



NHWBA members at the 2023 Annual Retreat. In celebration of their 25th anniversary, the NHWBA created a new logo. Courtesy Photo

Celebrating 25 Years of Progress: The NHWBA's Legacy in Advancing Gender Equity in the Legal Profession

By Grace Yurish

In the 133 years since Marilla Ricker won women the right to be admitted to the New Hampshire Bar, many women have followed a career in law, including trailblazers like Agnes Winifred "Winnie" McLaughlin, who became the first female admitted to practice law in the state in 1917. These trailblazers and many others have paved the way for today's women lawyers. Because of them, the New Hampshire Women's Bar Association (NHWBA) is celebrating its 25th anniversary this year.

The NHWBA is a voluntary professional organization and New Hampshire's first statewide women's bar association. From law students to judges, its diverse membership shares a clear mission: to achieve gender equity in the legal profession by promoting women's advancement and interests through leadership, professional development, and education.

In 1991, a group of women attorneys, including Maureen Raiche Manning, one of the NHWBA's founders and its first president, established the Hillsborough County Women's Bar Association (HCWBA). After years of a flourishing association, the members considered the idea of creating a statewide women's bar association.

On February 10, 1998, following a presentation titled *Why Have a Statewide Women's Bar Association in New Hampshire?* by Ellen Kearns from the Women's Bar Association of Massachusetts, they decided to form what is now known as the

NHWBA. They closed HCWBA and offered its 78 members the option to transfer their membership.

"It probably took the better part of a year to get established," Raiche Manning says. "There were four or five of us that were meeting every few weeks or so with different tasks, and we would come together in the evenings – usually at someone's house – to report on what our assignments were and what information we had learned."

Raiche Manning was on the New Hampshire Bar Association's Board of Governors at the time, and the founding of NHWBA was met with support from most members, although some were initially skeptical about the need for a women's bar association. Nevertheless, the association moved forward.

In May 1998, NHWBA was incorporated by Maureen Raiche Manning, Jennifer Parent, Joy Riddell, Julie Introcaso, and Claudia Damon. During their first established year, they welcomed over 200 members and opened their admission to all lawyers – regardless of gender. Their first male member was Raiche Manning's father, Robert Raiche.

Jennifer Parent, a founding member and the second president of the NHWBA, recalls the excitement in the air during the time of incorporation. The number of women practicing law was growing, and more women were taking roles in political office. The country had its first woman Attorney General, and the first woman

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Pioneer Superior Court Chief Justice Tina Nadeau To Retire on September 29

By Tom Jarvis

New Hampshire Superior Court Chief Justice Tina Nadeau, a pioneer on the bench for nearly 30 years and a champion for the drug court system in the state, has announced she will retire on September 29, 2023.

Daughter of former New Hampshire Supreme Court Justice Joseph Nadeau, she received a bachelor's degree, with a major in Spanish, from the University of New Hampshire in 1985. She then spent a year running a guest house in Puerto Rico to strengthen her use of Spanish before attending the Franklin Pierce Law Center (now UNH Franklin Pierce School of Law).

"My dad always encouraged me to consider the law because he found so much purpose in what he did as a lawyer," Justice Nadeau says. "He was a true inspiration. I loved listening to the stories he told my sister and me about cases, clients, and challenges throughout our childhood years. Through his example, I appreciated that the practice of law is more about understanding the human condition and using the skills we develop as lawyers to help people in need, than it is about books and court filings. He gave me the space to



believe I could accomplish anything and was there to support me throughout my career, as was my stepmother. She attended every opening statement and closing argument I gave as a young lawyer. Seeing her face in the audience calmed my nerves."

After obtaining her law degree in 1989, Justice Nadeau began working as an assistant attorney general, prosecuting homicide cases and arguing Supreme Court appeals for the State. Interestingly, she was able to make use of her Spanish skills right away, as her very first homicide case involved a Mexican victim and defendant.

A few years later, she became legal

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Practitioner Profile

Benjamin King: The Playbook of a Fighter for Workers' Rights

By Kathie Ragsdale

No one can say Benjamin T. King can't get no satisfaction.

The longtime employment law practitioner has seen the Rolling Stones a good half-dozen times, has attended 39 Dave Matthews Band concerts, and recounts with obvious joy his stage-side awe watching an Eddie Van Halen guitar solo.

"In addition to triggering memories, I think music is perhaps the fastest-acting tonic for the spirit that there is," says King, whose tastes range from Metallica to Carrie Underwood. "In that sense,



music certainly supports my legal work."

Now a partner at Douglas, Leonard & Garvey, he was introduced to employment law soon after law school, while he was an associate at the Boynton, Waldron, Doleac law firm in Portsmouth and one of the partners chose him to help

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The Importance of Collegiality in the New Hampshire Bar

How do we achieve collegiality with a Bar Association encompassing almost 8,500 lawyers? I hope that my nearly 38 years of practice has given me some insight that might help Bar members attain collegiality with each other while practicing law.

I have been fortunate in my career to work in the personal injury and insurance law sectors. Rarely in that practice do things get personal. Both sides advocate vigorously for their client but ultimately, I, as a personal injury/workers' compensation/medical malpractice lawyer am doing my best to build my client's case for as good a recovery as possible, while insurance counsel are working to save their companies money. Both sides want resolution while seeking these goals. To a substantial degree, both sides are professional risk managers for their respective clients. This can be very different from other types of litigation such as family and criminal law, where emotions often run high.

However, discovery disputes arrive, things are not going to be done in time to abide by court structuring orders, and occasionally deadlines pass without notice. At each of those junctures, you want a strong and amicable relationship with opposing counsel. Rarely do courts want to adjudicate discovery disputes that are resolvable between counsel – they want counsel to act as adults.

The first step when interrogatories are overdue is not to file a Motion to Compel – unless time is of an absolute necessity. You are likely wasting your time and your

President's Perspective



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

client's money doing so. Rather, discuss with opposing counsel when you need answers, and agree on a date to get them. No harm, no foul, and no bad blood. The work you put in to developing a good rapport with opposing counsel can help immensely when it comes time to address difficult issues in a case.

I have been in the business of lawyering long enough to have screwed some things up and to have missed some deadlines. Odds are, over your career you will as well. When that happens, that amicable relationship you have cultivated with counsel can go a long way to resolve the problem. If you have an antagonistic or unhealthy relationship with opposing counsel, overcoming the error may be much harder.

That does not mean that you are not a zealous advocate for your client. Rest assured, there are lawyers in the state who think I go after witnesses aggressively and argue law vociferously. However, those

same lawyers know that I always ask how they are doing, and smile and shake their hands when the case has been submitted.

Being a good colleague can involve recognizing when opposing counsel is experiencing life difficulties. Perhaps they are suffering from depression, are overwhelmed, have substance misuse issues, or are having difficult family issues. Several times, I have been concerned about opposing counsel. I have directly asked those with whom I am familiar if everything is all right with them, and how can I help in the context of the litigation.

Our Bar is small enough that you will encounter opposing counsel repeatedly throughout your career. You will recognize how they work. For example, I was a party in an insurance arbitration and had worked with opposing counsel on other matters and knew him to be quite capable. Leading up to and at the arbitration, his performance was significantly below his usual work. Following the arbitration, I reached out to the arbitrator who had been chosen by opposing counsel, expressing my concern. He then reached out directly to the opposing lawyer asking about his health, if things were okay, and if he could help.

Finally, I was advised early in my career to treat others as your mother (hopefully) taught you to treat them. Be a good colleague and treat everyone with kindness and respect. I promise that doing so will only help you and your clients. Maybe, if you are lucky, like me, some of those opposing counsel will become good friends. ■

From the Editor

Share Your Experiences in the Upcoming *Bar News* DEI Supplement

The *New Hampshire Bar News* team, in collaboration with the New Hampshire Supreme Court's Steering Committee on Diversity and Inclusion (D & I Committee), is putting together a special diversity, equity, and inclusion (DEI) supplement to be included in the October issue of the *Bar News*.

The supplement will feature content and articles from members of the D & I Committee and Advisory Board, Circuit Court Judge Susan Carbon, Attorney Lyndsay Robinson, NAACP Manchester President and Managing Partner of Organizational Ignition James McKim, and others, relating to the purpose and importance of DEI, as well as additional coverage of the 2023 Annual Meeting CLE on diversity.

The timing of this supplement is particularly fortuitous with October being LGBTQ+ History Month. First celebrated in October 1994, and founded by Missouri high school



teacher Rodney Wilson, it was originally called Lesbian and Gay History Month.

As part of the supplement, we aim to include experiences that our members have had with racial, gender, sexual orientation, or other discrimination or prejudice in the workplace.

If you would like to include your story, please submit a short description (a paragraph or two) about your experience by August 28 to tjarvis@nhbar.org. The blurbs will be compiled into one full article. If you wish to remain anonymous, please indicate that in your email. ■



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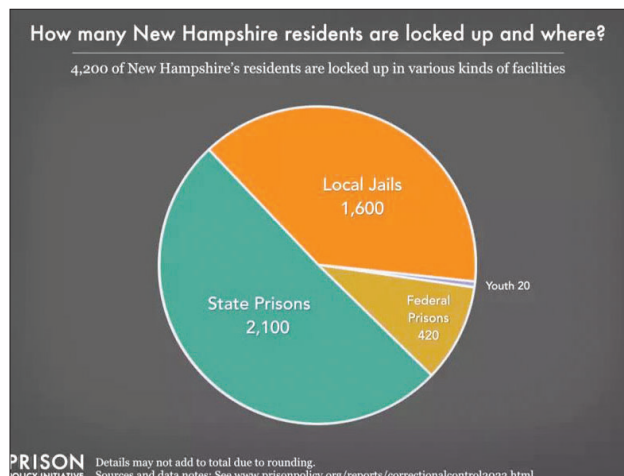
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The NHBA Prison Series: An Introduction

By Tom Jarvis

In 2018, the United States had the highest incarceration rate in the world.¹ According to the Prison Policy Initiative, a non-profit organization for the mitigation of mass incarceration, “New Hampshire has an incarceration rate of 328 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities), meaning that it locks up a higher percentage of its people than almost any democracy on earth.”²

Over the next several months, the *Bar News* will feature a series of articles about the prison system and inmates in the Granite State. The New Hampshire Bar Association (NHBA) Prison Series is made possible by the Charles W. Dean Trust Fund, a justice grant awarded through the New Hampshire Bar Foundation.



Since this chart was created, the federal prison in Berlin updated the amount of inmates to 705. Photo courtesy of prisonpolicy.org

The series aims to educate members about the New Hampshire prison system and provide insights from the people who live – or have lived – within it. The articles will relay stories of current and former New Hampshire inmates, as well as lawyers in the criminal field, and will form an arc starting from when a person is first charged with a crime, moving through life in prison, and then ending with re-entry into society.

Currently, the United States has 1.9 million people behind bars and an estimated 3.7 million adults under community supervision. Additionally, the World Prison Brief, an online database by the Institute for Crime & Justice Policy Research at the University of London, states that as of 2023, the US has the sixth highest incarceration rate in the world, at 531 people per 100,000.

The numbers are exponentially higher when factoring in probation, parole, and transitional housing. According to the Bureau of Justice Statistics report, “Correctional Populations in the United States, 2021,” an estimated 5.5 million people were under the supervision of adult correction systems in the country, whether incarcerated or under community supervision. This means that one in 48 adult residents in the United States were under some form of correctional supervision at the end of 2021.

In New Hampshire, there are currently more than 4,400 people that are behind bars, with approximately 2,100 in the three state prisons, 1,600 in the ten county

jails, 705 in the federal prison, and 20 in the youth facility. The incarceration rate for New Hampshire is 328 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities).³

There is currently one inmate on death row: Michael Addison, who was convicted of shooting and killing Manchester police officer Michael Briggs in 2006. New Hampshire abolished the death penalty in 2019 – becoming the 21st state to do so – but the bill did not apply retroactively to Addison.

Although New Hampshire has ten county jails, one federal prison, and one youth detention center, the NHBA Prison Series will focus mainly on the state prison system.

Operated by the New Hampshire Department of Corrections (NHDOC), the system consists of the New Hampshire State Prison for Men (NHSPM) in Concord, the New Hampshire Correctional Facility for Women (NHCFW) in Concord, the Northern New Hampshire Correctional Facility (NNHCF) in Berlin, three transitional housing units (formerly called halfway houses), and a transitional work center. There was also a state prison in Laconia (Lakes Region Facility), but it is now closed.

The New Hampshire State Prison for Men



Photo by Tom Jarvis

The NHSPM is the oldest prison in the state. It was originally built in 1812 and was occupied by a single inmate at the time. In 1878, a new facility was constructed, and throughout the years various renovations were performed. The most recent – and most extensive – renovations took place in the 1980s. It was around this time, in 1983, that the NHDOC was created by statute to consolidate the previously independent probation department, parole department, and the state prison. There are several sections of the prison, including reception and diagnostics (where an inmate is processed upon entry), the secure housing unit (solitary confinement), the secure psychiatric unit, the residential treatment unit, and general population.

The Lakes Region Facility

With the ever-increasing number of inmates in the state, a second facility became necessary. In 1991, the Lakes Region Facility (LRF) opened on the grounds of the former New Hampshire State School for the Developmentally Disabled in Laconia, and housed minimum- to medium-security prisoners. In 2004, the NHDOC converted the building into a transitional facility for minimum security

inmates who would soon be released. However, four years later, the facility closed. According to the NHDOC, as they were preparing the operating budget for the 2010-2011 biennium, it was determined that to meet the parameters set forth by then-Governor John Lynch, a prison facility would have to close. The LRF was identified as the least efficiently operating facility and was shut down in 2009.

The Northern New Hampshire Correctional Facility



Courtesy Photo

Once the state's inmate population surpassed 2,000 in the mid-1990s, the NHDOC determined that, in addition to the NHSPM and the LRF, a third facility was needed. In 2000, the NNHCF opened in Berlin. It was originally proposed to open in Franklin, but a local referendum turned it down. When the LRF closed in 2009, one of the two gymnasiums at the NNHCF was converted into a 112-bed minimum-security unit to accommodate the transfer of the LRF inmates.

The New Hampshire Correctional Facility for Women



Photo by Tom Jarvis

The NHCFW is the newest addition to the New Hampshire prison system. Female inmates were originally housed in the south wing of the NHSPM from 1880 until 1941, when legislation was passed to transfer women offenders to other states or to county jails. In 1989, the

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'The Court Saved My Life' – A Story of Cycle-Breaking and a Lifelong Dream

Editor's Note: The name Karen Page is a pseudonym used to protect the identities of those involved, at the request of the subject of the article.

By Alex Attilli

It might have taken a few years to get there, but Karen Page knew she wanted to be an attorney since she was only 14 years old.

"I was in history class in high school," she says. "It was the first time I *really* learned about the civil rights movement, and I was astounded by the role of attorneys and the Supreme Court. I just fell in love and knew that was what I wanted to do."

Page went home that day and immediately told her mother, who first laughed at her but then helped her begin looking at colleges. However, she had to put her plans on hold when she got pregnant at 15.

"I had twins," she says. "I was a sophomore in high school when I had them. I tried going back to school but I couldn't do it."

She felt isolated by many of her teachers because of her pregnancy, so she withdrew and enrolled in a GED program instead.

"I was in a bad situation at the time,"



Attilli

she says. "I ended up living with the father of my children. He was extremely abusive. But I had no family to help me, so I completely survived off him. I wasn't allowed to leave the house, wear makeup, or talk to men. I felt like I was in prison."

Page says the abuse was both physical and psychological, but she was able to leave when she was pregnant with her fourth child.

"My three boys and my pregnant self were homeless," she recalls. "The father of my children took off and I went to my mother for any help I could get so that I could go to school. But, she rented a small apartment. We bounced from place to place—couch surfing, sleeping in my car and motels. That lasted about six months."

Luckily, she qualified for an emergency housing voucher. However, she was about to lose her job as the retail chain she was working for went out of business. She saw this as an opportunity, so she "waddled into Hesser College, nine months pregnant," and told them she needed to enroll.

She chose to enroll in Paralegal Studies and "instantly fell in love." One of her professors even told her she was meant to go to law school.

Around this time, Page found a job working part-time for a New Hampshire court. Eventually, she began working full-time and by the time she finished her degree, about five years later, she asked a few of the judges to write her recommendation letters so she could finally go to law school. She decided to put law school on the "back-burner" so she could focus on her kids, though.

"The truth is, when you're a victim of domestic violence, your whole life is a lie," she says. "You have to lie about why you can't leave the house, why you have bruises, why you can't spend money. This is why it takes domestic violence victims *so long* to leave; you've been told no one will believe you because you've been lying to everyone for so long that you've been conditioned to continue a fake truth."

During this period of her life, the father of her children drifted in and out of their lives.

"He'd be gone for long periods of time but came back claiming to have gotten sober or to have gotten counseling," she says. "I was just so desperate to have some help with the kids that I gave him another chance."

Page says working for the court forced her to see the truth, which helped her leave the father of her kids a final time and work through the struggles of healing, even after finally getting out and moving on with



other relationships.

"Everyone has their own personal issues," she says. "As a kid, people [in my life] just drank to deal with it. But I witnessed so many judges and attorneys juggling their own personal lives while still being phenomenal in their careers. I wanted to be just like them."

She says that working with the courts not only showed her healthy coping mechanisms but demonstrated how cycles of abuse run their course in the criminal justice system.

"The court saved my life," she says. "I was in the abuse cycle. Working for the court forced me to see what was really happening."

She mentioned that witnessing families in a similar situation to her own gave her the clarity she needed to acknowledge and process her own trauma.

After her twins moved out of the house, she asked a case manager who was enrolled at a law school to help her with the admissions process.

"I knew that was my shot," she says. "I went to those same judges, 13 years later, asking for that recommendation letter and they were more than happy to write it."

Although she tried staying at the court part-time while attending law school, she knew she had to focus on her first year.

"I had to leave," she says. "And it was heartbreaking because this job was the whole reason I was able to go to law school, to take care of my family, and see the people falling through the cracks in the criminal justice system."

When first approached about sharing her story, Page said she wanted those in the legal field to know that they are setting an example for others. Specifically, the way they see and treat people. She noted that many of the attorneys, judges, and court staff that inspired her and gave her the tools to break the cycle of domestic violence in her life were not even close colleagues.

She notes that even if she isn't a successful attorney in terms of money or name-recognition, she knows she will be a good attorney because she is so passionate about making a difference in the criminal justice system.

This month, she will fulfill the dream she's had since she was 14 years old by working as a lawyer in public service.

"One of my fears was that people would think that because of my history, I couldn't fairly represent a defendant who abused someone, but I absolutely can," she says. "I know that an abuser themselves has their own issues—mental health or substance abuse issues that sometimes stems from their own abuse. The whole point is telling their story, explaining what got them here, and finding what will help so that this doesn't keep happening."

She says her background drove her to criminal justice because she knows change is possible in everyone.

"If anyone looked at me back then, I don't think they would have thought I could be here today," she says. "But, because of the people I have worked with, I saw there were other ways to rewrite my story." ■

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NHBA Modest Means Program Helps to Bridge the Justice Gap

By Misty Griffith

The New Hampshire Bar Association Lawyer Referral Service's Modest Means Program (LRS-MM) helps bridge the legal services gap by connecting individuals of low to modest means with attorneys who agree to consider their case at a greatly reduced rate aligning with LRS-MM's sliding fee schedule. Modest Means provides access to justice for people whose household income is between 125 percent to 325 percent of the Federal Poverty guidelines; those who do not qualify for *pro bono* assistance, but who cannot afford an attorney's full fees.

The Modest Means Program is a godsend for people whose inability to afford an attorney might otherwise force them to represent themselves. A program participant from northern New Hampshire expressed their gratitude.

"I want to thank you for your courtesy and quick response to my request for a referral," the client said. "Your advance notice to that law firm made my first call to them very easy! Other requests that I made for information or guidance ... fell on deaf ears and my requests were ignored. Your response and referral to an excellent law firm near me has restored my confidence in the New Hampshire judicial system! It's refreshing to see that some businesses still care enough to do a great job! Thank you again."

Attorneys who participate in the Modest Means Program find the work extremely gratifying.

"Helping clients through the Modest

Means Program allows us to give back to our community and have an impact on the growing access to justice problem," Kate Morneau of Morneau Law says. "There is a significant amount of people who fall into the gap between earning too much to qualify for *pro bono* and not earning enough to afford a full fee attorney. I appreciate that these cases are vetted through LRS

and come to us organized with relevant information right from the start. We have had some of the most thankful clients in taking Modest Means cases. Recently, I was able to assist a single mother in obtaining a restraining order and parenting order to protect her children from an abusive father. She made sure she thanked my entire team for our assistance, and we could all see the relief she felt from having this protection. This is especially important work where one parent can afford an attorney and the other cannot."

Alice Ranson of Elliott, Jasper, Shklar, Ranson & Beaulac in Newport says, "I have met some



great clients through the Modest Means Program. I had a collaborative attorney-client relationship with a woman who needed a divorce from an abusive partner. She was responsive and ready to help with discovery and other paperwork for her case. The divorce process went smoothly, and she still to this day sends me a card each Christmas."

The Modest Means Program serves individuals and families statewide. However, there is a disproportionate need for attorneys in Coos, Grafton, Cheshire, Sullivan, Carroll, and Belknap counties. Family law is by far the biggest area of demand for Modest Means attorneys accounting for 61 percent of Modest Means cases, followed by housing at 11 percent. Other case types comprise a wide variety of practice areas including domestic violence, bankruptcy, consumer protection, employment, probate, criminal misdemeanors, immigration, and many others.

Attorneys who participate in the Modest Means Program agree to charge eligible clients a reduced rate of \$80 to \$125 per hour based upon a sliding scale corresponding to household income. This fee range is far below the average fees charged by most attorneys in New Hampshire. The modest fee allows some attorneys to take cases knowing they may make enough to recoup their overhead costs. Moreover, many attorneys charge even less than our sliding fee.

The Lawyer Referral Service is experiencing a record number of calls, and there is great need for the Modest Means Program. During the last 12 months, LRS staff pro-

cessed 1,210 requests for assistance and opened 554 new Modest Means cases (991 referrals were made because some prospective clients require two or three referrals before an attorney is found for their case). In addition to the 554 primary clients, 774 family members benefited from the Modest Means Program, and 656 people were referred to other sources of legal help.

Participating attorneys select the type of cases they are willing to accept and may choose to limit the number of referrals. Joining the LRS Modest Means Program is free, and attorneys do not have to participate in the LRS Full Fee Program to be a part of the Modest Means panel. There is no percentage fee due to LRS for Modest Means cases.

For more information about the LRS Modest Means Program or to apply, visit our website nhbar.org/join-lawyer-referral-service or contact NHBA Member Services Supervisor Misty Griffith at mg-riffith@nhbar.org or (603) 715-3227. ■

New Admittees July 18, 2023

The NHBA welcomes the following new attorneys: Kathryn Elizabeth Carlson, Erin Martha Creegan, Mary Alissa Triick, Bryan Richard Whitney

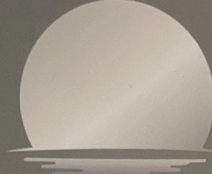


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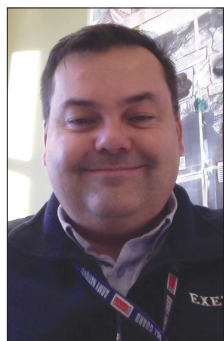
Beyond High School Plans To Go Digital

By Grace Yurish

Beyond High School: A Guide to Your Rights and Responsibilities, a book written by Attorney Jennifer A. Eber in collaboration with the New Hampshire Bar Association's (NHBA) Law Related Education (LRE) program, is set to transition to a digital platform to better engage with high school students. The book, which offers crucial information to high school students about their legal rights and responsibilities as they become adults – such as dealing with law enforcement or understanding the draft process – aims to provide young adults with knowledge about their civic duties and rights.

Aaron Blais, a teacher at Exeter High School, is working with the NHBA to facilitate the transition to a digital platform. Blais passionately teaches a popular elective law class where students gain insights into civil and criminal law. He believes that students should be required to take a class in law, so they are knowledgeable about their civic duties.

"The key that a lot of students need is a basic understanding of what their rights and responsibilities are," says Blais. "It's



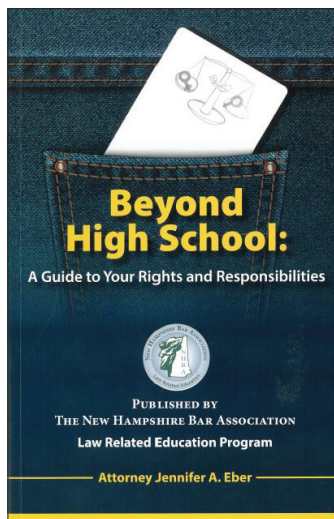
Blais

tough to be a good citizen when you don't even understand what is required of a citizen. I think it's a very important class. We think we know the basics, but oftentimes, a situation arises, and you may not know what the solution is."

Originally published as a booklet in 1996, *Beyond High School* was distributed to graduating high school students throughout the state, preparing them for the responsibilities of adulthood. In 2001, its content was made available on NHBA's website under the LRE section until 2017. In 2018, the information was re-published as a comprehensive book with input from various attorneys and teachers who helped review and edit the content. Further updates were made in 2019, including additional sections contributed by Jennifer Eber. The book's illustrations were thoughtfully crafted by New Hampshire students.

"*Beyond High School*, to me, is an opportunity to have the basic rights and responsibilities of many things students of New Hampshire may come up against in the future, laid out in front of them," says Blais.

Initially introduced to the book by



Eber, Blais distributed copies to his students, recognizing its value. However, he observed that students preferred seeking information online instead of carrying a physical book. Recently, Blais was approached by Judge Landya McCafferty with the idea to make *Beyond High School* more accessible and better fit the needs of the students.

"I have the perfect opportunity here," Blais says. "I have 100 students coming in next year who are going to be leaving high school soon. This is an opportunity for them to be the resource we need to figure out what students that age want to look at, read, or watch. Instead of brainstorming what kids want, let's just ask them."

The law class students will actively contribute to breaking the content into more manageable pieces that better resonate with high schoolers. They will also play a pivotal role in determining the most effective means of distributing the information. Blais hopes that as the project progresses, other law teachers and their classes from around the state will contribute, as well. Throughout the year, NHBA staff and members will visit the students to provide feedback and monitor

the project's progress.

Blais adopts an experiential teaching approach, involving students in real-world learning experiences. His law class has participated in various activities, including hosting naturalization ceremonies, running innocence projects, visiting jails and engaging with inmates, witnessing manslaughter trials, and hosting professionals from the legal field such as police officers and lawyers. These experiences create a deeper connection to the subject matter and motivate students to excel.

"It creates real-world learning," Blais says. "When the students are revisiting *Beyond High School*, it's not going to go into a recycling bin at the end of the semester. It's going to be out there and used by students. They're going to do a great job because they realize that it's something that's going to be valuable for other people."

One vital piece of advice Blais imparts to high school students is to proactively engage with and learn the fundamentals of their rights and responsibilities as citizens. He emphasizes that life can get in the way once students head off to college, making it crucial to lay a strong foundation early on.

Blais anticipates that the new *Beyond High School* digital platform will be substantially completed by the end of the upcoming school year. Those interested in contributing to the project or visiting his class can contact him at ablais@sau16.org. ■



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Lawyer-To-Lawyer Wellness Advice: How Do You Create Work-Life Balance?

By Misty Griffith

No one understands the unique challenges faced by attorneys better than another practicing attorney. If you are struggling with professional stress or seeking to achieve the elusive work-life balance, it is important to realize that you are not alone. Insight from peers can provide useful strategies for coping with the demands of the legal profession. Our lawyer-to-lawyer wellness series shares advice from attorneys, for attorneys.

Judith N. Reardon,
Reardon Law Office, Chocorua

"Since I am a solo practitioner, and nearing retirement, I've had the fortunate opportunity to try out the following ideas:



1. Have a companion (adult, child, or animal) who insists on having some fun and sulks persuasively if you don't join in. (Companion must also be understanding when it's important worktime, or when some time spent quietly working or clearing your desk will really help your mind frame.)



2. Be clear to clients about when you can do things and stick to that promise. Most of them are human enough to not demand that everything be done "as immediately as possible," especially if you have already handled their emergency promptly. But they do need to know *when* you will do it, so they can plan. If you are working on emergencies constantly, or if your client isn't that reasonable, you should seek different cases, or break down the case into manageable pieces with such deadlines. Once you have given yourself the reasonable deadline, you can have your "mandatory fun time" (item 1 above) with a clear conscience and still professionally satisfy yourself and your client.

3. Let your staff protect you. Give your employees enough information so they can do some things for you, such as paralegal work, talking with clients, organizing something for you, collecting information, or doing your scheduling, per item 2.

4. Don't create minefields for yourself! If there's a deadline, meet it. If there's a bill to pay, pay it. If there's bad news to give someone, figure out how best to present it with constructive options and do that as soon as possible.

5. At night, after work, do at least one thing that makes you happy and one thing that gives you peace of mind. Mine are watching something fun on TV, reading an interesting news article, and cleaning

up the kitchen. These are just as important as doing more client work because it keeps you balanced.

6. Life balance can be some simple things that make you happy every day: a brief walk, healthy snacks to eat at your desk, a quick chat (or text) with someone who makes you laugh, a fan at your desk to keep you cool enough, or a bit of time to solve a personal problem that's worrying you (a dental appointment or a family member you need to contact).

7. Studies have shown that "effective people" have a morning routine before they leap into the day. It can be some exercising, or drinking coffee while watching the birds, or helping your children get off to school. (Hopefully the clear deadlines and helpful staff will protect you from finding that something bad happened while you were doing your morning routine!)

In short, having lots of time to go on vacation or go to a spa isn't necessary if you have things every day that make you feel happy and in control. You deserve that feeling!" ■

Do you have tips or strategies that you have found helpful to maintain work-life balance or reduce stress in your practice? Members are invited to share their words of advice. Please email NHBA Member Services Supervisor Misty Griffith at mg-riffith@nhbar.org.

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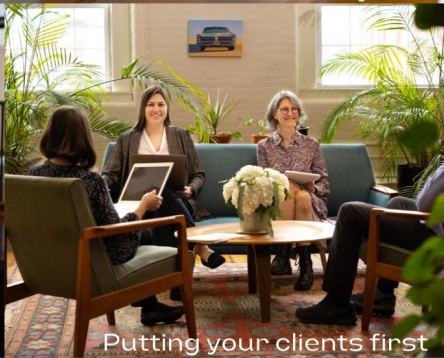
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Secretary of State, and New Hampshire had its first woman Governor.

"I thought it was an exciting time to be a female and a lawyer in the state of New Hampshire, and to be embarking on this new adventure of starting a statewide women's bar association. I saw it as a host of opportunities," Parent says.

In October 1998, the NHWBA held its inaugural Fall Reception at the Centennial Inn in Concord, which attracted over 100 attendees, including attorneys from across the state. The Fall Reception is now held annually. During the event, the Marilla M. Ricker Achievement Award is presented to women lawyers who have achieved professional excellence, paved the way to success for other women lawyers, advanced opportunities for women in the legal profession, and performed exemplary public service on behalf of women. The event also features the presentation of the Winnie McLaughlin Scholarship, an academic financial award given to a rising second-year law student annually in partnership with the University of New Hampshire Franklin Pierce School of Law.

In 2001, the NHWBA undertook a project to identify the first 100 women admitted to practice law in the Granite State. A committee of approximately 20 people was formed to uncover this information, and they successfully identified these women with the cooperation of the New Hampshire Supreme Court and the New Hampshire Bar Association, revealing that on November 1, 1977, Nancy O. Dodge became the 100th woman admitted to practice in New Hampshire – 60 years after Winnie McLaughlin's historic achievement in 1917.

"In 1977, when we reached 100 women lawyers, I don't even think anyone knew that at the time. It wasn't until we did a project to identify all women who had been sworn into the Bar, looking at every single court record," says Raiche Manning.

A celebration of New Hampshire's first 100 women lawyers was subsequently held in May 2002, marking a significant milestone for women in the profession.

The NHWBA also held a Centennial Celebration Gala in 2017 to honor 100 years of women lawyers in the state.

In April 2003, the Work Stress Relief Clinic – now known as the Annual Retreat – was held for the first time. This event brings NHWBA members together for an overnight gathering at a different location each year. The retreat includes multiple programs, CLE sessions, dinner, and an overnight stay. The goal of this gathering is to provide educational programming to promote a better work-life balance and allow members to network with one another in a relaxed setting.

In addition to the Fall Reception and the Annual Retreat, the NHWBA holds many events throughout the year. These include numerous CLEs, networking events, community service initiatives, leadership events, and leisure activities such as yoga sessions or visits to local wineries. Their most notable project is the Women to Women Project, which has earned an award from the National Conference of Women's Bar Associations. Working together with the New Hampshire Department of Corrections, the NHWBA connects inmates of the New Hampshire State Prison for Women with attorneys, allowing the female inmates to receive limited legal advice and information on various issues to assist in their



Recipients of the 2008 NHWBA Trailblazer Award, for attorneys who have led the way in improving the experiences of women in the legal profession in New Hampshire. From left to right: Justice Linda Dalianis, Maureen Raiche Manning, former Senator Kelly Ayotte, Jennifer Parent, Hon. Jean Burling, and Hon. Susan Carbon. Courtesy Photo



NHWBA President Lindsey Courtney (left) with Membership Committee Chair Alexandra Cote (middle), and Treasurer Lyndsay Robinson (right) at the 2022 Fall Reception. Courtesy Photo

transition out of prison.

In 2018, when they celebrated their 20th anniversary, the NHWBA launched a SHERO Campaign to honor the women heroes of their members and friends. The full list can be found on their website at nhwba.org/honor-your-shero.

The dedication and hard work of the members continues to drive the achievement of the organization's mission.

"When you have people who stand behind your mission, it develops this culture," says NHWBA Immediate Past President Caroline Leonard. "We are all here for the same purpose. We're taking those forward steps to move the needle and make things a little bit better for the next generation. Even if it wasn't like that for us, we want to make things better for the next group. I think that the Women's Bar has that attitude, and its members share that attitude."

Over the last 25 years, the number of women lawyers practicing in the Granite State has continued to grow. According to a study conducted by the NHBA Gender Equality Committee, women made up 29 percent of the Bar when the NHWBA was incorporated; today, they make up 40 percent. Despite these improvements, there is still room for increased equity in the legal profession. Current NHWBA president Lindsey Courtney shared the organization's goals for the coming years.

"First, is educating people about the barriers to achieving gender equity in the legal profession," she says. "Second, we would like to increase transparency in judicial selection. I think women often are not necessarily going to put themselves out there to seek judicial appointments. We have done events about what that looks like if you want to apply, but there are still some questions about the process. Third, we'd like to highlight the professional accomplishments of our members. Again, I think women are sometimes hesitant to put themselves out there and we'd like to be that platform for them. We'd

also like to promote leadership opportunities. There are so many, and leadership has value everywhere. Lastly, we want to ensure that our organization is sustainable, stable, and that we're forward-thinking and engaged with our members to continue to grow and capture what our membership is looking for."

As Raiche Manning and Parent look back on the past 25 years, they feel proud to have been part of creating the organization and seeing how far it has come. They also envision what it will be in the future.

"I hope that we continue to thrive with a healthy membership and that new lawyers get involved – that we continue to have programming on work-life balance and helping women become judges," Raiche Manning says. "I hope that we continue to have a strong and involved Board of Governors and that those women go on to run for political office, they run for positions within the New Hampshire Bar, and they become judges. The Women's Bar is a place where women grow and develop, and I hope that continues and advances to even more places."

"I think we've made strides, but we still have a lot to do," Parent says. "I envision that men and women will make those strides to get us there and open the door for opportunity – not just open the door, take the hinges off, and get rid of the door. I would hope that as we look toward the future, the Women's Bar continues to be there for its members and that it grows with the profession. I expect good things for the Women's Bar."

In celebrating its 25th anniversary, the NHWBA stands as a testament to the perseverance and dedication of countless women lawyers who have paved the way for gender equity in the legal profession. Looking ahead, the NHWBA remains committed to its mission of promoting women's advancement, with a strong vision to create a brighter future for the next generation of women lawyers in New Hampshire. ■

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UNH Franklin Pierce Law School To Hold 50th Anniversary Celebration

In September, Dean Megan Carpenter, along with the faculty and staff of UNH Franklin Pierce School of Law, will welcome graduates to Concord for a 50th anniversary celebration of the law school. Classes graduating in years ending in "3" and "8" will also be celebrating their reunions.



Rines (dean and professor of law), the new school focused on teaching students to practice law, a novel concept in legal education at the time, and training intellectual property lawyers. The law center that exists today has not strayed far from its roots.

To help him make his vision a reality, Rines recruited Robert M. Viles (associate dean and professor of law), a man committed to providing a practical legal education and someone who also valued public service. With leadership from Rines and Viles, as well as many others, the first class of lawyers graduated in 1976.

After purchasing the United Life and Accident Insurance Company building at 2 White Street in Concord, the law school found a new home in 1977. It continues to operate at that location today.

With the 50th anniversary celebration scheduled for the fall, UNH Franklin Pierce Law will honor its history and those who have made possible the institution that exists today.

Visit law.unh.edu/people/alumni for a complete list of events and to register. Please contact Professor Emerita and Alumni Liaison Ellen Musinsky at ellen.musinsky@law.unh.edu with questions or interest in sponsorships. ■

What was then known as Franklin Pierce Law Center commenced operations in a bull barn on Mountain Road in East Concord in 1973. Though the old barn was an unconventional place to store books and hold classes, it also held a certain charm and, most importantly, a commitment to creating the leading law school for the information age.

The brainchild of founder Robert H.

Nominations Needed for the 2023 Bruce Friedman Award

Becoming an attorney is a solemn acceptance of the unique privilege that lawyers have to practice law. Bruce Friedman, the late founder of the Civil Practice Clinic at UNH Franklin Pierce School of Law, and a legend in the world of civil legal services in New Hampshire, was vocal and active in developing a culture in the state where lawyers utilized this privilege to serve those who needed it most. This award pays tribute to Bruce Friedman's legacy by honoring the accomplishments of a UNH Law graduate and New Hampshire Bar member who exemplifies the commitment to public service of Bruce Friedman.

On October 18, 2023, at 5:30 pm, we will be honoring yet another recipient. As this award is intended to honor a member of the Bar who stands out as an exemplar of Bruce's commitment to public service, it is only fitting that we look to the Bar for nominations.

Who is it that comes to mind when you think of public service? Whom among your colleagues and friends reminds you that you can always do better, do more, and use your privilege to serve those with no privilege? The nominations should be of a practicing New Hampshire Bar member who is a graduate of the UNH Franklin Pierce School of Law (formerly Franklin Pierce Law Center). In your nomination, please include a reason why this individual is deserving of the award. Nominations should be sent to 603 Legal Aid Deputy Director Emma M. Sisti at esisti@603legalaid.org. Nominations must be received by August 25, 2023.

The 2022 recipient, Donna J. Brown, earned this award for her career-long commitment to empowering indigent individuals and giving them the best defense possible, often against all odds. Brown recognized the long-shadow cast by criminal convictions and was instrumental to the development of a robust pro bono criminal record annulment practice in the state. She is also a consistent mentor to newer attorneys and has always demonstrated a commitment to leading by example. ■

Past recipients include:

- | | |
|------|--|
| 2022 | <i>Donna J. Brown, Wadleigh, Starr & Peters</i> |
| 2021 | <i>Katherine J. Morneau, Morneau Law</i> |
| 2020 | <i>Suspended due to COVID-19</i> |
| 2019 | <i>Thomas A. Fredenburg (posthumously), Legal Advice & Referral Center</i> |
| 2018 | <i>Kirk C. Simoneau, Nixon, Vogelmann, Slawsky, Simoneau, PA</i> |
| 2017 | <i>Marilyn T. Mahoney, Harvey & Mahoney</i> |
| 2016 | <i>Catherine E. Shanalaris, Shanalaris & Schirch, PLLC</i> |
| 2015 | <i>Jack P. Crisp, Jr., The Crisp Law Firm, PLLC</i> |
| 2014 | <i>Quentin J. Blaine, Blaine Law Office, PLLC</i> |
| 2013 | <i>Steven B. Scudder, Committee Counsel, ABA Standing Committee on Pro Bono and Public Service</i> |
| 2012 | <i>Marilyn Billings McNamara, Upton & Hatfield, LLP</i> |

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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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NEW HAMPSHIRE

BAR FOUNDATION NEWS

IOLTA Grant Awards up 68 Percent From Previous Year

By Mysty Shappy

In June, the New Hampshire Bar Foundation (NHBF) announced grant awards of \$1.3 million to four non-profit legal aid programs through its annual Interest on Lawyers' Trust Account (IOLTA) program. This funding is up 68 percent from the previous year's awards and is a vital source of unrestricted funding for the nonprofit organizations who receive grants. Increased grants will provide funding for legal assistance for low-income clients across the state, including assistance for survivors of domestic violence, advocacy for individuals with disabilities, and homelessness prevention.

The IOLTA program was founded in New Hampshire in 1982 through New Hampshire Supreme Court Rule 50, and the rule was updated to make the program mandatory for all pooled client trust accounts in 2011. This year's funding is the first seven-figure award in 15 years. In 2009, the Bar Foundation awarded \$1.6 million in grants, which dropped by almost half in 2010. The amount of revenue available for grant awards primarily depends on the interest rates paid by finan-



cial institutions that hold these accounts, which have been historically low since the financial crisis of 2008. Rising interest rates, while generally not favorable to consumers, have had a positive effect on IOLTA revenue. Monthly revenue has been up almost 300 percent this year over the same time in 2022.

Organizations receiving grant funding this year are New Hampshire Legal Assistance, 603 Legal Aid, Disability Rights Center – NH (DRC-NH), and the New Hampshire Bar Association's Lawyer Referral Service – Modest Means program. Some of the funding was also allocated to support the NHBF's Law School

Loan Repayment Assistance Program, which is an important tool for these organizations when recruiting and retaining staff attorneys.

"Thank you to the attorneys, banks, and the Bar Foundation," DRC-NH Executive Director Stephanie Patrick says. "Funding through the IOLTA program helps us to fight discrimination and work toward an inclusive, accessible, and just society."

The NHBF manages the program and works tirelessly to maximize the financial resources it can disburse to the charities. In addition, five members of the New Hampshire Bar volunteer their time to help review applications and ensure the thoughtful and equitable distribution of New Hampshire IOLTA funds. Practicing attorneys can support the program by choosing to have their IOLTA at a Leadership Institution. Over half of the revenue from the IOLTA program is received from this short list of banks. These institutions are highlighted in the ad below, and an updated list can be found on the Bar Foundation's website, nhbar.org/nh-bar-foundation. ■

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You have a choice where you open an IOLTA account.

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NEW HAMPSHIRE
BAR FOUNDATION
Strengthening Justice for All



LawLine

The New Hampshire Bar Association would like to thank Sulloway & Hollis, Pastori Krans, and Attorney Kayla Turner, for a very successful LawLine event held on July 12, 2023.

A record 72 calls were taken from counties all over the state on a variety of legal topics including consumer matters, landlord/tenant law, real estate law, and family disputes. The NHBA is immensely grateful to all our volunteers for their continued support and participation in this valuable public service each month.

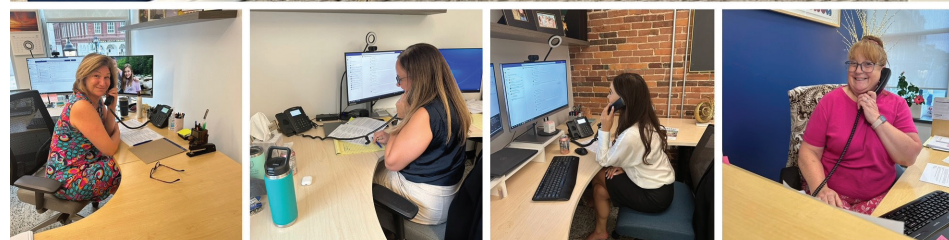
LawLine is a free public hotline, hosted by volunteer attorneys, on the second Wednesday of each month from 6:00 pm to 8:00 pm. The Bar staff forwards the phone calls from the public, so you remain anonymous.

We are currently seeking volunteers for the upcoming 2024 LawLine events.



Kayla Turner of the Disability Rights Center – NH. Courtesy Photo

For more information, or to volunteer, please contact NHBA Lawline Coordinator, Anna Winiarz, at awiniarz@nhbar.org. You can still volunteer and make a difference this year!



Pastori Krans volunteer attorneys Brooke Moschetto, Terri Pastori, Kathleen Davidson, Meredith Lasna, and Ashley Taylor, along with staff members Steph Champagne and Laureen Mastine. Courtesy Photo



Volunteers from Sulloway & Hollis. Front row (L to R): Rich Woodfin, Jennifer Iacopino, and John Gosnell. Middle Row (L to R): David Johnston, Robert Best, and Allyson Moore. Back Row (L to R): Alexander Henlin, Christopher Pyles, Paula Domanski, Bradley Holt, and Geoffrey Gallagher. Courtesy Photo

Community Notes

Brian Quirk Named a Fellow of the Litigation Counsel of America

Attorney Brian Quirk, a partner at Shaheen & Gordon, has been named a Fellow of the Litigation Counsel of America (LCA). He is one of only 12 attorneys in New Hampshire to achieve this recognition. He joins Attorney Michael Noonan, Managing Partner at Shaheen & Gordon, who is a Senior Fellow of the LCA and has been a member of the society for more than seven years.



Attorney Quirk has decades of experience, including numerous high-profile trials and investigations. His practice is focused on white-collar defense, government investigations, and civil litigation. He has been consistently recognized as one of the leading defense attorneys in New Hampshire by peers and clients.

The LCA is an honorary society for trial attorneys with membership limited to 3,500 Fellows or less than half a percent of American lawyers. According to the LCA, "Fellows are selected and invited into Fellowship after being evaluated for effectiveness and accomplishment in litigation and trial work, along with ethical reputation." The society focuses on diversity and inclusion and creates a community for professional development and advocacy in the law.

Coming and Going

McLane Middleton Welcomes Attorneys Sean Leonard, Madeline Lewis, and Susan Cannon

The law firm of McLane Middleton is pleased to announce the hiring of attorneys Sean M. Leonard, Madeline S. Lewis, and Susan E. Cannon.

Sean is an associate in the firm's Family Law Practice Group. Before joining McLane Middleton, Sean was a partner in a Maine law firm. He focuses his practice on various family issues including parental rights and responsibilities, divorce, termination of parental rights, and adoption.

Admitted to practice in New Hampshire, Massachusetts, and Maine, Sean can be reached in the firm's Manchester office at (603) 628-1370 or sean.leonard@mclane.com.

Madeline is an associate in the firm's Corporate and Tax Departments. She has extensive experience advising businesses



and individuals on compensatory, employee benefits, employment-related matters in corporate transactions, and in day-to-day business management. Prior to joining McLane Middleton, she was an attorney at international law firms in New York and Massachusetts. Admitted to practice in New Hampshire, Massachusetts, New York, and New Jersey, Madeline can be reached in the firm's Manchester office at (603) 628-1330 or madeline.lewis@mclane.com.

Susan is a trust officer in the firm's growing Trust Services Department. She will work with grantors and beneficiaries, their fiduciaries, and financial advisors to coordinate and facilitate asset transfers, distributions, review tax documents, prepare reporting and other trust related services.

Susan began her career in 1995 as an internal auditor and compliance officer with Bank of America and then Citizens Bank. Prior to joining McLane Middleton, she was a relationship manager and vice president with Cambridge Trust in their Wealth Management group for 10 years. Susan can be reached in the firm's Manchester office at (603) 628-1164 or susan.cannon@mclane.com.



Jest Is For All

by Arnie Glick



"Wonderful news -- the negligence case against you got thrown out. The plaintiff's lawyer couldn't establish what the standard of care is of a reasonably prudent chicken."

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Laura M. Dudziak

JOINS UPTON & HATFIELD, LLP



Upton & Hatfield, LLP is pleased to announce that Laura M. Dudziak has joined the firm.

Laura brings 20 years of experience representing clients in a variety of cases including divorce, parenting, child support, domestic violence, estate planning, and civil litigation.

Welcome Laura--we are pleased to have you on our team!

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Emily Goering

Associate

goering@gcglaw.com

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GCG is pleased to welcome Emily Goering

Emily's practice is centered on property and real estate development, with a focus in the areas of eminent domain, construction disputes, public infrastructure, and complex real estate conveyancing.

Before joining GCG, Emily was an Assistant Attorney General at the Office of the New Hampshire Attorney General.



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Attorney Amanda Steenhuis

Attorney Steenhuis' practice focuses on estate planning, guardianships, and probate and trust administration. She strives to help individuals and families create comprehensive estate plans tailored to their goals. Prior to entering private practice, Amanda spent more than a decade at the New Hampshire Public Defender, where she helped vulnerable people navigate the legal system.



AMANDA STEENHUIS
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191 Main Street, Nashua, NH

Attorney Julianne Plourde

Attorney Plourde is a recent graduate of the UNH Franklin Pierce School of Law's prestigious Daniel Webster Scholar Honors Program. Through her practical experience, Julianne developed a passion for supporting families through times of conflict and helping victims of domestic violence. She has completed Domestic Violence Emergency (DOVE) training, as well as Collaborative Divorce training.



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Concord • Dover • Manchester • Nashua • Peterborough • Portland • shaheengordon.com

DEVINE MILLIMET

ATTORNEYS AT LAW

Devine Millimet is pleased to welcome Jeffrey Adams to the firm. Located in our downtown Manchester office, Jeff is a graduate of Suffolk University School of Law, with nearly 20 years' experience.

As the chair of Devine's Financial Services Litigation team, he will work on a variety of matters within the Commercial, Business, and Real Estate Litigation practice areas as well as Family Law.

Welcome!

JEFFREY D. ADAMS

Of Counsel

603.695.8750

jadams@DevineMillimet.com

www.DevineMillimet.com

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MORNEAU
LAW

Morneau Law is excited to welcome Attorney Stacy Wardle and Attorney Elise St. Lawrence to our growing law firm. Their expertise will support our clients requiring family law and estate planning services.

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ATTORNEY STACY WARDLE

Stacy Wardle recently relocated to New Hampshire from New York where she practiced all aspects of family law for many years. At Morneau Law, she will continue to focus her practice on family law.

"These difficult times call for great sensitivity and compassion. My clients can count on me to be by their side throughout the entire process."



ATTORNEY ELISE ST. LAWRENCE

Elise St. Lawrence is focusing her practice on family law and estate planning and will represent clients living in New Hampshire and Massachusetts.

"With determination and dedication, I will do everything that I can to advocate for my clients' best interests."

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DEVINE MILLIMET

ATTORNEYS AT LAW

Welcome!

Devine Millimet is pleased to welcome the managing team of Greenblott & O'Rourke to their firm. Bringing a combined 54 years of experience and being a staple in the Concord and central New Hampshire area, attorneys Greenblott, O'Rourke, and Roedel are an exciting and mutually beneficial addition to the Devine Millimet team of professionals.



SETH GREENBLOTT

Seth is a graduate of Seton Hall University School of Law, with over 10 years' experience.

As a member of the Devine Corporate Team, he will work on a variety of matters across sectors including banking, manufacturing, business, and real estate.



MARY LYNN ROEDEL

Mary Lynn is a graduate of Seton Hall University School of Law, with over 20 years' experience.

As a member of the Devine Corporate Team, she will work on a variety of matters within the Family Law and Probate & Trust Administration practice areas.



JAMES O'ROURKE

Jim is a graduate of The George Washington University Law School, with 20 years' experience.

As a member of the Devine Litigation Team, he will work on a variety of matters within the Criminal Law practice area along with some Family Law work.

603.669.1000

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Technology Hype: We Are in the AI Era, the Time To Prepare Is Now

By Ryan Barton

I first experienced technology hype in 1995. I was a lonely, home-schooled 11-year-old who spent my free time learning everything possible about computers.

USA Today had featured a full double-page ad with nothing but a mystical “Start” button in the middle. The countdown for Windows 95 was on. The more I learned, the more excited I became. I was about to be part of the most important technological advancement of our time – Windows 95 was going to change everything!

We have all experienced plenty of technology hype in the decades since. But I don’t think anything has quite matched the frenzy around Artificial Intelligence (AI).

It is hard to know how to respond to it. The story of AI promises disruption at such existential levels it is difficult to grasp: Are we headed for work-free, equality-for-all utopia? Or for a post-apocalyptic world serving digital overlords? Or for a world like this one, with another new tool and another overhyped launch in our memory?



I’m asked regularly by professionals and business leaders: “Should I pay special attention to AI? Or is this just more technological hype? And in the legal industry, how significant will the AI impact be?”

Until recently, my answer was that AI was evolving, but in very targeted ways. Understand the niches and keep an eye on it, but don’t worry about it (I even wrote articles to this effect). This was the consensus of experts and the prediction of most futurists. However, when ChatGPT was released on November 30, 2022, it quickly became clear that this was a threshold moment in AI development.

Then, in April 2023, the underlying intelligence was upgraded to GPT4, and the nature of that threshold became apparent. GPT4 passed the Bar exam, scoring in the top 10 percent.¹ The following months have been chaotic in the tech industry.

And for attorneys, what does it portend that the multi-year investment and hard work of a JD program can be completed by an AI with just a few clicks?

To answer that, let us first consider the nature of AI, as of summer 2023:

1. AI is more than technology. It is *intelligence*, grown on technology. Intel-



ligence is of a higher order than simply technology, and it functions differently. While technology serves our will with specific instructions, AI can be given a goal and then autonomously complete it, using judgement along the way. Technology is a self-driving tractor. AI is a self-driving tractor with the goal of “make the property more beautiful” that autonomously buys new plants, builds a rock wall, and repaves your driveway while you sleep. And maybe also knocks down your house to plant a garden, to “make the property more beautiful.”

2. Current models are already intelligent enough to cause significant disruption. GPT4 is already a formidable intelligence. In addition to passing the Bar exam, it can write stories, teach lessons, draw up legal contracts, design home layouts, solve complex problems, and answer technical questions. Google’s Med-PaLM can already pass the medical exam. These AIs don’t need to become smarter to disrupt industry significantly: they simply must be integrated and safeguarded.

3. AI is attracting extreme levels of investment. Of course, these AI models are getting smarter at a screaming pace. Billions are pouring into the industry, with tech giants like Google, Microsoft, and Meta racing for dominance. AI capabilities are growing rapidly. Judging AI by its capabilities today would be like seeing Intel’s 286 processor back in 1982 and thinking “well, processors aren’t *that* fast.”

How will this play out for lawyers?

AI provides the possibility of entirely novel approaches to practicing law, as it redefines our relationships to problem solving, to work, and to each other. Law practitioners and business leaders should be investing **significant** and **focused attention** on artificial intelligence now, not later.

Today’s AI models excel at ingesting large amounts of data, finding patterns, and making predictions. This makes them especially powerful for the legal industry. There are five areas to consider:

1. AI is being integrated specifically for lawyers. Because AI models are not fully accurate (they “hallucinate” and regularly communicate inaccurately), they need to be tuned and integrated to be trustworthy for attorneys. Multiple software companies are doing exactly this. There are dozens of high-powered software tools with AI integration, including ChatGPT integrations into Word tuned for contracts. Spend time educating

yourself on these tools and trying them.

2. AI is dramatically increasing back-end efficiencies. AI tools are already being used to assist in analyzing vast amounts of legal data, including case law, statutes, and regulations, and provide relevant insights and recommendations to attorneys. This saves a tremendous amount of time, helping lawyers stay up to date with the latest legal developments, and reducing costs, while having an undeniable impact on staffing. This is the double-edged sword

of AI – when it can do the job of a human, that makes us more efficient, but at what cost?

3. AI will automate low-level legal areas. Companies like LegalZoom brought a simple, automation approach to straightforward legal cases. AI will accelerate that trend and enable an increase of the complexity that can be fully automated.

4. AI will be an effective partner with attorneys for strategy and insight. We are many years away from a complex legal item being handled autonomously by an AI. For the foreseeable future, law firms will be best served by partnering with AI for strategy and data analysis. AI will calculate the likelihood of success in litigation, estimate damages in personal injury cases, or determine the probability of settlement in negotiation processes. AI will analyze patterns and trends across multiple cases or legal authorities and help identify hidden connections, assess risks, and provide valuable insights that may not be immediately apparent to human practitioners. These insights, provided to experienced attorneys, will provide new capabilities. There’s also a chance it unleashes a hidden dynamic we could call “the IQ wars,” as perhaps the lawyers with the smartest AI win.

5. New legal areas. Every innovation brings new risks, privacy challenges, and novel legal situations. AI will be no different. There are already a host of thorny legal challenges clustered around each new AI release. This provides new opportunities for lawyers and their clients.

Of course, the best way to predict what is coming is to research, get close to software companies that lead the industry, try the best tools, and update predictions regularly. At Mainstay, we have convened a cross-functional team and created an AI Implementation Engineer to do just that for our business, and we advise our clients to consider a similar strategy.

All of this is just the beginning. We are in the AI era.

It is time for all business leaders and professionals to work to understand AI, partner with it, and move to the forefront of their field. The threatened pace of disruption is too great for a “wait and see” approach. The time to prepare is now. ■

Endnote

1. Source: <https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry>

In Memoriam

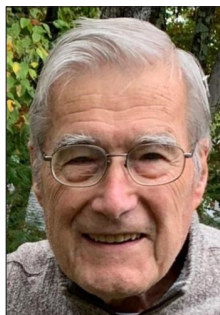
Peter V. Millham

Peter Van Etten Millham, beloved husband, father, counselor, moderator, skier, sailor, gardener, golfer, ditty singer, and champion pun maker, passed away on Saturday, July 1, 2023, at the Taylor Community in Laconia. He was 90 years old. He will be missed by many.

Peter was born in Brooklyn, New York, and raised in Locust Valley on Long Island. He went to high school at Friends Academy in Locust Valley, New York. He then followed a long family tradition attending St. Lawrence University in Canton, New York where he majored in history, government, and football. At St. Lawrence he established friendships that lasted his lifetime, and most importantly he met Alida Isham, the love of his life, with whom he enjoyed 66 years of marriage.

After serving in the Army, Peter attended Columbia University School of Law in New York. In 1959, Peter and Alida moved to the Lakes Region of New Hampshire. Peter began his legal career working with Judge Harold Wescott. They were soon joined by Rod Dyer and formed Wescott, Millham & Dyer, now known as Wescott Law. Peter practiced for 55 years, establishing a reputation as a lawyer with a strong work ethic and dependable moral compass.

Peter and Alida eventually landed in Gilford where they raised their three children. Peter loved his family. He was a play-



ful and supportive father, full of silly songs and games. He was a faithful attendee of sporting events. He encouraged his children to follow their hearts and create for themselves lives of meaning and purpose.

Second only to his love for his family was Peter’s deep love of his community. He devoted his 64 years living in central New Hampshire to participating fully in his community. He served as Moderator for the Town of Gilford for 40 years. He was known as “Mr. Moderator” long after he had given up the position. His list of volunteer positions included: 15 years on the Gunstock Commission, member of the Red Cross Board, many years on the New Hampshire Bar Disciplinary Committee, longtime member of Laconia Rotary Club with a term as President, an enthusiastic member and Commodore (1972-1973) of the Winnepesaukee Yacht Club, founding member of the Lakes Region Charitable Foundation, Chairman of the Board of the Circle Program, and many, many more.

Peter is survived by his wife, Alida Isham Millham, his son Fred Millham and daughter-in-law Laura Prager and their children, Sam and Lucia, and her husband Robert Doles, his daughter Sarah Millham and son-in-law Tom Horton and their children, Madison and Crawford, and his daughter Anne Millham and son-in-law Jim Huleatt and their children, Ethan and Peter. Surviving siblings include Lucia Michelli, Clodagh Lee, and Newton (Tony) Millham. Peter was pre-deceased by his sister Kate Latimer.

In lieu of flowers, donations in Peter’s name can be made to the Circle Program, circleprogram.org and the New Hampshire Charitable Foundation, 37 Pleasant Street, Concord, NH 03301-4005. ■

NHAJ Awards Members for Exemplary Achievements

At its 46th annual dinner and awards banquet on June 7, the New Hampshire Association for Justice (NHAJ) continued its tradition of recognizing members of the legal profession for various contributions to the civil justice system. NHAJ is a statewide professional association of trial attorneys working to protect individual rights by ensuring equal access to justice. The NHAJ Board of Governors dedicated the following awards:

Thomas R. Watson Board of Governors Award to Kristin Ross

Given to a NHAJ Board member for their exemplary support of the Association through the volunteering of one's time, expertise, and financial support.

Lifetime Achievement Award to Maureen Raiche Manning

This award goes to a NHAJ member "who has made a positive impact on the lives of other lawyers, on the laws in the State of New Hampshire, for their body of work and for their leadership."

Granite State Advocate Award to Jared Green, Mary Tenn, Scott Harris, and Benjamin King

Periodically given to attorneys who,



NHAJ Award Recipients from left to right: Christopher Seufert, Jared Green, Benjamin King, Hon. Landya McCafferty, Scott Harris, Mary Tenn, Kristin Ross, Jared Bedrick, and Maureen Raiche Manning. Courtesy Photo

while representing their clients, pursue and help achieve substantive changes in the laws of the state which improve the civil justice system, enhance the rights of citizens' access to the courts, preserve the right of trial by jury or enhance the right of everyone to attain full, fair, and timely remedies for civil wrongs.

Civil Justice Award to Hon. Landya McCafferty

This award recognizes outstanding commitment to the improvement and preservation of the American civil justice system. The award is not limited to members of the NHAJ or even to attorneys.

President's Award to Christopher Seufert

Given annually to the individual who, in the opinion of the president, has been of outstanding service to the Association and of particular help to the president. The award is not limited to members of the Association but may be presented to anyone who assists the Association in achieving its objectives for that year. ■

Book Review

If *The Lincoln Lawyer* Took Place in New Hampshire

Abiding Conviction: Book Three of the Dutch Francis Series

By Stephen M. Murphy

Oceanview Publishing (2022),
Trade Paperback, 289 pages

Reviewed by Lynnette V. Macomber

What if the show *The Lincoln Lawyer* took place in New Hampshire? That is the question answered by author Stephen Murphy's Dutch Francis series, with its latest installment, *Abiding Conviction*. I recently read *Abiding Conviction*, which is equal parts "whodunit" mystery and legal thriller. I found it to be a quick and absorbing read.

Murphy's Dutch Francis series is comprised of three standalone novels that track the trials (literally) and tribulations of Dutch Francis, a fictional, Manchester, New Hampshire-based attorney. I have only read *Abiding Conviction*, the third and most recent novel in the series, but now look forward to reading its predecessors, *Alibi* and *About Power*. According to author Stephen Murphy's website, a fourth novel in the series is also underway.

If *Abiding Conviction* is any indication, Murphy's Dutch Francis novels could easily each comprise a season of the recent Netflix show *The Lincoln Lawyer*, or a jam-packed episode of *Law & Order*. Murphy's character, Dutch Francis, is a likeable, oftentimes relatable lawyer who somehow manages to balance a criminal murder trial – in which he is defending a judge accused of murdering his wife – with the search for his own wife, who suddenly goes missing.

So begins *Abiding Conviction*'s gripping story arch, which alternates back and forth between the search for Dutch Francis's missing wife (a WMUR newscaster), and the criminal murder trial that goes forward at the insistence of Francis's client.

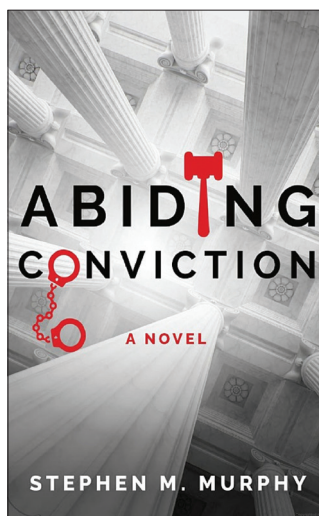
Murphy's writing strikes a nice balance that is probably harder than it looks: not sinking too far into a vortex of legalese, while making some elements of legal strategy an interesting part of the plot. His seemingly simplistic writing style can be surprising with its effortless depth at times.

I know what you are thinking: I practice law every day – do I really want to read fiction novels about it?

In this case, yes – because Murphy doesn't make it feel like "work." It will likely be obvious to seasoned criminal defense attorneys that some of what occurs "wouldn't really happen in real life." Yet – every time I thought that, Murphy surprised me with a one- or two-sentence plausible explanation. He takes complicated legal concepts that you or I might spend hours researching and explains them in layman's terms – without giving into the temptation to over-explain, as many real-life attorneys would.

Although the author practiced law for 34 years according to his website, Murphy doesn't try to prove how much he knows or let that get in the way of good storytelling. The focus is always on advancing the plot, which kept me turning the pages (short, succinct chapters really helped with this). The legal aspect of the story was equal parts intriguing and digestible – with enough there for any lawyer or nonlawyer to enjoy.

It is also rare to be able to read a story that is set in New Hampshire. I couldn't help but be charmed by references to places I've lived, seen, or worked, told through the first-person viewpoint of the main character. That allowed for a level of im-



mersion I would not have expected. I was able to visualize the places Dutch Francis goes in the book – mostly in Manchester, but other places in New Hampshire and Massachusetts, as well.

The name *Abiding Conviction* comes from a California criminal jury instruction, presented at the beginning of the book: "[p]roof beyond a reasonable doubt is proof that leaves you with an **abiding conviction** that the charge is true. The evidence need not eliminate

all possible doubt since everything in life is open to some possible or imaginary doubt."

I think this answers the "so what?" question of the book. Sometimes, a mystery novel is just a mystery novel. But we as humans tend to look for deeper meaning – and I would be remiss not to follow my English professor's advice from long ago and identify the "so what?" that should be answered by any piece of writing. In this case, I think Murphy's novel looks at *assumptions* versus *abiding convictions*. We should always examine what we think we know, and the basis for it. What abiding convictions do we hold, and are we willing to be open-minded when confronted with new evidence?

My other takeaway from *Abiding Conviction* was an appreciation for my own law practice. Lawyers will recognize the intensity of the situation that Francis is in – preparing for a criminal murder trial, which most of us would put our lives on hold to prepare for, while dealing with his wife's kidnapping, which most of us cannot imagine. Despite these incredible stressors, Francis perseveres, because that

is what lawyers do. Reading this was a reminder to appreciate everyday practice, when work and life fire alarms are not always going off simultaneously. Francis's determination was a reminder – whatever the situation, *we can do this*.

If you love mystery novels, I would add *Abiding Conviction* to your list for an absorbing but effortless read. The main character is an interesting narrator to follow around New Hampshire as he meets with clients, appears in recognizable court-houses, and investigates legal mysteries. Like any good book (or Netflix series), my first foray into Murphy's Dutch Francis novels left me wanting more. The only exception to this rule was Murphy's development of female characters, which I was ultimately disappointed by – those with similar viewpoints to mine will likely understand what I mean. However, I will be interested to see whether *Alibi* and *About Power* provide some redemption in this respect.

I look forward to reading *Alibi* and *About Power* to learn more about Dutch Francis as a character, and to be absorbed into another of Murphy's legal thriller page-turners – with a familiar New Hampshire backdrop. ■

Lynnette V. Macomber is an attorney at Orr & Reno who practices in civil litigation, representing individuals, businesses, non-profits, and public entities in a range of matters. She sits on both the NHBA's Ethics and Legislation Committees and is a member of the New Hampshire Women's Bar Association and the Charles C. Doe Inns of Court.



New Hampshire Bar Association Budget for Fiscal Year 2024

Dues Level Maintained for June 1, 2023 to May 31, 2024

The 2023-2024 fiscal year budget for the New Hampshire Bar Association was presented to and approved by the NHBA Board of Governors in May.

The NHBA budget is balanced, reporting an expected six percent increase in revenue and expenses over the prior year's budget.

A conservative and creative approach, along with a dedicated and motivated staff have enabled the budget to retain the capacity for member and public service – in particular, through continued support of the New Hampshire Bar Foundation, the NHBA's Law Related Education program, and the NHBA's Lawyer Referral Service – without increasing membership dues. In addition, the NHBA supports the state's Pro Bono Program administered through 603 Legal Aid, the Public Protection Fund, New Hampshire Minimum Continuing Legal Education, and the New Hampshire Lawyers Assistance Program.

Budget Highlights

The NHBA budget totals \$3.844 million.

Revenue Breakdown

- Fifty-five percent – Membership dues and fees (\$2,078,939), which is recorded as actual membership dues collected in fiscal year 2023. Membership continues to increase by about 100 members or less and has done so over the past seven years.
- Thirty-three percent - Registration and fees, of which the majority is Continuing Legal Education revenue (\$1,274,017).
- Seven percent – Publications and merchandise sales, which includes *New Hampshire Bar News* advertising and subscriptions (\$282,121).

- Three percent – Substantive Law Section membership revenue (\$121,250).
- One percent – Other, which includes investment income, and other miscellaneous revenue (\$43,755).
- One percent – Grant and other funding for NHBA programs (\$43,500).

Expense Breakdown

- Program Expenses are 27 percent of the total expenditure budget and relate to member and public programming and services (\$1,018,593).
- Overhead costs are 12 percent of the total expenditure budget, the largest expense being occupancy costs for the owned office condominium at 2 Pillsbury Street (\$482,169).

New Hampshire Bar Association

	APPROVED BUDGET May 31, 2024	APPROVED BUDGET May 31, 2023	Change
REVENUE			
Membership Dues & Fees	2,078,939	1,970,611	108,328
Registrations & Fees	1,274,017	1,205,951	68,066
Publications & Merchandise Sales	282,121	278,119	4,002
Grant & Funding Revenue	43,500	28,500	15,000
Other Revenue	165,005	131,088	33,917
General Support to Affiliates	-	-	-
TOTAL REVENUE	3,843,582	3,614,269	229,313
EXPENDITURES			
Personnel Expenses	2,342,821	2,128,500	214,321
Overhead Expenses	482,169	451,380	30,789
Program Expenses	1,018,593	1,034,389	(15,796)
TOTAL EXPENDITURES	3,843,582	3,614,269	229,313
Net Asset Contribution	-	-	-
EXCESS OF REVENUE OVER EXPENSES	-	-	-

New Hampshire Bar Association Explanation of Largest Expenditure - Personnel Costs

Department	Budget Year Ended, May 31, 2024				Budget Year Ended, May 31, 2023			
	Personnel Costs	Full Time Staff Equivalent (FTE)	Positions All or Partially Funded	% Expense of Total Budget	Personnel Costs	Full Time Staff Equivalent (FTE)	Positions All or Partially Funded	% Expense of Total Budget
Executive	483,717	4.150		12.59%	411,191	4.100		11.38%
Business Operations	689,760	8.633		17.95%	546,389	7.220		15.12%
Program Development & Member Services	445,563	6.000		11.59%	424,560	6.270		11.75%
Marketing & Strategic Communications	487,162	6.000		12.67%	502,052	6.200		13.89%
Lawyer Referral Service - Full Fee	89,853	1.550	1.600	2.34%	93,842	1.600	1.600	2.60%
Modest Means Referral Service	89,853	1.550	1.600	2.34%	93,842	1.600	1.600	2.60%
Law Related Education	56,913	0.800	0.800	1.48%	56,625	0.800	0.800	1.57%
Total Personnel Costs	2,342,821	28.683		60.95%	2,128,501	27.790		58.89%

New Hampshire Bar Association Budget for Fiscal Year 2024

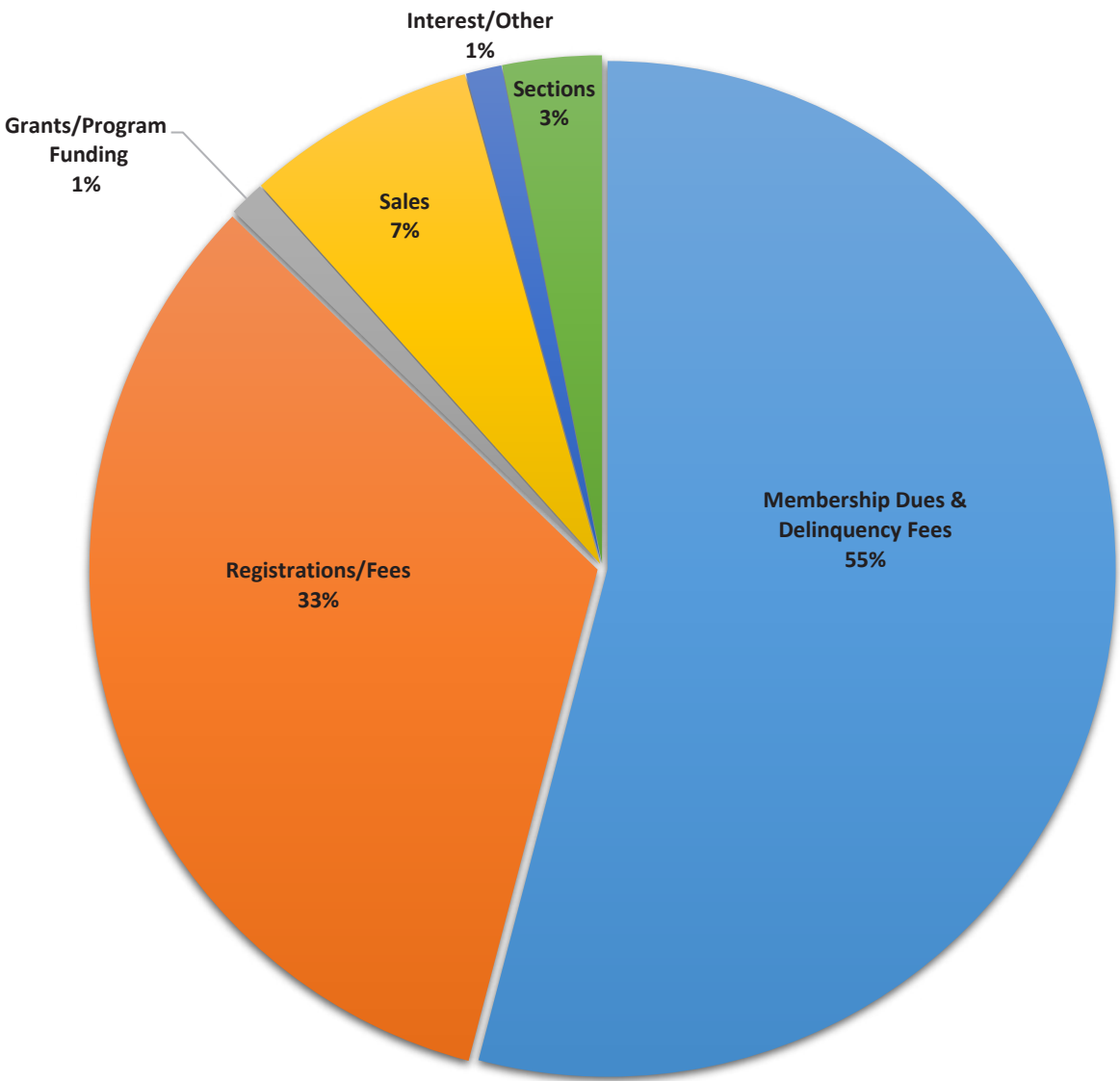
- The largest expense for most service-intensive organizations, are personnel costs (salary, wages, and benefits). Virtually all activities at the Bar Center are service-related; hence the single-largest expense in the budget is staffing to provide programs and services at 61 percent of the total expenditure budget (\$2,342,821).

As noted above, the NHBA supports affiliates that share the Bar Center offices to include, the New Hampshire Bar Foundation – the charitable arm of the NH Bar Association – and New Hampshire Minimum Continuing Legal Education (New Hampshire Supreme Court Rule 53). In addition, NHBA staff also support the Public Protection Fund Committee by administering New Hampshire Supreme Court Rule 55, support New Hampshire Supreme Court Rule 50-A by administering the annual Trust Account Compliance Form filing, and assist 603 Legal Aid and New Hampshire Lawyer Assistance Program with marketing and other support. ■

Notice of Budget Information Session – All Members Welcome

Please attend the Budget Information Session on Thursday, September 14, 2023, at 3:00 pm for questions and discussion regarding this fiscal year’s budget. Please respond to info@nhbar.org of your intent to attend. Any questions or comments in advance of the meeting may be emailed to NHBA’s Deputy Executive Director, Paula D. Lewis, at plewis@nhbar.org.

NH Bar Association 2023-2024 Budgeted Revenue Sources



New Hampshire Bar Association Largest Expenditures, Excluding Personnel Costs

Budget Year Ended, May 31, 2024

	Budgeted Cost	Expense Funded by Grant or Award	% Expense of Budget
Overhead Expenses			
Occupancy (mortgage interest, CAM, maintenance)	242,392		6.31%
Miscellaneous (includes credit card processing fees)	159,947		4.16%
Information Services/Data Processing	98,244		2.56%
Professional Fees (includes annual financial audit)	59,840		1.56%
Program Expenses			
Printing & Materials (includes CLE materials for members)	71,460		1.86%
Facilities & Meals	65,231		1.70%
Law Related Education Programs	63,334		1.65%
Member Services Affinity Partners	62,892		1.64%
Midyear Meeting Expenses	62,620		1.63%
Practical Skills Member Workshops	53,785		1.40%
Program Development & Training	53,585		1.39%
Postage	48,620		1.26%
Annual Meeting	39,800		1.04%
Officer & ABA Delegate Allowance	38,210		0.99%
Total Percentage of Budget			29%

Budget Year Ended, May 31, 2023

	Budgeted Cost	Expense Funded by Grant or Award	% Expense of Budget
Overhead Expenses			
Occupancy (mortgage interest, CAM, maintenance)	233,413		6.46%
Miscellaneous (includes credit card processing fees)	162,571		4.50%
Information Services/Data Processing	90,247		2.50%
Professional Fees (includes annual financial audit)	65,345		1.81%
Program Expenses			
Printing & Materials (includes CLE materials for members)	70,825		1.96%
Facilities & Meals	30,080		0.83%
Law Related Education Programs	60,834		1.68%
Member Services Affinity Partners	62,892		1.74%
Midyear Meeting Expenses	93,720		2.59%
Practical Skills Member Workshops	43,785		1.21%
Program Development & Training	48,405		1.34%
Postage	54,148		1.50%
Annual Meeting	57,652		1.60%
Officer & ABA Delegate Allowance	34,755		0.96%
Total Percentage of Budget			31%

with a case involving a sexual assault. The victim had previously been assaulted in college, and the workplace assault triggered PTSD that affected her career.

“That was my employment law training,” says King, who had taken no employment discrimination classes while in law school. “The outcome we obtained helped the woman rebuild her life. I was challenged by the substantive law, and I also felt deeply rewarded by the work that we accomplished. I continue to feel rewarded by the work I accomplish for people subject to discrimination in the workplace.”

King grew up in Chelmsford, Massachusetts, the child of a music-minded father who had once played tenor sax in a Navy band, and a mother who was also a music aficionado with a large collection of Frank Sinatra records.

He remembers being four years old and wanting nothing more than a KC and the Sunshine Band album.

“I was fascinated with the record album and the fact that there was music revealed when the needle hit the record,” he says. “Music has been a source of inspiration and comfort throughout my life.”

King attended Dartmouth College, with a double major in government and English, and had aspirations of a career in pulmonary medicine, inspired by the doctors who had helped him with his asthma earlier in life. But a course in organic chemistry convinced him that “my talents tended more toward the written word and persuasive argument.”

A summer internship in the City of Portsmouth legal department clinched his

career plans. The city negotiator enlisted King’s help in preparing a Supreme Court brief, which in 1992 still meant traveling to the Franklin Pierce Law Library to do research.

“I honestly found it thrilling,” King says. “My mind said, this is like a treasure hunt.”

He went on to the University of Virginia School of Law because of that experience “and the sense that this career would provide an intellectual challenge, a suspicion that has proven true,” he says.

Upon graduation, King worked at Boynton Waldron, Doleac for four years, stayed at another firm for less than a year, then joined Douglas, Leonard & Garvey, where he has been for 21 years. His focus areas include plaintiffs’ employment law, personal injury, and workers’ compensation cases, as well as those involving property rights disputes.

In one of his most memorable cases, just as the pandemic was starting, he represented an African American woman with a record of success as a sales professional who felt she was subject to adverse treatment under a new supervisor because of her race. King flew to Los Angeles to depose the human resources director, who insisted his client had never complained of race discrimination, then flew to South Carolina to depose the alleged harasser, who had left the company.

During the deposition, the accused harasser told King, “I knew your client complained of race discrimination because after your client went to HR, HR went to me and said I’d been accused of racism,” King recalls.

His client had accompanied him to the depositions “and it was very validating for her,” he adds. “What we showed



Benjamin King strikes a tourist’s pose in “Batman Alley” in Sao Paolo, Brazil. Courtesy Photo

was not only did the employer not take any remedial action but tried to cover it up.”

King’s work has won the admiration of his longtime paralegal, Susan Mello, who calls him “an excellent employment, discrimination and workers’ compensation attorney who goes the extra mile for his clients,” as well as colleagues like Nancy Richards-Stower.

“Over 20 years ago, Ben joined our employee rights group, the New Hampshire chapter of the National Employment Lawyers Association,” she says. “I was blown away by his brilliant writing: pure poetry. Ben’s stories of sharing music with his late parents are epic; his own courage in the face of challenges, inspirational; and I dare you to ask him which Dave Matthews Band album is the best, or which DMB live concert was his favorite.”

“He has the risk-taking spirit to help take on contingent cases knowing he will only be paid if he prevails,” law partner Charles G. Douglas, III, says. He has known King for more than 20 years. “Due to his mastery of the law and facts in dispute, he almost always prevails and has a happy client.”

He adds that King “gives tirelessly to the National Employment Lawyers Association and is always willing to write a brief for the New Hampshire Association of Justice.”

King is the current president of NELA and is treasurer of the Disability Rights Center-NH, where he has been on the board since 2020. He has also authored the Superior Court digest for the

New Hampshire Association of Justice Trial Lawyers Quarterly for 20 years. He is a past president of the New Hampshire Association for Justice and continues to serve on the board of governors and was on the Rye zoning board for 13 years.

King says he is indebted to his parents for his professional success.

When his mother died in 2022, he founded the Joyce D. King Memorial Scholarship in the Town of Chelmsford Public Schools, where she worked and where he attended school. It awards \$2,500 annually to Chelmsford High School graduates pursuing careers in education.

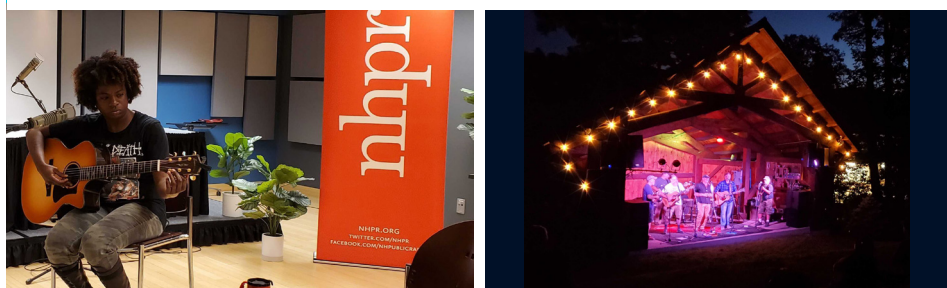
King has also written fondly of his father, Thomas J. King, in poignant and often funny columns in the Concord Monitor, including one about his father taking him to his first rock concert in the midst of a raging blizzard.

A theater buff, King has a collection of playbills, and enjoys travel, often designing a vacation around a concert, as when he ventured to northern England after a Rolling Stones concert in Liverpool.

He attends eight to ten concerts a year and counts as his favorite the time he watched Van Halen in 1986, standing next to the stage as the famed guitarist did a soundcheck.

“I’m sure my mouth was agape,” King says. “I met his eyes at the end of the solo and he winked at me.”

“Music of all the art forms is the art form that most powerfully triggers memories,” he adds. “I can hear a song and I can remember when I first heard it or when it was part of the soundtrack of my life.” ■



LIVE PERFORMANCES | MUSIC NEWS
STAFF-CURATED PLAYLISTS

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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.

SEPTEMBER 2023

THU, SEP 14 – 10:30 a.m. – 2:30 p.m.
What Lawyers Need to Know About Business
• 180 NHCLE min.
• Concord – UNH Franklin Pierce School of Law

THU, SEP 21 – 9:00 a.m. – 4:30 p.m.
22nd Annual Labor & Employment Law Update
• 365 NHCLE min. incl. 60 ethics/prof.
• Concord – NHBA Seminar Room/Webcast

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

OCTOBER 2023

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

WED, OCT 18 – 12:00 p.m. – 1:00 p.m.
2023 Patent Law Update: Key Developments in Patent Litigation and Patent Prosecution
• Webcast; 60 NHCLE min.

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

MON, OCT 23 – 12:00 p.m. – 1:00 p.m.
Tik Tok, Twitter, Tech, and Ethics
• Webcast; 60 NHCLE min.

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

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

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

NOVEMBER 2023

MON, NOV 6 – 12:00 p.m. – 1:00 p.m.
What my Facebook Posts Teach about Lawyer Mental Health
• Webcast; 60 NHCLE min.

DECEMBER 2023

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

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

FEBRUARY 2024

FRI, FEB 9
Midyear Meeting 2024
• Manchester – DoubleTree by Hilton

Federal Research Grants & Agreements



Friday, September 22, 2023

12:00 - 1:00 p.m.
60 NHCLE min.

This CLE will cover the basics of federal grants and agreements as they exist in the research space. Topics will include – what grants and other agreements are, what terms to look out for and know about when counseling a client whether to seek federal funding for research, and topics that are specifically applicable in the realm of research.

Who Should Attend this Program?

Lawyers who represent tech companies, start-ups, and those generally interested in the topic.

Faculty

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

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How to Register

All registrations must be made online at
<https://nhbar.inreachce.com/>
(if you missed any of the previously held programs, they are now available ON-DEMAND)



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Live Programs • Timely Topics • Great Faculty • Online CLE • CLEtoGo!™ • DVDs • Webcasts • and More!

What Lawyers Need to Know About Business (Facilitated by Hon. John Lynch)

Thursday
Sept 14 10:30 a.m. – 2:30 p.m.
180 NHCLE min.



UNH Franklin Pierce School of Law, Concord

Many attorneys represent businesses, or business people, as clients. It is useful to understand how business people view their challenges, opportunities, and problems. The goal of the day is to give attorneys a better appreciation of what their business clients care about and are trying to accomplish.

Program instruction will be entirely case method. Given this, participants should be well-prepared in advance and have read thoroughly and analyzed the cases provided prior to the program. Participants may be randomly called upon to offer their perspective. The cases discussed are taken from the capstone course, "The CEO Experience" recently offered at the Tuck Business School, and currently being taught at the Harvard Business School.

Topics will include an examination of the customer, defining quality, developing financial strategies, managing change, including technological innovation, mergers and acquisitions and leading turnarounds. The principles are the same for small businesses, start-ups, or larger companies.

You will not want to miss the opportunity to attend this in-person only event!

Monday "Fun-days" with Stuart Teicher

Don't miss Monday "Fun-days" with Stuart Teicher – the "CLE Performer" – and have a laugh at lunch!



8 Reasons Movie Lawyers Would be Disciplined

October 16, 2023 – 12:00 – 1:00 p.m.
60 NHCLE ethics min.

Tik Tok, Twitter, Tech, and Ethics

October 23, 2023 – 12:00 – 1:00 p.m.
60 NHCLE ethics min.

From Bonnie and Clyde to Bernie Madoff – What the Biggest Thieves in History Teach About Attorney Ethics

October 30, 2023 – 12:00 – 1:00 p.m.
60 NHCLE ethics min.

What my Facebook Posts Teach about Lawyer Mental Health

November 6, 2023 – 12:00 – 1:00 p.m.
60 NHCLE min.

22nd Annual Labor & Employment Law Update

Thursday
Sept 21 9:00 a.m. – 4:30 p.m.
365 NHCLE min.
incl. 60 ethics/prof.



NHBA Seminar Room, Concord/Webcast

This full day seminar will address cutting edge developments in employment law over the past year focusing on recent agency and court decisions, new laws, Long COVID's impact on the workplace, ethical considerations around ChatGPT and more.

Faculty

Debra Dyleski-Najjar, Program Chair/CLE Committee Member, Najjar Employment Law Group, PC, N. Andover, MA

Heather M. Burns, Upton & Hatfield, Concord

Becky Howlett, The Legal Burnout Solution, Philadelphia, PA

Lauren Simon Irwin, Upton & Hatfield, Concord

Jennifer Shea Moeckel, Sheehan Phinney Bass & Green, Manchester

Julie A. Moore, CLE Committee Member, Employment Practices Group, Wellesley, MA

Jennifer L. Parent, McLane Middleton Professional Association, Manchester

Jeffrey Parsonnet, MD, Dartmouth Hitchcock Medical Center, Lebanon

James P. Reidy, Sheehan Phinney Bass & Green, Manchester

Nancy Richards-Stower, Merrimack

Cynthia Sharp, The Legal Burnout Solution, Philadelphia, PA

Kevin W. Stuart, Bernard & Merrill, Manchester

2023 Patent Law Update: Key Developments in Patent Litigation and Patent Prosecution

Wednesday
Oct. 18 12:00 p.m. – 1:00 p.m.
60 NHCLE min.



The presentation will cover recent developments in patent law including the latest trends in patent litigation, new USPTO filing procedures, and important patent cases pending with the U.S. Supreme Court as well as Federal Circuit Court decisions.

This presentation will also share insight on:

- Best practices for patent litigation, including venue changes
- Practical prosecution advice
- Recent trends and developments in Patent Trial and Appeals Board proceedings

Faculty

Lisa N. Thompson, CLE Committee Member, Sanborn Head Associates, Inc., Concord

Peter A. Nieves, Nieves IP Law Group, LLC, Manchester

Kimberly A. Peaslee, Concord



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

Representing Start-Up Charities A Pro Bono Alternative for the Transactional Attorney

Wednesday
Oct. 25 9:00 a.m. – 12:30 p.m.
195 NHCLE min.



In the lifespan of a charity, few moments are as consequential as the start-up phase. Thoughtfully incorporating documents, sound bylaws, and thorough policies set the organization up for success. If you are an attorney who wants a rewarding and impactful pro bono opportunity that does not involve litigation, helping charities think through these crucial first steps is an excellent option. In this program, you will hear from the New Hampshire Charitable Trusts Unit and a private practitioner with extensive experience navigating the complex issues that charities face. Topics include: choosing the legal form of the charity, alternatives to separate incorporation, charities regulation by the state and federal government, and frequent pitfalls faced by new charities.

Faculty

Meaghan A. Jepsen, CLE Committee Member, Ransmeier & Spellman, PC, Concord

Diane Murphy Quinlan, NH Department of Justice, Concord

Michael R. Haley, NH Department of Justice, Concord

Katherine B. Miller, Donahue, Tucker, & Ciandella, PLLC, Exeter

Emma M. Sisti, 603 Legal Aid, Concord

On-Demand Programs from our Partners in the Shared-In Catalog

2023 Annual Convention: Biden's Border and Other Immigration Issues

From the Kentucky Bar Association
Original Program Date: June 23, 2023 – 60 NHCLE min.

2023 Annual Convention: "You Can't Do That Here" – Conducting Appropriate and Effective Workplace Investigations

From the Kentucky Bar Association
Original Program Date: June 23, 2023 – 60 NHCLE min.

2023 Military Law Symposium

From The Florida Bar CLE
Original Program Date: June 21, 2023 – 360 NHCLE min.

BLM's New Oil and Gas IM's: Refining the Federal Leasing Process and More

From the Rocky Mountain Mineral Law Foundation
Original Program Date: April 26, 2023 – 60 NHCLE min.

Developments in the Law 2023

Friday
Oct. 27 9:00 a.m. - 4:30 p.m.
360 NHCLE min.
incl. 60 ethics/prof. min.



Manchester – DoubleTree by Hilton Downtown

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

Faculty

Corey M. Belobrow, Friedman & Feeney, PLLC (of counsel), Concord

Simon R. Brown, Preti Flaherty Beliveau & Pachios PLLP, Concord

Thomas M. Closson, Jackson Lewis, PC, Portsmouth

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

Alyssa Graham Garrigan, Ansell & Anderson, PA, Bedford

Christopher M. Johnson, NH Public Defender, Concord

Thomas J. Pappas, Primmer Piper Eggleston & Cramer, PC, Manchester

Laura Spector-Morgan, Mitchell Municipal Group, PA, Laconia

Roy W. Tilsley, Jr., Bernstein Shur Sawyer & Nelson, PA, Manchester

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

Medical Malpractice Cases in NH

Original Program Date: May 11, 2023 – 360 NHCLE min., incl. 30 ethics/prof. min.

Navigating the Healthcare World: Understanding the New Laws & Complex Healthcare System

Original Program Date: May 24, 2023 – 350 NHCLE min.

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

Original Program Date: June 21, 2023 – 280 NHCLE min., incl. 30 ethics/prof. min.

Upcoming CLE Programs

More Information Coming Soon!!

Administrative Law

Thursday, October 19, 2023

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

Thursday, November 16, 2023

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

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

NHBA•CLE Volunteer Faculty

Honor Roll



Over 175 individual members of our Bar and over 40 non-NHBA members volunteered (some multiple times) during the 2022-2023 CLE year as faculty panelists, program chairs and moderators in more than 40 high quality, live and remote NHBA•CLE seminars. Together, faculty donated thousands of hours of time to share their knowledge and expertise with colleagues statewide and beyond. Without the professional commitment of these volunteers, the New Hampshire Bar's CLE programs would not have been available to the many individual Bar members who attended. NHBA•CLE programs consistently receive very positive participant evaluations. Please – When you see these individuals let them know you appreciate their important contributions to the competency and professionalism of the New Hampshire Bar Association. On behalf of the entire CLE Committee and staff, we wish to thank all members for their continued support of NHBA•CLE efforts.

***Please let us know if we have left you off our list in error. We apologize for any oversights.**

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The CLE Performer

Odette J. Turenne
Internal Revenue Service

Thomas Wright
The Turning 65 Workshop, LLC

counsel to then-Governor Stephen Merrill.

“That was a really exciting opportunity,” Justice Nadeau says. “It involved speaking at the legislature, testifying about his position on bills, covering for him at speeches if he couldn’t attend, and giving him advice on any topic that he wanted to ask me about.”

In 1996, Merrill decided not to run again and appointed Nadeau to serve as an associate justice in the Superior Court.

“When Governor Merrill first nominated me to the Superior Court, my newly born twins were in the intensive care unit after having been born premature,” Justice Nadeau says. “So, my first thought was, ‘can I be a good mother and a good judge?’ I was truly honored to receive the nomination and I was excited about this new phase in my career. At the same time, I knew that women faced challenges in the workplace, which made balancing family and work difficult. I hope that over time, I achieved that balance.”

As an associate justice, Nadeau got involved with expanding the mental health court program through a committee with Circuit Court Judge James Leary (now retired).

“She had come up with the idea of creating a conference and having all the people involved in the mental health system get together, and I thought it was a great idea, but I didn’t think it was going to go anywhere,” Judge Leary says. “The next thing I knew, she had secured funding for it, and we had the Grappone Center sold out with a two-day-long conference on mental health in the court system. That just gives you an idea of her energy and her passion for these projects. She’s remarkable – a very impressive judge.”

At the same time, Justice Nadeau, after having implemented a drug court in Rockingham County where she presided, began spearheading efforts to secure funding for additional drug courts throughout the state.

“I like to think that my mother’s influence inspired me to combine my education as a lawyer with her influence as a clinical psychologist,” Justice Nadeau says. “Seeing the challenges of people who struggle with mental health and substance use issues prompted me to spend my years as chief justice promoting, creating, and supporting treatment courts throughout the state. Her model of listening, validating, and acting with empathy helped me understand what it took to be an effective drug court judge.”

In 2011, then-Governor John Lynch appointed her as Superior Court Chief Justice – the first under a new statute limiting the terms to five years – and she continued to grow the drug court system. By 2016, she had liaised with stakeholders from each county and oversaw the opening of ten drug courts. She then worked with legislators to pass legislation for statewide funding of the drug court programs.

“Her out-of-the-box thinking and enthusiasm are contagious,” says David King, Chief Administrative Judge of the Circuit Court. “She and I have worked collaboratively on many projects in tandem with both the Circuit Court and the Superior Court. I think in some ways we have sort of changed the culture between the courts. We created the Circuit Court in 2011 around the same time she came on as chief justice of the Superior Court, and we were suffering some growing pains. She was very supportive of this brand-new court and the need to reallocate precious resources that the Judicial Branch had. I’m so grateful for her support early on.”

When the COVID-19 pandemic reared its ugly head, Justice Nadeau picked up the baton and led the charge to establish a way to safely conduct jury trials.

“During the pandemic, she took the lead, and she became our sort of pandemic expert,” Judge King says. “She kept current on the science and guided the whole court system through those really difficult times. When things that are novel come up, she’s one that digs in and figures out how to do it and just gets the job done.”

New Hampshire Supreme Court Senior Associate Justice Gary Hicks echoes the sentiment about her leadership through the pandemic.

“It was quite challenging for the courts to pivot through all that,” Justice Hicks says. “She handled it with a high level of skill and helped get us all through it. She has accomplished a great deal in her role – I can’t think of any Superior Court judge that has accomplished as much as she has.”

Throughout her years on the Bench, Justice Nadeau has collaborated with many stakeholders on several groundbreaking initiatives such as e-filing for civil cases (which, by a stroke of luck, was implemented just before the pan-



At the 2023 NHBA Annual Meeting, Justice Nadeau received the Justice William A. Grimes Award for Judicial Professionalism. Photo by Tom Jarvis

demic), Felonies First, and CaseLines, to name a few.

Strafford County Attorney Thomas Velardi says it’s an extraordinary circumstance to have a jurist like Justice Nadeau.

“She has presided over some of the most significant changes to Superior Court practice in the last 100 years,” Velardi says. “It’s a unique experience for members of the Bar to be able to work in a truly collaborative way with the judiciary. Traditionally, the judiciary is sort of shrouded from view of those of us who are just mere practitioners. But what Chief Justice Nadeau did was she really opened the doors to the Superior Court and gave critical thought to how we can do things better. And it wasn’t just dictates coming from the court, but rather stakeholders were sat in chairs and asked to be truthful with the court on how they can do things better. That’s just part of that humble leadership that she has always shown.”

Kimberly Weibrecht, a founding partner of Weibrecht & Ecker, who clerked for Justice Nadeau in 1998, says Justice Nadeau has never shied away from a challenge and has embraced each with grace, persistence, and foresight.

“She is an innovator in judicial reform and criminal justice reform,” Weibrecht says. “She’s an outside-the-box thinker and she has brought that to her role as chief justice. She’s also a collaborator. She’s really good at bringing stakeholders together and delivering some challenging messages in ways that really diverse groups of people can hear. She has to get prosecutors and defense attorneys to talk with one another, and [she has to get] police officers to want to embrace initiatives that result in individuals that might be in jail to be in the community instead. Those are hard, complex messages and she’s able to bring those people together. It’s pretty amazing.”

Weibrecht continues: “She’s a nationally recognized expert in the drug court and people are hiring her to travel across the country to train their stakeholders in the system. Frankly, she makes New Hampshire look really good and innovative...it’s a pretty big punch for a little state.”

Beyond the Bench, Justice Nadeau is heavily involved as a board member of both the New England Association of Recovery Court Professionals and All Rise (formerly known as the National Association of Drug Court Professionals). She is also a co-chair of the New England Regional Judicial Opioid Initiative.

“I can’t think of any Superior Court judge that has accomplished as much as she has.”

– Justice Gary Hicks

“In the context of national drug court leadership, she’s a rock star,” Superior Court Judge David Ruoff says. He presides over the Rockingham County Drug Court and has known Justice Nadeau since he was in law school. “She’s been a fantastic leader in the Superior Court. She listens carefully and thoughtfully, and she’s always been someone that you can go to with any question or concern and receive a very thoughtful response from. She’s very genuine and approachable, which really made her an excellent chief justice.”

Throughout her career, Justice Nadeau has received multiple awards. In 2013, she received the Caroline Gross Fellowship Award to attend the John F. Kennedy School of Government program on Executive Leadership; the Eric Cogswell Achievement Award, recognizing commitment to addressing the over incarceration of offenders with mental illness; and the Marilla M. Ricker Achievement Award, presented by the New Hampshire Women’s Bar Association to women in leadership positions.

In 2015, she received the Advocacy Award from New Futures and the Wheelock-Nardi Advocacy Award from the Mental Health Center of Greater Manchester for her work advocating for those with mental health and substance use disorder. In 2016, she was awarded the Kathleen Taylor Legislator Award from the New Hampshire Alcohol and Drug Abuse Counseling Association.

In 2017, she received the Leadership Award from the New England Association of Drug Court Professionals, and then she received the Perkins Bass Fellowship from the Nelson A. Rockefeller Center, Dartmouth College in 2021.

Just recently, at the 2023 Annual Meeting, she received the NHBA’s Justice William A. Grimes Award for Judicial Professionalism.

Justice Nadeau says she feels lucky for where her career has taken her and that it has been satisfying every step of the way, but that it’s time to retire.

“It feels like it’s time for someone else to come take a fresh look at things,” Justice Nadeau says. “I also feel excited about the opportunity to contribute in a different way by getting more involved in the boards I’m on already, hopefully adding a couple boards here and there, and getting involved in my local community, as well.”

She says she plans to do some traveling, to take the time to become fluent in Spanish once more, and to take up the clarinet again.

Among the many mentors she has had throughout her career, Justice Nadeau counts retired New Hampshire Supreme Court Chief Justice Linda Dalianis as one of the biggest.

“She blazed the way for women,” Justice Nadeau says. “I will never forget when I was first nominated, I was required to go to the Judicial College for two weeks in Reno, but my twins were only nine months old. The thought of doing that panicked me. I called [Justice Dalianis] and asked her if I should request an exception. She said, ‘Absolutely not. You need to go. I was a mom, and I did it. You will be a good mom and a good judge.’ That was the best advice I had from her.”

Justice Nadeau says that Superior Court Administrator Karen Gorham has also been a mentor.

“Technically, she works for me, but she is a mentor, equally,” Justice Nadeau says. “She’s a problem solver. She knows how to bridge gaps between sides that aren’t necessarily agreeing on things. She is as much of a mentor to me as my dad and Linda Dalianis were.”

Gorham says that Justice Nadeau has been a phenomenal leader who leads by example.

“I’ve been an attorney since 1990,” Gorham says. “I had so many different bosses and supervisors, and until I worked with Justice Nadeau, I did not truly understand how a great supervisor can change your work environment. I have loved my job ever since – and it’s because of her.”

Gorham continues: “She will be sorely missed in retirement, but is leaving the Superior Court with a wonderful legacy of collaboration and innovation. Her leadership has taught us all how to meet the needs of the court and its litigants while being thoughtful and compassionate in the process. She’s been a wonderful leader in the judicial branch, a wonderful colleague to her peers, and a wonderful manager to her Superior Court team. I think I can speak for everyone [when I say] that there is a sense of loyalty she has cultivated among all of us. She hasn’t asked for it, but she gets it because of her actions and the way she responds to people.”

Justice Nadeau plans to continue public service as a Senior Active Judge sitting one or two days a week, doing mediations, and covering for drug court judges, as needed.

“It’s really been a privilege to bear witness to the human condition and to use my position in a way that recognizes people need help – even when they are doing things against the law,” Justice Nadeau says of her career. “People are struggling with mental health and substance issues, and to be able to come up with ways for them to get their lives back has been really meaningful to me.”

Governor Chris Sununu has nominated Superior Court Judge Mark E. Howard to be the next Superior Court Chief Justice. If confirmed, he will succeed Justice Nadeau. ■

Prison Series from page 3

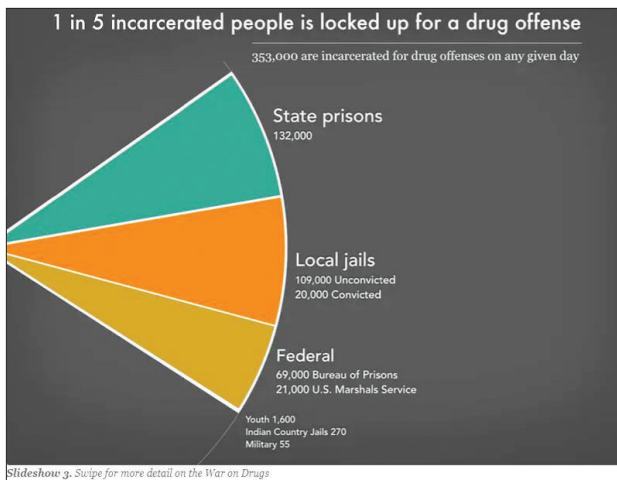
NHDOC leased the former Hillsborough County House of Corrections in Goffstown and moved the female prisoners there. However, the cramped and antiquated facility was never intended for long-term use as a prison and did not include any of the same programs and services available to the male inmates in the NHSPM. After decades of legal battles stemming from a class-action lawsuit on behalf of women state prisoners by Elliott Berry and Alan Linder (both formerly of New Hampshire Legal Assistance), the new facility in Concord was built in 2018.

The Transitional Housing Units and the Transitional Work Center



Shea Farm House was the first housing unit to open off the grounds of the state prison. It now houses female inmates preparing for their return to society. Photo by Tom Jarvis

The NHDOC operates three transitional housing units (THU) and one transitional work center. Formerly known as halfway houses, THU are minimum-security facilities that hold inmates nearing their parole dates as they seek work and prepare for their return to society. The Shea Farm THU in Concord, established in 1973, became the first housing unit to open off the grounds of the state prison and now houses exclusively female inmates. In 1979, Calumet THU in Manchester opened and houses male inmates. The



Courtesy of prisonpolicy.org

newest, which opened in 1996 and houses male inmates, is North End THU in Concord. The Concord Transitional Work Center, constructed in 1988, is for male inmates with six months or less remaining in their sentence. It is the final stage of an inmate's confinement before they are released back into the community.

According to the NHDOC, the average annual cost to keep someone in prison is \$54,386 and the average cost for supervising someone on probation/parole is \$603 per year.

In an effort to reduce the rate of incarceration in the Granite State, the New Hampshire Judicial Branch has implemented prison diversion initiatives such as the drug and mental health courts, that combine community-based treatment programs with strict court supervision and progress incentives and sanctions.

According to the National Institute on Drug Abuse, 85 percent of the US prison population has an active substance use disorder or were incarcerated for a crime involving drugs or drug use. Superior Court Chief Justice Tina Nadeau worked with stakeholders to bring the drug court program statewide, so there is now a drug court for each county.



The Lakes Region Facility in Laconia was closed on June 30, 2009. Photo by Annmarie Timmins/New Hampshire Bulletin

The next article in the NHBA Prison Series, running in the September issue of *Bar News*, will explore what happens when a person is charged and subsequently convicted of a crime. This will include sentencing and the first days of quarantine in prison, called Reception and Diagnostics. ■

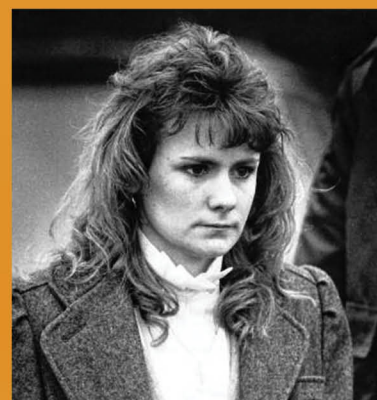
The statistics in this article were compiled using data from the Prison Policy Initiative, the World Prison Brief of the Institute for Crime & Justice Policy Research at the University of London, the Bureau of Justice Statistics, the National Institute on Drug Abuse, and the New Hampshire Department of Corrections. Additional information on the state prison system was provided by Attorney Robin Melone.

Endnotes

1. World Prison Brief by the Institute for Crime & Justice Policy Research at the University of London.
2. Mass incarceration is a term coined by David Garland, Arthur T. Vanderbilt professor of law and professor of sociology at New York University, as a shorthand to characterize the fact that the US incarcerates more people than any other nation in the world.
3. Prison Policy Initiative, prisonpolicy.org.

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Workers' Compensation and Personal Injury

Seven Tips for Young Personal Injury Lawyers

By James Hawthorne

Managing your caseload: Don't bite off more than you can chew!

Young associates have all been here. In the drive to build your client base and add to your file list, there is a temptation that exists to take on as many files as you can. While this makes sense for building a young career, it is important



to remember to have realistic expectations about the volume of cases young attorneys can reasonably maintain. Personal injury cases are similar to gardening. They require consistent work and maintenance to yield the greatest rewards. Be willing to refer cases within your firm, or outside, if you feel you are at max capacity. As new lawyers, we are still learning to be efficient and effective at the practice of law, and some files are simply too large or too complex. That is okay! More will come with time.

Client intake and retention: Show some personality.

The practice of law is an inherently client-oriented role. Clients come into our practices at some of the most difficult times in their lives. Make their experience as stress-free as possible. To keep the clients that come in the door, clients often need to see that we are not just lawyers, but that we are human beings, as well. Ask about your client's lives, how they are doing, and connect with your clients if you can. This connection is valuable both in keeping clients happy, and in making them feel heard. More immediately, this also can help get past the reservations some clients have with hiring a young attorney. How to incorporate this is an art, not a science. Initial consults are an excellent way for young attorneys to hone many of the interpersonal skills which are foundational to a successful practice.



Communication: Every conversation is a negotiation.

This is most important when communicating with insurance companies and opposing counsel. That said, communicating with your clients is just as important. As an attorney, your words in conversations, knowledge about your case, and strength of your convictions all send subtle messages to the other side. While these subtle negotiations may not have the direct confrontation of a mediation, your case will be evaluated based on these small matters. If you sound like an expert in the law, know the facts of your case, and can quickly recall information, opposing counsel and their adjusters should notice and respect this. This knowledge and understanding will lead to higher offers. It also helps to build your reputation among your fellow attorneys.

Client contact: Manage your client, and their expectations.

Client communication is the most critical development skill for new attorneys. I have found that many personal injury clients look forward to hearing updates from their attorneys. As such, it behooves you to stay on top of your client's course of treatment by communicating with them on a regular basis. That way, when the adjuster calls for an update, you can quickly reply with the client's last treatment, future treatment, and how they are doing medically overall. This will make you an expert in your file and will keep your clients happy. Also, it will help you with discovery, keeping a complete file, and tracking down any outstanding medical records. While these discussions are often pleasant updates, not

all conversations turn out this way.

We often must give our clients difficult news, as well. A seemingly perfect case can be ruined by a bad medical record, an unfortunate statement by the client, or other bad facts and evidence. Keeping your client's expectations realistic will make these tough conversations easier. Having these difficult conversations early also helps when it comes time for demands and mediations. Getting out ahead of these sticking points early on can make the proverbial tough pill easier to swallow. When opposing counsel is standing firm at mediation because of a problematic evidentiary issue, having set the foundation of already identifying these issues with the client helps the negotiation process move more smoothly. Not every file can be worth millions, but many clients think their case is. It's important to know your file and be honest about how the litigation may end.

Professional development: Don't be afraid to ask for help.

The New Hampshire Bar Association and various other programs affords young attorneys greater access to mentorship than any other state. Through the many means of reaching out to senior attorneys, there is always someone who experienced your situation (or something very similar to it) and will be willing to give advice. From the NHBA Mentor Advice Program to the various Listservs like the New Hampshire Association for Justice (NHAJ), it is important to take advantage of the many resources afforded to you. In my experience, I have never been turned away when I reached out for advice, and I have found more experienced attorneys are excited to

share their wisdom with younger attorneys.

Continuing education: Train yourself to navigate insurance to maximize recovery.

Issues with insurance are one of the most common reasons personal injury attorneys are hired. Learning how to navigate the world of insurance is one of the greatest assets you can bring to your clients, and the source of most of their common questions. From learning about liens, subrogation, or PIP laws in Massachusetts, learning the nuances of the insurance system will maximize your client's recovery and set their minds at ease. Discussions of these topics can be found on the NHAJ website and the many CLEs and Webinars available through the NHBA website.

File review: Be your case's best expert.

There should be no one who knows your files the way you do. You spend more time with your client, spend more time analyzing medical records, and understand nuanced legal advantages or disadvantages better than anyone else. As discussed earlier, this foundational knowledge leads to more respect with opposing counsel, higher offers from adjusters, and happier clients. Also, if the partner ever asks about a file, being able to speak with knowledge and expertise about your file list helps both your clients and bosses have confidence in your work.

Thankfully, New Hampshire is a wonderful state to practice law. The best advice I can give as a young attorney is that if you need help, ask for it. There is always someone in New Hampshire willing to help. ■

James W. Hawthorne joined Parnell, Michels & McKay in 2021 after he earned his JD from the University of New Hampshire Franklin Pierce School of Law and graduated Cum Laude as part of the esteemed Daniel Webster Scholar's Program. James is admitted to the United States District Court for the District of New Hampshire and works primarily in the areas of personal injury, workers' compensation, and employment discrimination.



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An Update on the Law of Civil Sexual Abuse Cases in New Hampshire

By Peter Hutchins

While the perpetrator of a sexual assault is liable for damages suffered by the victim for assault and battery – since individual perpetrators are either uninsured or any applicable insurance is excluded as an intentional and/or criminal act – practitioners should seek to determine liability on the part of institutional defendants with insurance (e.g., employers, schools, landowners, churches, the State, etc.). This article discusses the law to be applied in such cases.



I. Statute of Limitations

Initially, it must be determined whether the applicable statute of limitations has expired. At the very least, a minor victim has until his or her 30th birthday to file suit. RSA 508:4-g. For an adult, the limitation period has been three years. 508:4, I. Both statutes contained a discovery rule. In 2020, however, the New Hampshire legislature amended RSA 508:4-g and eliminated the statute of limitations for civil claims arising from sexual assault as defined in RSA 632-A or 639:2. An important legal question which has yet to be addressed by our Supreme Court, is whether this amendment applies



only to claims in which the prior statutory limitation period has not yet expired, or whether the statute can be applied retroactively to cases where the prior applicable statutes of limitations have passed.

In cases against the State of New Hampshire (e.g., YDC, DCYF, etc.), the State has consistently taken the position that the strict three-year statute of limitations contained in the sovereign immunity statute (RSA 541-B:14, IV) applies regardless of the age of the victim or the ability of the victim to discover the harm and relationship to a state agency. The State's position admittedly results in the absurd result that a three-year-old child in State custody must file suit by the time they are six years old – even if they remain in State custody.

In *Petition of NH Div. for Children, Youth and Families*, 173 NH 613 (2020), the Supreme Court held that the discovery rule did apply to sexual abuse claims against the State. The issue of whether the minority/disability tolling provision of RSA 504:8 also applies to the State is currently on appeal to the New Hampshire Supreme Court in *C.M. v. N.J.H.Y. DHHS, et al*, Merrimack County Superior Court 217-2019-CV-677 (Order of August 27, 2021). The issues of the retroactive application of the amended RSA 508:4-g eliminating the statute of limitations, as well as the prior version of that statute extending the age 30 limitation period are currently pending in the Merrimack County Superior Court, *David Meehan v. State of NH – Department of Health and Human*

Services, et al, and all consolidated YDC and YDSU Cases, 217-2020-CV-00026.

II. Duty and Negligence

A claim against an institution or legal entity or person other than the perpetrator essentially alleges that said defendant was negligent in failing to protect the victim from foreseeable harm (i.e., the sexual assault). Before such a negligence claim can be asserted, however, it must be shown that the defendant owed the plaintiff victim a duty at law. Whether such a duty exists is a question of law. *Dupont v. Aavid Thermal Technologies*, 147 NH 706, 709 (2002) (plaintiff decedent shot and killed by co-worker on employer's premises).

Since sexual assault is a criminal act, the duty would be one to protect the victim from harm caused by the criminal conduct of another. Generally, in New Hampshire "a private citizen has no general duty to protect others from the criminal attacks of third parties." *Id*.

However, the New Hampshire Supreme Court has recognized three exceptions to this general rule where a tort duty to exercise reasonable care would arise: "(1) a special relationship exists; (2) special circumstances exist; or (3) the duty has been voluntarily assumed." *Remsburg v. Docusearch, Inc.*, 149 NH 148, 154 (2002).

The "special relationship" exception

UPDATE continued on page 32

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Handling a Massachusetts Car Crash? You Better Know PIP

By Shawn J. Tennis

What is PIP?

Personal Injury Protection, also known as PIP, is a no-fault insurance coverage included in every Massachusetts automobile insurance policy. PIP was established by Massachusetts General Laws Chapter 90, Section 34M. PIP will provide an injured party with either \$2,000 or \$8,000 in coverage for either medical expenses, lost wages, and/or replacement services. It is important to note that a claim for PIP benefits must be made within two years of the date of the incident.¹



PIP and the Massachusetts Tort Threshold

In Massachusetts, in order to bring a personal injury claim that is based on a motor vehicle collision, the medical expenses must exceed \$2,000.⁴ There are five notable exceptions when the tort threshold will not apply: (1) the incident results in death; (2) the incident consists of the loss of a body member; (3) the incident involves permanent and serious disfigurement; (4) the incident results in certain types of loss of sight or loss of hearing; or (5) the injuries consist of a fracture.⁵

If none of those exceptions apply, and



the medical bills are less than \$2,000, then in Massachusetts, you cannot move forward with a personal injury claim. The reason for this threshold is PIP. Every motor vehicle crash in Massachusetts should have some sort of PIP coverage available. Thus, since PIP will typically pay at least the first \$2,000 regardless of fault, your medical bills must be higher than that to have a personal injury claim.

Determining the Amount of PIP Coverage

Depending on the circumstances and applicable insurance coverages, PIP benefits available to the plaintiff will be either \$2,000 or \$8,000. If there is private health insurance (such as Blue Cross Blue Shield, United Healthcare, Aetna, etc.), then PIP

will only provide \$2,000 in benefits. The one exception to this is if the private health insurance is an ERISA plan⁶. If it is an ERISA Plan, then there will be \$8,000 in PIP benefits available.

If the client has Medicare, Medicaid, or does not have health insurance then the full \$8,000 in PIP benefits are available to the client.

Offset

You should determine early on the amount of PIP coverage that your client has available. This will affect the amount of money available to the client and the amount that will need to be subrogated at the time of settlement. Generally, insurance carriers will assume your client has full \$8,000 cov-

erage in PIP until they are shown otherwise. If your client is not entitled to the \$8,000 in coverage, then this must be addressed immediately.

Unlike Medical Payments coverage, PIP payments are subject to subrogation.⁷ This is generally referred to as the PIP offset. This is the reason that it is critical that you determine the amount of benefits available to your client as well as knowing the amount that PIP has actually paid out. The PIP carrier will maintain a PIP log which will reflect payments made. It is imperative that you obtain a copy of that log prior to settling to ensure that the bodily injury carrier is taking the proper offset amount.

Often times, when an insurance carrier is making an offer in Massachusetts, that offer already includes the PIP offset. You must confirm with the adjuster the amount of the offset that they are taking when the offer is made.

For instance, if your client has private health insurance that is not an ERISA plan, then that client has \$2,000 available in PIP benefits. That means if the insurance carrier makes an offer of \$10,000, then that offer really is \$12,000 minus the \$2,000 paid by PIP. It is important to understand this so you can appropriately advise your client about what the settlement offers mean.

PIP Deductibles

PIP deductibles make setline cases much more difficult and are something to keep an eye out for. Policyholders in Massachusetts can elect to have a PIP deductible to have a lower premium payment.⁸ PIP deductibles can range all the way up to \$8,000. When there is a PIP deductible in play, that means PIP will not provide benefits until beyond the deductible, if anything. For instance, if your client has \$8,000 in PIP coverage because they are a Medicare beneficiary, and they opt for a \$2,000 PIP deductible. Then they will only have PIP coverage of \$6,000 starting after the initial \$2,000 in medical bills. Your client (or possibly their health insurance) will be responsible for the first \$2,000 in medical bills before PIP will start paying for anything.

The most important piece for a practitioner to understand about PIP deductibles is that the insurance carrier can still take the offset of whatever PIP coverage would have been available notwithstanding the deductible.⁹ In the example above of a \$10,000 settlement, that offer would remain the same

PIP continued on page 32



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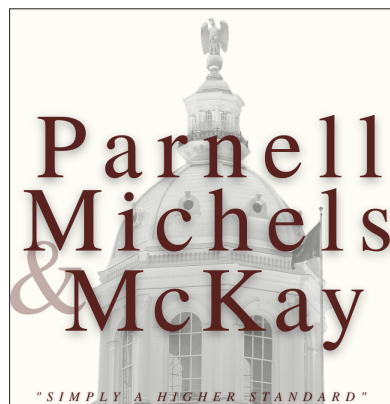


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The Basics Still Matter

By David Gottesman

After 50 years of practice, has nothing changed? Well, some things have changed, but not the basics. We have allowed ourselves to become automated with phone systems, computer systems, iPhones, iPads, and Apple watches that let us answer our calls like Dick Tracy did in the comic strips of old. Yes, younger lawyers, Dick Tracy was a real comic strip, and he had a watch into which he could speak.



The one thing that was drilled into me as a result of an early case success was that we have to remember that all phone calls should be returned quickly. A friend called me to say that his acquaintance, a janitor, was trying to reach a well-known attorney, and that attorney was either just too busy or not interested in returning his call. He asked if I would return the call and I said, "of course, I would!"

I really did not have that much to do at the time and was looking for any sort of case involving personal injury. I was passionate about personal injury and products liability cases because of having Professor Tom Lambert drill into me as a law student that, "you must pay for what you break."

As it turned out, this janitor had a son



who was involved in a multi-car crash that left him a paraplegic, with little ability to walk. All the parties were insured with the minimum amount of coverage available at the time, \$25,000.00 per driver, totaling \$75,000.00. I was able to settle these cases quickly. Certainly, this was not enough to compensate this young man.

This leads me to the second thing that I learned was necessary to be an effective lawyer and advocate. "Get out of your chair," I was told by some of my older and more experienced colleagues. In these circumstances, what did that mean? It meant thinking about what your client is facing and thinking about what else you can do for him. For me, a fairly novice lawyer and products liability fledgling, it meant trying

to find another way to compensate my client.

I started to think about the car and whether it was defective. The car that my client was in was an American Motors Javelin. It had two bucket seats and a lot of space between them. The crash occurred because an elderly driver came out of an old bridge onto the main road without warning, causing a crash that sent my client – who was the passenger – headfirst into the ceiling abutment for the back left door.

As I learned, bodies travel in the direction of the impact, and my client was thrown from the passenger seat through the opening between the seats backwards to the steel abutment. To figure this out, I went to a real expert products liability lawyer

in Boston who gave me some advice. He told me to hire an expert to look at the car, which was at the owner's house in a suburb of Nashua. I had never hired an expert before.

This brings me to the third thing that I learned about these cases; if it is over your head, get help.

So, I hired an expert. I don't remember how I found him, but I do remember the examination of the vehicle that he conducted. I remember because he had me lay in all different poses in the car to show how easy it was for a body to fly from the front seat to the back upon a rear impact. He took tons of pictures. He felt that there was just too much room between the seats and that was a bad thing. I then took the pictures back to the lawyers in Boston, and to my surprise, I was told that this could very well be a case. I was thrilled. They told me to go buy the car. What? Really? They actually wanted me to buy the car.

Back out of my chair, I went to the owner's house where the car had been stored just a week or so before – but it was not there. I knocked on the door and the mother of the driver said a junk dealer gave them \$50 and hauled it away the day before.

Now what? I went to the phone book's yellow pages (remember those?) back at the office and looked up every junkyard in the southern New Hampshire area where it might have been towed and drove around

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SB 71: Expanding Firefighters' Cancer Presumption Under RSA 281-A:17,II

Editor's Note: Just as this issue was going to print, SB 71 was signed by Governor Chris Sununu.

By Jared O'Connor

In June of this year, the legislature sent to Governor Sununu for signature Senate Bill 71, an important update to the presumption that exists in New Hampshire Workers' Compensation law that cancer disease in firefighters – whether regular, call, volunteer, or retired – is occupationally-related. Initiated by prime sponsor Senator Sharon Carson, and passed unanimously through both the House and Senate, SB 71 is a model of bipartisan cooperation and reflects committee findings that cancer occurs at much higher rates in firefighters than in most other professions due not only to their hazardous work environment, but in a cruel ironic twist, to chemical off-gassing from the very PPE required to survive that environment.

As of August 1, the bill has not yet been signed, but will take effect immediately upon passage.

This cancer presumption has formally existed in some form since 1989, though its practical effect has been stymied for



decades and has only recently seen real-world application. As originally drafted and enacted in 1989, RSA 281-A:17,II limited the application of the presumption to types of cancer known by the International Agency for Research on Cancer (IARC) to be caused by heat, radiation, or a known carcinogen. For years, this would have included cancers resulting from soot or asbestos exposure, such as lung, thyroid, and colon cancer.

The benefit of this early presumption was also contingent on the firefighter having been in service for ten years, and that the employer voluntarily had in place a policy that follows the fire standards and training commission curriculum require-

ment for best practices for use and cleaning of equipment. (This latter is paradoxical, in that an employer's failure to follow such best practices would presumably leave the worker at greater risk of exposure to carcinogens. The thinking may have been that in such instances, causation is easier to prove, and no presumption is necessary: or perhaps it was meant to encourage employers to adopt such practices for the health of their workers.)

The law was immediately challenged on constitutional grounds, and in *N.H. Municipal Trust v. Flynn*, 133 N.H. 17 (1990), the New Hampshire Supreme Court (NHSC) ruled it an unfunded mandate on local governments in violation of Article 28-a of the New Hampshire Constitution. The law then remained in limbo until July 2018, when the legislature finally provided the funding necessary to remove the constitutional taint.

But in the intervening decades, occupational epidemiological studies have increasingly demonstrated that cancers of all kinds are more prevalent in firefighters than was known in the 1980's. Worldwide longitudinal studies have coalesced around recognition that firefighters are exposed to class 1 and 2A carcinogens the entire time they are on duty, resulting in oxidative stress and inflammation at a cellular level. Exposures include not only the polycyclic aromatic hydrocarbons and volatile organic compounds that are the byproducts of combustion, but also chemicals with which firefighters' PPE is treated.

As a result, the IARC (the cancer agency of the World Health Organization, the findings of which RSA 281-A:17,II ex-

plicitly incorporates) has released Monograph 132 to update its conclusions for 2023. For the first time, the IARC has classified the occupation of firefighting wholesale as Group 1: "carcinogenic to humans." This is the highest hazard category in the IARC Monograph classification system.

Therefore, even in the absence of SB 71, the already-existing RSA 281-A:17,II would incorporate this higher classification into the law by reference to the IARC. But by de-linking the presumption from the evolving findings of the IARC, SB 71 eliminates the need to litigate precisely which cancers may meet that standard. Instead, SB 71 simply provides that "cancer disease in a firefighter ... is occupationally caused," full stop.

The function of a legal presumption in workers' compensation was well-articulated by the NHSC in *Cunningham v. City of Manchester Fire Department*, 129 N.H. 232 (1987) when discussing the substantively identical presumption of heart disease in firefighters. "The apparent purpose ... is to implement a social policy of providing compensation to firefighters in those circumstances where the medical evidence fails to establish the etiology of the plaintiff's [cancer] disease. The defendant bears the burden of persuasion and can rebut the presumption only by producing evidence that one or more non-occupationally related factors were more probably the cause of the plaintiff's [cancer] than his [firefighting] occupation." (Emphasis added).

The passage of SB 71 does not mean that every cancer-related workers' compensation claim will be approved. It simply means that in those cases where the evidence does not clearly indicate whether the cancer was occupationally caused, the benefit of the doubt works in the favor of the firefighter. If a firefighter's cancer is medically determined to be not work-related, the presumption fails. But SB 71 is a critical legislative directive that if the employer fails to meet its burden to prove a probable non-occupational cause, the firefighter will have a compensable claim. ■

Jared O'Connor is a partner at Shaheen & Gordon, PA and has been litigating workers' compensation cases on behalf of injured workers since 2003. He sits on the NH Compensation Appeals Advisory Board and is the NHAJ attorney member of the Governor's Commission to Study PTSD in First Responders.

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Juries Are the Backbone of Civil Litigation: Should Courts Protect the Anonymity of Jurors?

By Scott Harris

In August of last year, a New Hampshire jury acquitted Volodymyr Zhukovskyy, then 26, of seven negligent homicide charges, seven manslaughter charges, and a single reckless conduct charge.

A week earlier, the trial judge had dismissed eight additional charges related to driving under the influence of drugs, due to the prosecution's failure to produce sufficient evidence to support those charges.

The Zhukovskyy case, involving as it did the unspeakable tragedy of seven lost lives, generated significant national interest. The jury's verdict after approximately three hours of deliberation was condemned by a number of individuals as erroneous. While the trial itself was undoubtedly interesting and well tried, this article considers the *Boston Globe's* post-trial petition to have the court disclose the names and addresses of the jurors who sat in judgment of Mr. Zhukovskyy.

Trial by jury has a history that stretches back to the signing of the Magna



Carta over 800 years ago. It has persisted over eight centuries because it is the best system we have to discern liability and damages in civil cases, and guilt and innocence in criminal matters. As noted by the trial judge in *Zhukovskyy*, "[t]he obligation of jury service is one of the most important that our government imposes on its citizens. It is, therefore, important to ensure that the fulfillment of this obligation is not made so burdensome that it becomes more than a citizen should have to bear." *State of New Hampshire v. Zhukovskyy*, Coos County Superior Court, No. 214-2019-CR-00078, Order dated April 4, 2023 at 9, citing *United States v.*

Chin, 913 F.3d 251, 261 (1st Cir. 2019).

In order to decide whether to divulge to the *Boston Globe* the names and addresses of the jurors, the trial judge appointed *amicus* counsel to interview the jurors to discern their views on disclosing their names to the *Globe* reporter. *Amicus* counsel reported that the jurors were uniformly opposed to the court's disclosure of their names and addresses and thereafter subject to requests by the *Boston Globe* (and perhaps others) to be interviewed about their jury service. One juror stated that he had begun to carry a gun for protection against those who had spoken harshly about the verdict and the

jurors who delivered it. After the verdict, the jury was condemned by members of the general public and public officials alike. Although those commenting harshly on the verdict had not sat in the courtroom and listened to the evidence for 12 days, they were obviously disappointed and angered by what they perceived as an unrequited tragedy.

With the input of *amicus* counsel, the trial court undertook to balance the jurors' and media's competing interests in disclosure. When considering jurors' privacy interests, the trial court pointed out that today, with the advent and prevalence of social media, the risk of potential harm to the jurors whose identity is widely shared can be significant. Take, for instance, a local restaurateur who served on a jury that delivered an unpopular verdict. There is virtually nothing that would keep those dissatisfied with that juror's service from negatively rating their restaurant in response to that disaffection. Likewise, jurors who are also parents would naturally be concerned that their children could be marked for negative comments or worse. The risk of community censure is amped up multifold by social media in a way that was not the case even 15 years ago.

Another important factor favoring keeping the jurors' identities in confi-

JURIES continued on page 32



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focuses on the relationship between the institutional defendant and the victim. The seminal case in New Hampshire was *Marquay v. Eno*, in which the Court followed the Restatement (Second) of Torts §314A in holding that such a special relationship exists between common carriers and passengers, innkeepers and guests, and landowners and invitees. 139 NH 708, 717-18. Additionally, the relationship existed between a plaintiff and "one who is required by law to take or who voluntarily takes...custody of another under circumstances such as to deprive the other of his normal opportunities for protection." *Id.* In *Marquay*, the Court, relying in part on the doctrine of *in loco parentis*, concluded a special relationship existed between a student and a school. See also *Dupont*, 147 NH at 709-712.

The "special circumstances" exception arises where "an especial temptation and opportunity for criminal misconduct brought about by defendant, will call upon him to take precautions against it," or, stated another way, "a party who realizes or should realize that his conduct has created a condition which involves an unreasonable risk of harm to another has a duty to exercise reasonable care to prevent the risk from taking effect." *Walls v. Oxford Management Company, Inc.*, 137

NH 653, 658 (1993) (plaintiff raped in parking lot of apartment complex which had been the location of significant criminal activity in years prior to assault).

The third exception very simply "derives from the general tort principle that one who voluntarily assumes a duty has a duty to act with reasonable care." *Walls*, 137 NH at 659, referencing Restatement (Second) of Torts §§ 323, 324. This duty will arise regardless of whether the assumption of the duty was gratuitous or for compensation. Restatement (Second) of Torts §323.

The specific duties to be asserted may include one or more of the following claims of negligence, all deriving from a duty to exercise reasonable care: (1) a duty to exercise reasonable care in avoiding an act or omission which defendant knew or should have known would expose plaintiff to an unreasonable risk of harm through sexual misconduct by its employee, specifically the perpetrator, Restatement, Second, Torts §§ 302, 302A, 302B; (2) a duty to act reasonably and avoid negligent acts which the defendant intended, or realized or should have realized would prevent the taking of actions for the protection of the plaintiff; Restatement, Second, Torts § 305; (3) a duty to exercise reasonable care in performing duties and responsibilities voluntarily undertaken, Restatement, Second, Torts § 323, 324; (4) a duty to exercise reasonable care to

protect the plaintiff from an unreasonable risk of harm, Restatement, Second, Torts §314A; (5) a duty to exercise reasonable care to control its employees to prevent exposing the plaintiff to an unreasonable risk of harm, Restatement, Second, Torts § 315; (6) a duty to warn plaintiff from exposure to an unreasonable risk of harm; and (7) a duty to exercise reasonable care in the hiring, training and supervision of its employees, *Cutter v. Town of Farmington*, 126 NH (1985), *Trahan-Laroche v. Lockheed Sanders, Inc.*, 139 NH 483, 485-86 (1995).

III. Fiduciary Duty

Another potential cause of action is for breach of fiduciary duty. This duty arises when the employee of an institution (e.g., a school, college, or church) is placed in a position of superior authority and power over the victim which essentially renders the victim unable to protect herself. This duty can also arise from the lack of a sexual misconduct policy or procedure which thereby creates an environment that enables misconduct and/or discourages reporting. See *Schneider v. Plymouth State College*, 144 NH 458, 462-63 (1999). Of interest is that under

HB 1558, which also passed the New Hampshire House and Senate this year, requirements are imposed on institutions of higher learning to implement policies and procedures relative to sexual misconduct and the protection of students.

IV. Vicarious Liability

A count for vicarious liability in certain cases can be asserted under one or more of three independent legal theories: (a) *respondeat superior*; (b) apparent authority; or (c) aided by agency relationship. See *Daigle v. City of Portsmouth*, 129 NH 561 (1987) (*respondeat superior*); *Porter v. City of Manchester*, 151 NH 30 (2004) (*respondeat superior*); *Demetracopoulos v. Strafford Guidance Center*, 130 NH 209 (1987) (apparent authority); *Costos v. Coconut Island Corp.* 137 F.3d 46 (1st Cir. 1998) (aided by agency relationship). These claims are very fact specific (which should be pled) and are very powerful claims if they can survive summary judgment.

V. Repressed or Recovered Memory

A practitioner should be very wary of cases that rely upon a client's repressed or recovered memory in order to establish that a particular perpetrator committed a sexual assault. Such testimony will likely be deemed unreliable and inadmissible, which is fatal to a successful civil claim. *State v. Hungerford*, 142 NH 110 (1997). ■

Peter E. Hutchins is a solo practitioner in Manchester and past president of the NHBA who has personally handled several hundred civil sexual abuse cases on behalf of victim plaintiffs, including claims against the Diocese of Manchester, Archdiocese of Boston, public and private schools, daycares, DCYF, foster care providers, medical providers and hospitals, the Boy Scouts and other youth organizations, and numerous other institutional defendants.

Juries from page 31

dence is the impact disclosing that information to the news media could have on the ability to attract future jurors and insure their impartiality. Knowing that one's decision may be dissected publicly and subject the individual to the public's anger, might cause individuals to attempt to avoid jury service and to make their decisions based on what the juror thinks will be the more popular decision (and how the verdict will be covered in the press, notwithstanding what an unvarnished view of the evidence would dictate as a result.)

The trial court balanced the jurors expressed aversion to having their names and contact information disclosed to the *Boston Globe* with the newspaper's interest in examining every aspect of a case that had garnered national attention.

As argued by the *Globe*, disclosure of the jurors' names and address information "would allow it 'to give the public an insight about the trial, the judicial system, and post-trial comments about the jury's verdict from those jurors who are willing to speak with its reporter.'"

Reporting on the trial process in Zhukovskyy case is the sort of activity that is at the core of First Amendment values in that it offers a public exploration of one of our most important rights—the right to be judged by one's peers. See Opinion at 12, quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 587 (1976) (Brennan, J., concurring).

The trial court's decision not to order disclosure of jurors' names and contact information was fortified, at least in part, by the fact that trial had been live streamed allowing the press, even those who chose not to travel to Lancaster, to observe the proceeding and form their own opinions as to Zhukovskyy's guilt or innocence. Moreover, the State and Zhukovskyy's lawyers had the juror identity information available to them at the time the case was empaneled, relegating the jurors' individual identities to the status of trial artifact.

In summary, while there are occasions when it would be in the public's interest to allow follow-up inquiries about jury deliberations (such as when counsel calls the jurors after 30 days have passed since verdict), the Zhukovskyy fact pattern was not one of them. ■

Scott Harris is a director in McLane Middleton's Litigation Department. His practice involves representing companies and executives in litigation and at trial in a range of commercial disputes. He can be reached at scott.harris@mclane.com or (603) 628-1459.

PIP from page 28

even if your client had a PIP deductible of \$2,000 and had to pay for the initial medical expenses out of pocket.¹⁰

There are situations where, because of the PIP deductible, the final offer may not even fully compensate for all the medical bills. Unfortunately, the case laws support the application of the PIP offset even where there is a deductible. If you are in this situation, you need to try and reduce all the bills as much as possible. If that is not enough, then litigation may be necessary.

Conclusion


Personal Injury Protection coverage is an important aspect of motor vehicle claims in Massachusetts. If you do not understand how PIP works, then you are doing your client a significant disservice. You need to understand the amount of the PIP benefits that your client is entitled to receive, how much was in fact paid out by PIP, and whether there is a deductible in play. If you do not have a firm understanding of these pieces, then you do not truly have an understanding of your Massachusetts motor vehicle case. ■


Shawn J. Tennis is an associate attorney at Ward Law Group, PLLC. His areas of concentration are personal injury, workers' compensation, and civil litigation. He is also a member of the Massachusetts Bar and the New Hampshire Association for Justice.

Endnotes

1. M.G.L. Ch. 90, Section 34M.
2. M.G.L. Ch. 231, Section 6D.
3. *Id.*
4. An ERISA health plan is one that is employer-funded and thus treated differently than standard private health plans.
5. M.G.L. Ch. 90, Section 34M.
6. *Id.*
7. See *Commerce Insurance Company v. Scarella*, No. 9700301A (Mass. Superior Court, 1998).
8. See *Mallegol v. Divino*, 2007 Mass. App. Div. 62 (2007).

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Young Adult Court: A New Pilot Program for At-Risk Youth

The Hillsborough County Superior Court, Northern District, is launching a pilot project that will create an alternative sentencing track for individuals between the ages of 18 and 25 who have been charged with a crime and present a high risk of committing a new offense without close supervision.

The pilot, referred to as Young Adult Court, was developed in collaboration with the Departments of Corrections and Health and Human Services, as well as the Hillsborough County Attorney's Office and the New Hampshire Public Defender. It will provide services, including job training, education assistance or support, mental health treatment, and case management intended to enable participants to develop the skills necessary to lead a productive life and avoid further involve-

ment with the criminal justice system. The initial pilot will involve five individuals. Its effectiveness will be evaluated after 18 months.

"Hillsborough County Young Adult Court fits in well with effort by the New Hampshire criminal justice system to develop programs such as Drug Court and mental health courts that are designed to reduce recidivism through alternatives to incarceration," Superior Court Chief Justice Tina Nadeau says.

To be eligible for participation, an applicant must agree to be sentenced to participate in the program for 12 months and to follow the rules of the program. An applicant's pending charges cannot involve certain serious violent crimes, including homicides, sexual assaults, or shootings in which another person was injured.

Defendants will be held accountable through frequent, random drug testing, recurring meetings with a probation officer, regular status hearings in front of a judge, and a team that includes the prosecutor, defense lawyer, probation officer, and a case manager.

The Young Adult Court judge will use incentives to promote positive behavioral change and sanctions to discourage negative behavior. As participants meet certain benchmarks, they are granted more privileges, such as fewer court appearances and reduced curfew hours. Benchmarks include successfully passing a high school equivalency test, getting a job, demonstrating responsible decision-making, and complying with program rules.

If a participant does not meet the program's expectations, the Court will

impose consequences. If a participant is ultimately unsuccessful and is terminated from the program, they may be sentenced to incarceration.

"The most rewarding cases I have presided over involve defendants who are headed down a bad path but who take advantage of an opportunity to make positive change in their lives," says Superior Court Judge N. William Delker, who will be presiding over Young Adult Court cases. "It often takes a lot of hard work by the defendant and the criminal justice system, but the end result is worth it."

The pilot is modeled on similar youthful offender treatment courts around the country. MY TURN, Inc., a regional nonprofit with an office in Manchester, will be providing case management services for Young Adult Court. ■

NH Supreme Court At-a-Glance

July 2023

Charitable Trusts

In Re Robert T. Keeler Maintenance Fund for the Hanover Country Club at Dartmouth College, No. 2022-0145
July 13, 2023
Affirmed

- Whether the trial court erred in finding that the putative intervenors did not have standing to intervene in a proceeding brought under the Uniform Prudent Management of Institutional Funds Act.
- Whether putative intervenors have a vested interest in funds if the application of the *cy pres* doctrine is not an available remedy due to a lack of general charitable intent.

Dartmouth applied to the Circuit Court under the Uniform Prudent Management of Institutional Funds Act (UPMIFA) to modify restrictions on the permissible use of the Robert T. Keeler Maintenance Fund for the Hanover Country Club at Dartmouth College after Dartmouth decided to permanently close the Hanover Country Club golf course.

The putative intervenors, the Robert T. Keeler Foundation and Peter P. Mithoefer, the fiduciary for the Estate of Robert T. Keeler, appealed orders of the trial court that: (1) denied their motion to intervene in proceedings; and (2) granted Dartmouth's assented-to application to modify the restrictions governing an institutional fund created by a charitable gift pursuant to the last will and testament of Robert T. Keeler. The putative intervenors argued that the trial court erred in denying their request to intervene because they had "special interest" standing pursuant to *In re Trust of Eddy*, (2019) under the Blasko five-factor test, therefore granting the assented-to application was in error.

The Court found that the putative intervenors lacked standing to intervene under the UPMIFA. The Court summarized that *In re Trust of Eddy* the Blasko five-factor test applies to ongoing charitable trusts. The Court declined to extend the Blasko five-factor test to a completed charitable gift that was subject to a peti-

tion brought under the UPMIFA. The Court noted that the putative intervenors cited no case in which any court has applied the Blasko five-factor test to determine whether a deceased donor's estate and a former contingent beneficiary had special interest standing to intervene in a proceeding brought under the UPMIFA.

The putative intervenors also argued that denying their motion to intervene violated the State and Federal Constitutions because it deprived them of a "vested interest" in the funds if the application of the *cy pres* doctrine is not an available remedy due to a lack of general charitable intent. The putative intervenors cited to a 1953 *Opinion of the Justices* in which the Court discussed the common law *cy pres* doctrine to permit departure from the literal terms of a charitable trust. The Court found that, similar to the Uniform Trust Code's modification of the *cy pres* doctrine, the provision of the UPMIFA at issue does not condition the grant of an application to modify the restrictions on a charitable gift upon proof that the donor had a general charitable intent, but rather presumes that the donor had such an intent.

McLane Middleton, Manchester (Ralph F. Holmes on the brief and orally) for the petitioner. John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Diane M. Quinlan, director of charitable trusts, and Michael R. Haley, assistant director of charitable trusts, on the memorandum of law, and Michael R. Haley orally), for the respondent. Laboe & Tasker, Concord (Danielle C. Gaudreau and John E. Laboe on the brief, and John E. Laboe orally), for the putative intervenors.

Criminal Law

In Re D.J., No. 2021-0560
July 13, 2023
Affirmed

- Whether the evidence was sufficient for the trial court to find that a juvenile made "repeated communications" under RSA 644:4, I(b), in an adjudication alleging the offense of harassment.
- Whether RSA 644:4, I(b) is substantial-

At-a-Glance Contributor



Eric Wind
Attorney at the
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Commission
in Concord, NH

ly overbroad or overbroad as applied.

In a delinquency petition based on the offense of harassment pursuant to RSA 644:4, I(b), the juvenile challenged the sufficiency of the evince supporting the "repeated communications" criterion, and that the statute is overbroad on its face and as applied.

The Court affirmed the trial court's finding that over an eight-minute encounter the juvenile imparted a series of messages, both verbal and non-verbal. The Court found that when an individual makes a verbal remark, rejects an opportunity to stop communicating with the recipient, and imparts another message, a break has occurred sufficient to make the communications repeated.

Addressing the first constitutional argument, the Court found that RSA 644:4, I(b) is not substantially overbroad under *State v. Gubitosi* (2008) (finding RSA 644:4, I(b) is not unconstitutionally overbroad in the context of private phone calls). The court disagreed that *Gubitosi* did not consider its application in the context of public speech and declined to consider overruling *Gubitosi* in the absence of any argument for such relief.

Addressing the as applied argument, the Court found that RSA 644:4, I(b) is not unconstitutional as applied because it is content neutral, narrowly serves a government interest, and allows other opportunities for expression.

Christopher M. Johnson, chief appellate defender, Concord, on the brief and orally, for the juvenile. John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Laura E.B. Lombardi,

senior assistant attorney general, on the brief and orally), for the State.

Family Law

In The Matter of Dana Albrecht and Katherine Albrecht, No. 2022-0517
July 25, 2023
Affirmed

- Whether trial court's failure to rule on a motion for contempt for over two years constitutes reversible error.

Petitioner appeals an order denying a post-final-divorce-decree motion requesting that the trial court find the respondent in contempt of the parties' parenting plan. The motion was filed on an *ex parte* basis in November 2019. The trial court denied *ex parte* relief and directed that the matter be scheduled in the ordinary course. In June 2022, the petitioner requested that the motion be addressed at a previously scheduled hearing. The trial court then denied the motion without hearing. In so ruling the trial court identified several factors, including that the petitioner never requested hearing, mootness due to the passage of time and subsequent case developments, and that the allegations in the motion and the respondent's objection did not establish that the respondent willfully violated the parenting plan. Petitioner sought rehearing, which was denied for exceeding applicable page limits and on its merits.

Without excusing the trial court's apparent oversight in failing to rule on the motion for over two years, the Court found that the Petitioner failed to establish reversible error. The Court found that the Petitioner did not demonstrate that the alleged error affected the outcome of the case based on a constitutional or statutory right because the motion did not describe circumstances that amounted to parental alienation or that otherwise violated the parenting plan's healthy-and-beneficial relationship or joint decision-making provisions.

The Petitioner also argued that the trial court erred by denying his motion for reconsideration based on page limits. The Court declined to find that the trial court

AT-A-GLANCE continued on page 34

unsustainably exercised its discretion because the trial court set forth alternative grounds for its decision and the appealing party challenged only one of the grounds on appeal.

Self-represented petitioner. Welts, White & Fontaine, Nashua (Michael J. Fontaine and Israel F. Piedra on the brief), for the respondent.

Insurance

CC 145 Main, LLC v. Union Mutual Fire Insurance Company, No. 2021-0376
July 20, 2023
Affirmed

- Whether the trial court erred in finding an exclusion provision to be ambiguous.

CC 145 Main’s (Appellee) insured property sustained damage when a tenant poured cat litter down a toilet clogging an interior pipe and causing water to overflow from a shower and toilet, requiring significant cleaning and repair. Appellee filed an insurance claim with Union Mutual (Appellant) for water damage, which Union Mutual denied pursuant to a provision in the insurance policy excluding coverage for damage caused by “[w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment.” Addressing cross-motions for summary judgment, the trial court found the water exclusion provision to be ambiguous and construed it in favor of the Appellee. The trial court reasoned that it

was unclear whether the word “drain” in the water exclusion applies to shower and toilet drains because such drains are set apart from sewers and sump pumps, which are typically external features.

Appellant argued that the trial court erred in finding the water exclusion ambiguous because the only reasonable interpretation of the exclusion is that it applies to water that overflows from drains, including toilet and shower drains. The Appellee argued that the context of the provision limits its applicability to water damage precipitated by off-premises circumstances or events. Interpreting the contract language in context and with reference to dictionary definitions and similar interpretations from other jurisdictions, the Court found that both parties presented reasonable interpretations, resulting in the provision being ambiguous and construed against the insurer.

Stebbins, Lazos & Vanderbeken, Manchester (Henry B. Stebbins on the brief and orally), for the plaintiff. Primmer Piper Eggleston & Cramer, Manchester (Gary M. Burt and Bailey M. Robbins on the brief, and Gary M. Burt orally), for the defendant.

Public Health

In Re G.W., No. 2021-0525
July 13, 2023
Affirmed

- Whether the trial court properly ordered involuntary admission after overruling a psychiatrist’s medical opinion on mental illness.
- Whether trial court properly considered past acts in determining dangerousness.

- Whether trial court erred in ordering appellant remain in jail until a bed became available in the mental health system.

Trial court ordered that the Appellant be admitted to the mental health system involuntarily. Appellant claimed that the trial court erred in ordering involuntary admission based on insufficient evidence that she met either of the admission standards of a mental condition resulting from mental illness or dangerousness. Appellant also claimed and that trial court erred by ordering her to remain in jail pending availability of a bed in the mental health services system.

With respect to the sufficiency of the evidence to find a mental condition resulting from mental illness, appellant claimed that the court made an error of law overruling the examining psychiatrist’s medical opinion on the existence or absence of a mental illness pursuant to RSA 135-C:34. The Court found that trial court did not err when it made the requisite additional finding under RSA 135-C:45, I, and overruled the expert’s opinion the appellant did not have a mental illness because, although the expert’s opinion is important, it is not dispositive under RSA 135-C:45, I. The Court further found that sufficient evidence existed in the record to support the trial court’s finding, by clear and convincing evidence, that appellant had a mental illness as defined in RSA 135-C:2, X.

With respect to dangerousness, Appellant argued that the Court should impose the 40-day limitation in determining whether past acts are sufficiently recent to support a finding of present dangerousness that applies to emergency admissions pursuant to RSA 135-C:27. The Court found that RSA 135-C:34 does not set forth any time limitation for consideration of specific acts demonstrating dangerousness, and that ample evidence exists in the record to demonstrate that the appellant’s attempts to harm others show current dangerousness.

Finally, the Court deemed the Appellant’s arguments relating to the trial court’s order that she remain in jail until a bed became available in the mental health system to be moot, finding that there are likely to be material changes to New Hampshire’s mental health services system in the coming year.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Laura E.B. Lombardi, senior assistant attorney general, on the brief and orally), for the Petitioner. Amy B. Davidson, Contoocook, on the brief and orally, for the respondent.

Zoning

Jeffrey E. Raymond, Trustee of J&R Realty Trust v. Town of Plaistow, No. 2022-0236
July 28, 2023
Reversed

- Whether zoning determinations were based on insufficient findings, were not supported by the record, and were influenced by improper considerations.

Appellant seeks review of the trial court’s decision affirming the Plaistow Zoning Board of Adjustment’s denial of a variance and other zoning determinations. Appellant desires to develop a lot in Plaistow, including building a new office and warehouse space to be leased to a company engaged in the business of selling, servicing, and installing windows, siding, roofing, decks and gutters. Appellant argues that the trial court erred in upholding the zoning determinations because the property’s proposed use is more akin to a Trade Business, which is permitted in the applicable zoning district. Appellant argues that the zoning determination of a Contractor’s Storage Yard is inconsistent with the plain language of the zoning ordinance, was not supported by the record, and was influenced by improper considerations.

The Court applied a plain reading of the ordinance and found that the proposed use of the property falls within the definition of a Trade Business opposed to a Contractor’s Storage Yard. The Court considered the ordinance’s use of the word contractor and considered the examples of contractors listed in the ordinance’s definition of Trade Business, finding the proposed use consistent with those examples. The Court also considered the definition of a Contractor’s Storage Yard, and the listed examples of the types of contractor activities and equipment stored at such a site, finding that the record did not support that the proposed use of the warehouse was consistent with such activities or equipment. As such, the Court determined that the proposed use was more consistent with a permissible Trade Business. The Court also found that the Board impermissibly considered evidence of past zoning violations at other properties within and without Plaistow.

Nicosia & Associates, Tyngsboro, Massachusetts (Peter J. Nicosia on the brief and orally), for the plaintiff. Wadleigh, Starr & Peters, Manchester (Charles F. Cleary and William P. Reddington on the brief, and Charles F. Cleary orally), for the defendant.

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US District Court Decision Listing

July 2023

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Civil Rights

6/27/23 *Robert Arias v. Herzon, et al.*
Case No. 17-cv-516-LM, Opinion No. 2023 DNH 076P

Plaintiff Robert Arias alleged that several Drug Enforcement Administration agents violated his rights under the Fourth Amendment by using excessive force on him during a September 2016 arrest. Arias claimed damages from the agents under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Defendants moved for summary judgment, arguing that the DEA's alternative remedial scheme promulgated under the Inspector General Act precluded a *Bivens* action considering *Egbert v. Boule*, 142 S. Ct. 1793 (2022). The court granted defendants' motion, holding that the DEA's alternative remedial scheme was a special factor that the Supreme Court did not consider in *Bivens*, thus precluding *Bivens*'s application. 12 pages. Chief Judge Landya McCafferty.

Evidence; Opinion Testimony

7/14/23 *ZJBV Properties v. Mammoth Tech*
Case No. 21-cv-1070-JL, Opinion No. 2023 DNH 086*

In advance of a jury trial in a commercial landlord-tenant dispute, the court issued rulings on the parties' motions in limine. The plaintiff-landlord moved to exclude any undisclosed expert opinion evidence from representatives of heating, ventilation and air conditioning companies that performed maintenance work at the leased premises. The defendant-tenant responded that the expert disclosure rules did not apply to documentary evidence in the form of business records that may incidentally include expert opinions, specifically, the portions of the technicians' invoices explaining recommended repairs or part replacements for the system. The court rejected the tenant's unsupported position and found that because it had failed to disclose any expert witnesses, the tenant could not introduce through the technicians the narrative portions of the invoices containing recommended repairs, upgrades, or part replacements. The tenant moved in limine to exclude (1) evidence of other unrelated civil lawsuits that had been filed against it; and (2) evidence that its employees were dissatisfied with the way in which it closed its business operations. The court granted the first motion as to the three identified other lawsuits and took the second motion under advisement pending receipt of more specific information regarding the potential dissatisfied employee statements and subject to the evidence presented at trial and counsel's trial strategies and tactics. 11 pages. Judge Joseph N. Laplante.

Landlord-tenant; Constructive Eviction

6/8/23 *ZJBV Properties LLC v. Mammoth Tech, Inc.*
Case No. 21-cv-1070-JL, Opinion No. 2023 DNH 071

In a commercial landlord-tenant dispute, the plaintiff-landlord moved for partial summary judgment on its breach of lease claim. The landlord argued that the undisputed facts showed that the defendant-tenant's constructive eviction defense failed as a matter of law. The court found that several genuine disputes of material fact precluded summary judgment. These disputed facts were material to determining several aspects of the construc-

tive eviction defense, including whether: (1) the alleged problems with the air conditioning system at the leased premises substantially interfered with the tenant's use and enjoyment of the premises; (2) the tenant provided timely and sufficient notice and opportunity to cure the alleged defects to the landlord; (3) the tenant vacated the premises within a reasonable time after the reason to do so arose; and (4) the tenant's delay in vacating the property could be excused. 13 pages. Judge Joseph N. Laplante.

Legal Malpractice

7/28/23 *Abdel-Fattah v. Kelly, et al.*
Case No. 23-cv-125-JL, Opinion No. 2023 DNH 088

In this legal malpractice action, the plaintiff took issue with his former attorney's failure to file a motion to dismiss and a counterclaim while representing him. The defendant moved for summary judgment because the plaintiff did not disclose an expert witness, and the expert disclosure and discovery deadlines had passed. The court found that an expert witness was required to prove the essential elements of the malpractice claim. Specifically, expert testimony was necessary to enable the jury to assess the adequacy of the attorney's actions and whether they caused harm to the plaintiff, as this analysis turned on matters of legal judgment and procedural and substantive aspects of the law, which are not areas of common knowledge. The plaintiff's breach of contract claim rested on the same theory as the legal malpractice claim, and thus also required an expert witness. Summary judgment was warranted due to the plaintiff's failure of proof as to essential elements of his claims. 11 pages. Judge Joseph N. Laplante.

RESPA; Motion for Reconsideration

6/7/23 *Wood v. U.S. Bank Home Mortgage, et al.*
Case No. 22-cv-235-JL, Opinion No. 2023 DNH 070

In a suit by a pro se borrower against her lender and mortgage servicer, the court issued rulings on two pending motions. First, the court denied the plaintiff's motion for reconsideration of the court's order granting in part and denying in part defendant-bank's motion to dismiss because it was based on arguments that the court previously considered and rejected, which were improper for a motion or reconsideration. The allegedly "new" evidence presented by the plaintiff did not change the result either. Next, the court granted the defendant-bank's motion to dismiss the remaining claim in plaintiff's amended complaint because the plaintiff agreed to withdraw that claim. The court nevertheless considered the merits of the bank's motion and found that the plaintiff had failed to sufficiently allege that the bank's alleged violation of RESPA caused her any actual damages. 17 pages. Judge Joseph N. Laplante.

Severance of Joined Claims; Venue Transfer, NHCPA

6/27/23 *Armendariz, et al. v. Sig Sauer, Inc.*
Case No. 22-cv-536-JL, Opinion No. 2023 DNH 078

In a consolidated product liability suit, the defendant moved to sever and transfer the plaintiffs' claims to their home districts and moved to dismiss their claims for violation of the New Hampshire Consumer Protection Act (NHCPA). The court denied the motion to sever without prejudice, finding that the claims were properly joined, venue was proper in this court, and pre-trial consolidation of the claims was an efficient and fair course of action. The

court found valid the defendant's concerns about prejudice and jury confusion that could arise from a joint trial, but deferred ruling on the defendant's request to sever the claims for trial until a later procedural juncture. The court also granted the motion to dismiss the NHCPA claim because none of the out-of-state plaintiffs alleged that the wrongful conduct occurred "within this state," as required by the statute. The court followed a growing line of decisions holding that a misrepresentation occurs within New Hampshire for purposes of the NHCPA when a person receives the misrepresentation in New Hampshire. 9 pages. Judge Joseph N. Laplante.

SSI; Disability

7/14/23 *Wiggin v. Social Security Administration*
Case No. 23-cv-30-JL, Opinion No. 2023 DNH 085

Charles Wiggin appealed the Acting Commissioner's decision denying his applications for disability insurance benefits and supplemental security income on the grounds that the Administrative Law Judge (ALJ) erred in evaluating a consultative psychologist's opinion and erred in assessing his residual functional capacity. Mr. Wiggin, however, identified no errors in the ALJ's evaluation of the consultative psychologist's opinion, and the court concluded that the ALJ properly relied on that opinion and another in the record. The court also concluded that the ALJ did not err in omitting his "Paragraph B" findings from the residual functional capacity assessment and that the ALJ properly consid-

ered Mr. Wiggin's difficulty in regulating his emotions in assessing his residual functional capacity. The court affirmed the decision of the Acting Commissioner. 13 pages. Judge Joseph N. Laplante.

Sovereign Immunity; Rehabilitation Act

6/27/23 *Hill v. New Hampshire Department of Corrections et al.*
Case No. 22-cv-290-PB; Opinion No. 2023 DNH 077

A corrections officer brought suit against the Department of Corrections (NHDOC), the Commissioner of NHDOC, and the Warden of the New Hampshire State Prison for Men alleging that the defendants discriminated and retaliated against him in violation of the Rehabilitation Act, the New Hampshire Law Against Discrimination, and the New Hampshire Whistleblowers' Protection Act. The court granted the defendants' motion to dismiss as to the state law claims, concluding that the claims were barred by the Eleventh Amendment. The court denied the defendants' motion as to the claims under the Rehabilitation Act. In doing so, the court concluded that (1) the plaintiff was not required to comply with the administrative exhaustion requirements of Title VII; (2) the plaintiff adequately alleged that he was disabled; (3) the defendants could be liable for failure to accommodate even assuming they engaged in the interactive process; and (4) the plaintiff adequately alleged that he suffered an adverse employment action. 21 pages. Judge Paul J. Barbadoro.

Classifieds

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

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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.

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- Works closely with Victim/Witness Coordinators to ensure that all witnesses/victims are properly informed, prepared and supported throughout the prosecution process.
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The application and additional information may be obtained at www.nh.gov/judicialcouncil or by contacting Richard Samdperil, Acting Executive Director, Judicial Council, 25 Capitol Street, Room 120, Concord, NH 03301; or by email at richard.e.samdperil@jc.nh.gov.

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Paralegal

Immediate opening for an experienced paralegal. Role includes assisting clients with completion of applications for the immigration process. Our clients include employers and/or individuals seeking visas or permanent resident status. The candidate is responsible to maintain assigned cases by gathering information from clients, preparing petitions and managing immigration files. This position requires regular contact with clients and appropriate government agencies.

As a Paralegal, you must have an interest in immigration and stay current on immigration issues. A Bachelor's Degree in Paralegal studies is preferred or 3 years prior experience working as a paralegal. Some knowledge of immigration process is helpful but not required. No JDs, LLBs, LLMs, or current/matriculating law students please. This is a full time in office position. Ability to speak a second language is helpful.

If you want to practice immigration law with people passionate about what they do, please send resume and letter of interest in confidence to:

hiring@goffwilson.com

Competitive salary and generous benefits package is available.

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ENERGY, ENVIRONMENTAL, AND TELECOMMUNICATIONS ATTORNEY

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

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

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

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

Requirements

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

Minimum Qualifications

J.D. from an accredited law school.

Desired Qualifications

Experience or advanced degrees in environmental, energy or telecommunications.

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

LABOR & EMPLOYMENT ASSOCIATE ATTORNEY

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

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

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

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

Assistant County Attorney Belknap County



The Belknap County Attorney's Office is seeking a prosecutor to work in a team environment as a full time Assistant County Attorney. Under the general supervision of the Belknap County Attorney, the Assistant County Attorneys enforce the laws of the State of New Hampshire by preparing charges for the Grand Jury, meeting and interviewing witnesses and victims, seeking indictment and prosecuting felony crimes and misdemeanor appeals in the Superior Court. Other responsibilities may include "on-call" duties and providing advice and guidance to local law enforcement. For further information visit our website listed below.

Salary Range: \$78,041-\$115,155 commensurate with experience along with a competitive benefits program.

Minimum Qualifications: Bachelor's Degree and Juris Doctor of Law, membership in the New Hampshire Bar Association. Some prior litigation experience preferred, and a strong preference for prior criminal prosecution experience.

Application: Send resume and cover to letter to Jamie Ellsworth, Human Resources Coordinator, 34 County Dr., Laconia, NH, 03246. Phone: 729-1245; email jellsworth@belknapcounty.gov or visit our website at <http://www.belknapcounty.gov> for additional information or a complete Job Description. A criminal history & background check will be required of any applicant prior to being offered a position.

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Legislative and Bill Drafting Attorney Office of Legislative Services

The General Court's Office of Legislative Services (OLS) is seeking a full-time attorney in its Legal and Drafting Division at the State House in Concord. Responsibilities include: drafting legislation and amendments for members of the House of Representatives and the Senate; ensuring that all legislative documents meet the technical and editorial standards of OLS; advising members of the legislature in resolving practical, technical, and legal issues in their drafting requests; compilation and review of statutory changes enacted in each legislative session for publication in the New Hampshire Revised statutes annotated (RSA); and assisting the OLS Administrative Rules Division in reviewing and presenting agency rules to the Joint Legislative Committee on Administrative Rules.

Candidates for the position must be a graduate of an accredited law school and admitted to the NH Bar Association or will pursue admission. This is not a remote-work position. More information may be found at www.gencourt.state.nh.us. To apply, please submit a resume and cover letter to:

David J. Alukonis, Director Office of Legislative Services David.alukonis@leg.state.nh.us

Hamblett & Kerrigan

ATTORNEYS AT LAW

Trust and Estates Laterals

Hamblett & Kerrigan, P.A. seeks a partner-level lateral attorney to join its busy trust and estates department at its Nashua office. We are interested in an attorney who has the skill and experience to immediately handle complex estate matters and values being part of a collegial, tight-knit team. The professionals at Hamblett & Kerrigan enjoy a healthy work-life balance, work collaboratively on case and management tasks, and are committed to a long-term presence in the Greater Nashua and southern New Hampshire region. Hamblett & Kerrigan provides its attorneys with excellent 401(k), health and dental benefits, as well as flexibility regarding remote and onsite hours. Interested candidates should contact Kim Childs at kchilds@hamker.com

Laterals and Experienced Solos

Are you an experienced attorney who is unhappy with your current work environment? Are you an experienced solo practitioner in Greater Nashua who is tired of handling all administrative tasks associated with your practice? Hamblett & Kerrigan, P.A. in Nashua seeks talented laterals and partner-level attorneys who value a healthy work-life balance, have capacity to take on additional work, and are committed to a long-term, professional presence in the Greater Nashua and southern New Hampshire region. The professionals at Hamblett & Kerrigan enjoy a collegial and informal workplace and work collaboratively on case and management tasks. Hamblett & Kerrigan provides its attorneys with excellent 401(k), health and dental benefits, as well as flexibility regarding remote and onsite hours. Interested candidates should contact Kim Childs at kchilds@hamker.com

nashualaw.com

Hearings and Rules Administrator – Position #16738

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

Requirements:

Education: Juris Doctorate from recognized law school.

Experience: Five years' experience as an attorney, two years of which must have been as an attorney involved with administrative law or concerned with regulatory authorities.

License/Certification: Valid driver's license and/or access to transportation for statewide travel.

Special Qualifications: Must be an active member of the New Hampshire Bar Association and in Good Standing.

How to apply: Please go to the following website to submit your application electronically through NH 1st: <http://das.nh.gov/jobsearch/employment.aspx>. Please reference the job ID number that you are applying for: #32650 Hearings Examiner. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

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

Hearings Officer – Position #18086

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

Requirements:

Education: Bachelor's degree from a recognized college or university with a major in pre-law, economics, industrial relations, business administration or public administration. Each additional year of approved formal education may be substituted for one year of required work experience.

Experience: Five years' experience in conducting hearings or administering laws related labor insurance or business practices, with demonstrated progression of increasing responsibility either in a public or private agency or in private industry.

How to apply: Please go to the following website to submit your application electronically through NH 1st: <http://das.nh.gov/jobsearch/employment.aspx>. Please reference the job ID number that you are applying for: #32819 Hearings Officer. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

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

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

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

DCYF Attorney Duties include:

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

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

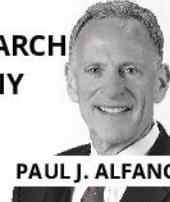
How to APPLY: Please go directly to the following link to submit your application electronically through NH First: <https://lmkp.nhfirst.nh.gov/lawtaprd/xmlhttp/shorturl.do?key=8AT> or visit Candidate Space (nh.gov) and enter Attorney in the Job Title field.

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



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