as well as whitepapers and video tutorials to help your firm maximize the benefit from legal technology. Member services include free use of conference rooms, meeting rooms, and the new Member Center. To learn more about these and other resources available to NHBA members, stop by the member services table.

#### New Lawyers Committee

The NLC serves as a resource to all newer members of the New Hampshire Bar, whether you are a recent law school graduate or a seasoned attorney practicing in a new jurisdiction. This year's NLC is planning a variety of social and educational events to help integrate new members to the NHBA. Upcoming events include dinners with judges and other dignitaries,

an evening of skiing, and other networking events. Please visit the NLC table; we would love to meet you. Attorneys of all ages are invited to join us for the after-hours social, as well.

#### Publications and Advertising

The NHBA publishes information on a regular basis through the monthly Bar News, the weekly E-Bulletin, specialty publications, social media, and the nhbar.org website. Are you interested in writing for the Bar News? Do you have an opinion you would like to share with your peers? Would you like to promote yourself or your firm to Bar members? Perhaps you have an event coming up that you would like to publicize, or you need to fill a position and need to post a classified ad. Whatever the reason, the Bar News team will all be on hand to answer questions or listen to your ideas.





# ANNUAL MEETING

**June 7-9, 2024**

**Grand Summit Hotel at Attitash Bartlett, NH**



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