An Official Publication of the New Hampshire Bar Association

NEW HAMPSHIRE BAR NEWS

April 17, 2019 *Supporting members of the legal profession and their service to the public and the justice system.* Vol. 29, No. 11

Piece of the Puzzle: Drug Courts Expand Across State

By Anna Berry

It was a Monday afternoon in Concord and Christopher Ruggles was sitting in a familiar place — in front of Judge John Kissinger at the Merrimack County courthouse. But after more than a year of regular appearances in court, this visit was cause for celebration.

Once one of Concord's most-wanted men, Ruggles was graduating from the Merrimack County Drug Court — and he was the first to cross the finish line.

Wearing a collared sweater and a close-cropped beard, Ruggles looked younger and healthier than in the mugshots posted in news reports over the years.

Nearly 100 people had crowded into the courthouse for the January 28 ceremony, a mix of current participants, healthcare workers, police officers, and public officials in suits and ties.

"Every cop in the room had literally arrested me at one point or another," Ruggles, 46, said later.

His girlfriend and his daughter sat in the front row, laughing together as he remembered jokingly asking his future partner if she "Googled" — was it a dealbreaker if the top results for his name were headlines like "Alleged Meth Dealer Arrested in Concord Hotel Room"?

But his crimes belied his commitment to drug court — of the 18 people who joined the program in 2017, Ruggles was at the head of the inaugural group.

After all, as many of the drug court team members recounted during the ceremony, Ruggles was a controversial choice to be one of the first inductees.

For nine years, he said he'd been in and out of recovery programs for substance misuse, including the Friendship House and the Farnum Center — "a couple times apiece."

By 2015, he was spiraling, selling meth to support his addiction.

"He knew he was a wanted man," Concord Police Chief Bradley Osgood says. "… We knew he was on the run."

According to police reports, Ruggles was arrested at least four times over two years and charged with methamphetamine possession and distribution. He pled into drug court just as it opened in fall 2017.

"Both of my lawyers told me I'm the luckiest guy in the world," he says. "... I was going away for at least five years. … The motivating factor at first was not going to prison. Get me out of jail — I'll jump through the hoops."

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Christopher Ruggles receives a congratulatory hug at his graduation from the Merrimack County Drug Court in Concord on January 28. He was the first person to graduate from the program.

Part I of an ongoing series examining the justice system's response to the state's behavioral health crises, produced by the Granite State News Collaborative.

PRACTITIONER PROFILE

Israel Piedra: Manchester's "Warrior for Justice"

By Kathie Ragsdale

Depending on the hour and day of the week, Israel Piedra might be found conferring with a personal injury client, drafting a piece of legislation, tooting a trombone for the Windham Community Band, or jamming with a cover band in a Cambridge, Massachusetts tavern.

The multi-skilled Manchester resident, 28, is a practitioner with the Nashua firm of Welts, White & Fontaine, a first-term state representative, a classically trained musician, and a lover of the Constitution and the Boston Red Sox.

"In my view, Israel is a great example of a young warrior for justice, fighting for the rights of the little guy," says friend and colleague David Slawsky of the Nixon, Vogelma, Slawsky & Simoneau firm in Manchester. "He's bright and creative, and not afraid to take on the challenging case when the cause is righteous."

Piedra's says his desire to help "the little guy" stems from his own family history.

His parents met in his father's native Ecuador, where his mother, Mary, a Massachusetts native, served in the Peace Corps. She arrived in the country speaking no Spanish "and she left a couple of years later with a husband and fluency in Spanish and became a teacher," Piedra says.

The situation was reversed when Mary returned to the U.S. with her new husband, Angel, who knew no English.

"He had to work bagging groceries and flipping burgers for a few years until he learned the language and he ended up going to school and becoming a teacher," Piedra says of his father. "It's a real American success story for somebody to come here without knowing English at all and ending up teaching with a master's degree."

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Periodical Postage paid at Concord, NH 03301

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Update From the Bar's Committee on Cooperation with the Courts

By Jonathan Eck, Committee Chair

The New Hampshire Bar Association's Committee on Cooperation with the Courts monitors the rules, practices, and procedures of the courts in New Hampshire and serves as a conduit for information and discussion about such matters between Association members and other entities within the Bar. The Committee sometimes makes recommendations to the NHBA Board of Governors regarding the need for appropriate actions, meetings, conferences, studies, surveys, or dialogue in order to ensure an ongoing cooperative relationship between the Bench and the Bar.

The Committee is comprised of practitioners of diverse types of practice and employment, judges from all of the different courts in New Hampshire, and several high-level court staff personnel. At each monthly meeting, the Committee receives reports from one or more of the judicial representatives from each of the court systems in New Hampshire (i.e., the USDC-NH, the Supreme Court, the Superior Courts, and the Circuit Courts). A wide range of matters are brought before the Committee at its monthly meetings, held between September and June. Committee members regularly discuss recent court developments and initiatives and any broad concerns among members of the Bar.

Recent projects the Committee undertook included drafting a set of guidelines for self-represented parties in NH Courts (titled *Things to Know When You Represent Yourself in New Hampshire Courts*), which is available online through the state court system's website (**www.courts.state.nh.us/selfhelp/documents/Guidelines-for-Pro-Se-Litigants.pdf**) and posted in all of the clerks' offices across the state. Additionally, a subcommittee led by NH Supreme Court Justice Anna Barbara "Bobbie" Hantz Marconi is currently working on the installation of a Westlaw computer terminal at a public location in the North Country, for purposes of providing greater access to online legal research to self-represented parties and practitioners in the North Country.

In recent years, the Committee's work has also included updating and revising the *New Hampshire Lawyer Professionalism Creed* (**/www.nhbar.org/resources/professionalism-creed**) and the *New Hampshire Bar Association Litigation Guidelines* (**www.nhbar.org/wp-content/uploads/2017/12/LitigationGuidelines.pdf**).

Additionally, at several recent Committee meetings, Committee members have discussed the state judicial branch's e-filing system. As one example, at the Committee's March meeting, there was significant discussion about multiple specific practitioner concerns and questions regarding the superior court e-filing system. Judge Charles Temple responded to those matters during the meeting, and with input from Chief Justice Tina Nadeau and Karen Gorham, superior court administrator, he provided additional comprehensive follow-up responses to Committee members after the meeting. The Committee also regularly discusses and vets proposed rule changes advanced by the NH Supreme Court's Advisory Committee on Rules.

The Committee welcomes input from Bar members relative to any concerns about how the courts, at any level, are performing, with a view to helping members solve issues with the courts and their practices.

Please feel free to communicate directly with any of the following Committee members who are active practitioners and not affiliated with the judicial branch:

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The Committee is here as an asset for members to facilitate a dialogue with the bench as to what is working, and what is not working, for practicing members. If there are any particular matters that you believe should be brought before the Committee on Cooperation with the Courts for exploration and discussion, please do not hesitate to raise those matters with one or more of our Committee members.

Learn More

The New Hampshire Bar Association's Committee on Cooperation with the Courts, which has both Bench and Bar representation, monitors the rules, practices and procedures of the New Hampshire courts and serves as a conduit for information and discussion about such matters between Association members and other entities within the organization and the profession. The committee usually meets the third Wednesday of each month, 4 p.m. at the Bar Center.

NEW HAMPSHIRE BAR NEWS

(ISSN 1051-4023)
An official monthly publication of the New Hampshire Bar Association.

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Subscription price: $160/year to non-members; members, included in annual dues; $80/year to students. Advertising rates on request. Periodical postage paid at Concord, New Hampshire 03301. Postmaster: send address changes to New Hampshire Bar News, 2 Pillsbury Street, Suite 300, Concord, NH 03301.

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McLane Middleton Celebrates Centennial

Founded in 1919 by Judge John McLane, McLane Middleton now has over 100 attorneys admitted to practice in 17 states and the District of Columbia. The year-long celebration includes monthly community donations in quantities of 100 and the firm also held a celebration with colleagues and alumni on April 4. **Top:** Jack Middleton, U.S. Rep. Annie Kuster, and Brad Kuster at the event. **Middle:** NHBA Executive Director George Moore and Jim Tenn at the event. **Bottom**: Justice Carol Ann Conboy, Bruce Felmly, Cathy Schmidt, Susan Felmly, Binney Wells.

Staff Changes at Bar Center

The New Hampshire Bar Association recently announced new additions to its staff, filling existing positions that became vacant.

Yvonne Borghetti has joined the Bar Association as intake and referral specialist with the NH Lawyer Referral System. Her previous experience includes work as an elementary school library instructor and service as president of the local labor association. With her husband of 25 years, she has a 19-year-old son and a 3-year-old rescue pup. Her family enjoys traveling and kayaking together.

Mary Clairmont has joined the Bar as front desk/purchasing coordinator. Her previous experience includes purchasing for an international manufacturing company.

Nancy Gross has joined the Bar as website coordinator. She has spent the last year and a half working as a front-end design consultant for the NHBA. She received her MBA from UNH. When not building web pages, Nancy can be found volunteering in her community and spending time with her husband and three teenagers and their dog, Boston.

Kailah Millen has joined the Bar as marketing and public relations coordinator. She received her bachelor's degree from the University of Massachusetts and is an MBA candidate at SNHU. Millen has past experience with non-profits in New Hampshire. She enjoys traveling, hiking, biking and painting.

Membership Status Changes

Presented to the Board of Governors
March 4, 2019 / April 1,2019

Active to INACTIVE
Burdin, William T., Windham, NH (Feb. 15)
Conklin, Clara E., Agawam, Mass. (Mar. 8)

Active to INACTIVE RETIRED
Friedman, Ellen S., Manchester, NH (Feb. 21)

Active to Full-Time Judicial
Gleason, James D., Henniker, NH (Feb. 4)
Steckowych, Kerry Peter, Goffstown, NH (Feb. 4)

Active to SUSPENDED
Nary, Donald R., Dover, NH (Mar. 15)

Active to DECEASED
Sheppard, Duane L., Henniker, NH (Dec. 15, 2018)
Wensley, Danford J., Rochester, NH (Feb. 4)

Inactive to ACTIVE
Rosen, Sara-Ann, Streamwood, Ill. (Feb. 6)
McNamara, Shana Marie, Rochester, NY (Feb. 26)
Beckwith, Shannon L., Keene, NH (Mar. 11)

Inactive to SUSPENDED
Lebeck, Julian, Haverhill, Mass. (Feb. 4)

Inactive Retired to ACTIVE
Brick, Margaret M., Dunbarton, NH (Feb. 11)

Suspended to INACTIVE
Harris, Gwendolyn W., Brooksville, Fla. (Feb. 22)

Suspended to ACTIVE
Harrington, Michael M., Pelham, NH (March 4)

Honorary Inactive to DECEASED
Harkaway, William I., Silver Spring, Md. (June 8)

Military Active to INACTIVE
Bunn, Linda Y., Fairfax Station, Va. (Mar. 5)

The Census and a Smorgasbord of Broken Rules

By Joseph D. Steinfield

Editor's Note: This article is reprinted with permission from the Keene Sentinel.

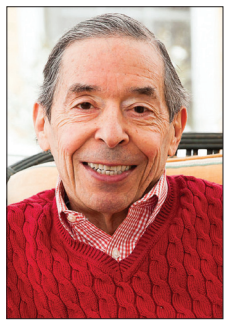
Article One of the Constitution provides that members of Congress shall be apportioned among the states "according to their respective Numbers." That Article also requires a census every 10 years in order to count how many persons reside in each state.

Originally, the words "respective Numbers" referred to "free Persons" plus "three-fifths of all other persons," the latter referring to slaves. After the Civil War, the Fourteenth Amendment eliminated the notorious "three-fifths" clause and established the requirement that the apportionment of congressional members from the states be determined "according to their respective numbers, counting the *whole number of persons* in each State."

The words "whole number of persons" seem clear enough. When the Constitution refers to "citizens" or "the right to vote," it uses those words. For example, the Nineteenth Amendment, ratified in 1920, says that the right of citizens to vote may not be denied on account of sex. And, within the very same paragraph, the Fourteenth Amendment uses the word "citizens" when granting birthright citizenship to persons born in the United States, and the words "any person" when prohibiting the states from denying life, liberty, or property without due process of law, or denying equal protection of the laws.

The Census Bureau is part of the Department of Commerce, and the present Secretary of Commerce is a man named Wilbur Ross, a former banker who specialized in buying and reselling bankrupt companies. Ross won't be doing the actual population counting himself, but he is the person in charge, and that has led to a remarkable conflict over including a citizenship question in the Census Bureau's questionnaire for the 2020 Census. For much of our history, the Census Bureau's questionnaire did include a question about citizenship status, but the Bureau took it out in 1960 based on data showing that the question resulted in undercounting members of "hard-to-count" groups, especially noncitizens and Hispanics. Now, over the objections of the Census Bureau, six of its former Directors, and countless groups from all sides of the political spectrum, Secretary Ross wants to reinstate that question.

The stakes are high because the result of that census will determine which states gain, and which states lose, congressional districts. This, in turn, will apportion the 435 congressmen and women among the 50 states. (It will also affect the allocation of billions of dollars of federal aid to the states.)



On January 15, 2019, Judge Jesse Furman, a federal judge in the Southern District of New York, issued a decision in *State of New York v. Department of Commerce*. The name of the case doesn't tell the whole story. The case was brought by 18 states, the District of Columbia, 15 cities and counties, and several nongovernmental organizations, all protesting the citizenship question. The principal defendant, as you might expect, is Wilbur Ross.

Judge Furman's decision, a mind-numbing 277 pages including 88 footnotes, describes government run amok.

Secretary Ross claimed he was adding the citizenship question because the Department of Justice (DOJ) asked him to do so, supposedly so that it could do a better job enforcing the Voting Rights Act. The facts, unearthed during an eight-day bench (non-jury) trial and based almost entirely on the government's own documents, tell a far different story.

In a scathing opinion, Judge Furman found that Secretary Ross "blatantly" violated the federal census law by failing to follow the proper procedures and by failing to notify Congress, as the law requires, that he intended to include the citizenship question. Ross's actions were, in the judge's words, arbitrary and capricious "several times over," he "ignored, cherry-picked, or badly misconstrued the evidence," he "acted irrationally," and he concealed the true basis for his decision — all of which the judge called a "veritable smorgasbord" of federal law violations.

Moreover, the trial record included undisputed evidence that the Attorney General didn't initiate this brouhaha in order to promote voting rights, but the very opposite. Ross went looking for someone outside his Department, and he ultimately found a DOJ political appointee willing to write a letter requesting the addition of the

STEINFIELD *continued on page 15*

The Renewed School Funding Effort — an Update

By John Tobin

One year ago, in April 2018, I wrote an article for the *New Hampshire Bar News* about how New Hampshire's current school funding system, with its wildly disproportionate property tax rates, is decimating the school systems and economies of dozens of New Hampshire towns and cities, with many more communities also in increasing jeopardy. The severity and scope of this problem had pushed me to come out of retirement and I had quietly begun recruiting lawyers for a possible new school-funding lawsuit.

Building Public Support for School Funding and Property Tax Reform

At the same time, I became part of an informal group that began holding public forums about school funding and property taxes in school auditoriums and libraries. We were quickly inundated with requests from every corner of the state to make our "Education Funding 101" presentations. While these issues had not been given much attention by political leaders or the news media in recent years, we soon realized that they have been simmering just below the surface, ever more troubling and urgent to educators and property taxpayers alike.

We saw that it might be possible, through grassroots advocacy and the democratic process, to generate significant and sustained public pressure to resolve this problem in the legislative arena. Since then I have put the idea of litigation on the back-burner, at least until the end of the current Legislative session, in the hope of prompting a comprehensive and long-range legislative solution to this complex issue.

Since our first public forum on a muggy June evening in Pittsfield, where more than 100 people from Pittsfield and across the state showed up, I have had the opportunity and privilege to be part of a remarkable exercise in local and statewide civics, citizen education, and grassroots policy-making. Our aim was and is to bring the inequities in school funding and property tax rates into the forefront of public debate.

We have held these forums in most of our state's largest cities and in a number of more rural regional school districts. We have been invited to speak to the Business and Industry Association, Rotary Clubs, nonprofit boards, and other groups. Doug Hall, a former legislator and the former New Hampshire Center for Public Policy Studies director, Executive Councilor Andru Volinsky, who was lead counsel in the *Claremont* case, Mary Wilke, a former partner at Orr & Reno and a longtime public school teacher, and I have led this effort, but many people across the state have helped us, in large and small ways. After attending one of the forums, a number of people have followed up by raising these issues in letters to the editor and op-ed columns, as well as through social media.

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Opinions in *Bar News*

Unless otherwise indicated, opinions expressed in letters or commentaries published in *Bar News* are solely those of the authors, and do not necessarily reflect the policies of the New Hampshire Bar Association Board of Governors or the NHBA staff.

A Term in Turmoil: Select Criminal Cases from the 2017-18 Supreme Court Term

By Juliana DeVries

Editor's Note: This excerpt is reprinted with permission from the most recent issue of "Court Review," published by the American Judges Association. The full article is available at nhbar.org/publications/BarNews.

This was a tumultuous year for the United States Supreme Court. On June 21, 2018, Justice Anthony Kennedy announced his retirement after 30 years on the Court. And President Trump nominated Judge Brett Kavanaugh to fill the seat. Judge Kavanaugh's confirmation hearings riveted and polarized the nation. Late in the proceedings, multiple women accused him of sexual misconduct. One of those women, Professor Christine Blasey Ford, testified before the Senate Judiciary Committee, detailing how Judge Kavanaugh allegedly sexually assaulted her when they were in high school. Judge Kavanaugh denied the allegations in emotional testimony that triggered a letter from over 2,400 law professors asserting that he "did not display the impartiality and judicial temperament requisite to sit on the highest court of our land." (Susan Svrluga, 'Unfathomable': More than 2,400 Law Professors Sign Letter Opposing Kavanaugh's Confirmation, WASH. POST (Oct. 4, 2018).) The Senate nonetheless confirmed Justice Kavanaugh to the high court.

With Justice Kavanaugh's confirmation arriving just 14 months after Justice Neil Gorsuch began his tenure, this is a Court in transition, both in terms of its personnel and its jurisprudence. This year's criminal cases put that flux on display. The Court decided a high number of Fourth Amendment cases this Term. The justices disagreed starkly over the future of Fourth Amendment law, especially in the area of standing. The Court also issued split decisions interpreting the First, Fifth, and Sixth Amendments. ...

Fourth Amendment

This Term was chock-full of significant Fourth Amendment cases. The Court took particular interest in the concept of "standing": what a person must show to have a cognizable Fourth Amendment interest allowing her to seek relief for an unconstitutional search. Perhaps the most groundbreaking Fourth Amendment opinion was *Carpenter v. United States* (2018), where the Court held that a person has a reasonable expectation of privacy in her cell phone location information turned over to a third party. Carpenter limits the so-called "third party doctrine," though it's not clear how much. Another important standing case, *Byrd v. United States* (2018), held that a person has a reasonable expectation of privacy in a rental car even if she's not listed in the rental agreement. In *Collins v. Virginia* (2018), the Court decided officers need a warrant to search a vehicle parked in the curtilage of a home. And in *District of Columbia v. Wesby* (2018), the Court concluded that officers had probable cause to arrest a group of trespassing partygoers and that the court below erred by viewing facts in isolation.

In *Carpenter*, police arrested four men suspected of robbery, including Timothy Carpenter. Federal prosecutors obtained telecommunications records from Carpenter's wireless carriers. Those records included cell-site location information (CSLI), time-stamped location data from each time Carpenter's phone connected to one of the carrier's cell sites. The government obtained 12,898 data points cataloging Carpenter's movements over 127 days. These data points created a map of Carpenter's location that placed him at the robbery. The Sixth Circuit held that Carpenter lacked a reasonable expectation of privacy in the CSLI because he had turned that information over to third parties: his wireless carriers.

The Supreme Court reversed in a majority opinion written by Chief Justice Roberts. "[A]n individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI." The government therefore needed a warrant, supported by probable cause, to obtain Carpenter's CSLI.

This was significant because the Court has long held that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." (*Smith v. Maryland*, 442 U.S. 735 (1979).)

... Continue reading at: **www.nhbar.org/publications/BarNews**.

Juliana DeVries is assistant federal public defender for the Northern District of California and a former Ninth Circuit clerk. She is the daughter of Hon. Sharon DeVries. (The views expressed are her own and not those of her employer.)

A New Age of Pay Equity

By Alexandra Geiger

April 2, 2019 marked the 13th anniversary of Equal Pay Day, a day first recognized by the National Committee on Pay Equity to raise awareness of the gender wage gap. Equal Pay Day is celebrated in early April because it is approximately the day until which a woman must work into the year to make the same amount earned by a man at the end of the previous year. While we have come a long way since 1996, when women earned on average just 73.8 percent of what men earned, we still have a long way to go. In 2017, women earned on average just 80.5 percent of what men earned and that percentage is even less for women of color.

While pay equity has been a topic of public discourse for decades, it has come to the forefront in conjunction with the #MeToo movement, as pay differences between high-profile men and women performing the same jobs have come to light. In 2018, Mark Wahlberg earned $1.5 million for reshoots for the movie, "All the Money in the World," while his co-star, Michelle Williams, earned just $1,000. And last month, the United States Women's Soccer Team sued the United States Soccer Federation alleging that, under the Federation's pay structure, a female player has the ability to earn just 38 percent of what a male player would earn with the same record. The Complaint highlights that the pay discrimination has persisted for years despite the women's team winning more games and more championships and outpacing the men's team in viewership and ticket sales.

> "Given the significant disparity in wages between men and women that exists today, most people do not realize that the Equal Pay Act, the first federal law addressing the gender wage gap, was enacted 56 years ago, in 1963."

Given the significant disparity in wages between men and women that exists today, most people do not realize that the Equal Pay Act, the first federal law addressing the gender wage gap, was enacted 56 years ago, in 1963. The Act, signed by President John F. Kennedy, made it unlawful for an employer to discriminate on the basis of sex by paying an employee of one sex higher wages than an employee of another sex for "equal work" in the performance of jobs requiring "equal skill, effort, and responsibility, and which are performed under similar working conditions" unless the difference in pay is based on seniority, merit, quantity or quality of production or a differential based on a factor other than sex.

The next federal legislation specifically aimed at addressing the gender wage gap, the Lilly Ledbetter Fair Pay Act, was not signed until 2009 — 46 years later. The Lilly Ledbetter Fair Pay Act, the first bill President Obama signed into law as president, overturned a Supreme Court decision significantly restricting the time period for filing complaints for discrimination in pay on the basis of sex. Despite repeated attempts by some lawmakers, there has been no further legislation enacted at the federal level to address gender pay equity since 2009.

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MEMBER BENEFIT SPOTLIGHT

Long-Term Care Insurance — Protect Your Assets and Save on Taxes

As one of its numerous member benefits, the NHBA has partnered over the past several years with Advanced Resources Marketing, an industry leader in providing Long Term Care Insurance (LTCi). A veteran insurance agent specializing in this type of insurance, Derek Miele, or one of his colleagues is available to answer your questions without obligation.

Several current trends magnify the fact that the need for proper long-term care planning is **more important now than ever**. Consider the following: the population of the United States is aging at a rapid rate, people are living longer than in the past, and retirement funding (which includes long-term care funding) is increasingly becoming a personal responsibility.

Since the cost of long-term care is generally not covered under a medical or disability insurance contract, or under Medicare, **LTCi provides the perfect solution to bridge this glaring gap in coverage**.

Fortunately, as a member of the New Hampshire Bar Association (NHBA), you have access to an endorsed Long-Term Care insurance program, which provides you with a number of **exclusive member benefits**.

LTCi protects your hard-earned retirement income, savings, and assets by providing the dollars to pay for the costs associated with a long-term care need. With the purchase of a qualified National Partnership Policy through the NHBA's program, you can secure **Dollar-for-Dollar Asset Protection**, allowing you to protect assets from Medicaid's "spend down" rules should you outlive your policy's benefits and apply for assistance.

Like most other forms of health insurance, LTCi provides tax advantages to both individuals and corporations. While tax deductions vary with types of corporations, individuals, including s**elf-employed individuals**, can deduct LTCi premiums for themselves and their spouses up to the limits set by the IRS:

Age of Insured Before Close of Taxable Year	2019 Limit (Per Policy)
40 or less	$420
41 to 50	$790
51 to 60	$1,580
61 to 70	$4,220
Over 70	$5,270

Besides the advantages of tax savings and asset protection, there are numerous member benefits and plan design options available to you through the NHBA's program, including:

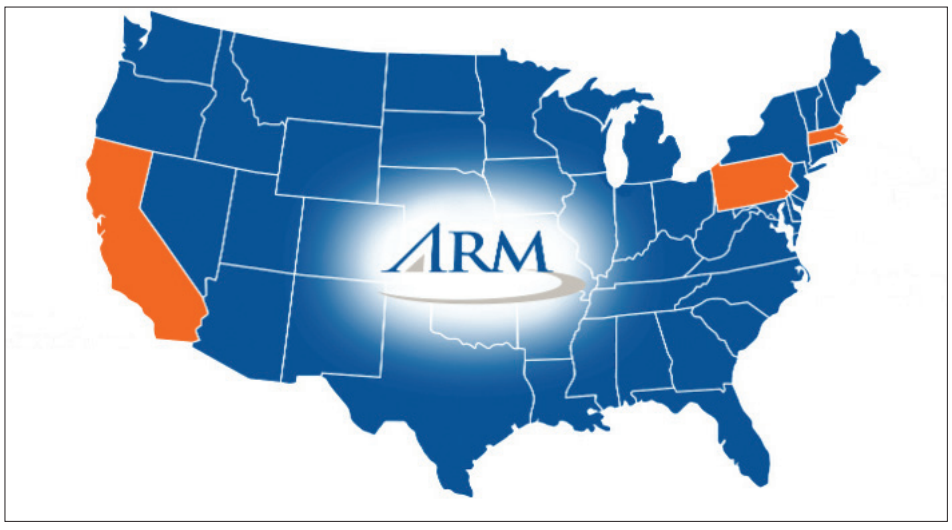
- Premium **discounts** ranging from 5% to 10%
- **Unlimited** benefit options
- Limited premium payment options, including **10-pay** and **Single-lump-sum** payment options
- **Full Return of Premium** & Cash Surrender Value options
- **1035 exchanges** from non-qualified life insurance and deferred annuity policies

The best part is, not only are these benefits available to you — **your spouse and family members** are eligible to apply and take advantage of these same benefits as well! What's more, even **employees** can share in program benefits. With firm sponsorship, you can secure **further discounts** for you and your employees, as well as the possibility of **relaxed underwriting**.

Want to learn more about the NHBA's LTCi Program? Simply call **800.269.2622** and arrange to meet a Long-Term Care Insurance Specialist at your home, office, or ONLINE via your computer and telephone. You can also view a short presentation at **http://www.armltci.com/nhba/**.

The NHBA's Long-Term Care Insurance Program Specialists are the best in the business. Focusing strictly on LTCi, they are certified by the Corporation for Long-Term Care [CLTC], the highest industry standard. With endorsements from the Massachusetts and Connecticut Medical Societies, Bar Associations of Massachusetts, Maine, and Connecticut, and the CPA Society of Massachusetts, the NHBA LTCi Specialists provide the highest quality service and advice for your long-term care needs. You are in good hands.

LTCi provides answers to the questions that are on everyone's mind — *What will I do should the need for care arise? How can I protect my retirement income, savings, and assets? If I end up needing care, how can I preserve my family's financial, emotional, and physical well-being?* Get some answers — act now!



MEMBER BENEFIT SPOTLIGHT

Casemaker4: New and Improved, Yet Reassuringly Familiar

By Norman Woolworth

Editor's Note: At the time this article was written, Casemaker4 was still in beta testing. As a result, it is possible that features described will be modified slightly in the final version.

New Hampshire Bar Association members will soon be introduced to Casemaker4, the next generation legal research platform from Casemaker. In creating Casemaker4, to which NHBA members will have free access, the Casemaker development team was presented with two over-arching imperatives:

- On the one hand, improve search speed, modernize the interface to enable more intuitive site navigation, and upgrade design responsiveness to better accommodate mobile devices;
- On the other hand, retain features and design elements that loyal Casemaker users value and trust, and minimize changes with the potential to disorient.

Put another way: Make it new. Make it better. But avoid change for change's sake.

"The history of platform re-designs across various industries is littered with examples of solutions in search of problems," said Dan McCade, Casemaker's chief information officer. "We were very conscious throughout the development process of only adding features that would matter to our users, and of not throwing out the baby with the bath water, so to speak."

Guided by several years of user feedback and incorporating refinements suggested through an extensive beta testing process (which includes NHBA representation), the team managed to achieve the desired balance, producing a new and improved platform that remains, nonetheless, reassuringly familiar.

Casemaker4 features a clean and uncluttered layout, with all of the features CBA members previously enjoyed, along with faster search speeds, better search filter tools, and new functionality such as type ahead searching. It is both W3C and ADA compliant and includes a much more responsive design for enhanced display on smaller devices.

Not every change to the new platform is visible to users. As McCade explained, Casemaker invested in significant "back end" enhancements.

"We have upgraded our load balancing and database clustering technologies," McCade said. "And then, along with hardware improvements, we've invested in our server operating system, and database and search engine software. The result is faster response time and greater platform stability."

In designing the new platform's user interface, much thought was put into making the user experience not only more intuitive, but also more efficient. To that end, notable enhancements include:

- Moving the main navigation to the header area so there is no longer a need to return to the home page.
- Enabling a search of anything from anywhere by including the jurisdiction selection menu on every page. In concert, the system automatically updates the search jurisdiction as the site is navigated, so that searching on just the content you are browsing remains the default.
- Adding time-saving options to the Search Input box, including "Recent Searches," "Search Tips," "Advanced Search," and predictive "Type Ahead" functionality.
- Adding Casemaker Digest (daily summaries of leading cases), Casemaker Libra (eBooks), CiteCheck and CLE Events to the main navigation for easier access, as well as the inclusion of links to Libra citing references where applicable.
- A new Alerts feature that allows users to be notified of any new developments pertinent to a predefined topic based on a saved search or list of primary sources.
- Incorporating intelligent algorithms to suggest related primary and secondary materials not previously displayed.
- And much more!

What's not changing? The expert care and handling of legal content by editorial staff that has long distinguished Casemaker among low cost legal research providers, who tend to rely more heavily on algorithmic approaches to capturing and organizing legal content, with comparatively little to no human intervention.

In a study circulated at last summer's Annual Meeting of the American Association of Law Libraries, entitled "Database Evaluation: Drawing The Silken Thread,"* three highly respected Connecticut law librarians set out to objectively evaluate seven legal research services by researching six topics. They performed identical searches on each service, and then assessed each result set against five pre-determined criteria.

The study showed that Casemaker consistently returned more relevant results than other low cost services, that its content was more current, and that its citator, CaseCheck+®, was more precise and less cumbersome to use than other providers' citation checking tools. In fact, Casemaker performed on a par with (and in some cases even surpassed) the leading high cost services across multiple points of comparison.

As Casemaker Chief Operating Officer Sarah Gorman said at the time, "These results are truly gratifying. Our editors take great pride in their work and here we can see that the human touch really does make a difference."

Soon, as an NHBA member, you can have the best of both worlds: a much-improved platform with state-of-the-art functionality, and content you can continue to rely on with confidence.

**Full study: http://casemakerlegal.com/pdf/public/database-comparision.pdf.*

Norman Woolworth joined Casemaker as director of marketing in 2018. He is a seasoned veteran of the online legal research industry.

NHBA & Casemaker

- New Hampshire was one of the original members of the consortium of Bars to offer Casemaker to all members for free.
- Since 2002, NHBA has contracted with Casemaker in order to provide a free legal research subscription to all NHBA members.
- In the last year, there were 2,009 unique registered NHBA members. 133 are mobile app users.
- In 2018, NHBA members ran 175,834 searches in Casemaker over the course of 33,603 sessions.
- In a recent survey to solo and small firm members, 54 percent of respondents reported that they "always" use Casemaker and 31 percent reported that they "sometimes" use Casemaker.
- The new platform has an improved search engine to help with search and navigation functionality.
- The new platform is still being beta tested and Casemaker4 is scheduled to be rolled out by this summer.
- Casemaker will be offering training help once the new platform is rolled out, so stay tuned.

Geiger from page 4

As part of the movement toward pay equity that began with the Equal Pay Act, all but two states (Alabama and Mississippi) have passed some form of equal pay law. While the majority of these laws mirror the federal law, including New Hampshire's equal pay statute, a handful of states have enacted legislation which provide greater protections against pay discrimination.

The most powerful equal pay law in the country took effect last year, on July 1, 2018, in Massachusetts. The Massachusetts Equal Pay Act applies to all private, state and municipal employers regardless of size, and prohibits an employer from paying an employee of one gender less than an employee of an another gender for "comparable work." The Act defines "comparable work" more broadly than "equal work" under the Equal Pay Act as work requiring "substantially similar" skill, effort and responsibility performed under similar working conditions unless based on a permissible variation in pay such as seniority, merit, geography, productivity, education, training or experience. "Comparable work" may even include employees in different positions and departments.

The Massachusetts Equal Pay Act, like the equal pay laws in states such as Connecticut, California, Delaware, Oregon, and Vermont, also prohibits employers from asking about the wage or salary history of a prospective employee during the hiring process. The rationale behind this prohibition is that, because women have historically earned less than men, allowing employers to ask candidates about salary history and then make employment offers based on that salary history will only perpetuate the gender pay gap.

The most ground-breaking feature of the Massachusetts Equal Pay Act, however, is that it offers employers who have conducted a self-audit of their pay practices, as defined by the Act, an affirmative defense to liability should one of their employees file suit. Massachusetts is the first state to include such a defense in its equal pay law, and it remains to be seen how courts will grapple with employers who submit their self-audits in their defense. A critical component in utilizing this defense is being able to show that the employer has developed a plan to address an inequities discovered in the audit process.

While Massachusetts and other states are leading the charge against pay disparities by enacting comprehensive legislation, efforts at the federal level have stalled until just recently. In March, the House passed the Paycheck Fairness Act, which, if enacted, would close the loopholes in the Equal Pay Act, including by prohibiting employers form using salary history to set the salary for a new employee, protecting employees against retaliation for discussing their salaries at work, and allowing prevailing plaintiffs to recover compensatory and punitive damages. While the Senate is not expected to take up the bill, if Democrats gain control of Congress and the White House in 2020, it could be one of the first bills signed into law by the new administration.

Alexandra Geiger, an attorney practicing in the Employment Law Practice Group in both the Woburn, Mass., and Manchester, NH, offices of McLane Middleton, can be reached at 603-628-1483 or alexandra.geiger@mclane.com.

Tobin from page 4

The Legislature Begins to Respond to Grassroots Calls for Change

Our forums helped give prominence to the issues of school-funding gaps and property tax burdens in the legislative elections last fall. This in turn led to the filing of multiple House and Senate bills in the 2019 Legislature proposing an array of changes to the current school-funding system.

When public hearings began to be scheduled on these bills, we were ready. We had collected the names and email addresses of the people who attended the forums and we began sending weekly email newsletters with information about the content of the bills and the hearing dates. The result was a wave of compelling testimony from school and municipal officials, parents, taxpayers, and business owners.

Based on what we had seen and heard at the public forums, we decided upon three main goals for the 2019 Legislative session:

- An immediate halt to the ongoing reductions to "Stabilization Grants," a component of the state education funding that is especially important to property-poor districts, and restoration of the cuts to this program that had occurred in the past three years;
- A meaningful interim increase in the overall level of state education funding;
- The creation of a truly independent commission, with public members and the capacity for research and analysis, to develop a comprehensive school funding plan, with an accurate assessment of the actual cost of K-12 education and the identification of the revenue stream needed to raise the necessary funds.

While we are only halfway through the Legislative session, a series of votes in both the House and Senate have shown that there is widespread bipartisan support for the first two goals, and we are continuing to build support for the commission that will design a long-term solution.

A New Lawsuit Is Filed

In the past few weeks, the ConVal Regional School District filed a new school funding lawsuit, and two other school districts in southwestern New Hampshire have decided to join that case. We were not consulted in advance of ConVal School District's filing. While the lawsuit is framed somewhat narrowly, we share a common ultimate goal: requiring the state to comply with its constitutional responsibility to provide students across NH with an opportunity for an adequate education, supported by taxes that are reasonable and proportional.

For the balance of the current Legislative session, which will likely end in late June, we remain committed to working in good faith with legislators, school districts, and community leaders from across the state to produce a legislative approach that will immediately address the worst inequities in the current system, and, in the long term, result in fair and full funding of our public schools. Like ConVal, we want to see the State make an honest calculation of the true cost of an adequate education. As noted, we support legislation to create an independent commission to do just that.

As the history of the *Claremont* case shows, even when school districts, students and taxpayers win a school funding case in court, it is up to the legislative branch to design and build the components of the funding system. Our current efforts are intended to make this happen. However, if the Legislature and/or the Governor fail to act in a meaningful way during the current session, it is likely that dozens of school districts will consider filing their own lawsuits.

Ask Your Local Legislators — and the Governor — These Questions

With so much at stake and many school districts already in crisis or on the precipice, we must make sure that the Legislature and Governor take action during this legislative session. Here are three questions to ask every House member, State Senator and the Governor:

- What will you do to make sure that the State takes action now to update its adequacy grants to realistic levels?
- What will you do now, and over the long-term, to make school property tax rates more fair and equal across the state?
- As an immediate measure, will you support a moratorium on cuts to stabilization aid? Will you support restoring the amount that has been cut since 2015?

We are setting up a nonprofit, the NH School Funding Fairness Project, to help us organize and go forward with our public education efforts and advocacy. If you are interested in receiving our email newsletters, or want to help organize a public forum, email **schoolfundingfairness@gmail.com**. We have a Facebook page: NHSchoolFundingFairness. For a compilation of news articles and other information, please visit the website of Advancing NH Public Education (ANHPE) at **https://anhpe.org/**.

Attorney John E. Tobin Jr. is the former executive director of NH Legal Assistance. His email address is jtobinjr@comcast.net.

Section Meetings in Review

Alternative Dispute

On March 5, Steven H. Slovenski, Co-Chair of the Alternative Dispute Resolution Section, presented a Section CLE on ethical considerations in mediation, focusing on common ethical dilemmas and ways to minimize the likelihood of such occurrences.

Trust & Estate

On March 13, attorney Joseph F. McDonald, III, of McDonald & Kanyuk, led an engaging discussion on the "Anatomy of a Pre-Liquidity Event Strategy: Leveraging a Business Owner's Wealth Transfer Tax Exemptions Before the Deal Goes Down."

Municipal & Governmental

On March 20, the Municipal & Governmental Law Section hosted attorney Cameron G. Shilling, Chair of Privacy and Data Security at McLane Middleton, who discussed information privacy and security with those in attendance. Attorney Shilling covered specific issues such as the regulatory landscape, conducting a risk assessment, and the information security process.

Environmental & Natural Resources

Also on March 20, the Environmental & Natural Resources Law Section meeting featured Sarah Pillsbury, Administrator, Drinking Water & Groundwater Bureau, and Michael Wimsatt, Director, Waste Management Division, both of the NH Department of Environmental Services (NH DES). Pillsbury and Wimsatt provided an overview of NH DES's work to address per- and polyfluoroalkyl substances (PFAS) contamination in New Hampshire, current legislative efforts related to PFAS, and the Department's pending proposed rulemaking relative to drinking water MCLs and groundwater standards for PFAS. Thank you to the NH Department of Justice for hosting this event!

Intellectual Property

The Intellectual Property Section met on March 21 at Finch & Maloney in downtown Manchester to discuss updates to various aspects of intellectual property law including trade secrets, copyright, trademarks, as well as "tips and tricks" for litigating patent matters. Discussions were led by Attorneys Peter Nieves of Sheehan Phinney, Arnie Rosenblatt of Cook, Little, Rosenblatt & Manson, and Ashlyn Lembree, Director of the Intellectual Property and Transaction Clinic at the UNH School of Law's Franklin Pierce Center for Intellectual Property. A very special thank you to the firm of Finch & Maloney for being such wonderful hosts!

Condominimum Law

On March 27, the Condominium Law Section gathered at the NH Bar Center to hold section elections (see results,), as well as to discuss a number of issues including the conversion of Common Area to Limited Common Area, the proposed foreclosure amendment to the NH Condominium Act, as well as leasing restrictions and the Airbnb phenomenon.

Section Elections

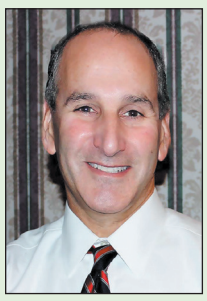
Election season kicked off this spring for section officers. Congratulations to the new officers listed here! The Condominium Law Section and the Workers' Compensation Law Section held elections for the 2019-2020 section year (June 1, 2019 – May 31, 2020).

Condominium Law:

Michael R. Feniger of Feniger & Uliasz, Chair
Quinn P. Colgan of Janson & Colgan, Vice Chair
Gary M. Daddario of Marcus Errico Emmer Brooks, Clerk

Workers' Compensation Law:

Andrew D. Johnstone of Johnstone Law Office, Chair
Laura M. Del Camp of Bernard & Merrill, Vice Chair
Jared P. O'Connor of Shaheen & GordoN, Clerk


Feniger


Colgan


Daddario


Johnstone


Del Camp


O'Connor

NEW HAMPSHIRE
BAR FOUNDATION NEWS

Help us reach the most vulnerable citizens of New Hampshire

Your donation in any amount directly impacts the lives of NH residents

The Foundation depends upon your generosity to help provide funding to promote justice and serve our community. If you already contributed to the Bar Foundation's Annual Appeal, thank you! If not, we hope you will make a contribution today and support the New Hampshire Bar Foundation's Annual Appeal!

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Make your donation by April 30 and be entered to win a **$100 Amazon gift card!**

NEW HAMPSHIRE BAR FOUNDATION
Strengthening Justice for All

Attorney McManus to Receive Nixon-Zachos Award

Anthony A. McManus has been named the 2019 recipient of the Nixon-Zachos Award for his decades of work as a lawyer, civic volunteer, and legislator.

The award was created in memory of New Hampshire lawyers David Nixon and Kimon Zachos, "who exemplified the important role lawyers play to ensure we live in a society where everyone is equal before the law."

McManus will be presented with the award at the 2019 Fellows Justice Reception on May 22 at the Currier Museum of Art in Manchester. McManus served in the state Legislature with Nixon and Zachos and maintained a close friendship with both for more than 50 years. "They were pretty much my idols of what a lawyer should be," McManus said.

Like Nixon and Zachos, McManus has devoted his life to service. McManus began his legal career in 1964 as a public defender in Massachusetts and later helped start NH Legal Assistance and the Legal Advice and Referral Center. He was a founding member of the Dover Day Care Center and the Dover Group Home. He has served as a member on numerous non-profit boards, including Child & Family Services, the NH Community Mental Health Association, and Strafford Hospice Care, two years as its chair. He also served in the state Legislature for nearly seven years, including two terms as vice chair of the House Judiciary Committee.

McManus has had his own law practice since 1967. From 2001 to 2008, he worked for the New Hampshire Judicial Conduct Committee as its executive secretary. McManus served as a board member of the New Hampshire Bar Foundation for 13 years, seven years as treasurer and one year as president. He has also served as chair of the Bar Association Ethics and Gender Equality committees and the Bar Foundation Board.

McManus is the fourth recipient of the Nixon-Zachos award. Prior award winners are Jack Middleton, 2016; Claudia Damon, 2017; and David Bradley, 2018.

Save the Date

Attorney Anthony McManus will be presented with the Nixon-Zachos award at the 2019 Fellows Justice Reception on Wednesday, May 22 at the Currier Museum of Art in Manchester.

Board Member in the Spotlight: John A. Curran

"I joined the NH Bar Foundation Board because of the people already serving, from Co-chairs Jack Middleton and Jim Tenn, to my fellow members and the Bar Staff involved in the program," said John Curran, a five-year veteran of the Foundation Board of Directors and a member of the Bar Association's Board of Governors.

A graduate of Boston College and Suffolk University Law School, Curran served as a judicial law clerk and deputy senior law clerk with the NH Superior Court before serving as an assistant attorney general where he prosecuted homicide cases and represented the state in criminal appeals and federal habeas corpus proceedings. He then went on to private practice with several firms before joining Gallagher, Callahan & Gartrell earlier this year.

Active in his profession and his community, Curran has served on several state and local boards including the NH Higher Education Commission, the NH Board of Registration for Funeral Directors, the NH Supreme Court Rules Committee, the Manchester Bar Association and has served as an elected member for the Town of Londonderry Library Trustees. In addition to his civic and professional commitments, he volunteers as a youth soccer coach.

When asked why he feels the Foundation is important, Curran responded: "The Foundation ensures that entities and efforts that serve the ends of justice for all in New Hampshire are funded in a way that they can instead focus on their core missions, whether that is access to justice or civics education." He went on to explain that the Foundation pursues the principles and values that attracted many members of the Bar to the law; maintaining that commitment serves all of us involved in the judicial system, as well as our society as a whole.

Although his term on the Bar's Board of Governors as Governor-at-Large expires in May, Curran is running for the position of Merrimack County Governor so that he can stay involved with the Bar and help ensure "Equal Justice Under Law."

In Memoriam

Leila Gemme Connor

Leila Gemme Connor, 76, of Bedford, and formerly of Manchester and Clearwater, Fla., died peacefully on March 29, 2019, after a long struggle with dementia.

She was born Leila Frances Boyle in Philadelphia, Pa., on Nov. 29, 1942, to Thomas E. Boyle Jr. and Virginia (Antisdale) Boyle.

At the age of four, her family relocated to Milford, Conn., where she graduated from The Academy of Our Lady of Mercy, Lauralton Hall, in 1960.

She then earned a bachelor's degree from Newton College of the Sacred Heart (now Boston College) and a master's degree from the University of Connecticut.

After a period as a high school teacher, Leila became an editor, then writer, authoring several books of nonfiction and many children's books.

In the late 1970s, Leila enrolled at Loyola University School of Law in Chicago. After her studies were interrupted by the death of her first husband, she went on to earn her J.D. from Franklin Pierce Law Center in 1984.

Attorney Connor practiced in Manchester for several years, focusing on family and special education law. She was a passionate advocate for children with special needs.

After losing her sight in 1993, Attorney Connor served for several years on the board of the New Hampshire Association for the Blind. She remained a member of the New Hampshire Bar Association until her death.

Leila married Francis Robert Gemme in 1964. They shared almost 15 years together, had three children and lived in Connecticut, California and Illinois before Leila lost her beloved Frank in the 1979 crash of American Airlines Flight 191.

In 1981, Leila married David G. Connor, MD, of Manchester. They shared 29 wonderful years together until Dr. Connor's death in 2011.

Leila enjoyed practicing law, reading, writing, the beach, good movies and spending time with her family. She was known by all as a crossword puzzle wizard. She will be remembered for her fundamental belief in people's goodness, her sense of humor, warmth, sharp intellect, devotion to her two husbands and the tremendous pride she took in her children.

The family would like to thank Mrs. Connor's longtime caregiver, Eileen Finnegan, and the staff of Carlyle Place in Bedford.

Family members include her children Michael Gemme of Playa del Rey, Calif., Abigail Gemme of Manchester, and another daughter and son-in-law, as well as step-children Susan (Glen) Bossie of Virginia, David Connor of New York and Goffstown, Michael Connor of Massachusetts, and Christine (Fabrice Betoudji) Connor of Sherbrooke, Quebec, Canada; three adoring grandchildren and seven step-grandchildren; her siblings, Deborah Bowley of Bridgeport, Conn., Thomas Boyle, and his wife, Adele, of Madison, Conn., and Joseph Boyle, and his wife, Dennise Murray, of Philadelphia, Pa.; nieces, nephews and cousins.

In addition to her two husbands, Leila was predeceased in life by her loving daughter-in-law, Lola Boyd Gemme and her step-granddaughter, Ashling Felicia Kagbo Betoudji.

The funeral was held at Saint Joseph Cathedral, Pine Street, Manchester. Burial will take place privately in Saint Joseph Cemetery, Bedford.

In lieu of flowers, memorial donations may be made to Future in Sight, 25 Walker St., Concord, N.H. 03301. For more information visit: www.connorhealy.com.

In memory of our colleague, the NHBA Board of Governors has made a contribution to the NH Bar Foundation.

In the News

Community Notes

Sheehan Phinney shareholder **Megan C. Carrier** has been named to the Board of Directors for NeighborWorks Southern NH. Carrier's practice focuses on business litigation and involves representing individuals and businesses in a wide range of disputes before state and federal trial and appeals courts, administrative tribunals, arbitrators, and in mediation.

Carrier

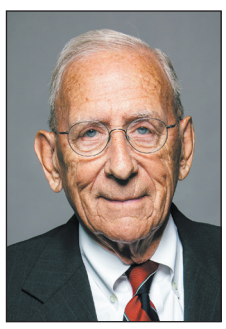
Gregory Eaton, of Primmer Piper Eggleston & Cramer, has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America.

Eaton

McLane Middleton recently recognized attorney **Mark C. Rouvalis** with the 14th annual Jack B. Middleton Pro Bono Legal Services Award for his outstanding commitment to serving citizens in need. McLane Middleton also announced that **Ashley B. Campbell** was recently presented with the firm's John R. McLane, Jr. Community Service Award during its annual Colleague Recognition Reception.. McLane's **Jack Middleton** was honored by City Year with a Lifetime of Service Award at the nonprofit's annual gala.

Rouvalis

Campbell



Middleton

At their Holiday Party and Auction, the New Hampshire Association for Justice collected record donations for a local nonprofit organization. Members of the association donated $11,670 for Friends of Forgotten Children. The New Hampshire Association for Justice is a statewide professional association of trial attorneys working to protect individual rights by ensuring equal access to justice.

Coming & Going

Preti Flaherty recently announced that attorney **Jaclyn N. Fisher** has joined the firm. She will practice in the Business Law group from the firm's Concord, New Hampshire, office.

Shaheen & Gordon welcome attorney **Carole Waters** to the firm. She will practice with the elder law, estate planning, probate and trust group. Waters is a member of the Bar's current Leadership Academy class.

Lawson Persson & Chisholm announced the addition of **James Ball** as a director and the change of the firm's name, effective April 1, to Chisholm, Persson & Ball. The firm also announced the addition of **Alexandra M. Collins** as an associate attorney practicing in estate planning and probate administration.

McDonald & Kanyuk recently welcomed **Megan C. Neal** back to the firm, where she will continue her estate planning practice representing high net worth individuals, and administering trusts and estates.

Gallagher, Callahan & Gartrell announced that attorney **Anne Jenness** joined the firm as an attorney in the employment and litigation departments.

Attorney **Amy R. Braun** of Lebanon has joined the northern New England law firm Downs Rachlin Martin and will practice in the Labor and Employment Group. She began work at the firm on March 25 and works in the firm's Lebanon office.

Wellness Tip of the Month: Don't Eat in Front of the TV!

Binging the latest round of The Game of Thrones while shoveling in your dinner is a proven cause of weight gain. Eating while watching a screen guarantees you are not registering what you are eating and missing body cues signaling you are satisfied or even full. You also don't pay attention to how fast you are eating while you are zoned out in front of a screen. It takes 20 minutes for your brain to realize you are no longer hungry after you start eating. Eat mindfully at a table.

New Hampshire Lawyer Assistance Program
Help. Hope. Healing.
Don't hesitate. Don't go it alone.
Call today: (603) 491-0282
www.lapnh.org

Under Supreme Court Rule 58, all contact with NHLAP, whether with lawyers, judges, law students, or concerned third parties, is confidential. In addition, NHLAP employees and volunteers are exempt from reporting professional misconduct under Rule 8.3, and prohibited from doing so under Rule 37.

Professional Announcements

Professional Announcements Rates and Sizes for June 2018-May 2019

Size Ad	Price	Width	Height
1/8 page horizontal	$220	4.92	3.25
1/4 page vertical	$380	4.92	6.75
1/2 page horizontal	$575	10	6.75
Full page	$1090	10	13.63

Additional $50 charge for color

LAWSON PERSSON & CHISHOLM, PC

is pleased to announce the addition of James Ball as a director and the change of the firm's name, effective April 1, 2019, to

CHISHOLM PERSSON & BALL, PC

We are also pleased to announce the addition of Alexandra M. Collins as an Associate Attorney concentrating in Estate Planning and Probate Administration. Although the name of the firm has changed, our dedication to our clients has not. We continue to offer a wide range of services in many areas of practice, including

- Estate Planning & Probate Representation
- Family Law
- Patents, Copyrights & Trademarks
- Real Estate & Commercial Transactions
- Business Formation & Counseling, and
- Civil Litigation

755 North Main Street, P. O. Box 712, Laconia, NH 03247-0712
603-528-2900 | www.laconialaw.com | info@laconialaw.com

CAROLE WATERS
cwaters@shaheengordon.com
(603) 871-4144
353 Central Avenue, Suite 200
Dover, NH

Join us in welcoming

ATTORNEY CAROLE WATERS

to the firm.

Carole will practice with the Elder Law, Estate Planning, Probate, and Trust Group at Shaheen & Gordon, P.A.

Carole has extensive experience providing compassionate, professional legal services to families in times of need. She practiced for seven years in Alaska, with the Office of Public Advocacy and the Alaska Public Defender Agency.

Carole is also a member of New Hampshire Bar Association's Class of 2018 Leadership Academy and the New Hampshire Women's Bar Association.

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McDonald & Kanyuk, PLLC

welcomes

Megan C. Neal

back to the firm, where she will continue her estate planning practice representing high net worth individuals, and administering trusts and estates.

Megan received her undergraduate degree in Economics from Skidmore College, and her law degree from Syracuse University College of Law. Megan earned her LL.M. in Taxation from Boston University of Law.

She also holds her A.R.A.D. as an Associate of the Royal Academy of Dance and has studied at the Juilliard School in New York City.

She is licensed to practice in New Hampshire, Massachusetts and Rhode Island, and is a fellow of the American College of Trust and Estate Counsel.

McDonald & Kanyuk, PLLC
7 Hills Avenue, Concord, NH 03301
Office: 603-228-9900 • fax: 603-228-2802

We are pleased to announce that

Attorney Anne Jenness

has joined the firm as an attorney in the Employment and Litigation departments.

GALLAGHER, CALLAHAN & GARTRELL

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Quid Pro Bono Golf Tournament

Thursday, August 8, 2019

Lake Sunapee Country Club, New London

Please join us at a Quid Pro Bono Golf tournament to help celebrate 26 years of "great golf for a great cause!" The Pro Bono Referral Program is a New Hampshire nonprofit devoted to helping those in need of free legal assistance. By linking low-income clients with volunteer lawyers, Pro Bono brings help and hope to New Hampshire's most disadvantaged and vulnerable citizens. Some examples of our work include:

- helping domestic violence and stalking victims secure protective orders through the courts;
- assisting families in keeping a roof over their heads when job loss or illness strikes;
- helping elders make financial and other plans when faced with debilitating diseases;
- assuring children receive the financial support to which they are legally entitled;
- and much more!

Player Registration is now open!

CONTESTS:
Closest to the Pin, Longest Drive, Hole in One,
Putting as well as 1st, 2nd, and 3rd Place Teams

FEES:
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New Members of the New Hampshire Bar Association

The following attorneys were admtted to the New Hampshire Bar Association at a swearing in ceremony on March 27, 2019.

Matthew O'Laughlin Altieri, Portland, Maine
Katelynn Rose Balsamico, Albany, NY
Michael Myles Burke, Salem, Mass.
Tiffany B. Carmona, Reno, NV
Rebecca Constance Christon, Manch., NH
Ethan Robert Crofut, Saratoga Springs, NY
Noreen Kathryn Cowdrey, Rochester, NH
Martha Lynn Davidson, Manchester, NH
Michael Stephen Driscoll, Newton, Mass.
Valerie Ann Fallica, North Andover, Mass.
Colton Phillip Gross, Portland, Maine
Sandra L Guay, Biddeford, Maine
Rebecca Ann LaPierre, Bangor, Maine
Daron Layne Janis, Boston, Mass.
Karen Beth Johnson, Westford, Mass.
Caitlin Mae Kellner, Portland, Maine
Kira Aakre Kelley,Windsor, Vt.
Geoffrey Damon Ketcham, Concord, NH
Timothy Jude Lawlor Jr., Methuen, Mass.
Andrea Levesque, Hollis, NH
Matthew Lawrence Magliozzi, Waltham, Mass.
Hilary Ann Martin, Hempstead, NY
Mary Kathleen Mason, Claremont, NH
Anne Catherine McBroom, Boston, Mass.
Lindsay Kaite Zahradka Milne, Portland, Maine
Keith Andrew Mitchell, Waltham, Mass.
Rebecca Jane Mutch, Boston, Mass.
Amanda E.M. Natoli, Keene, NH
Deborah Lyn O'Neill, Methuen, Mass.
Gary Thomas Pepka, Manchester, NH
Deborah J. Pedersen, Raymond, NH
Ian O'Donnell Russell, Boston, Mass.
Michael Aron Sauer, Valencia, Ca.
Dana E. Scaduto, Hanover, NH
Elroy Francis Sequeira, Concord, NH
Kaitlyn P. Sheridan, Concord, NH
Boolie Leigh Sluka, White River Junction, Vt.
Brian Edward Sopp, Boston, Mass.
Peter Ryan Winnett, Somerville, Mass.

Congratulations to the new members of the New Hampshire Bar Association, who heard from Bar President David McGrath (above) during their swearing in ceremony at the NH Supreme Court.

Steinfield from page 4

citizenship question. Shades of President Trump asking Deputy Attorney General Rod Rosenstein to write a letter justifying the James Comey firing, only to have Trump acknowledge the pretext by telling Lester Holt on NBC News that his real motive for getting rid of Comey was "the Russia thing."

The Trump administration is doubling down. On January 25, the DOJ — describing the case as one of "imperative public importance" that simply can't wait — asked the Supreme Court to bypass the Court of Appeals, take the appeal directly, hear the case in April, and issue a decision in time for printing the census questionnaire in June. On February 15 the Court granted that request and scheduled oral argument for late April.

Judge Furman's decision rests on federal administrative law, but the Wilbur Ross citizenship question has profound constitutional ramifications. The government's own data show that if the question becomes part of the 2020 census, the result will be a serious undercount of "the whole number of persons," largely minorities and immigrants who tend to live in urban areas that elect Democrats. Such an undercount would benefit rural Republican-leaning states.

The Constitution points the other way. Members of Congress represent not just citizens but all persons who reside in their districts, and it is a constitutional imperative that we count every man, woman, and child irrespective of citizenship. If it were otherwise, those who wrote and later amended the Constitution would have used different language. We allow the executive branch to tinker with the fundamental principles of our democracy at our peril.

Joseph D. Steinfield lives in Keene and Jaffrey. He is Of Counsel to the Law Office of Thomas R. Hanna in Keene and can be reached at jsteinfield@hannalandlaw.com. *Copyright 2019.*

Drug Courts from page 1

Audrey Clairmont, who is a licensed clinical social worker with Riverbend Community Mental Health and coordinator of the Merrimack County Drug Court, says some of the stakeholders building the drug court worried that allowing Ruggles out of jail and back on the streets was "a jump in the deep end" for the new program.

But, they couldn't avoid the hard cases.

"That's who we're looking for ... [someone] incarcerated many times," she says.

Although Osgood says frequent overdose calls made him acutely aware of the opioid crisis when he began leading the Concord police department six years ago, he didn't know much about drug court.

"I was really uneducated," Osgood says. "[Drug court] had not existed before."

Now, he describes the model as a key piece of the puzzle needed to solve the epidemic.

"I think it has to be a collaborative effort," he says.. "... I think that it's part of our services to the community."

A Model for Criminal Justice Reform?

Drug courts aren't a new solution for substance misuse. The first drug court in the country was launched 30 years ago in Miami-Dade County, Florida. Since then, problem-solving courts have gained traction in both political parties because rehabilitation focuses on personal responsibility but is also less punitive, and potentially less expensive, than the regular criminal justice system.

However, the model didn't arrive in the Granite State until 2004, when Strafford County began a pilot program (See chart, page 17). Over the next 12 years, drug courts were added in Belknap, Cheshire, Grafton, Hillsborough (South), and Rockingham counties.

When the dual opioid and behavioral health crises engulfed New Hampshire following the Great Recession, the expansion of drug courts took on new urgency. Following an influx of state funding in 2016, four more drug courts were added over two years to the existing system, based in superior courts.

Now, drug court is the largest problem-solving court in the state and 437 people have graduated so far. (Other diversion programs and specialty dockets tackle mental health issues and serve veterans.) Although New Hampshire drug courts must follow the best practices outlined by the National Association of Drug Court Professionals, which have included Medication Assisted Treatment (MAT; read more about it at **www.nhbar.org/publications/BarNews**) since 2013, each drug court has adapted the model to fit its local community — and, acting as laboratories of justice, the teams adjust policies within weeks or even days to make the system work better.

With 65 percent of all U.S. inmates experiencing addiction, NACDP backs treatment courts as a holistic approach that saves lives: "The average national completion rate for treatment courts is nearly 60 percent, approximately two-thirds higher than probation and more than twice the rate of probationers with substance use disorders."

New Hampshire's legislation also established a state Office of Drug Offender Program, which is launching a statewide database to track trends across the system.

And although there isn't enough statewide data to fully analyze yet, local advocates point to successes in New Hampshire so far, including a statewide drug court graduation rate of approximately 50 percent, according to Alex Casale, coordinator of the statewide drug offender program.

Nationally, 75 percent of graduates of the country's 3,000 drug courts are arrest-free at least two years after leaving the program, according to NADCP.

In 2017, NADCP compiled data on all of New Hampshire treatment courts that showed that 78 percent of graduates had not reoffended within two years.

However, Casale says that recidivism data reflected "hand counting" so it's not as accurate as the new database. Generally, drug courts cost about a third of incarceration and he says those cost savings will also be tracked.

Comparatively, 60 percent of formerly incarcerated individuals had not reoffended within two years of leaving state prisons, according to the NH Department of Corrections as of 2014. The cost of incarceration annually per person in New Hampshire in 2017 was around $93 a day, according to the Department of Corrections, or $1.42 a day for probation/parole supervision.

The philosophies that guide drug courts are also finding increasing acceptance across the justice system as prosecutors, public defenders, and judges try out the "non-adversarial" approach that hinges on understanding substance use disorder as a chronic disease, part of a larger public health problem, and motivating participants with incentives to continue community-based treatment.

Casale describes the best candidates as highly addicted and highly likely to re-offend. However, participants are not necessarily disqualified for having a dual diagnosis, as long as their mental health condition can be managed through medication or counseling.

These "high risk/high reward" cases are risky on both sides of the equation.

"We take a risk in accepting these cases," says NH Superior Court Chief Justice Tina Nadeau, who oversees the drug court system. She says graduations like Ruggles' prove that the risk is worth it.

A Hue & Cry for Drug Court

Nadeau, who describes substance abuse disorder as a "pernicious chronic disease," has been a staunch advocate for treatment courts across the state since she was a new judge in Strafford County almost 15 years ago.

"We started to see the same offenders the longer we sit on the bench, recycling through the system over and over," she recalls. "It took a couple of years to convince all of the stakeholders to give [drug court] a try."

One of the most significant challenges was funding. When she was appointed chief justice in 2011, Nadeau helped expand drug courts statewide with grants from the federal department of justice. She also became a supporter of MAT in drug courts — she says about 90 percent of people with substance abuse disorder need MAT to recover.

But, by 2016, the federal grants were running out.

"It's a tough sell and there are all kinds of competing interests," Nadeau says. "The opioid crisis was the hue and cry for it to be extended statewide."

She helped two Republican state senators — David Boutin and Jeb Bradley — draft legislation but didn't expect the legislature to cover more than half the cost.

"The legislature was very engaged and very interested to do whatever they could to stem this epidemic," she said. "The debate was always, 'Who is saving money? The county or state?'"

After unanimous approval, the new legislation was signed by then-Governor Maggie Hassan, fully funding an adult treatment drug court or alternative drug offender program for each county.

The legislature allocated $1,635,000 for the first full fiscal year ending in June 2017. The judicial branch received $333,000 for that year to provide administrative support, estimating at the time that judges spent about four hours per week on drug court at an average hourly rate of $141.60. The branch agreed to absorb the cost if it was fully staffed.

"The judges appreciate that all of these cases they would see anyway and maybe several times over the years so it's worth the investment of a full day every week of managing the drug court docket," Nadeau says. "Judges are incredibly motivated by this approach."

Sullivan is the only county without a drug court but its department of corrections runs a treatment center, Transitional Reentry and Inmate Life Skills, inside the jail.

What Does Success Mean?

Nationally, drug courts track recidivism — whether a graduate commits a new crime within two years of leaving a program — and savings from reduced incarceration, as well as compliance.

Jacki Smith, an assistant county attorney and part of the Merrimack County Drug Court team, says recidivism is the most important measure because it's used to justify

What is Drug Court?

- **12-18 month voluntary program**
  can operate pre- or post-plea with violent crimes reviewed on a case-by-base basis.
- **Team-based, non-adversarial approach**
  includes treatment provider, case manager, probation/parole officer (PPO), judge, prosecutor, public defender and police officer.
- **Participant has regular hearings at courthouse**
  plus frequent drug tests, substance abuse treatment including MAT, cognitive therapy, monitoring by a PPO, and incentives or sanctions.
- **Goal: to reduce recidivism and enhance community safety.**

Concord Police Chief Osgood speaks at Ruggles' graduation.

New Hampshire's Drug Courts by County

**Data from 2017 & 2018 annual reports from the State of New Hampshire's Drug Offender Program*

Jurisdiction	Approx. # of participants as of 12/2017	Approx. # of participants as of 12/2018	FY19 Budget	Start Date	State Funding Start Date	Current Service Provider
Belknap County	15	22	$297,375	Jan 2013	Sep 2017	Horizons
Carroll County	0	5	$186,620	Feb 2018	Nov 2017	Northern Human Resources
Cheshire County	22	21	$296,297	June 2013	July 2017	Cheshire County
Coos County	0	6	$190,910	Feb 2018	Nov 2017	Northern Human Resources
Grafton County	17	19	$260,000 to NCHC $40,000 to Grafton	May 2007	Jan 2017	North Country Health Consortium
Hillsborough North	60	63	$429,990	Nov 2016	Nov 2016	Elliot Hospital
Hillsborough South	53	61	$381,378	Aug 2014	Oct 2017	Greater Nashua Health Center
Merrimack Superior	18	64	$490,000	Oct 2017	Sep 2017	Riverbend Community Mental Health
Rockingham Superior	31	30	$444,243	Mar 2011	July 2016	Keystone Hall
Strafford Superior	74	74	$479,548.	Nov 2004	July 2016	Southeastern NH Services
Sullivan County	No Drug Court					
TOTAL	**290**	**365**	**$3,496,361**			

keeping drug court participants out of jail.

And graduation rates — which NADCP recommends range from 50 to 70 percent to ensure courts take enough "high risk" cases — show that the program helps graduates remain in treatment long enough to be "successful."

However, it can be difficult to track sobriety once graduates leave the program and probation. And, success has more than one definition.

Clairmont, the Merrimack drug court coordinator, points out that even the participants who don't graduate from drug court improve their lives, such as one client who regained custody of their child and another who was excited to start filing taxes after finding employment.

"These are all successes," she says. "… Even clients who have been terminated, sentenced to prison, [say]… 'I hope you don't count me as a failure.'"

If the statewide drug court system will be evaluated based on cost savings, Hillsborough County's 2020 proposed budget may be an early example of success.

According the *Union Leader*, Valley Street jail Superintendent David Dionne recently asked the county commission to cut the jail's budget by $374,000, after new bail reforms at the state level and treatment courts left fewer inmates incarcerated at the jail — 230 people in early April, compared to nearly 500 two years ago.

Casale says the graduation rate and other measures can also be useful to the drug court teams to rethink policies and approaches. For example, Strafford County was able to improve a 38 percent graduation rate at one point by, in part, changing the schedule for drug testing.

Nadeau agrees — regular collection of information on the ground and the new statewide drug court database will mean that program leaders could quickly see whether, for example, they're using too much jail time as a sanction.

And, she's always watching other national developments as the model continues to evolve.

"A lot of these concepts can apply broadly to criminal justice anyway — incentives, sanctions, motivational interviewing …" Nadeau says.

At the national level, advocates have long used data to gauge success. Challenges have emerged too.

Finding a Balance

A warning came from the NADCP's "Journal for Advancing Justice" in 2018 that while drug courts are making positive changes in local communities, the model can also perpetuate the inequalities of the national justice system:

"Treatment courts were created to improve a troubled criminal justice system, not to mirror its worst attributes; yet racial, ethnic, and gender disparities exist in many treatment courts, reflecting and possibly exacerbating systemic injustices. In the United States, African American individuals are underrepresented in drug courts by approximately 15 to 20 percentage points compared with the arrestee, probation, and incarcerated populations, and Hispanic or Latino individuals are underrepresented by approximately 10 to 15 percentage points ... differences in graduation rates have been as large as 25 to 40 percentage points."

NADCP directed treatment courts back in 2010 to correct racial and ethnic disparities, reinforced in the 2013 and 2015 "Best Practice Standards." But, "progress toward meeting these obligations has been unsatisfactory," wrote Dr. Douglas Marlowe, chief of science, law and policy for NADCP in the 2018 "Journal."

According to The Sentencing Project, a nonprofit promoting justice reform, New Hampshire's 2014 ratio of racial/ethnic disparity in imprisonment was 5:2 for "Black:white" offenders and 2:0 for "Hispanic:white."

Casale says the state hasn't been tracking the racial or ethnic makeup of drug courts' participants but the new database will include those metrics. New Hampshire drug courts mirror the population of the state but a much larger study would need to track the populations coming in and out of the criminal justice system to compare, he adds.

"I would want my drug courts to reflect what is in the system," Casale says.

Nadeau agrees: "We will be able to take a look at that a little more closely" in a few years, she says.

Catherine Flinchbaugh, one of two attorneys representing the NH Public Defender's Office on the Merrimack drug court team, says she's also interested in the issue. "There's not any overt discrimination but at the end of the day, the drug court team itself is not a diverse group of people so obviously implicit bias is a real thing," she says. "We are trying to make sure we don't exacerbate the issue of discrimination in the criminal justice system but obviously sometimes best efforts don't even work ..."

Stronger criticism has come from the medical community — in a 2017 report called "Neither Justice Nor Treatment," Physicians for Human Rights called for the decriminalization of all drug possession to move treatment out of the criminal justice system, arguing that the "criminal justice objectives of drug courts often overrule the medical needs of the patient in ways that threaten the rights and health of participants."

Indeed, there is an inherent push and pull between the criminal justice system and the healthcare system even at the local level.

Clairmont describes it as a "clash of the titans" with two different views on the right approach to treatment.

"Both sides need to give a little," she says.

However, some of the national criticism of drug courts was based on old practices of enforcing abstinence, which has changed since MAT was incorporated as a best practice at the national level six years ago. The quick adaptation of MAT illustrates the flexibility of the model.

"We were an abstinence-based program," says Strafford County Attorney Tom Velardi of county's drug court. "We were wrong. We certainly reeducated ourselves."

Meanwhile, the Merrimack team is still working on what a non-adversarial approach looks like in court.

Merrimack Assistant County Attorney Jacki Smith has experienced both sides of the equation — after serving as a public defender in Nashua's drug court, she's been working as a prosecutor in Merrimack's drug court since 2017.

As a prosecutor, Smith said public safety is now "job one," while her concern as a public defender was "people's rights." Either way, she thinks drug court works.

"The reality is if you're pulling in the high risk/high need population, this is the hardest thing people are ever going to do," she says. "It's amazing to watch the transformation in people's lives."

Flinchbaugh has a different perspective.

"The [justice] system is very much built to be adversarial," she says. "In theory, the drug court is team-based …. [but] it's a hard role for defense … We also really have to be worried about that individual and that individual's rights."

Flinchbaugh adds that what she might think is best for the client in terms of treatment doesn't always fit the goals or confines of the program.

"I'm not sure if it's the best way to deal with addiction but it's certainly better than a lengthy sentence," she says.

Does it matter whether people struggling with addiction get help inside or outside of the justice system?

From a medical perspective, Clairmont notes that entry into the treatment system via a courthouse, instead of a "doorway" in the state's new hub and spoke system for treatment, can be challenging for patients.

"But in a lot of different ways it can be a relief," she says of the opportunity to start recovery. "Motivation can be extrinsic. Having the teeth of the criminal justice system is a really important thing …"

Ruggles, who is now on the board of the Merrimack County Drug Court, believes that he needed to be closely monitored to succeed — and he's adamant that even jail time was beneficial to his recovery.

"I truly think in order to get sober you need to be monitored by somebody … for me, I needed to do jail time," he says. "And the model they have works. I had to be ready and I had to make that commitment to want to change, to want to stop using, to want to better my life."

Anna Berry is editor of publications at the Bar Association. (Disclosure: Berry's spouse is a member of the steering committee for the Merrimack drug court.) This ongoing series, examining the overlap between the justice system and the state's behavioral health crises, continues next month.

Bar Thanks McLane for Hosting LawLine

The NHBA would like to thank McLane Middleton for graciously hosting LawLine on March 13. Attorneys Patience Morrow, Gena Lavallee and Laura Dodge fielded 41 phone calls providing legal information and advice. There were multiple subject matters, such as employment and labor issues, tenant's rights, property boundaries and family law. Michael Quinn and Denis Dillon also participated. We are very thankful for their participation in this public service.

Luckily, we have filled our volunteer slots for the remainder of the year and are beginning to work on next year's schedule. If you would like to get a group of colleagues together for two hours of fun hosting LawLine (always the second Wednesday of the month from 6 p.m. to 8 p.m.), please contact Yvonne Borghetti at **yborghetti@nhbar.org**. LawLine phone calls may be forwarded to any phone number so you can answer questions from the comfort of your own office. We will reimburse you for your takeout dinner!

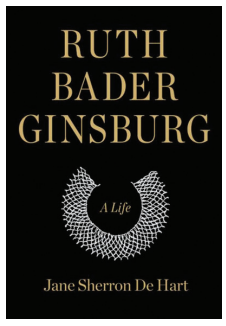
LawLine is a short, but extremely helpful program to people. We are enormously grateful to all our volunteers, past and future.

Book Review

"A Life" Illuminates Supreme Court Justice Ginsburg's Values

"Ruth Bader Ginsburg: A Life"
Jane Sherron DeHart
Deckle Edge; 2018
Hardcover; 752 pages

Reviewed by Rachel Harrington



I first saw this book while I was holiday shopping — a beautiful thick hardcover that called to the book nerd in me and insisted I bring it home. Its length at 500+ pages was slightly intimidating but also appealing, hinting at a treasure of insight into the person behind the icon of Ruth Bader Ginsburg.

I was partly correct. The author does give us many entertaining and humanizing glimpses into Justice Ginsburg the person, from her childhood nickname of "Kiki" to her tendency towards reckless driving as an adult. She introduces us to the forces that shaped Ginsburg's outlook on life and work, chief among these being her mother, who instilled in her the importance of achieving higher education and fighting for those with less power in society. Throughout the book we see these values reinforced by her Jewish heritage as she is inspired by the Hebrew mandates to "repair the world" and pursue justice.

This book also brings to life the battle that Ginsburg faced against sexism and anti-Semitism. It's one thing to know that she was the second female justice and the first Jewish woman to sit on the U.S. Supreme Court. It's another to hear her required to explain at a dinner for first year Harvard Law students why she was "taking a place that could have gone to a man." Or to learn that during her first argument in front of the Supreme Court one of the justices felt it important to place a letter "J" next to her name to document that she was Jewish.

While I was fascinated by these details, I found myself wishing for more insight into Ginsburg herself — her thoughts and emotions. The author clearly did a tremendous amount of research including interviews with Ginsburg and her family. Yet there were times when the book felt less personal than I had hoped. The chapter where she meets and falls in love with her husband, for example, felt as if it were constructed from observations by those on the outside, rather than her own voice. I was left wondering if this was a stylistic choice by the author or the result of a subject who wasn't comfortable expressing her feelings about the more intimate aspects of her personal life.

Ginsburg's voice feels stronger as the book describes her crusade to battle discrimination through a strategic presentation of cases as an advocate in front of the Supreme Court and eventually her opinions as a justice. There is a tremendous amount of caselaw in these sections which, while interesting for Constitutional Law groupies like myself, might start to bore some readers. The author also includes "behind the scenes" glimpses of the negotiations between the justices on many key cases discussed, which gave a fascinating context to the written decisions.

I was well into Chapter 6 before I realized that there were over 100 pages of endnotes that provide the author's sources and additional information for nearly every line in the book. Many of these are only worth a quick skim, but they do contain some gems that don't appear in the main text, such as a description of Ginsburg's special connection with Chief Justice Rehnquist.

Overall, I would definitely recommend this book for someone who is not afraid of a dense read and is interested in a detailed history of Justice Ginsburg and her jurisprudence. Although it didn't give me the unfiltered look inside her mind that I was hoping for, I really did enjoy it and came away with a much deeper appreciation for her legal brilliance and dedication to equal rights.

Rachel Harrington is currently on sabbatical after prosecuting for the Merrimack County Attorney's Office for 13 years. She has her J.D. from Northeastern University of Law in Boston, MA.

Piedra from page 1

His mother is now retired but Piedra's father still teaches high school Spanish in Milford, where Piedra grew up.

It was there, when he was a 17-year-old high school senior, that he decided he wanted to be a lawyer.

Piedra participated in a civics competition through the We the People program, sponsored nationally by the Center for Civic Education and administered locally by the New Hampshire Bar Association.

"Sub-units of a team offer prepared remarks on a particular constitutional or legal or historical topic and are then asked questions about it by a panel of judges," Piedra explains. "I hadn't really been exposed to that kind of constitutional history and constitutional politics and government in my education.

"I just fell in love with the Constitution and law and reading about the law."

His team won the state competition and went to compete in the national contest, which only solidified Piedra's determination to become a lawyer.

He went on to Bates College in Lewiston, Maine, where he had a double major in politics and music performance. In addition to the trombone, he plays bass guitar and is a classically trained vocalist.

Then came Boston College Law School, where he was a member of the school's national moot court teams and served as senior editor of the "Environmental Affairs Law Review."

Soon after graduation, he joined Welts, White & Fontaine, where he focuses on miscellaneous civil litigation "with a good percentage of personal injury law."

"I'm still a new lawyer so hopefully my greatest hits are yet to come," he says of his career. "I have been fortunate enough to argue before the New Hampshire Supreme Court on a few occasions, which was a highlight and an honor even though I've had mixed results."

Another friend and fellow attorney who has known Piedra since they were both at Bates, predicts many "greatest hits" ahead for him.

"The depth and breadth of his legal knowledge make him a top-flight issue spotter," says James Dowling-Healey, who practices in West Hartford, Connecticut. "And he cares so much about his work product and enjoys what he does so much that he reads legal writing articles in his free time, so he drafts top-flight pleadings."

Last year, Piedra mounted a successful campaign to represent Hillsborough District 9, serving Manchester's Ward 2, in the State House, supporting issues like Medicaid expansion, raising the minimum wage and paid family leave.

"I wanted to be in the position where I could help people and effect change directly," says Piedra, a Democrat. "We're very lucky in New Hampshire to have the citizen legislature that we have. Ordinary people like me can run and serve."

But one aspect of that citizen legislature has troubled him – which is why he co-sponsored a bill to establish a committee to study how working people can more readily serve in it.

Israel Piedra plays the trombone and is also a classically trained vocalist.

"The median age in the House is 62," he explains. "A lot of people there are retired because you make $100 (per year) and you sometimes have to be there two or three days a week for six months so it's very difficult for the average working person to serve in our state government, which is not the way it should be, in my opinion."

He says several younger representatives with families support the idea of making it easier to serve, "whether it's using technology to telecommute or holding hearings at night or on weekends."

The measure has passed the House and has moved on to the Senate for consideration.

"I think we all benefit from a more diverse viewpoint in the legislature, whether it's a working person, a middle-class person or a person of color, or it's younger people with families," Piedra adds. "We don't have a lot of that in the House as it's currently composed."

Piedra, who lives with partner Caitlyn Boucher, spends time away from the office watching his beloved Boston sports teams and playing music. In addition to his work with the volunteer Windham Community Band, he has played bass with a pop/rock band at monthly gigs in Cambridge. The group is in the process of reorganizing after losing its lead singer.

"It's a fun hobby, for sure," he says of his musical sojourns. "It's a good way to get your mind off things and it's just fun. I just love making music."

He also loves studying the way history and the law keep evolving.

"It's helpful to understand that the law develops over time and that something that was the case in the 1800s is not necessarily the case currently," Piedra says.

"Just the way history changes, the law changes."

Kathy Ragsdale is a freelance writer based in Chester and a frequent contributor to Bar News.

Marijuana and the Modern Workplace
To Test or Not to Test: When Will the Smoke Clear?

By Jim Reidy

Strict drug screening policies may not be keeping up with the times. That is because drug-testing policies, especially for marijuana use, are no longer in step with the changes to the law in several states, and the realities of today's workforce.

Marijuana is still classified as an illegal substance under federal law, but state legislatures across the country continue to move toward legalizing it for medical and/or recreational purposes. In New Hampshire, marijuana use has been legal for a few years for medical reasons but not yet for recreational purposes. The Governor has already stated that he is not in favor of any legislative efforts to legalize the recreational use of marijuana. One cannabis advocate referred to New Hampshire as "an island of prohibition in a sea of legalization." Perhaps that is because 33 states and the District of Columbia have legalized marijuana in one form or another and close to home, Massachusetts, Vermont and Maine (as well as all of Canada) have legalized recreational marijuana use. With these significant changes to state law and the difficulties many employers experience when trying to recruit, hire and retain qualified employees, some employers in this competitive labor market are rethinking their drug-testing policies.

While some employers are making changes to their drug-testing policies on their own, others are doing so because of requirements under state law. Maine prohibits employers from testing for marijuana at the pre-employment stage and from discharging an employee for an initial positive drug test. In some states pre-employment tests for drugs are permitted, but only if the applicant is notified in advance. In other states where marijuana is legal, testing agencies have reported a significant decline in drug testing of job applicants, especially for marijuana, even though positive results for such screens are at an all-time high. (No pun intended.)

Not only are the laws changing but public opinion about marijuana has also changed. According to a Gallup survey, support in the U.S. for marijuana legalization was at a record high of 64 percent last fall. U.S. Department of Labor Secretary Alexander Acosta, because of the changes to marijuana laws, has suggested employers should rethink drug testing for every job applicant. Even OSHA proposed a rule (now shelved) that if adopted would have done away with mandatory post-accident drug tests.

Of course, such testing is still performed routinely — and appropriately — for workers in safety-sensitive positions, both before and during employment. But otherwise, pre-employment drug tests, at least for marijuana, may be going the way of other once-popular, but now largely obsolete, pre-hire screening methods.

Many employers simply don't see a return on investment when they weigh the costs of random and pre-employment testing

REIDY *continued on page 30*

Mental Health Issues in the Workplace — Ending the Stigma and Creating Strategies

By Beth Deragon

In the last few years, more public attention has highlighted the types of mental impairments and symptoms that are increasingly prevalent across the United States. 43.8 million adults experience mental illness in a given year, according to the National Alliance on Mental Illness (NAMI, which provides this and other illuminating statistics on the prevalence of mental illness by diagnosis in "National Institute of Mental Health Statistics." (*www.nami.org/NAMI/media/NAMI-Media/Infographics/GeneralMHFacts.pdf*)

Those numbers can be broken down by mental disorder: 18.1 percent (42 million) live with anxiety disorders (including panic, obsessive compulsive and post-traumatic stress disorders); 6.9 percent (16 million) live with major depression; 2.6 percent (6.1 million) live with bipolar disorder; and 1.1 percent (2.4 million) live with schizophrenia. In terms of treatment, nearly 60 percent of adults with a mental illness *did not* receive mental health treatment in the previous year.

> "Employers can safely assume that their workforce includes individuals who have diagnosed and undiagnosed mental health impairments and treated and untreated mental health impairments. This panoply of scenarios presents challenges to employers, employees and health care providers."

To put it in other terms, one in five adults experience a mental illness and nearly one in 25 (10 million) adults live with a serious mental illness. Given the relatively low treatment percentage, it is reasonable to conclude that the percentage of adults experiencing mental health illness will increase in time, as more people seek treatment.

Mental health impairments are common and typically long-lasting and/or include periodic flareups. Employers can safely assume that their workforce includes individuals who have diagnosed and undiagnosed mental health impairments and treated and untreated mental health impairments. This panoply of scenarios presents challenges to employers, employees and health care providers. Given the prevalence of mental health impairments, employers are well advised to develop strategies to assist employees who have mental health impairments (diagnosed or undiagnosed) that include the interactive process, assessing requested accommodations, and training supervisors as to their obligations under the Americans with Disabilities Act (ADA).

The ADA protects an employee who has a mental impairment that substantially limits (without mitigating factors/medication) one or more major life activity. The protection extends to individuals who have a record of such an impairment or are regarded as having a mental impairment. The assessment as to whether there is a protected mental impairment is made on an individualized basis and includes an analysis of the severity and length of time the impairment lasts. The term "major life activity" in the context of mental impairment includes the ability to interact with others (e.g., regular and severe hostility, social withdrawal and failure to communicate — not unfriendliness); the ability to concentrate (e.g., frequent distractions, being drawn to irrelevant sights, sounds, or thoughts, and mind going "blank" — not difficulty concentrating when tired); the ability to think, con-

DERAGON *continued on page 31*

Will the Supreme Court Make LGBTQ & Transgender Discrimination at Work Unlawful? (And Will It Even Get the Chance?)

By Erik Peters

If you were going to pick a blockbuster, controversial employment law issue that the courts and policymakers have managed to make clear as mud, whether Title VII prohibits employment discrimination based upon sexual orientation and gender identity would be at the top of your list.

However, just as the scene is set for the Supreme Court to decide another divisive, emotionally fraught social issue, recent legislative events call into question whether it will get the opportunity to do so.

Title VII is, of course, Title VII of the Civil Rights Act of 1964, 29 U.S.C. § 2000e, *et seq*. Among other things, the statute prohibits employment discrimination against "any individual ... because of such individual's ... sex." 42 U.S.C. § 2000e-2(a)(1).

Worth noting is that even in the absence of an explicit federal prohibition, many states (22 (including New Hampshire), plus the District of Columbia) and localities currently prohibit discrimination based upon sexual orientation and gender identity. Additionally, sex or gender stereotyping (workplace discrimination based upon an employee not conforming to gender stereotypes, i.e. predetermined ideas of either masculinity or femininity) *is* illegal under Title VII and has been since the Supreme Court decided *Price Waterhouse v. Hopkins* (1989).

While clearly better than nothing, these piecemeal protections still fall short of a full federal prohibition on employment discrimination based upon sexual orientation or gender identity. Unfortunately, as of now, currently, where you live determines whether this exists.

> "[J]ust as the scene is set for the Supreme Court to decide another divisive, emotionally fraught social issue, recent legislative events call into question whether it will get the opportunity to do so."

That may be about to change. Although according to a brief recently filed with the U.S. Supreme Court by the Department of Justice, "[u]ntil 2017, all eleven courts of appeals to consider the question had concluded that Title VII does not apply to sexual-orientation discrimination," the Second and Seventh Circuits have now concluded that it does. Additionally, the Sixth Circuit ruled that Title VII protects employees from discrimination on the basis of either their transgender — or transitioning — status or their failure to conform to sex stereotypes. Contrast this with decisions from the Fifth and Eleventh Circuits holding that Title VII (still) doesn't prohibit employment discrimination based on sexual orientation.

The Equal Employment Opportunity Commission and the Justice Department are similarly divided. The EEOC's position is straightforward: it "interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on gender identity or sexual orientation. These protections apply regardless of any contrary *state or local laws*." (Emphasis in original.)

Consistent with this, the Commission has six separate web pages concerning sexual orientation or gender identity discrimination available as resources. One is entitled "Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII." It includes cites to both *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 79-80 (1998) for the proposition that "Title VII prohibits 'discriminat[ion] ... because of ... sex.' [This] ... must extend to [sex-based] discrimination of any kind that meets the statutory requirements," and to *Price Waterhouse*, referenced above.

By contrast, on October 4, 2017, then-U.S. Attorney General Jeff Sessions issued a memorandum stating that "Title VII's prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity per se," and "Title VII is not properly construed to proscribe employment practices (such as sex-specific bathrooms) that take account of the sex of employees but do not impose different burdens on similarly situated members of each sex."

The Department of Justice recently reiterated this petition, filing a brief in conjunction with its request that the Court hold the Petition for *Writ of Certiorari* filed in *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*. In its brief, the DOJ stated that "the court of appeals misread the statute and this Court's decisions in concluding that Title VII encompasses discrimination on the basis of gender identity" and that Title VII "does not apply to discrimination against an individual based on his or her gender identity."

Currently, in addition to the Petition in R.G, also pending are Petitions for Writs of Cert. in two Title VII cases involving employment discrimination based upon sexual orientation — *Zarda v. Altitude Express, Inc.*, and *Bostock v. Clayton County*.

So, are we on the verge of another blockbuster, we interrupt our regularly scheduled programming-type Supreme Court decision? Another *Obergefell v. Hodges*, in which the Court held that the fundamental right to marry is guaranteed to same-sex couples by the Fourteenth Amendment to the Constitution? Maybe something along the lines of *National Federation of Independent Business v. Sebelius*, in which the Court upheld Obamacare?

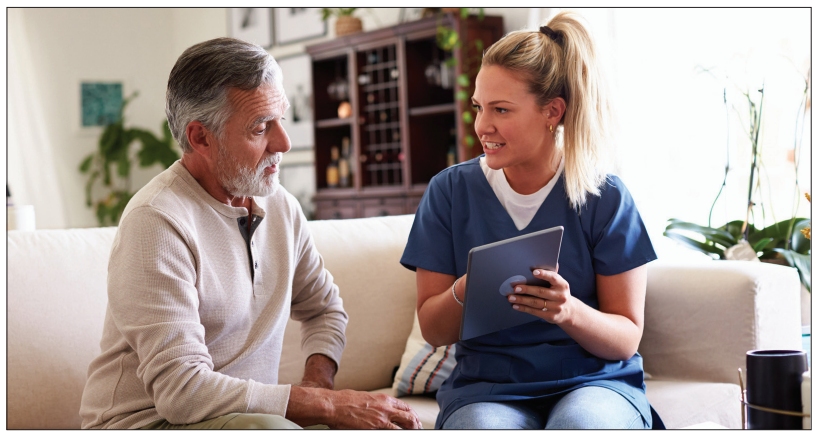
Unfortunately, politics may intervene to deny SCOTUS watchers this thrill.

On March 13, 2019, both the House and Senate reintroduced The Equality Act, legislation that would explicitly amend Title VII

PETERS *continued on page 30*

Domestic Workers: What are Their Rights?

By Jennifer Eber



There are at least two million domestic workers in the United States. Domestic workers are generally those who work within the employer's household. Due to the increased demand for home care for persons of all ages, from the young to the old, the number of domestic workers is predicted to increase in the coming years.

Domestic workers have been organizing and focusing on building the rights and protections in the employment laws related to this growing sector of workers. The National Domestic Workers Alliance, a network of activist groups across the country, was formed in 2007 and is seeking to pass laws at both the state and federal level to afford domestic workers the protections already afforded to many other employment sectors.

The federal and New Hampshire laws addressing the rights and protections of domestic workers are difficult to navigate and offer differing definitions of a "domestic worker." In addition, a recent New York Times article ("Out of the Shadows" by Lauren Hilgers, February 21, 2019) stated that only around 5 percent of domestic workers in the United Stated are "paid on the books." Additional layers of complexity are that many domestic workers are unfamiliar with their rights and English may not be their native language.

With regard to federal law, one of the most important protections to workers is the Fair Labor Standards Act (FLSA), passed in 1938, that provides minimum wage and overtime protections. It was not until 1974 that Congress extended the FLSA to cover "domestic service" workers who were generally defined to be employees performing household services in a private home. The FLSA provides these domestic service workers with the protections of both overtime pay and minimum wage. "Domestic service employment" means services of a "household nature" performed in or about a private home. 29 CFR 552.3. It includes an illustrative list of "companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use." *Id.*

Thus, the FLSA provides a broad definition of workers with wage protection. The FLSA, however, excludes from coverage of minimum wage protections those employees providing casual babysitting services and domestic service workers employed to provide "companionship services" to elderly, ill, injured, or disabled persons. 29 CFR 552.4, 552.5 and 552.6. In addition, live-in domestic service workers may be exempt from overtime pay requirements if they reside in the employer's premises "permanently" or for "extended periods of time."

On January 1, 2015, new FLSA regulations went into effect that allow many direct care workers, such as nursing assistants, home health aides, personal care aides, and other caregivers to receive minimum wage and overtime protections. More information can be found on **www.dol.gov/whd/homecare**.

Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating against workers on the basis of protected classes, including race and gender, often does not apply to domestic workers. While there is no direct exclusion for domestic workers under Title VII, most domestic workers are employed by private employers with less than 15 workers. Title VII protections apply only to employers with 15 or more employees. It is estimated that more than 12 million United States workers, or about 10 percent of the workforce, worked for employers with fewer than 10 employees in 2017 and a vast majority of these workers are housekeepers, nannies, home health care aides, and other domestic service workers.

In New Hampshire, under RSA 279, employees engaged in household labor and domestic labor are exempt from the minimum wage law requirements. RSA 279:21, I. Under N.H. Department of Labor regulations, domestic labor is defined either as

(1) work performed in a private residence of the employer where employees are not employed by an employer or agency other than the family using services, "which includes but is not limited to, caregivers or companions for babies, children or persons who are not physically or mentally infirm or the aged, as well as housekeeping, gardening, and handy person work; or

(2) live in companionship services, which provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity cannot

EBER *continued on page 32*

What Every Personal Injury Lawyer Should Know About Employment Law

By Kirk Charles Simoneau

They sat in your office, tearfully finishing off your last box of tissues — your new client and his wife. He'd been sitting at a stoplight, when a truck smashed into his car, totaling both vehicles, and hurting, badly, him. Your new client isn't going to be working for a while; the doctor's note he handed you says he needs to stay home for at least the next week, maybe more. He asks if he's going to get fired. His wife wants to know how they will pay the mortgage. And then, of course, come more tears. What are you going to tell them?

Many personal injury lawyers assume the most obvious employment protections, the FMLA and the ADA, will protect their clients and leave it at that. The truth is, there's no guarantee either of those statutes will do much.

> "Many personal injury lawyers assume the most obvious employment protections, the FMLA and the ADA, will protect their clients and leave it at that. The truth is, there's no guarantee either of those statutes will do much."

The Family and Medical Leave Act

While many people have heard of the FMLA, few have read the fine print and, mistakenly, believe it applies to all employers. It doesn't. In order for your client to get 12 weeks of unpaid time off to recover from an injury or care for a hurt family member, his employer must employ at least 50 people (within a 75-mile radius of the client's worksite) and your client must have worked at least 1,250 hours in the 12 months prior to applying for FMLA leave. That's about 7 months of full-time, 40-hour-a week-work.

If your client's employer qualifies, make sure your client understands the leave will be unpaid but group health insurance stays in full force. If your client normally contributed to the premiums, he will still have to pay his share. Your client should also understand that when he returns, it might not be to the same job, but it must be an equivalent one in terms of pay, benefits, location, schedule and other previous conditions of employment. If your client returns with time left on his leave and needs to leave work for medical appointments, that time will normally be deducted from the 12 weeks.

There's a pretty good chance, though, that your client's employer isn't going to be required to follow the FMLA. According to the U.S. Census Bureau, 89 percent of businesses in America have 20 or fewer employees. If your client works for one of those small businesses, the FMLA does not apply. If he's a new employee, it doesn't apply. If he's a part-time employee, it doesn't apply. So, what's an injured client to do?

The Americans with Disabilities Act Amendments Act

Depending on the severity and nature of the injury, you can turn to the ADA, but, remember, it only applies to businesses with at least 15 employees. If the employer is still too small, look to state resources like the Human Rights Commission and our anti-discrimination statute, RSA 354-A, which applies to employers with 6 or more employees. What qualifies as a disability has changed quite a bit in recent years, so ask an expert, but if your client can return to work and perform the essential functions of his job with a reasonable accommodation, one of these laws might work. So, ask, would some accommodation make the return to work possible? Could something as simple as letting an employee sit on a stool rather than stand make a difference? If the employer pushes back, let them know Section 44 of the IRS Code allows for a tax credit of up to $5,000 and that 57 percent of accommodations cost nothing and the rest seldom cost more than $500. Lastly, on this, leave, such as for surgery, can constitute a reasonable accommodation.

Where There's a Will (to Fire You), There's a Way

But, as we all know, New Hampshire is an "at will" employment state. This means, at its most basic, absent an employment contract, any employee can be fired or quit for any reason or no reason, with or without cause, except for reasons motived by bad faith, malice or retaliation and contrary to public policy. *Porter v. City of Manchester*, 151 N.H. 30, 38, 849 A.2d 103, 114 (2004). As we all also know, an employer need not take on an undue financial hardship to save an injured employee's job. In other words, an employer probably isn't doing anything illegal by letting an injured employee go if he needs the work to get done.

Let's Go A Little Off Topic

If many employment safeguards don't apply to the average employer, what's a personal injury lawyer to do? The good news is, there are other ways to replace lost income. First, unemployment is sometimes available; you should look at RSA 282-A:32I and Emp. 503.08, but it isn't easy. Many, even small employers, have short- and long-term disability coverage as a benefit. Ask for a copy of your client's employee manual and benefit package. Some mortgage and automobile policies include disability coverage, so look at those. These coverages may be limited to, for example, covering just the mortgage, but others are more expansive. There's also SSDI but, of

SIMONEAU *continued on page 31*

Member Benefits

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Go to your MyNHBarPortal to verify and update your contact information! Comply with NH Supreme Court Rule 42(XIV), receive licensure reminders to avoid late filing fees and stay informed of activities at your Bar Association by updating your contact information today! **The deadline for contact information updates is May 10, 2019.**

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To make it easier for NHBA members to identify themselves as practicing attorneys, the Association issues member ID cards to Active status members.

If you require a replacement card, or you wish to add or update a photo, please contact Member Records. There is a $10 processing fee for the issuance of a replacement card.

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Are you new to the NH Bar?

Looking for resources and materials to help you do your job better? Want to engage in activities where you can meet other new lawyers, connect with more experienced attorneys and even rub elbows with judges? Get an insider's perspective on navigating your first few years as an attorney in NH. The New Lawyers Committee has you covered! Visit nhbar.org to learn more and check out upcoming events!

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Looking for a space to meet with clients or hold a committee meeting?

Did you know that conference rooms and small meeting rooms are available to members at no charge on a space-available basis? Parking is free. Contact the front desk coordinator at 603-244-6942 to inquire about availability.

Professionalism & Ethics

Ethics Opinions and Guidance

The Ethics Committee renders opinions and publishes articles to provide guidance to the members of the New Hampshire Bar Association in interpreting the New Hampshire Rules of Professional Conduct. Members can find Ethics Opinions and Ethics Corner articles addressing a variety of situations at nhbar.org.

Take advantage of the many resources at your fingertips by visiting **nhbar.org/resources/**

If you have any questions about these and other benefits of membership, contact Member Services at 603-715-3227 or

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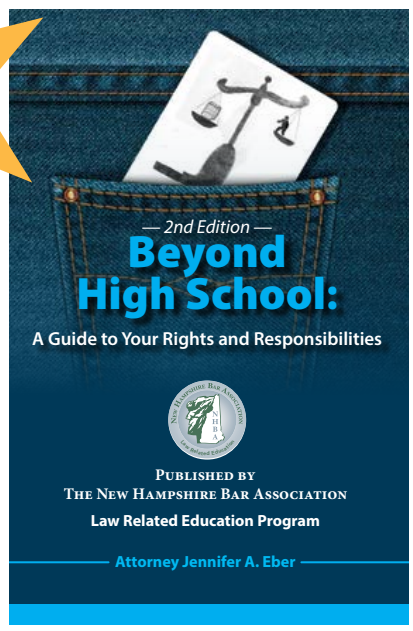
Serve the Community

2nd Edition

Help us reach every High School Senior in NH!



Law Related Education (LRE) serves as a tool to help youth connect their values to civic participation and become the kind of active citizens democracy depends on.

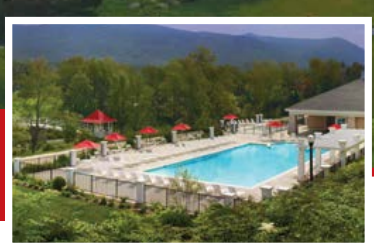
In celebration of Law Day, the LRE program is recruiting attorneys to speak to high school seniors about the 2nd Edition of *Beyond High School: A Guide to Your Rights and Responsibilities* book.

Help us reach every High School Senior with a copy of the newest edition of the Beyond High School book! Sign up to visit a class today! Any questions? Please contact Robin E. Knippers at reknippers@nhbar.org or (603) 715-3259.

2019 NHBA Annual Meeting

Omni Mount Washington Resort, Bretton Woods, NH

Share knowledge, find answers, network with colleagues in a relaxed setting. Come celebrate the success of your peers as we present the professionalism awards, recognize this year's leadership academy graduates and honor the members of the NH Bar Association who have reached the 50 year membership milestone.



Participants can take part in these exclusive activities

Trivia Night • Prohibition Tea Party• Cog Railway/ Mount Washington Observatory • Guided Hike to Upper Falls

Visit nhbar.org to learn more about the meeting and book your room today – space is limited!

Going for the Gold (Standard) in Workplace Investigations

By Anne Jenness

Many attorneys and employers know that bad investigations can do a lot of harm. Overbroad investigations can unnecessarily set off rumors and needlessly aggravate tensions between employees, without providing resolution of conflicts. Investigations that are too narrow can fail to detect serious problems or areas of liability. If an investigation is so bad that it appears pretextual, the methodology or conduct of the investigation could be used as evidence to rebut the employer's defense that an adverse employment action occurred for non-discriminatory reasons (under *McDonnell-Douglass*).

A poorly performed investigation could even support charges that the employer retaliated against an employee for protected activity.

Due to the nature of litigation, many stakeholders never hear much about how to conduct good investigations. Nonetheless, properly-conducted investigations have a range of benefits, including providing an employer with protection under *Faragher-Ellerth,* an affirmative defense available if the employer took reasonable steps to prevent and promptly correct harassment.

Of course no approach to workplace investigations is right in every case. Investigations require professional judgement, careful analysis, and a flexible approach. However, the following signposts can help attorneys who advise employers, and those who conduct investigations themselves, help to ensure that investigations meet the Equal Employment Opportunity Commission's (EEOC) gold standard of being prompt, impartial, and thorough.

> "An investigation is most valuable when all involved employees have a reasonable opportunity to feel heard and understood as part of a neutral process. As such, an employer must choose an investigator who is impartial and will be perceived as impartial."

Prompt

At the outset, an employer must decide whether to investigate and, if an investigation is warranted, begin that investigation promptly. The EEOC's Enforcement Guidance puts it this way: "[a]s soon as management learns about alleged harassment, it should determine whether a detailed fact-finding investigation is necessary." The Guidance further recommends that "[i]f a fact-finding investigation is necessary, it should be launched immediately." Beginning an investigation promptly ameliorates a range of problems, as, over time, witnesses' memories may fade or change, documents and other physical evidence may be lost or destroyed, and witnesses may become more difficult to contact. Even in cases where no potentially illegal activity is alleged or found, a prompt investigation can curtail or prevent behavior that, if repeated, could lead to harassment or discrimination.

Once an investigation begins, the investigator(s) must make time to proceed without undue delay, while balancing issues of witness availability and other strategic considerations. Firm guidance on the proper timespan for any particular investigation is difficult, though at least one administrative agency outside of New Hampshire has offered some guidance. California's Department of Fair Employment and Housing (DFEH) (roughly equivalent in some functions to New Hampshire's Commission for Human Rights) suggests, in its Workplace Harassment Prevention Guide for California Employers, that "[i]f the allegation is not urgent, many companies make it a point to contact the complaining party within a day or two and strive to finish the investigation in a few weeks (although that depends on several factors, including the availability of witnesses)."

Impartial

An investigation is most valuable when all involved employees have a reasonable opportunity to feel heard and understood as part of a neutral process. As such, an employer must choose an investigator who is impartial and will be perceived as impartial. For some types of workplace concerns, an experienced Human Resources Manager or similar professional may be an appropriate choice of investigator. When more serious concerns are at issue, particularly in situations where the complainant has alleged facts that could support a charge of harassment, discrimination, or retaliation, an employer should consider using experienced outside counsel to perform the investigation. Regardless of the investigator's professional title, it is important to consider the investigator's knowledge, training, experience, and any potential for bias that the investigator may possess. This includes any potential for bias that may arise if an internal investigator must make a conclusion that could negatively affect a coworker. As the DFEH Workplace Harassment Prevention Guide suggests, this could be a particular problem if the investigator is friendly or works closely with the complainant or respondent, or occupies a position at a lower organizational level than the complainant or respondent.

Even in cases where the investigator has appropriate training and the institutional support to make challenging decisions, the employer should consider the possibility that the investigator may be perceived as working on behalf of the employer to achieve a particular outcome. The 1st Circuit recently addressed this issue in *Thomas v. Harrington*. 909 F.3d 483 (1st Cir. 2018). In that case, the complainant, a terminated

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"Me, Too" Taxed Too? Answer: NO!

By Nancy Richards-Stower

In an article published in the February 20, 2019 *NH Bar News*, I discussed the poorly drafted provision in the "Tax Cuts and Jobs Act of 2017," Section 162(q) to the Internal Revenue Code. That provision takes away the business tax deductions for payments made to settle sexual harassment claims when the settlement agreement contains confidentiality provisions, to wit:

§ 162(q) to the Internal Revenue Code
"(q) PAYMENTS RELATED TO SEXUAL HARASSMENT AND SEXUAL ABUSE.
No deduction shall be allowed under this chapter for-
(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or
(2) attorney's fees related to such a settlement or payment." (emphasis added)

The provision was inserted into the tax code as the result of U.S. Senator Menendez' (N.J.) desire to punish corporate employers that required confidentiality/non-disclosure provisions (NDAs) because secret settlements allowed serial rapists and harassers to repeat their crimes without any public shaming — or warnings to future victims.

Media reports surrounding the "Me, Too" stories about rich and famous serial sexual harassers were plentiful and shocking. Because most sexual harassment victims prefer to avoid public trials, their private settlement agreements were easy prey for unwanted NDAs.

Nancy Richards-Stower presented at the NHBA's Annual Labor & Employment Law CLE April 11. If you missed the live program, you can still attend the Video Replay on May 2.
See the CLE section on page 43 for more info.

A big problem arose, however, because of the wording of Section 162(q). It failed to specify that the non-deductibility of attorney fee payments was meant only for the corporations employing the harassers, and not also the victims of the harassment. (Sexual harassment victims have been able to deduct their attorney fees for settlements and judgments since the American Jobs Creation Act of 2004, along with a wide array of other employment and civil rights claimants.)

Settlement agreements entered into during 2018 were the test cases for how the IRS would interpret the law. *Tax advisors warned: be careful. Assume the law reads as it was written.* As a result, plaintiffs lost out on potential settlements when (usually insured) employers required NDAs. The difference in paying taxes on 100 percent of a settlement and, in a typical 1/3 attorney fee contract, paying taxes on 66 percent of the settlement was significant.

The IRS to the Rescue? Yes, Really!

In a quiet press release issued on February 28, 2019 (**https://www.irs.gov/newsroom/section-162q-faq**), the IRS weighed in and the news was good for victims who had signed settlement agreements with NDAs since December 2017. It reads simply:

Section 162(q) FAQ Question:
Does section 162(q) preclude me from deducting my attorney's fees related to the settlement of my sexual harassment claim if the settlement is subject to a nondisclosure agreement?
Answer:
No, recipients of settlements or payments related to sexual harassment or sexual abuse, whose settlement or payment is subject to a nondisclosure agreement, ***are not precluded by section 162(q) from deducting attorney's fees*** *related to the settlement or payment, if otherwise deductible. See Publication 525, Taxable and Nontaxable Income, for additional information on when all or a portion of attorney's fees may be deductible.* (Emphasis added)

The bottom line: the benefits of the 2004 tax provision remain for employee sexual harassment victims. They may sign settlement agreements containing NDA's and still be able to deduct attorney fees they paid to resolve the case.

But NDAs are Still Burdensome for Victims

This IRS FAQ does not change what most plaintiffs' advocates consider to be a more important reason to refuse NDAs in sexual harassment settlement agreements: the burdens such promises of secrecy create for the psychological healing of victims. Women (and the victims are usually women) heal by sharing their stories with each other. I advise clients to not sign NDA-laden agreements because they will break them. They will be at an event, or meeting, or party, or at a bar and another woman will share her "Me, Too" story. For a client who has experienced her own workplace rape or other harassment, being gagged and unable to join in the discussion can be devastating. They feel their "gagging" is keeping them from healing and, keeping them from helping others to heal. Do sexual harassment victims really want to live with a *"payback the settlement funds"* provision looming over their conversations for the rest of their lives? No!

Is it ethical to advise a client to sign an agreement with an NDA because *"no one will ever find out if you talk about it with others."* No! (and, in this day and age of social media, it is very possible someone will find out, especially if they are looking, including for revenge.) It is axiomatic, that while totally undeserved, many sexual harassment victims feel shame and embarrassment. Rendering their stories "secret" only compounds

STOWER *continued on page 30*

Employee Action Committees: A Trap For The Unwary

By Rachel Adams Ladeau

Imagine a company that is facing significant financial pressures. The company ultimately decides to preserve capital by cutting back on bonuses and wage increases. Following this decision, discontent at the company rises sharply. Employee morale is low, and a petition of protest begins circulating.

Concerned, the company's president meets with supervisors and employees. Based on the responses, the president has the idea of repairing corporate-employee relations by involving the employees in coming up with solutions. The company distills the employees' concerns into categories, and posts sign-up sheets for employee "Action Committees" — one for each category of concern. The Committees are encouraged to talk to other employees, as well as amongst themselves, and asked to formulate proposals for the company's management. The company provides conference rooms and other materials, and pays the employees for the time they spend on committee matters. The company's hope is that this course of action will enable employees to feel heard, and give the company the benefit of thoughtful, relatively consensus-based proposals on the matters that concern its employees the most.

A charge is then filed with the National Labor Relations Board (Board). The Board finds that the above actions violated the National Labor Relations Act (NLRA), and orders the company to disestablish the action committees, cease and desist from its actions, and comply with a 60-day notice-posting obligation.

What Went Wrong?

The above tracks the fact pattern from a real-life unfair labor practice charge. In *Electromation, Inc.*, 309 NLRB 990 (1992), the Board found the above actions amounted to unlawful assistance and domination of a labor organization by the company-employer, in violation of Section 8(a)(2) the NLRA.

First, the Board found that the action committees constituted statutory "labor organizations" under the NLRA. Under the NLRA, a "labor organization" is defined as:

[A]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The action committees were held to easily satisfy this criteria. The main purpose of the committees, the Board found, was to "address employees' disaffection concerning conditions of employment through the creation of a bilateral process involving employees and management in order to reach bilateral solutions on the basis of employee-initiated proposals." This, the Board held, amounted to "dealing" with the employer on working conditions. In addition, the Board held that the action committee served in a "representational" capacity because the company contemplated that the committee members would get ideas from their coworkers and formulate solutions that would "satisfy employees as a whole."

Next, the Board found that there was "no doubt" the company had dominated the action committees in violation of Section 8(a)(2). The Board reasoned that the company had come up with the idea to create the committees; established the purpose and goals of each committee; defined and limited the subject matter to be covered by each committee; and established criteria for each committee's membership. In addition, the company had allowed the employees to carry out committee activities on paid time and within the specific structure that the company itself had cre-

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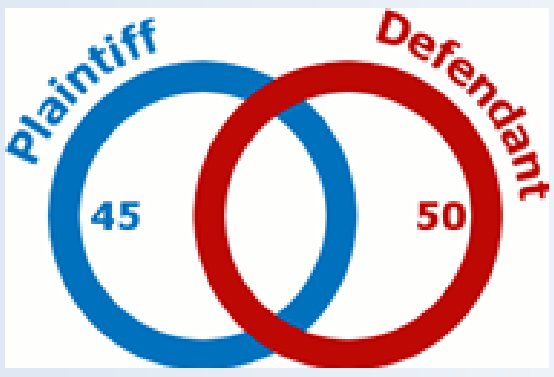
Nancy Richards-Stower, Attorney/Litigator/Mediator

Example of a successful confidential bid round on Trytosettle.com®



Plaintiff bid $45. Defendant bid $50.
The bids overlap, so their average is the settlement number: $47.50.

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against the results. Some complain that random screening hurts morale, and may prompt qualified applicants to look elsewhere for work. Employers can still test employees post-accident or based on reasonable suspicion. While there is no widely acceptable standard to determine if someone is impaired because of marijuana use, the presence in an employee's system can still be good reason to terminate that person's employment, especially if he or she is working in a safety-sensitive position.

Employers can and should still prohibit the use, possession or distribution of marijuana at the workplace, as well as prohibit employees from being under the influence while at work.

While the legalization of recreational marijuana in New Hampshire may still be down the road, employers in the Granite State are already dealing with employees who seek the use of marijuana for medical purposes. In a recent case, the New Hampshire Supreme Court ruled that a Workers Compensation Appeals Board erred when it determined that workers' compensation insurance can't reimburse an employee for the cost of medical marijuana and denied reimbursement because marijuana is still illegal under federal law.

Employers have also asked if they are required to accommodate marijuana use as a reasonable accommodation under disability law. Courts and the U.S. Equal Employment Opportunity Commission have consistently held that employers are not required to permit medical marijuana use as a reasonable accommodation under the Americans with Disabilities Act. That was the same position courts had taken under state law even in states where marijuana use was legal. However, over the last two years there have been cases in Rhode Island and Massachusetts where courts have held that the use of medical marijuana may be a reasonable accommodation for disabled employees under state disability law.

Again, with a majority of states legalizing marijuana use in one form or another, for all of the reasons stated above and with no scientific or legal standard to determine current impairment instead of just evidence of marijuana use at some point, more employers are dropping marijuana testing from the pre-hire screening for many positions. That said, given that marijuana is still an illegal narcotic under federal law and there are still potential liability concerns if an employer is aware of an applicant or employee's off-duty use of marijuana, pot may be the 2019 version of "Don't ask, don't' tell."

In short, with the relaxing of state marijuana laws, the changes in public attitudes towards marijuana use, legal challenges and labor market issues, drug testing, especially for marijuana, is declining — and, over time, screening for pot could go, yes, up in smoke. Queue up the Grateful Dead music — this really isn't your parents' workplace.

Jim Reidy, is a management employment lawyer and Chair of Sheehan Phinney's Labor and Employment Practice Group. He presented at the NHBA's Annual Labor & Employment Law CLE April 11.

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to outlaw employment discrimination based on sexual orientation and gender identity. In addition to the House and Senate members who sponsored and cosponsored it, in a strong show of political force, the bill has 104 corporate cosponsors, including heavyweights like Amazon, Apple, Bank of America, Coca-Cola, Facebook, and Microsoft.

Hearings on The Equality Act are expected soon and if the House of Representatives votes on it later this summer (the bill's fate in the U.S. Senate is less clear), its passage may coincide with the 50th anniversary of the Stonewall Riots in Greenwich Village, New York that many credit with kickstarting the fight for LGBTQ rights in the U.S.

Chief Justice John Roberts may be many things, but he is no dummy. Would it surprise anyone if he slow plays the Court's proceedings in *Zarda*, *Bostick* and *R.G.* to see which way the political winds are blowing? (And to buy time to see if the Court even has to get involved in the issue.)

A not-so bold-prediction: for better or worse, by this point next year (if not sooner), we'll have a better idea of whether Title VII prohibits employment discrimination based upon sexual orientation and gender identity — whether it comes from the Court or from Congress.

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those feelings. The adage, *"The truth shall make you free,"* (whether or not Biblically-based), became an adage for a reason.

More practically, neither employers, nor perpetrators, have much reason to publicize sexual harassment settlements, so while some victims prefer to keep the allegations and settlement terms confidential, the lack of an NDA neither requires, nor urges they publicize. I advise my clients that the intentional publication of a victim's sexual harassment settlement by one other than the victim, herself, can form the bases for claims of retaliation and/or privacy violations; and, experienced counsel for employers similarly advise their clients.

To recap: Thanks to the recent IRS FAQ, there is no longer any threatened tax disadvantage to victims of sexual harassment whose settlement agreements contain NDAs. (Thus, there is no need for Senator Menendez to reintroduce his May 2018 "fix it" bill, the "Repeal the Trump Tax Hike on Victims of Sexual Harassment Act of 2018.") But, since December 2017, there remains a tax disadvantage to (uninsured) employers whose sexual harassment settlement agreements contain NDAs. Payments the employers make to the victims, and payments the employers make to their defense counsel, are no longer deductible as business expenses.

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centrate or speak. It is important to note that traits/behaviors are not always related to or a manifestation of a mental impairment (e.g., feeling stress, irritability, chronic lateness or poor judgment).

In the most straightforward mental impairment situation, the employee with a recurrence of major depression would tell his employer that he is having a recurrence of major depression and might ask to be taken off a major stressful project until his medication stabilizes. In that instance, the employer could ask the employee to provide certification from his treating physician that he has that mental impairment, that the requested accommodation will enable the employee to perform the essential functions of his job (physician should have a list of the essential function of the position), and the estimated length of time of the proposed accommodation.

This process of discussing possible reasonable accommodations is called the "interactive process" and is required under the ADA, in these circumstances. The employer makes the ultimate decision, based on information gained during the interactive process, whether it can provide the requested accommodation or some other reasonable accommodation.

Reasonable accommodations take many different forms depending on the mental disability, the limitations the employee is experiencing, and how it affects the employee's ability to do certain tasks. For example, reasonable accommodations for anxiety could include use of white noise ear phones, attending meetings remotely, working from home part- or full-time, time off for medication adjustment, and/or change in management style of the supervisor.

If there is no effective accommodation or all other accommodations would be an undue hardship to the employer, then the employee could be reassigned to a vacant position with same pay, benefits, status, etc. If there is no vacant position, then he or she could be reassigned to a vacant lower position. If there is no vacant lower position, then there is no duty to reassign. Employers must proceed with caution prior to making any job decisions that could be construed as retaliatory — especially given that many accommodations for mental impairments do not cause an undue hardship.

The more challenging scenario occurs when an employee is exhibiting symptoms of a mental impairment and her job performance is deteriorating, but she has not disclosed the mental impairment. In that situation, the employer must take care to address the performance issues, but not treat the employee as if she has a mental impairment. The suggested course of action is to meet with the employee and discuss the performance issues and ask if the company can help her to improve. If the employee insists that she is fine and requires no assistance, the employer must treat her like any other employee or risk running afoul of regarding her as disabled in violation of the ADA.

One limited defense to terminating an employee on the basis of disability is if the employer believes the employee poses a direct threat to herself or others. The ADA defines direct threat as a significant risk of substantial harm. For example, an employee with uncontrolled epilepsy and frequent seizures who operates a saw will likely be unable to do so safely. However, even in the case of attempted suicide where the employee wants to return to work, the direct threat analysis must be based on the employee's ability to do her job when she returns to work and include medical opinions substantiating the same.

Mental health impairments are present in your workplace and your clients' workplaces now and will continue to be. The greater degree to which employers de-stigmatize mental health disorders, the more comfortable employees might be in coming forward. Regardless, with increased public conversation about mental health impairments, employers must be prepared for the conversation and ensure that supervisors on the front lines are acting in compliance with the ADA.

Beth A. Deragon is Of Counsel at the law firm of Pastori | Krans. She focuses her practice on counseling and training businesses on sound employment practices, and defending businesses in employment litigation before state and federal courts and administrative agencies. Deragon authored the NH chapter of: "Employment at Will: A State-by-State Survey (First & Second Editions)," ABA Section of Labor and Employment Law, Bloomberg BNA, 2017. She is Chair of the NH Department of Labor Civil Penalty Appeals Board, the NH Bar Association Labor and Employment Section and the NH Bar Association Gender Equality Committee.

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course, this will be an admission that your client can't work so a return to the job is unlikely as they would have to be, or expected to be, disabled for at least a year to qualify and that's more than 12 weeks.

Summing It All Up

If you suspect your client is going to miss significant time from work, get information about more than just the car crash. Ask about their job. How long has he or she been there? How many employees are there? Ask a host of questions to understand the whole situation. Read the employee manual and all insurance policies. Call the mortgage company.

Your client should alert their employer right away. They should ask how many sick and personal days they have available. Many employers make employees use these up first.

The good news is that, in this economy, good employees are hard to come by. There are more jobs available than people to fill them. So, if your client is a decent employee, his boss may be willing to work with him. Bosses are just people and do understand that life happens, and people get hurt. This can be very reassuring to a client who doesn't yet know how long may be needed for recovery.

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care for his or her own needs" regardless of the employer/agency's relation to the person using the services subject to the following limitations: (a) the services include household work (not to exceed 20 percent of total weekly hours worked), and (b) the services do not involve care that is normally performed by specially trained personnel, such as licensed nurses. NH Lab. 802.04. Household labor is not defined in the regulations.

Under RSA 354-A, the state law which prohibits discrimination in the workplace, an employee is defined not to include "any individual in the domestic service of any person." RSA 354-A:2, VI. Domestic service is not defined under RSA 354-A or the regulations. There appears to be no case law from the New Hampshire Supreme Court to date on who meets the definition of "domestic service" and thus would be excluded from discrimination protection. In addition, RSA 354-A does not cover employers with fewer than six persons in their employ. Many domestic service workers may not have an employer who meets this minimum worker requirement. Domestic workers still have common law actions, including wrongful termination suits, if they can meet the common law requirements.

Under the workers' compensation law, RSA 281-A:6 states that workers' compensation coverage for "domestic workers" is provided by a comprehensive personal liability, tenant's or homeowner's policy in the absence of a workers' compensation policy. A domestic employee or worker is defined generally as those persons performing domestic services in a private residence where the employer is an individual, family, local college club or local chapter of a college fraternity or sorority. RSA 281-A:2, V-a.

"Domestic labor" or "domestic services" means the performance of such duties as housekeeping, childcare, and serving as a companion or caregiver for "children and others who are not physically or mentally infirm." RSA 281-A:2, V-b.

There have been unsuccessful attempts to pass legislation in New Hampshire to require all homeowner's policies to cover all types of work by domestic workers. The New Hampshire Insurance Department in 2016 approved a new NCCI (National Council on Compensation Insurance) class code for use in certain classes of in-home physical assistance care thereby reducing the cost to disabled people who need to hire a caregiver and purchase workers' compensation coverage. Thus, domestic workers should be afforded workers' compensation coverage either through a tenant or homeowners' policy or through separate coverage purchased by their employer.

The number of employment issues arising from domestic service employment will likely increase in the coming years. Lawyers should be aware of the rights and protections that both federal and state law afford these workers in order to counsel them and the families that employ them.

Jennifer Eber is a lawyer at Orr & Reno, focusing her practice on employment law.

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police officer, alleged that the Town Manager improperly directed the work of an external investigator, who was a retired former chief of police. The complainant alleged that through their coordination, the Town Manager and investigator had entered into a civil conspiracy to terminate the complainant, in violation of the Massachusetts Civil Rights Act (MCRA). *Id*.

The parties agreed that employer did not tell the investigator what questions to ask, and did not receive copies of the investigator's notes. *Id.* at 488. Ultimately, the Court was not persuaded by the civil conspiracy claim. *Id*. at 491. Among other factors, the Court pointed to the employer's lack of control over the investigator's work, and a lack of communications between the employer and investigator that would support a common design. *Id*.

Thorough

Employers will not usually know the exact questions that an external investigator may ask and may not know the precise issues that an investigator is reviewing. Consistent with *Thomas*, this arrangement benefit of all of the involved parties, by providing an investigator with latitude to investigate issues impartially and thoroughly, pursuant to the investigator's training and expertise. However, this level of investigatory autonomy can make it challenging for an employer to know whether an investigator is being thorough.

To help ensure a thorough investigation, an employer should feel free to ask about any prospective investigator's training and experience, and ensure that the investigator has a solid understanding of the scope of issues to be reviewed. Experienced investigators will likely be familiar with the Association for Workplace Investigators and its Guiding Principles, which include a variety of recommendations for witness interviewing, including interviewing witnesses in person when possible, and primarily asking open-ended questions. Experienced investigators are also familiar with the EEOC's "Credibility Factors," including inherent plausibility, motive to falsify, corroboration, and past record, and can weigh the relative importance of these factors and others.

Conclusion

A thoughtful, well-executed workplace investigation can highlight an employer's commitment to a workplace free of discrimination and harassment, uncover potential areas of liability, and prevent workplace problems including EEO-related concerns from escalating. Internal and external investigators alike should be prompt, impartial, and thorough when conducting investigations. When in doubt, agencies like the EEOC, and organizations like AWI, provide useful information about best practices in the field of workplace investigations.

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ated — all of which amounted to unlawful support.

The Board concluded that the company's actions had placed the employees in a sort of Hobson's choice: "accepting the status quo, which they disliked, or undertaking a 'bilateral exchange of ideas' within the framework of the Action Committees, as presented by the [company]." As such, the Board held that by creating the committees and determining their structure and function, the employer had unlawfully dominated the committees in violation of Section 8(a)(2).

Following the *Electromation* decision, Congress passed a bill (the TEAM Act) that would have amended the NLRA to specifically permit employers to establish employee committees that permitted employees to "address matters of mutual interest" — so long as those committees did not claim or seek the authority to enter into collective bargaining agreements with the employer. *See* S. 295, 104th Cong. § 3 (1995).

Then-President Bill Clinton, however, vetoed the bill. In an accompanying 1996 veto statement, President Clinton expressed concern that carving out such committees from Section 8(a)(2) of the NLRA would "allow[] employers to establish company unions where no union currently exists," and "abolish protections that ensure independent and democratic representation in the workplace."

> "Not all company-created employee committees or suggestion mechanisms will amount to employer-dominated labor organizations. ... However, the above cases show why it continues to be important to exercise caution in establishing and supporting an employee action committee."

Electromation Today

As the *Electromation* case approaches its 30-year anniversary, its doctrine is still alive and well.

In late 2018, for instance, the Board affirmed that a 9,000-employee hospital's Environmental Support Service department's Employee Council "easily" amounted to an employer-dominated labor organization, in violation of the NLRA. *UPMC*, 366 NLRB No. 185 (Aug. 27, 2018), *reconsideration denied*, 2018 WL 6524011, at *1 (Dec. 11, 2018). In that case, the Employee Council submitted employee proposals to management for acceptance or rejection on such topics as employee bulletin boards, establishing an "Employee of the Month" award, and contacting employees on their lunch breaks. The Board found that through this bilateral process, the Council and the hospital were engaged in "dealing" with regards to employment terms and conditions.

The hospital was found to have unlawfully dominated and supported the Employee Council because the hospital (A) came up with the idea for the Council, (B) staffed the committee with the department manager and solicited employee volunteer members, (C) chose the place and time for the first meeting, as well as the employee chairs, (D) established the council's purpose as "team building and morale," (E) set aside time at monthly department meetings for reports on the council's activities, and (F) financially supported the council's activities (including the Employee of the Month award and a Memorial Day picnic).

Likewise, in a 2017 decision, an Administrative Law Judge for the Board found that T-Mobile USA, Inc. had created (and unlawfully dominated) a labor organization through its "T-Voice" program that designated employee representatives to solicit, receive, and pass along complaints from their coworkers about "pain points" that, in actuality, were often proposals for changes in scheduling, benefits, and metrics. *T-Mobile USA, Inc.*, No. 14-CA-170229, 2017 WL 1230099 (NLRB Div. of Judges Apr. 3, 2017),

Takeaways for Employers

Not all company-created employee committees or suggestion mechanisms will amount to employer-dominated labor organizations. Committees whose purpose is to perform management functions (like a hiring or operating committee), or to deal solely with productivity or quality issues, will rarely pose problems.

However, the above cases show why it continues to be important to exercise caution in establishing and supporting an employee action committee. Many employers may not realize that under the appropriate circumstances, any employee organization may amount to a statutory labor organization under the NLRA — even one established by the employer, and regardless of whether the organization refers to itself as a "union" or has a formal structure. In the 2018 UPMC case, the Board confirmed that a group may be a labor organization even if the employees themselves do not necessarily perceive the group as their representative with regards to making proposals on wages and other terms and conditions of employment.

While no employer wants unhappy employees, and while soliciting solutions from employees through an organized channel of feedback may seem like a helpful solution, it is important to carefully consider with counsel the NLRA's limitations on the extent to which an employer may dictate the structure of that process.

Rachel Adams Ladeau is a management-side labor and employment attorney with Schwartz Hannum, focusing on employment risk management and labor relations matters.

State Officials Dedicate Merrimack County Superior Court

Above: NH Supreme Court Chief Justice Robert Lynn cuts the ceremonial ribbon on March 26 at the new courthouse in Concord. **Left:** NH Superior Court Chief Justice Tina Nadeau was one of the speakers at the dedication ceremony for the new Merrimack County Superior Court.
(Photos courtesy of NH Judicial Branch, by Brian Eddy)

Supreme Court At-a-Glance

March 2019

Criminal Law

The State of New Hampshire v. Reilly O. Leith, No. 2017-0425
March 7, 2019
Affirmed.

- Whether an inventory form prepared by a loss prevention officer is inadmissible hearsay, the best evidence of the different prices of the items alleged to have been stolen, shifts the burden to the Defendant to disprove the prices of the items, and whether the evidence submitted by the State was sufficient to sustain a felony theft conviction.

Ms. Reilly O. Leith (Defendant) appealed her conviction for felony level theft by unauthorized taking following a jury trial in Rockingham County. On appeal, the Defendant raised evidentiary issues concerning the admissibility of certain evidence, and whether the evidence submitted by the State was sufficient to sustain the conviction.

The Defendant first argued that an inventory form completed by a loss prevention officer, offered by the State, was inadmissible hearsay. In finding that the inventory form was admissible, the Court examined the business record exception found at N.H. R. Ev. 803(6). In concluding that the inventory form was admissible, the Court found that the loss prevention officer, who testified at trial, established a foundation for the form and that the form was specifically not created for purposes of litigation. The Court disagreed with the Defendant's assertion that the loss prevention officer's testimony was used to establish the price of each item on the form, finding that the testimony was only used to establish the foundation for the form itself. On appeal, the Defendant also argued that the inventory form contained hearsay within hearsay since the form listed information found on the price tags of different items. The Court disagreed with this argument, finding that the tags themselves were also business records and, therefore, admissible under the same exception.

The Defendant next argued that the inventory form should have been barred under the best evidence rule found at N.H. R. Ev. 1002. The Court dismissed this argument finding that the accuracy of the inventory form was not questioned by the Defendant finding that the intent of the best evidence rule is to protect against inaccuracies and fraud, not to simply prohibit introduction of a copy of an original. Next, the Defendant argued that the inventory form should have been excluded as it violated her right to confrontation. However, the Court concluded that the inventory form was not prepared for litigation, as testimony established that the form is produced whenever items are lost, regardless of whether litigation commences. Defendant also argued that the introduction of the inventory form unconstitutionally shifted the burden to her to disprove the prices established by the form by proving the actual value of the items stolen. In dismissing this claim, the Court found that this argument amounts to "…little more than a protest that, in the absence of her presentation of evidence to refute the price tag evidence offered by the State, the jury will be more likely to find the State's evidence persuasive."

After making her evidentiary challenges, the Defendant made a challenge to the sufficiency of the evidence arguing that the State had failed to submit adequate evidence that the total value of all of the items stolen was more than One Thousand Dollars, as required by statute. The Court addressed the definition of the word "value" in addressing the evidence submitted by the State. The Court then concluded that the jury could have found that the value of the items stolen could have exceeded the monetary threshold, and that the State had therefore met its

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At-a-Glance Contributor

Sam Harkinson

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NH e-Court Program Update

e-Filing New Case Types is on the Way!

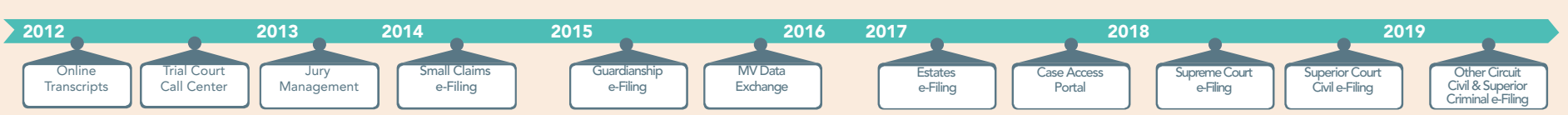
Circuit Court -- Landlord/Tenant, District Civil and Name Change are Next

The NH Circuit Court is working diligently to prepare electronic filing for additional case types:

- District Division - Landlord/Tenant
- District Division Civil (Civil Complaint, Foreign Judgment, Writ of Replevin, and Other Civil)
- Probate Division/Family Division - Name Change

The Circuit Court project team of judges and staff has been working with landlord/tenant attorneys to incorporate the needs of landlords and tenants as the e-filing process is developed. For District Division Civil, the Circuit Court anticipates adopting new civil rules to align as closely as possible with the Superior Court's civil rules. This work is being done to streamline the process and make electronic filing easy, convenient, and efficient for all. As with all other e-filed case types in the Circuit Court, e-filing new case types will be mandatory for both attorneys and self-represented litigants after the system enhancements "Go Live". The target date for bringing these cases online will be set and announced in the coming months.

Adding these case types to electronic filing will bring in approximately 13,000 additional e-filed cases per year. The annual total of electronically filed cases in the Circuit Court is expected to reach or exceed 35,000 by 2020. To date, the Circuit Court has received more than 70,000 electronically filed cases.



Source: NH Judicial Branch

burden.

Gordon J. MacDonald, Attorney General, with Stephen D. Fuller, Senior Assistant Attorney General on memorandum of law and orally for the State. Albert Hansen of Bosen & Associates, PLLC on brief and orally for Mr. Leith.

The State of New Hampshire v. Tommy Page, No. 2017-0632
March 19, 2019
Affirmed.

- Whether a search warrant lacked probable cause or otherwise lacked particularity so as to demand suppression, whether statements relating the "bad thoughts" were admissible at trial, and whether a defendant accused of first degree murder is entitled to a jury instruction that he was aware that his conduct was practically certain to cause the victim's death.

Mr. Tommy Page (Defendant) appealed his conviction for first degree murder following a jury trial in Grafton County. On appeal, the Defendant raised issues relating to his motion to suppress evidence obtained via a search warrant. The Defendant also raised issues relating to character evidence that he argued should be admissible, and also argued that he was entitled to a specific jury instruction related to the first degree murder charge.

The Defendant first argued that a search warrant obtained by the police to search his phone lacked probable cause to search for photos. In analyzing the issue, the Court relied on the fact that it is a well-known fact that users of smartphones can send photos via text message and that users of smartphones can capture text message exchanges by utilizing the screen-capturing function of a smartphone. The Court concluded that the search warrant in question had sufficient probable cause to search for photos in addition to text messages. The Defendant next argued that the search warrant lacked particularity since the warrant stated to search for photos and text messages "…for as far back as possible." In addressing particularity, the Court reviewed the testimony of the forensic officer from the suppression hearing and relied on the fact that the officer testified that while it is possible to limit a search on a phone to a specific date range, that doing so could potentially cause the search to overlook evidence that was being sought. The Court found that based on the record established between the affidavit in support of the search warrant and the suppression hearing, that the facts of the case were sufficient to not narrow the search parameters.

Next, the Defendant argued that he should have been allowed to admit character evidence against the mother of the victim, specifically related to "bad thoughts" the mother was having and the fact that the mother was having concerns about being left alone with the victim. Prior to trial, the State had moved to exclude both pieces of character evidence, with the trial court granting the motion as it related to the "bad thoughts" and denying as it related to the comments about being left alone with the victim. On cross-examination, the mother of the victim denied making either statement, and the Defendant moved to admit the prior statements as substantive evidence with the trial court denying the motion again. On appeal, the State argued that any error was harmless error. The Court agreed finding that, "[w]hen considered in relation to the strength of the State's evidence of guilt…the alternative perpetrator evidence the defendant sought to introduce was inconsequential."

Finally, the Defendant argued that it was plain error that the trial court erred by failing to give a specific jury instruction that in order to find the Defendant guilty of first degree murder, the jury had to find he "… was aware that his conduct was 'practically certain' to cause the victim's death." In concluding that this argument failed, the Court conducted a four-prong test to determine whether the error presented a plain error, concluding that the error, if there was one, did not "…seriously affect the fairness, integrity or public reputation of judicial proceedings." In concluding this way, the Court noted that it was not addressing whether the first three prongs, one of which is to determine whether there was error, because it ultimately concluded that even if there was error, the error would not otherwise be plain error. In further addressing the specific issue of the Defendant's requested instruction, the Court again reviewed the record and concluded that there had been ample evidence offered by the State that the Defendant would have known his conduct would cause the victim's death.

Gordon J. MacDonald, Attorney General, with Peter Hinckley, Senior Assistant Attorney General on the brief and orally for the State. Thomas Barnard, Senior Assistant Appellate Defender on the brief and orally for Mr. Page.

Worker's Compensation

Appeal of Andrew Panaggio (New Hampshire Compensation Appeals Board), No. 2017-0469
March 7, 2019
Reversed in part, vacated in part, and remanded.

- Whether a worker's compensation insurance provider is required to provide reimbursement for therapeutic cannabis that is otherwise authorized pursuant to statute.

Mr. Andrew Panaggio (Petitioner) appealed a decision by the New Hampshire Compensation Board (Board) denying his requested reimbursement from CNA Insurance Company (Respondent) for therapeutic cannabis authorized under New Hampshire statute to treat his work-related injury.

As established by the record, the Petitioner was injured on the job and received a permanent impairment award in 1996 and received a lump-sum settlement in 1997. The Petitioner continued to have pain and was prescribed opiates, later being approved for therapeutic cannabis treatment pursuant to New Hampshire Statute. When the Petitioner attempted to submit for reimbursement from the Respondent for the cost of the therapeutic cannabis, the Respondent denied the submission, initially stating that the Petitioner had failed to show a reasonableness/necessity of the treatment. The Petitioner challenged the decision of the Respondent through a hearing at the New Hampshire Department of Labor. The hearings officer affirmed the decision of the Respondent finding that the Petitioner had failed to meet his burden by failing to show that medical marijuana is reasonable/necessary for treatment of his injury. Petitioner then appealed this decision to the Board.

On appeal, the Board concluded that the treatment was reasonable/necessary for the treatment of the Petitioner's injury. However, the Board ultimately concluded that reimbursement was not authorized, relying on an argument put forward by the Respondent that reimbursement would cause the Respondent to become criminally liable under Federal Statute. The Board also concluded that provisions of NH Statute that applied to health insurance providers also applied to the Respondent, and that the Respondent could therefore not be ordered to reimburse for therapeutic cannabis treatment.

On appeal, the Court concluded that the Board erred when it found that the Respondent was prohibited from reimbursing the Petitioner for the cost associated with his therapeutic cannabis treatment. The Court found that the Board had failed to adequately address the issue of whether the Respondent would be criminally liable under Federal Statute if the Respondent was ordered to reimburse the Petitioner for his treatment. Ultimately, the Court ordered that the case be remanded so that the Board can have an opportunity to adequately address the issues raised in appeal.

Jared P. O'Connor of Shaheen & Gordon, P.A. on the brief and orally for the Petitioner. Robert S. Martin of Tentindo, Kendall, Canniff & Keefe, LLP on the brief and orally for the Respondent.

Family Law

In the Matter of Richell Chrestensen and Sean Pearson, No. 2018-0061
March 8, 2019
Affirmed.

- Whether a former parent, who has surrendered all parental rights, can otherwise collaterally attack his surrendering of parental rights and be afforded parenting time under a parenting plan by a showing that he has engaged in parenting time after his surrendering of parental rights.

Sean Pearson (Appellant) appealed an order dismissing his petitions for parenting time for lack of standing. On appeal, the Appellant argued that he should be afforded standing to seek parenting time pursuant to the Court's holding In the Matter of J.B. & J.G., 157 N.H. 577 (2008).

In addressing the Appellant's appeal, the Court carefully analyzed the record of events from the earlier court cases. The Appellant is the biological father to a child to the Appellee. Despite being the biological father, the Appellant otherwise surrendered all parental rights related to the child in

AT-A-GLANCE *continued on page 36*

NH Circuit Court Judicial Evaluation Notice

In accordance with Supreme Court Rule 56 and RSA 490:32, the New Hampshire Judicial Branch Circuit Court Administrative Judge routinely conducts judicial evaluations and invites you to participate in this process. The following Judges/Masters are presently being evaluated:

Bruce DalPra, Master	8th, 9th and 10th Circuit Courts
Jennifer Lemire, Justice	7th Circuit Courts
Robert Stephen, Justice	10th Circuit Courts

An evaluation may be completed online at www.courts.state.nh.us. On the Judicial Branch website, look to the left side of the page under Resources and you will see a link for Judicial Performance Evaluations. Click on the link for Current Circuit Court Evaluations and then choose the Judge/Marital Master you would like to evaluate. While responses will be shared with the Judges/Marital Masters being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous.

If you do not have access to the Internet or would prefer a hard copy of the evaluation mailed to you, please e-mail the Circuit Court Administrative Office at Lcammett@courts.state.nh.us or call 271-6418 and one will be mailed to you. Please include the name(s) of the judge/master you would like to evaluate as well as your name and address. As stated above, while responses will be shared with the Judges/Marital Masters being evaluated, they are treated as confidential, and the identity of the respondent will remain anonymous. In fact, if you request a hard copy of the evaluation form, we ask that you do not sign the completed evaluation.

All evaluations must be completed online or be returned no later than **May 10, 2019**.

an action in 2012. In 2014, the Appellant moved to reopen the surrender case, which was denied. In denying the 2014 motion, the Probate Court looked to the recording of the 2012 hearing where the Appellant surrendered his parental rights. The Court found that the Appellant did so freely, voluntarily and knowingly. In 2017, the Appellant filed petitions for parenting time with the child. The Appellee moved to dismiss arguing that the Appellant lacked standing after surrendering his rights in 2012. After an evidentiary hearing where the trial court heard evidence relating the frequency and nature of the Appellant's contact with the child, the trial court granted the Appellee's motion to dismiss.

On appeal the Appellant argued that he had "re-established" his parent status by maintaining a relationship with the child after he had surrendered his rights in 2012. In analyzing the instant case under the holding in J.B. & J.G., the Court distinguished the instant case and found that its prior holding was not applicable to the facts presented in Appellant's case. Specifically, the Court found that the Appellant had surrendered his parental rights in 2012 and was now seeking to collaterally attack that surrender. The Court ultimately ruled that the statutes dealing with surrendering parental rights and adoption govern and that the Appellant lost his right to address the surrender once the Appellee finalized her adoption of the child. Thus, the Court concluded that the Appellant lacked standing to pursue his petitions for parenting time.

John Anthony Simmons, Sr., of Simmons & Ortlieb, PLLC on the brief and orally for the Appellant. Brian D. Kenyon, of Marshall Law, PLLC on the brief and orally for the Appellee.

In the Matter of Mitchell Cohen and Marian Richards, No. 2017-0697
March 29, 2019
Vacated and Remanded.

- Whether a conditional deferred employment retirement benefit that was agreed to by an employer prior to a divorce decree, but was not to be paid until after a divorce decree and upon conditions being met should be construed as marital property for purposes of equitable apportionment, and whether certain household, medical and dental expenses were ascertainable for purposes of an awarding of alimony.

Ms. Marian Richard (Respondent) appealed a decision of the family division approving a final divorce decree that classified certain conditional deferred compensation and/or severance benefits to be paid to Mr. Mitchell Cohen (Petitioner) as future income, rather than as marital property. The Respondent also appealed the family trial court's decision on failing to award certain estimated expenses relating to home repairs, dental and medical expenses.

The Court addressed the issue relating to the conditional deferred compensation and/or severance payments first. On appeal, Respondent argued that the decision to treat payments that were to be made under the deferred compensation agreement as future income and, therefore, excluding them from equitable apportionment, was done in error. In addressing the issue and in concluding that the trial court had erred, the Court examined the applicable statutes. While the Petitioner argued that the deferred compensation agreement was different than the other retirement benefits enumerated by statute, i.e. vested pension, non-vest pension, or other retirement benefits, the Court disagreed. In concluding that the deferred compensation agreement was to be distributed with the rest of the marital property, the Court held that relevant inquiry is "… whether the employee has a present interest in a retirement benefit pursuant to an established plan at the time of the divorce." The Court further stated that "…a spouse's present inability to meet a condition precedent necessary to receive a retirement benefit does not exclude the benefit from marital property, where, as here, the spouse maintains a present interest in receiving the benefit at a later date…"

The Court dismissed the Petitioner's further arguments, concluding that the arguments raised cite cases from jurisdictions that employ markedly different statutory provisions than those found in New Hampshire. The Court applied a similar logic and analysis in determining that the Petitioner's severance agreement also should be included as a marital asset, subject to equitable apportionment.

The Respondent also argued on appeal that the trial court erred when it failed to award her with certain speculative medical/dental care expenses as well as household expenses. While concluding that the trial court's order as it relates to medical and dental care expenses were sustainable under the record, the Court disagreed that the record supported the same conclusion on the household expenses, specifically citing the words in the order as vague and, therefore, remanded the case for further findings related to those expenses.

Joshua H. Bearce on the brief, Ronald J. Caron on the brief and orally, both of Devine, Millimet & Branch, Professional Association for the Petitioner. Marsha V. Kazarosian on the brief, Janet E. Dutcher on the brief and orally, both of Kazarosian Costello, LLP, for the Respondent.

Tax Law

Appeal of the Town of Belmont (New Hampshire Board of Tax and Land Appeals), No. 2018-0217
March 19, 2019
Affirmed.

- Whether a fully disabled veteran who has obtained a loan from the Veteran's Administration for the modification of his home to be accommodating to his disability is entitled to a total exemption for property taxes pursuant to statute.

The Town of Belmont (Petitioner) appealed a decision from the Board of Tax and Land Appeals (the "Board"), which had granted the Robin M. Nordle 2013 Trust (Respondent) a tax exemption pursuant to New Hampshire RSA 72:36-a.

On appeal, the Petitioner argued that the Respondent is not entitled to the tax exemption that the Board granted since the Respondent had not used the loan from the Veteran's Administration to acquire a modified home, but rather, used the money to modify a home that the disabled veteran already possessed. In rejecting the Petitioner's arguments and affirming the Board's determination, the Court reviewed the definitions of the word, "acquired." The Court found that both the party's uses of the word was possible, and that the word was therefore ambiguous, so the Court was required to review the legislative history for further guidance.

In reviewing the legislative history, the Court found that the New Hampshire statute tracked the purposes that were behind a related federal statute that authorized the Veteran's Administration to issue loans for disabled veterans to have modified homes. The Court found it compelling that the New Hampshire statute changed to keep in line with the federal statute, and found that given the nature of all of the assistance that the Veteran's Administration was able to offer, that the word "acquired" should be read to mean the purchase of a new home, or the modification of a home that was already owned. The Court, therefore, affirmed the granting of the tax exemption to the Respondent, and indicated that it would be left to legislature to alter the tax exemption statute if it disagreed with the conclusion.

Laura Spector-Morgan, of Mitchell Municipal Group, PA, on the brief and orally for the Petitioner. Joshua L. Gordon on the brief and orally for the Respondent.

The State of New Hampshire v. Priceline.com n/k/a The Priceline Group, Inc. et al., No. 2017-0674
March 8, 2019
Affirmed.

- Whether a third-party provider that allows end users to reserve hotel rooms but does not engage in the operation of a hotel is otherwise obligated to provide payment of a New Hampshire rooms and meals tax, and/or violates the New Hampshire Consumer Protection Act by bundling service fees and taxes that it collects for the hotels operators that it reserves rooms with.

The State of New Hampshire (the State) appealed an order granting judgment for Priceline.com, Incorporated n/k/a The Priceline Group, Inc. (the "Respondent") after a bench trial. On Appeal, the State alleges that the Respondent violates New Hampshire law by failing to remit payment for the meals and room taxes in New Hampshire on transactions with hotel customers, and by bundling money collected from consumers as taxes with other amounts and violates the New Hampshire Consumer Protection Act by bundling tax monies with other service fees.

The Court begins by analyzing the business that the Respondent engages in, and by acknowledging that the Respondent engages in a "merchant model" in transacting business. Under this model, the Court goes on to explain that an end user pays the Respondent, not a local hotel, for a hotel booking through the Respondent's website. That money includes all service fees and applicable taxes. The price paid is often times a discounted price to what an end user would pay if they went straight through the local hotel. However, the price the end user pays also reflects a percentage of money that the Respondent makes on each transaction. The local hotel takes care of paying the rooms and meals tax for the room rental to the New Hampshire Department of Revenue. On appeal, the State argued that this arrangement violates New Hampshire law since the Respondent does not pay any taxes on the money that it retains as profit and/or service fees associated with the room reservation.

In affirming the trial court's decision, the Court analyzed the applicable New Hampshire Statutes as they relate to the room and meals tax and concluded that the Respondent is not an operator under the

statute, and is, therefore, not under an obligation to pay any portion of taxes to the Department of Revenue. The Court rejected the arguments that by accepting money from the end user, the Respondent has somehow become an operator of a hotel for purposes of paying room and meals tax. The Court further rejected the State's argument that the principle of administrative gloss applies to the case.

The Court further concluded that the bundling of the service and tax money did not violate the New Hampshire Consumer Protection Act. The Court specifically cited the fact that the Respondent advertises the fact that they collect all service fees and taxes related to the reservation. The Court concluded that they had not fraudulently misled any consumer, since the consumer agrees to the arrangement prior to concluding the reservation. The Court, therefore, affirmed the trial court's order finding judgment for the Respondent.

Gordon J. MacDonald, Attorney General, Philip B. Bradley, Assistant Attorney General, K. Allen Brooks, Senior Assistant Attorney General all on the brief, John W. Crongeyer, of Crongeyer Law Firm, P.C. on the brief and orally, and Paul I. Hotchkiss and Alexandria E. Seay, of Bird Law Group on the brief for the State. Christopher J. Sullivan, Michael S. Lewis, and Richard W. Head of Rath Young and Pignatelli, PC all on the brief, Jennifer J. McGaghey on the brief, and Anne Marie Seibel on the brief and orally, all of Bradley Arant Boult Cummings, LLP, Brian Staner and Scott R. Wiehle on the brief, of Kelly Hart & Hallman, LLP, and Jeffrey A. Rossman, of Freeborn & Peters, LLP, on the brief for the Defendants.

Land Use

New Hampshire Alpha of SAE Trust, No. 2017-0634
March 26, 2019
Affirmed in part, Vacated in part, and Remanded.

- Whether a fraternal organization is allowed to operate with a residential purpose when it has no affiliation with a college or university, as required by local zoning regulations.

The SAE Trust (Petitioner) appeals an order out of the Superior Court affirming the findings of the Zoning Board of Adjustment (the "Board") for the Town of Hanover (Respondent). On appeal, the Superior Court applied the holding of *Dartmouth Corp. of Alpha Delta v. Town of Hanover*, 169 N.H. 743 (2017), and sustained the order from the Board denying the requested relief of the Petitioner.

On appeal, the Petitioner argued that the zoning ordinance in question unlawfully delegated authority to the local college since it leaves up to the college whether to recognize a fraternity for any reason it desires and that fraternities, therefore, had to act in conjecture with the college. The Court found that this issue was not determined in the prior Alpha Delta and held that derecognition of a fraternity is only one factor to be considered by the Board, and that notwithstanding derecognition, a fraternity, such as the Petitioner, could continue to use its property as a residential facility. Next, the Petitioner argued that it need not associate with the college, but could also choose to try to show that it was an "association" under the local zoning ordinance, and, therefore, could exist separate from the necessity to be recognized by the college. The Court found that the Board had not considered these issues and remanded the case so that the Board could address them at a further hearing.

The Court rejected an argument made by the Petitioner that the Respondent had violated its rights to due process by notifying the college of its initial decision sustaining the Petitioner's request to operate as a residential facility after its derecognition by the college. The Court found that the Board's notification of the college was within the appropriate notification for abutters notice that comes with zoning cases.

Carolyn K. Cole, of Cole Associates Civil Law, PLLC on the brief and orally for the Plaintiff. Laura Spector-Morgan, of Mitchell Municipal Group, P.A. on the brief and orally for the Defendants. Howard Myers, of Myers Associates, LLC on the brief, Sean P. Callan, Patrick K. Hogan, of Manley Burke, LPA on the brief as Amici Curiae.

Civil Litigation

Edward F. Hayes, Jr., Trustee of the Survivor's Trust a C/U The Hayes Family Trust Dated January 20, 2000 v. James J. Connolly, Trustee of the Ann D. Connolly Living Trust, No. 2018-0025
March 29, 2019
Affirmed.

- Whether an otherwise unenforceable contract can nonetheless form a basis for a court order to partition a property that both parties to the former contract have an equal interest in.

Mr. Edward F. Hayes, Jr., Trustee to the Hayes Family Trust dated January 20, 2000 (Petitioner) appealed the decision of the Superior Court granting partition of a summer home jointly owned by the Petitioner and Mr. James J. Connolly, Trustee of the Ann D. Connolly Living Trust (Respondent).

The parties were the joint owners of a summer vacation property. At some point the Petitioner decided that it would like to dissolve, triggering a prior contract that dealt with what would happen upon the death or dissolution of either owner. Ultimately the trial court found that the prior contract was unenforceable as the parties had never had a meeting of the minds. After a site visit to the property, the trial court determined that a physical partition of the property would be impossible, and that the property should be sold, with the Respondent being given the option to purchase the Petitioner's interest. In trying to determine how to set the value of the property, the trial court utilized the process that had been outlined in the now unenforceable contract.

The Petitioner appealed the decision to utilize the process that had been outlined in the unenforceable contract, arguing that the trial court had already found that the agreement was unenforceable, and also arguing that the property should be sold at an auction rather than a private sale. In rejecting this argument, the Court found that the trial court did not enforce the earlier contract, rather the trial court was performing its function as an equity court in attempting to fashion the fairest outcome. The Court found that the Petitioner had failed to show that the trial court's ruling was unreasonable or untenable. The Court further found

AT-A-GLANCE *continued on page 38*

NH Superior Court Judicial Assignments: April – June 2019

COURT	HILLS NO	HILLS SO	ROCKINGHAM	MERRIMACK	STRAFFORD	CHESHIRE	BELKNAP	SULLIVAN	CARROLL	COOS/GRAFTON
MO/WK	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*	*Judges*
4/22/19	+Nicolosi Anderson Messer	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
4/29/19	+ Nicolosi Anderson Messer	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
5/6/19	+Nicolosi Anderson Messer Nadeau	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
5/13/19	+Nicolosi Anderson Messer Nadeau	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
5/20/19	+Nicolosi Anderson Messer	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
5/27/19	+Nicolosi Anderson Messer	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
6/3/19	+Nicolosi Anderson Messer Nadeau	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
6/10/19	+Nicolosi Anderson Messer	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger	+Houran Howard	+Ruoff	+O'Neill	+Tucker	+Ignatius	+Bornstein MacLeod
6/17/19	+Nicolosi Anderson Messer Nadeau	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod
6/24/19	+Nicolosi Anderson Messer	+Colburn Temple	+Delker Schulman Wageling St. Hilaire	+McNamara Kissinger Tucker	+Houran Howard	+Ruoff	+O'Neill		+Ignatius	+Bornstein MacLeod

+Supervisory Justice
Assignments commence on the first Monday of each month
Schedule is subject to change.
Effective 3/13/19 (PC)

At-a-Glance from page 37

that it would have been unequitable for the Respondent to pay above what is fair market value for the property solely because the Petitioner had decided to dissolve and sell its interest in the property. The Court, therefore, concluded that the Petitioner, desiring to sell its interest in the property, would be relieved from its obligation and paid, and that the Respondent would be able to maintain its ownership of the property by payment to the Petitioner.

Mark S. Derby on the brief and David W. Rayment on the brief and orally, both of Cleveland, Waters and Bass, P.A. for the Petitioner. Robert J. Dietel on the brief and Samantha D. Elliott on the brief and orally, both of Gallagher, Callahan & Gartrell, P.C. for the Respondent.

TS & A Motors, LLC, d/b/a Kia of Somersworth v. Kia Motors America, Inc.
No. 2017-0714
March 29, 2019
Affirmed.

- Whether a franchisor that allows a franchisee additional time to come into compliance of a franchise agreement forfeits its ability to cancel the franchise agreement when the franchisee continues to fail to address the compliance issues.

TS & A Motors, LLC, d/b/a Kia of Somersworth (Petitioner) appealed an order affirming a decision of the New Hampshire Motor Vehicle Industry Board (the "Board") granting the right of Kia Motors, Inc. (Respondent) to cancel a franchise agreement between the parties.

On appeal, the Petitioner argued that the Respondent illegally cancelled a franchise agreement between the parties when it failed to bring the cancellation upon first having actual knowledge of deficiencies in the Petitioner's compliance of the franchise agreement. In rejecting this argument, the Court reviewed the history between the parties from the proceeding before the Board. The evidence established that the Petitioner had been having staffing issues practically since inception of the franchise agreement, and that the Respondent had worked with the Petitioner to help resolve the issues. Despite these efforts, the record showed that the Petitioner ultimately could not maintain the minimum staffing required by the franchise agreement.

Specifically, the Petitioner argued that the Respondent was required to give a 180 day notice upon learning of the violations of the franchise agreement. In rejecting this argument, the Court noted that the Respondent did give the 180 day notice once it determined that no amount of assistance from the Respondent would allow the Petitioner to come into compliance with the requirements of the franchise agreement. The Court rejected the Petitioner's argument that the Respondent was obligated to give this notice as soon as it was aware of compliance issues. The Court noted that to do so would be to the detriment of a franchisee, because it would foreclose an opportunity as the one that is presented in this case, where a franchisor is willing to work with a franchisee on compliance. The Court also analyzed similar statutes from other jurisdictions to aid it in its decision to affirm the decisions of the lower court and the Board.

Joshua L. Gordon on the brief and orally for the Appellant. Kevin M. Fitzgerald and Nathan P. Warecki, both of Nixon Peabody, LLP, on the brief and Kirti Datla on the brief with Catherine E. Stetson on the brief and orally, both of Hogan Lovells US, LLP for the Appellee.

Natalie Anderson v. Adam Robitaille, No. 2017-0195
March 8, 2019
Affirmed.

- Whether a long term resident of a hotel room should be afforded the protections afforded to a tenant under the Landlord Tenant Statute.

Ms. Natalie Anderson (Plaintiff) appealed the decision of the circuit court denying her protection under the Landlord and Tenant Statute. On appeal, the Plaintiff maintains that the circuit court erred when it found that she and her husband were not tenants as defined by statute.

The Plaintiff and her husband were long term residents of Homewood Suites by Hilton (Hilton) for a period of time beginning in November, 2015 and ending in January, 2017. On January 4, 2017, the Hilton notified the Plaintiff that she and her husband's stay at the Hilton was not to be extended further and that they were to vacate on or before January 6, 2017. The Plaintiff filed under New Hampshire RSA 540-A on January 9, requesting relief from the circuit court to prevent the Hilton from ejecting her and her husband. The circuit court held a hearing on the Hilton's motion to dismiss, after which the circuit court concluded that the Hilton had shown that the Plaintiff and her husband were not tenants pursuant to statute, and, therefore, could be removed without judicial action being required.

On appeal, the Plaintiff attempted to characterize the Hilton as something other than a hotel; however, the Court disagreed with this distinction. The Court also disagreed that the statute allows for a case by case analysis of what is, and what is not, a hotel versus an apartment. Here, the facts as established by the record showed that the Hilton was a hotel. The Plaintiff also argued that the Court should interpret the language of the statute as establishing a categorical exemption for all those units "rented for recreational or vacation uses." The Plaintiff maintained that since she and her husband did not rent their room for this purpose, it was a residential unit and should, therefore, be excluded and protected by the requirements of RSA 540-A. The Court disagreed, finding that the Plaintiff's interpretation was not supported by the grammar of the statute, and would lead to absurd results. Court found that the Plaintiff mistakenly relied on prior case precedent, and further noted the distinguishing features between the two cases.

The Plaintiff also argued that the Hilton was not allowed to use the ejection process outlined at RSA 353, since she and her husband had been residents for over a year. The Court rejected this argument finding that the statute was still applicable and that the Hilton was, therefore, allowed to summarily eject the Plaintiff and her husband. The Court ultimately concluded that the Plaintiff and her husband had failed to demonstrate that they were tenants as defined by statute, and therefore had failed to make a showing that the additional protections afforded to tenants should apply to them.

Natalie Anderson, self-represented party, by brief for herself. Karl Terrell of Stokes Wagner, ALC on the brief and R. Brian Snow of Snow Law Office on the brief for the Defendant.

Supreme Court Orders

LD-2019-0002, *In the Matter of Donald R. Nary, II, Esquire*

On February 21, 2019, the Professional Conduct Committee (PCC) filed a recommendation that Attorney Donald R. Nary, II, be suspended from the practice of law for a period of two years and ordered to pay the costs associated with the investigation and enforcement of the disciplinary matter. The PCC's recommendation approved a stipulation executed by Attorney Nary and the Attorney Discipline Office's disciplinary counsel in which Attorney Nary agreed that he had violated several Rules of Professional Conduct and further agreed that the appropriate sanction for these violations was a two-year suspension. In the stipulation, Attorney Nary expressly waived his right to a hearing. In accordance with Rule 37(16), because this matter was resolved by a dispositive stipulation, the court may consider this matter without further notice and hearing.

Based on the parties' stipulation, the PCC found that Attorney Nary violated the following Rules of Professional Conduct:

1. Rule 1.1 and 1.3, requiring a lawyer to represent clients competently and with diligence;
2. Rule 1.4, requiring a lawyer to keep clients reasonably informed about the status of their matters;
3. Rule 8.4(c), making it misconduct to engage in conduct involving deceit; and
4. Rule 8.4(a), making it misconduct to violate the Rules of Professional Conduct.

After reviewing the PCC's recommendation and record, the court accepts the PCC's findings and its recommendation that Attorney Nary should be suspended from the practice of law in New Hampshire for a period of two years. Accordingly, the court orders as follows:

(1) Attorney Donald R. Nary, II, is suspended from the practice of law in New Hampshire for a period of two years.

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

(3) Attorney Nary is ordered to comply with the provisions of Supreme Court Rule 37(13).

(4) Within 30 days of this order, Attorney Nary shall file with this court an affidavit showing that he has fully complied with the requirements of Rule 37(13). A copy of the affidavit shall be sent to the Attorney Discipline Office.

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

DATE: March 15, 2019
ATTEST: Eileen Fox, Clerk

◆

To facilitate participation by as many lawyers and judges as possible in the New Hampshire Bar Association's "A Lawyer and Judge In Every School" program in celebration of Law Day, the Supreme Court of New Hampshire, pursuant to RSA 490:4, directs that participation by a lawyer or a judge in the program on Friday, May 3, 2019, ordinarily should serve as sufficient grounds to continue any conflicting hearings scheduled on that date. A judge or master may decide, in his or her discretion, not to continue proceedings in a particular case if the judge or master believes that interests such as the efficient administration of the court or ensuring justice in the case compel that a proceeding remain scheduled for that day.

Issued: March 28, 2019
ATTEST: Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

US Bankruptcy Court Opinion Summary

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

Morris v. Massachusetts Educ. Fin. Auth. (In re Morris), 2019 BNH 002, issued Mar. 27, 2019 (Harwood, C.J.) (unpublished) (holding that the repayment of the debtor's student loan debt would not impose an undue hardship within the meaning of 11 U.S.C. § 523(a)(8) where the debtor's household income would be sufficient to cover his student loans payments if the debtor were able to obtain another restaurant job making roughly the same money he made before he voluntarily left his last position).

US District Court Decision Listing

March 2019

* Published

ATTORNEYS' FEES

3/28/19 New Hampshire Hospital Association et al. v. Alex M. Azar et al.
Case No. 15-cv-460-LM, Opinion No. 2019 DNH 057

After successfully obtaining a permanent injunction preventing defendants from enforcing certain policies as to how to calculate supplemental Medicaid payments to hospitals who serve a disproportionate share of Medicaid-eligible patients, the New Hampshire Hospital Association ("NHHA") moved for an award of attorneys' fees under the Equal Access to Justice Act. Defendants objected, and also moved to modify the permanent injunction, arguing that the First Circuit's decision affirming the court's order represented a change in governing law. The court granted the NHHA's motion for attorneys' fees to the extent it sought to recover fees, holding that the NHHA was both an eligible party and that defendants' position was not substantially justified. The court directed the NHHA to file a renewed motion, or reach an agreement with defendants, to address defendants' concerns regarding some of their attorneys' billing entries. In addition, the court denied defendants' motion to modify the permanent injunction, holding that the First Circuit's order did not represent a change in the governing law. 41 pages. Chief Judge Landya McCafferty.

CRIMINAL CASE (SENTENCING)

3/1/19 United States v. Michael Bean
Case No. 18-cr-057-03-LM, Opinion No. 2019 DNH 027

Prior to sentencing, defendant requested that the court declare a categorical policy disagreement with the "purity-driven" sentencing guidelines for methamphetamine offenses that treat quantities of "actual" methamphetamine and "ice" (i.e. higher purity methamphetamine) more harshly than the same quantities of a mixture containing a detectable amount of methamphetamine. The court granted defendant's request, declaring a categorical policy disagreement with the methamphetamine guidelines for three reasons: there is no empirical basis for the harsher treatment of offenses involving higher purity methamphetamine; methamphetamine purity is no longer an accurate indicator of a defendant's role in a drug-trafficking conspiracy; and the methamphetamine guidelines create unwarranted sentencing disparities between methamphetamine offenses and offenses involving other major drugs. The court concluded that it would implement this policy disagreement in all actual methamphetamine and ice cases by applying a three-step sentencing process: (1) calculate the guidelines sentencing range using the purity-driven methamphetamine guidelines; (2) recalculate the guidelines range using the base offense level for the same quantity of methamphetamine mixture; and (3) evaluate the need for a variance based upon the individual characteristics of the defendant under 18 U.S.C. § 3553(a). 24 pages. Chief Judge Landya McCafferty.

DISCOVERY, COST-SHIFTING

3/28/19 Levy, et al. v. Gutierrez, et al.
Case No. 14-cv-443-JL, Opinion No. 2019 DNH 059

The defendant, Apple, moved to compel a non-party, GTAT, to produce certain documents regarding GTAT's sapphire production capacities. GTAT, released from all liability in this securities law class action because it filed for bankruptcy, requested cost-shifting if ordered to comply with Apple's request. The court granted Apple's motion to compel and ordered cost-shifting, as required by Fed. R. Civ. P. 45's mandatory cost-shifting provision. Further, the court ordered Apple and GTAT to negotiate a fair apportionment of costs reflecting GTAT's central role in the underlying securities fraud allegations, as well as GTAT's limited, post-bankruptcy resources. If no agreement is reached, the court will provide further guidance by a telephone conference. 17 pages. Judge Joseph Laplante.

EVIDENCE

3/29/19 USA v. Eleazar Flores-Mora
Case No. 18-cr-160/01-JL, Opinion No. 2019 DNH 030*

The defendant in this unlawful-reentry case moved in limine to preclude several types of evidence from the upcoming jury trial. Deciding the contested motions, the court: (1) denied the motion to preclude evidence of defendant's alleged tattoo reading "Hecho en Mexico," because the tattoo was relevant to identity and alienage; (2) denied the motion to preclude testimony by a government specialist regarding the absence of records in an immigration databases, because the best evidence rule does not bar testimony that a search of a database found no relevant records; and (3) denied the motion to preclude witnesses from using the statutory term "alien," but requested that witnesses refer to the defendant by name or as the defendant when not specifically discussing his legal status. 8 pages. Judge Joseph N. Laplante.

HABEAS CORPUS (Federal)

3/7/19 Clement Sao Nyonton v. Christopher Brackett, Superintendent of Strafford County Department of Corrections et al.
Case No. 18-cv-481-PB, Opinion No. 2019 DNH 038

Court denied without prejudice Liberian national's § 2241 habeas petition requesting an individualized bond hearing. Petitioner brought a *Zadvydas* claim, arguing that he had been unreasonably detained for longer than six months under 8 U.S.C. § 1231(a)(6). He had been detained under § 1231(a)(6) for slightly over seven months, detained under § 1226(c)(1)(A) for slightly under five months (after his motion to reopen was granted), and detained under § 1231(a)(2)

LISTING *continued on page 40*

Listing from page 39

for slightly under three months. The court denied the petition because he was still within the 90-day removal period but stated that his detention would not be authorized after the removal period without an evidentiary showing by the government that removal was likely. Petition denied without prejudice. 9 pages. Judge Paul Barbadoro.

HABEAS CORPUS (State)

3/4/19 Edwin Valdez-Aguilar v. Michael Zenk, Warden, New Hampshire State Prison
Case No. 17-cv-068-PB, Opinion No. 2019 DNH 031

Court denied state prisoner's § 2254 habeas petition. Petitioner argued that he was imprisoned for a "nonexistent offense" because New Hampshire does not recognize the crime of attempted murder. The court rejected this theory, noting that the New Hampshire Supreme Court recognizes the generic crime of attempted murder without requiring the prosecution to prove a murder of a specific variety. Motion to dismiss granted. 7 pages. Judge Paul Barbadoro.

INTERVENTION

3/8/19 New Hampshire Lottery Commission, et al. v. William Barr, in his official capacity as Attorney General of the United States of America, et al.
Case No. 19-cv-163-PB, Opinion No. 2019 DNH 039

Court denied trade association's motion to intervene. A trade association of businesses involved in the internet gambling industry filed an emergency motion to intervene in an action challenging a recent Office of Legal Counsel reinterpretation of the Wire Act, which criminalizes certain gambling activities involved in interstate commerce. The court concluded that the association's interests will be adequately represented by the present parties. It explained that the state lottery commission, the present private plaintiffs, and the putative intervenor sought the same ultimate objective: that the court declare that the Wire Act is limited to conduct relating to sporting events or contests. The court denied the motion without prejudice and permitted the putative intervenor to file an amicus brief and participate in oral argument. 11 pages. Judge Paul Barbadoro.

FOURTH AMENDMENT - SECTION 1983

3/13/19 Dia Fredyma v. Daniel Hurley
Case No. 17-cv-311-SM, Opinion No. 2019 DNH 043

On Sunday, July 19, 2014, at 1:52 AM, Officer Daniel Hurley was dispatched to the Keene Best Western Hotel to respond to a report of a disturbance. When he arrived, he spoke with the hotel clerk (who had called the police). He also spoke with the plaintiff and her husband - both of whom were intoxicated. Ultimately, Hurley took them both into protective custody under N.H. RSA 172-B. Plaintiff sued, claiming Hurley lacked probable cause to take her into protective custody and, therefore, violated her Fourth Amendment rights. She also claimed that, under state law, Hurley was required to consider options less intrusive than arrest (e.g., finding her a ride home) and, said plaintiff, Officer Hurley's failure to do so amounted to a violation of the Fourth Amendment. The court disagreed, concluding that Officer Hurley had probable cause to take plaintiff into custody and, therefore, he did not violate her constitutionally protected rights. Additionally, the court held that, notwithstanding any state law to the contrary, the Fourth Amendment did not require Hurley to consider options less intrusive than arrest. Finally, the court held that even if Hurley had violated plaintiff's Fourth Amendment rights (he did not), he would still be entitled to the protections afforded by qualified immunity. Defendant's motion for summary judgment granted. 19 pages. Judge Steven McAuliffe.

SOCIAL SECURITY

3/12/19 Lefebvre v. SSA
Case No. 18-cv-4-JL, Opinion No. 2019 DNH 042

On appeal from the Social Security Administration's denial of the claimant's application for a period of disability and disability insurance benefits, the court granted in part the claimant's motion to reverse the decision of the Administrative Law Judge ("ALJ") and remanded the case for further proceedings. The court found that the ALJ misinterpreted medical treatment notes in the record. Because of this error, the ALJ drew inferences from tests which did not occur. The court remanded the case because substantial evidence in the record might still support the ALJ's ultimate conclusion that the claimant was not disabled. 14 pages. Judge Joseph N. Laplante.

STANDING; STATUTE OF LIMITATIONS

3/29/19 Short, et al. v. Amerada Hess Corp., et al.
Case No. 16-cv-204-JL, Opinion No. 2019 DNH 0

The court granted the defendants' motion for summary judgment in this environmental-contamination action in large part, concluding that all but one of the plaintiffs lacked standing to bring, or was barred by the three-year statute of limitations from bringing, claims arising from a gasoline leak discovered in 1990 in Swanzey, New Hampshire. Specifically, all but one of the plaintiffs bringing property-based tort claims failed to introduce any evidence of injury to their property or, having introduced such evidence, failed to bring their claims within three years of discovering the injury. Similarly, all but one of the plaintiffs bringing personal-injury claims failed to introduce any evidence of an injury traceable to the defendants' conduct or, having introduced such evidence, failed to bring their claims within three years of their claims' accrual. Finally, the court granted the defendants' motions for summary judgment on all plaintiffs' claims under New Hampshire's Consumer Protection Act as exempted from that statute by § 358-A:3, IV-a. 56 pages. Judge Joseph N. Laplante.

STATUTE OF REPOSE

3/22/19 Continental Western Insurance v. Superior Fire Protection
Case No 18-cv-117-JL, Opinion No. 2019 DNH 051

In this action arising from water damage from a burst pipe, the defendant — who tested the pipes — filed a third-party complaint seeking common-law indemnification and contribution from the party that installed the pipes. The court granted that party's motion for summary judgment, concluding that: (1) New Hampshire's construction statute of repose, N.H. Rev. Stat. Ann. § 508:4-b, imposes a time limit on contribution and common-law indemnification claims "arising out of any deficiency in the creation of an improvement to real property," and (2) the defendant's claims were time-barred by that statute. 18 pages. Judge Joseph N. Laplante.

VENUE

3/21/19 MSPA Claims 1, LLC v. Covington Special Insurance Co.
Case No. 18-cv-830-JL, Opinion No. 2019 DNH 050

In this Medicare-secondary-payer case, the court granted defendant's motion to transfer venue. Plaintiff previously brought a similar lawsuit against defendant in Florida, which the Southern District of Florida dismissed. The court found that several private-interest and public-interest factors weighed in favor of transfer to that district, while only plaintiff's choice of forum and the relative congestion of the courts weighed against. The plaintiff's choice of forum was entitled to lesser weight because the suit was a class action, plaintiff was not a resident of New Hampshire, and the circumstances suggested forum shopping. 16 pages. Judge Joseph N. Laplante.

ZONING

3/27/2019 Macdonald v. Strafford County Superior Court, et al.
Case No. 18-cv-1100-JL, Opinion No. 2019 DNH 056

In this zoning case, the district court granted defendants' motions to dismiss plaintiff's claims. Plaintiff primarily challenged several decisions of the Strafford County Superior Court. The district court found that these claims were barred by the Rooker-Feldman and res judicata doctrines, and dismissed plaintiff's remaining claims because of judicial immunity, the Eleventh Amendment, and failure to state a claim. 25 pages. Judge Joseph N. Laplante.

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Classified advertising will only be accepted on a prepaid basis. The publisher reserves the right to accept or reject all advertising copy at its discretion.

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If you have missed the deadline for the current issue, your ad will appear on our website, **www.nhbar.org**, before the next issue date once the $25 website fee is prepaid.

2019-2020 *Bar News* Ad Deadlines

Issue Date	Ad Reservation Deadline	Final Ad Copy Due
May 15, 2019	April 29, 2019	May 6, 2019
June 19, 2019	June 3, 2019	June 10, 2019
July 17, 2019	July 1, 2019	July 8, 2019
August 21, 2019	August 5, 2019	August 12, 2019
Sept. 18, 2019	Sept. 2, 2019	Sept. 9, 2019
Oct. 16, 2019	Sept. 20, 2019	Oct. 7, 2019
Nov. 20, 2019	Nov. 4, 2019	Nov. 11, 2019
Dec. 18, 2019	Dec. 2, 2019	Dec. 9, 2019
Jan. 15, 2020	Jan. 2, 2020	Jan. 6, 2020
Feb. 19, 2020	Feb. 3, 2020	Feb. 10, 2020
March 18, 2020	March 2, 2020	March 9, 2020
April 15, 2020	March 30, 2020	April 6, 2020
May 20, 2020	May 4, 2020	May 11, 2020
June 17, 2020	June 1, 2020	June 8, 2020
July 15, 2020	June 29, 2020	July 6, 2020
August 19, 2020	August 3, 2020	August 10, 2020

POSITIONS AVAILABLE

ASSOCIATE ATTORNEY – Well established Upper Valley/West Central New Hampshire Law Firm is seeking an associate for general civil practice. Two to four years experience preferred. Small firm atmosphere with fast track to partnership for the right candidate. Reply to: **nhlawfirm.hiring@gmail.com**.

ASSOCIATE – Small Bedford NH law firm seeks Associate with no less than 3 years' experience. Firm currently focuses on commercial closings, real estate, as well as corporate and contract work. Individual should have experience with real estate and corporate work with the hope of building his/her own practice. Ideal candidate would be licensed in both NH and MA. Please send resume and cover letter to **cowen@owenlegal.com.**

ASSOCIATE – Brennan Lenehan Iacopino and Hickey, a six-lawyer firm engaged primarily in domestic, civil and criminal litigation seeks Associate Attorney with 1-5 years of experience. The successful candidate will have excellent research, writing and client management skills and must excel at trial preparation. Competitive salary and benefits. Please send letter of interest and resume to **jrancourt@brennanlenehan.com**.

PROBATE PARALEGAL – Manchester Law Office seeks Probate Paralegal for part time position. Flexible hours. Experience required. Submit resumes to: **mhigham@nhattorney.com**.

FAMILY LAW PARALEGAL – Russman Law Offices - Exeter law firm seeks an experienced full-time family law paralegal to join our team immediately. The ideal candidate should have the ability to multi-task in a fast-paced and growing environment, and has familiarity in both the family law practice and with billable hours. Please forward your resume and cover letter to **kphinney@russmanlaw.com**. Salary commensurate with experience.

OFFICE ADMINISTRATOR – Brennan Lenehan Iacopino and Hickey, a six-lawyer firm engaged primarily in domestic, criminal and civil litigation seeks innovative and growth-oriented Office Administrator to oversee all administrative and financial operations of the firm. Financial administration, accounting (including trust accounting,) HR and marketing experience is required. Experience with modern law office technology is preferred. Juris experience helpful. Competitive salary and benefits. Please send resume to **jrancourt@brennanlenehan.com**.

RECEPTIONIST/SECRETARY – Manchester Law Office seeks Receptionist/Secretary for part time position. Flexible hours. Experience preferred. Submit resumes to: **mhigham@nhattorney.com**.

FREE LAW BOOKS

NH reports 1-150, NH RSAs 2001 chapters 1-13-652-679, Court Rules 2003-2004, 2004-2005, Tables 1992, Index 2003. Please call 774-3351 if interested.

CLASSIFIEDS *continued on page 42*

Corporate Associate

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2 - 5 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

To learn more about the firm, visit our website at www.clrm.com. To apply, please send your resume to Lisa Roy, Hiring Coordinator, at **l.roy@clrm.com**.

COOK LITTLE ROSENBLATT & MANSON p.l.l.c.
Business Lawyers for Entrepreneurs®

Corporate Associate

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 5-10 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

To learn more about the firm, visit our website at www.clrm.com. To apply, please send your resume to Lisa Roy, Hiring Coordinator, at **l.roy@clrm.com**.

COOK LITTLE ROSENBLATT & MANSON p.l.l.c.
Business Lawyers for Entrepreneurs®

LITIGATION LEGAL ASSISTANT

Orr & Reno is looking for an experienced, enthusiastic, and energetic legal secretary to join our litigation group. The successful candidate will possess a professional demeanor and exceptional organization, written and verbal communication skills. The ability to be flexible, multi-task and prioritize is required. Must be detail-oriented, have superior computer skills (to include Microsoft Office Suite, Adobe, scanning and maintaining large, nuanced electronic files), be a team player and have the ability to work independently. This position supports multiple timekeepers. A minimum of 3 – 5 years legal assistant experience is required. This is a full-time, 40 hour per week position.

Orr & Reno offers a competitive salary and benefits package, which includes medical, dental, life, 401(k), paid vacation, holidays and sick leave.

Please send resume and cover letter to:

Orr & Reno, P.A.
Attention: HR Coordinator
PO Box 3550
Concord, NH 03302-3550
Fax: 603 223-9060
Email: resumes@orr-reno.com (please send in Word format only)
No phone calls please

Teaching Lecturer- Business Law - Part-time

Plymouth State University seeks applicants for part-time, non-benefited, teaching lecturer faculty positions for the Fall 2019 and Spring 2020 semesters to teach one or more of the following courses in the undergraduate and graduate business schools: Business Law, Labor & Employment Law, and Health Care Law & Ethics.

PSU is a residential and comprehensive university with a warm and engaged learning community focused on teaching excellence and regional engagement. The University is located in the beautiful Lakes Region and White Mountains of New Hampshire and serves approximately 4,300 undergraduate and more than 2,000 graduate students. Plymouth State University is transforming the campus to create a first-of-its-kind university holistically organized around integrated clusters: Exploration and Discovery; Innovation and Entrepreneurship; Arts and Technologies; Health and Human Enrichment; Justice and Security; Education, Democracy and Social Change; and Tourism, Environment and Sustainable Development. Our goal is to provide an interdisciplinary and innovative learning environment. Students, faculty, staff, and community will connect to solve real-world challenges that will benefit people and organizations at all levels. Now is an exciting time to join Plymouth State and help shape our new kind of university and ultimately tomorrow's leaders.

Minimal Qualifications:
• Master's Degree
• Daytime availability is a must for undergraduate courses

Additional Desirable Qualifications:
• University level teaching experience.
• Juris Doctorate

Application: Apply online at: **http://jobs.usnh.edu/postings/32367**

The position will remain open until it is filled or the search is otherwise closed at the University's discretion. Applicants should be prepared to upload the following documents when applying online:
• Cover Letter describing their teaching area of interest; identifies how their qualifications are applicable to the position applied for
• Curriculum Vitae
• Names and telephone numbers of three references relevant to the position
• Copies of highest degree obtained transcript

Background Check: The finalists for these positions will be required to undergo a full background check. Any offer of employment will be contingent upon satisfactory results.

The University System of New Hampshire is an Equal Opportunity/Equal Access/Affirmative Action employer. The University System is committed to creating an environment that values and supports diversity and inclusiveness across our campus communities and encourages applications from qualified individuals who will help us achieve this mission. The University System prohibits discrimination on the basis of race, color, religion, sex, age, national origin, sexual orientation, gender identity or expression, disability, veteran status, or marital status. Application by members of all underrepresented groups is encouraged. Hiring is contingent upon eligibility to work in the U.S

ATTORNEYS AT LAW
PRIMMER PIPER EGGLESTON & CRAMER PC

Litigation Associate

Manchester Office

PRIMMER PIPER EGGLESTON & CRAMER PC, a regional law firm with offices in New Hampshire, Vermont, and Washington, DC, seeks an attorney to join the legal team in its Manchester, New Hampshire office. The position requires 1 to 2 years' litigation experience and will involve drafting discovery and motions, taking and defending depositions, and arguing motions before federal and state courts. We are seeking candidates with strong academic credentials and excellent research, writing and analytical skills.

We offer a competitive salary, comprehensive benefits and a great work environment. Qualified candidates may submit letter of interest and resume by e-mail to **careers@primmer.com**.

All inquiries are held in the strictest confidence.

Attorney I — City of Manchester

Position Type: Full Time
Department: City Solicitor
Closing Date: 4/22/2019
Salary: $65,371.53 - $93,204.18 / Year
Summary: Provides professional legal representation for the City of Manchester; Prosecutes cases within the Juvenile Unit; Performs directly related work as required.
To view full job description, please use this link: **https://www.manchesternh.gov/Portals/9/SiteContent/Jobs/Attorney%20I%203-19.pdf**

Paralegal — City of Manchester

Position Type: Full Time
Department: City Solicitor
Closing Date: 4/22/2019
Salary: $19.58 - $27.93 / Hour
Summary: Provides administrative support for the Office of the City Solicitor, performs legal research, prepares pleadings and other legal documents, manages civil and criminal dockets, and performs related work as required.
To view full job description, please use this link: **https://www.manchesternh.gov/Portals/9/SiteContent/Jobs/Paralegal%203-19.pdf**

Legal Assistant I - Part Time — City of Manchester

Position Type: Part Time
Department: City Solicitor
Closing Date: 4/22/2019
Salary: $14.93 - $21.31 / Hour
Summary: Performs a variety of general office clerical and confidential administrative legal support duties for City Attorneys and related Legal staff; performs directly related work as required.
To view full job description, please use this link: **https://www.manchesternh.gov/Portals/9/SiteContent/Jobs/Legal%20Assistant%201-PT%203-19.pdf**

ELDER LAW/ESTATE PLANNING ATTORNEY

NELSON-READE LAW OFFICE, P.C.

The Nelson-Reade Law Office was established in 1994 and was among the very first firms to practice elder law exclusively. We are a small, high quality, boutique firm with three attorneys located in trendy, Portland, Maine. There are currently four Certified Elder Law Attorneys in the entire State of Maine, and two of them are at our firm. We are one of the leading elder law firms in Maine and our mission is to provide excellent legal services in a caring and respectful manner to our clients.

We are seeking a full-time elder law, trust, estates, and probate attorney with 3 or more years' experience to join our practice in Portland. The applicant should be compassionate, friendly, energetic, team oriented and possess strong analytical, organizational and time management skills, as well as be able to multi-task. We are looking for someone highly motivated to work in a fast-paced environment who is seeking a long term commitment and the satisfaction of helping people while practicing law. Prior experience in elder law, real estate and or estate planning is preferred. Salary is commensurate with experience with a full benefit package. Please email resume and cover letter to Tammy Clifford at **tammy@pnrelderlaw.com**. No phone calls please.

Continuing Legal Education GUIDE

April 2019

nhbar.org/nhbacle

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

Calendar Overview

MAY

1 Wednesday • 8:30 a.m. - 10:30 a.m.
Charitable Trusts and Donor Advised Funds with NHCF
- In Person • Webcast
- 120 min. credit
- Concord • NHBA Seminar Room

2 Thursday • 9:00 a.m. - 4:00 p.m.
18th Annual Labor & Employment Law Update
Video Replay
- In Person Video Replay
- 360 min. credit • incl. 60 ethics/prof.
- Concord • NHBA Seminar Room

9 Thursday • 9:00 a.m. - 4:30 p.m.
Issues in Advanced Personal Injury Litigation
- In Person • Webcast
- 360 min. credit • incl. 60 ethics/prof.
- Concord • NHBA Seminar Room

10 Friday • 9:00 a.m. - 4:30 p.m.
Solo & Small Firm Flight Plan for the 21st Century
- In Person • Webcast
- 360 min credit • incl. 90 ethics/prof.
- Concord • NHBA Seminar Room

16 Thursday • 9:00 a.m. - 1:15 p.m.
Intellectual Property for the GP
- In Person • Webcast
- 225 min. credit • incl. 30 ethics/prof.
- Concord • NHBA Seminar Room

22 Wednesday • Time TBD
Managing Student Loan Debt and Personal Finances
- In Person • Webcast
- Credits TBD
- Concord • NHBA Seminar Room

29 Wednesday • 9:00 a.m. - 4:30 p.m.
23 Mistakes Experienced Contract Drafters *USUALLY* Make *with Lenné Espenschied*
- In Person • Webcast
- 360 min. credit • incl. 60 ethics/prof.
- Concord • NHBA Seminar Room

31 Friday • 9:00 a.m. - 4:30 p.m.
When We're 64
Answers to Elder Clients' Frequently Asked Questions
- In Person • Webcast
- 360 min. credit • incl. 60 ethics/prof.
- Concord • NHBA Seminar Room

JUNE

5 Wednesday • 9:00 a.m. - 4:30 p.m.
Cybersleuth's Guide to the Internet
- In Person • Webcast
- 360 min. credit • incl. 120 ethics/prof.
- Concord • NHBA Seminar Room

21 Friday • 8:30 a.m. - 10:30 a.m.
13th Annual Ethics CLE
- In Person • Webcast
- 120 min. ethics/prof.
- Concord • NHBA Seminar Room

28-29 Friday & Saturday
Annual Meeting
- In Person
- Credits TBD
- Bretton Woods • Omni Mount Washington Resort

CLE HIGHLIGHT

Virtual Learn@Lunch *Webcast Series*

Everything You Need to Know About UTMA Including Conversion to Section 2503(c) Trust
April 23, 2019 • 12-1:00 p.m.

Essentials for Applying the New Alimony Law
May 7, 2019 • 12-1:00 p.m.

Recent Changes to Medicare Reimbursement for NH Hospital Outpatient Services
May 28, 2019 • 12-1:00 p.m.

10 Things Auto Dealer Attorneys Should Know
June 4, 2019 • 12-1:00 p.m.

Stay tuned for more!

Be sure to visit our catalog for other archived Learn@Lunch or 1-Hour or Less Programs.

(Browse by Subject Matter from the CLE catalog home page.)

nhbar.inreachce.com

Upcoming Programs this Fall

- **A Practical Guide to Evidence Video Replay**
- **Litigation Techniques**
- **Writing to Win**
- **Lifecycle of an Employee**
- **Administrative Law**
- **Developments in the Law 2019**
- **In-house Counsel**
- **37th Annual Tax Forum**
- **19th Superior Court Judicial Forum**
- **Midyear Meeting 2020**

5 Ways to Register

Mail	NHBA•CLE 2 Pillsbury St. Suite 300 Concord, NH 03301
Phone	(603) 715-EASY (3279)
Fax	(603) 224-3729
Email	cmoore@nhbar.org
Website	www.nhbar.org/nhbacle

Live Programs • Timely Topics • Great Faculty • Online CLE • CLEtoGo!™ • DVDs • CDs • Webcasts • Video Replays • and more!

Breakfast Forum

Charitable Trusts and Donor Advised Funds with NHCF

Wednesday
May 1

8:30 a.m. - 10:30 a.m.
120 min. credit

Webcast
In person

NHMCLE REPORTED

Learn the basics of two charitable giving techniques using trusts, the Charitable Remainder Trust and the Charitable Lead Trust. In addition, the program will include an informative discussion about Donor-Advised Funds and other funds at the New Hampshire Charitable Foundation.

Who should attend?

Estate planning lawyers, bank trust officers, accountants and investment advisers would benefit from this important program.

FACULTY

Robert A. Wells, Program Chair/CLE Committee Member, McLane Middleton Professional Association, Manchester
Michelle M. Arruda, Devine, Millimet & Branch, PA, Concord
Richard C. Peck, NH Charitable Foundation, Concord

Check-in & full breakfast begin at 8:00 a.m.
NH Bar Association Seminar Room, Concord
NHP New Hampshire Practice

PROGRAM PRICING

SEMINAR (preregistered): $99 NHBA Members; $65 NHBA•CLE Club Members; $129 Non-NHBA members. Walk-in on the day of the Program is an additional $15.

VIDEO REPLAY

18th Annual Labor & Employment Law Update

Thursday
May 2

9:00 a.m. - 4:00 p.m.
360 min. Live
incl. 60 min. Ethics/Prof.

Video Replay

NHMCLE REPORTED

Find out the cutting edge developments in employment and benefits law over the past year! With new members of the US Supreme Court and continuing staff changes in the various DOL agencies, there are many new developments.

The faculty members that taught that day have extensive practical and teaching experience in the labor, employment and benefits law fields and are members of the New Hampshire Bar. The program will include a networking luncheon as well as an ethics update on cyber security for law firms.

Who should attend?

This fast paced advanced program was designed as an update for attorneys with knowledge of labor, employment and benefits law. It addresses recent updates in the law over the prior year.

Check-in & continental breakfast begin at 8:30 a.m.
NH Bar Seminar Room, Concord
NHP New Hampshire Practice

PROGRAM PRICING

VIDEO REPLAY: $195 NHBA Member; $99 NHBA•CLE CLUB Member.

Issues in Advanced Personal Injury Litigation

Thursday
May 9

9:00 a.m. - 4:30 p.m.
360 min. credit.
incl 60 min. Ethics/Prof.

Webcast
In person

NHMCLE REPORTED

Take a deep dive into the complex but critical issues that arise frequently in personal injury cases and which can make the difference between a successful result and one fraught with problems and unpleasant ramifications for the attorney and client alike. This will be a highly substantive program with materials that attendees will save and use for years to come. The faculty is comprised of top experts in their fields, and promises to be heavy on content and substance.

Who should attend?

Civil litigation attorneys who handle a variety of personal injury matters in New Hampshire.

FACULTY

Peter E. Hutchins, Program Chair/CLE Committee Member, Law Offices of Peter E. Hutchins PLLC, Manchester
Ann N. Butenhof, Butenhof & Bomster, PC, Manchester
Doreen F. Connor, Primmer Piper Eggleston & Cramer, Manchester
Peter Early, Ringler Associates, Inc., Windham
Samantha D. Elliott, Gallagher, Callahan & Gartrell, PC, Concord
Scott H. Harris, McLane Middleton Professional Association, Manchester
Christine Hummel, Hummel Consultation Services, Portsmouth
Kimberly Kirkland, Reis & Kirkland, PLLC, Manchester
Hon. Robert E.K. Morrill, Mediation Arbitration & Judicial Adjudication, Portsmouth
Neil B. Nicholson, McCandless & Nicholson, PLLC, Concord
Mary Elizabeth Tenn, Tenn And Tenn, PA, Manchester

Check-in & continental breakfast begin at 8:30 a.m.
NH Bar Association Seminar Room, Concord
NHP New Hampshire Practice

PROGRAM PRICING

SEMINAR (preregistered): $209 NHBA Member; $159 Members in practice less than 3 years; $99 NHBA•CLE CLUB Members; $139 Paralegals, law office staff; $249 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional $15.

Intellectual Property for the General Practitioner 2019

Thursday
May 16

9:00 a.m. - 1:15 p.m.
225 min. credit.
incl 30 min. Ethics/Prof.

Webcast
In person

NHMCLE REPORTED

This half-day seminar is designed to provide an overview of the major areas of IP law, addressing patent law; trade secret law; trademark law; copyright law; contractual issues relating to intellectual property, including licensing agreements and insurance coverage for intellectual property.

Who should attend?

Anyone whose practice touches on any aspect of intellectual property in a transactional or litigation setting may find this seminar useful.

FACULTY

Arnold Rosenblatt, Program Chair/CLE Commitee Member, Cook, Little, Rosenblatt & Manson, pllc, Manchester
Matthew H. Benson, Cook, Little, Rosenblatt & Manson, pllc, Manchester
Daniel J. Bourque, Bourque & Associates, PA, Manchester
Doreen F. Connor, Primmer Piper Eggleston & Cramer, Manchester
Steven J. Grossman, Grossman, Tucker, Perreault & Pfleger, PLLC, Manchester

Check-in & continental breakfast begin at 8:30 a.m.
NH Bar Association Seminar Room, Concord

PROGRAM PRICING

SEMINAR (preregistered): $169 NHBA Member; $85 NHBA•CLE CLUB Members; $219 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional $15.

For more information go to nhbar.org/nhbacle

Solo & Small Firm Flight Plan for the 21st Century

Friday, May 10, 2019

Solo practitioners $50 for this full day CLE!

9:00 a.m. - 4:30 p.m.
Check-in & continental breakfast begin at 8:30 a.m.
NHBA Seminar Room, Concord
360 NHMCLE min. incl. 90 min. Ethics/Prof. • Webcast

Flight Itinerary

This program is designed for attorneys who are planning on striking out on their own or are in a small firm as well as those who are already there, but want to share tips with others who are in the same boat (or small plane!). All aspects of starting and running a small law business will be discussed including technology, staffing, space, insurance, scheduling, supplies and, most importantly, clients.

An ethics component will be offered. You will hear from experienced practitioners about what to do and what not to do when choosing clients or accepting cases. We will talk about money and trust account management as well as client management, competence and balancing life and business. This is a repeat of a very successful past program, with a few new twists, that you will find rewarding and insightful (not to mention witty, pithy and fun!).

Captain

Edward D. Philpot, Edward D. Philpot, Jr., PLLC, Laconia

Flight Crew

Sandra L. Cabrera, *Waystack Frizzell* Trial Lawyers, Colebrook
Jason R. Crance, Attorney at Law, Hanover
Kelly J. Gagliuso, Bernstein, Shur, Sawyer & Nelson, Manchester
Richard D. Sager, Sager & Smith, PLLC, Ossipee

Act Now!
Sign up before it sells out!

PROGRAM PRICING

SEMINAR (preregistered): $50 NHBA Members (3 or less attorneys in firm); $125 (4 or more in a firm; $75 NHBA•CLE CLUB Members; $249 Other/non-NHBA affiliated. Please call Cheryl at 603-715-3260 to register a non-lawyer staff person for $75 if accompanied by a lawyer. Walk-in on the day of the Program is an additional $15.

SAVE THE DATE!

Managing Student Loan Debt and Personal Finances

Wednesday
May 22
9:00 a.m. - Noon
165 min. credit
Webcast
In person
NHMCLE REPORTED

Practical tips from a Financial Planner and a Student Loan attorney for individuals with student loan debt and those who advise individuals with student loan debt. The following topics will be covered:

- Managing debt and monthly payments
- Paying down debt
- Repayment options
- The positive and negatives of refinance programs
- Loan forgiveness programs
- Budgets with attention to student loan debt
- Success stories

NH Bar Association Seminar Room, Concord

PROGRAM PRICING

SEMINAR (preregistered): $25 NHBA Members (in practice 5 years or less); $75 (in practice 5 years or more) Walk-in on the day of the Program is an additional $15.

When We're 64 Answers to Elder Clients' Frequently Asked Questions

Friday
May 31
9:00 a.m. - 4:30 p.m.
360 min. credit
incl 60 min. Ethics/Prof.
Webcast
In person
NHMCLE REPORTED

As our clients age, they are often faced with a variety of questions about living arrangements, available services and resources, and other steps to take to remain independent and healthy.

Learn how to help counsel your elder clients on their living and care options and answer their most frequently asked questions.

Who should attend?

If you practice elder law, estate planning, family law, or are a public sector attorney or elder advocate, this CLE will provide you with critical information that you need to know to assist and protect your clients.

Topics to be covered can be found online at nhba.org/nhbacle

FACULTY

John S. Kitchen, Program Co-Chair/CLE Committee Member, John Kitchen Law Offices, Laconia and Auburn
Cheryl S. Steinberg, Program Co-Chair/CLE Committee Member, NH Legal Assistance, Concord
Wendi Aultman, NH Bureau of Elderly and Adult Services, Concord
Judith L. Bomster, Butenhof & Bomster, PC, Manchester
Dawn Dumont, Opening New Doors, Manchester
Brandon H. Garod, NH Attorney General's Office-DOJ, Concord
Elizabeth M. Lorsbach, Sulloway & Hollis, PLLC, Concord
Sunniva (Sunny) Mulligan Shea, NH Attorney General's Office-DOJ, Concord
Christine C. Wellington, NH Legal Assistance, Concord

Check-in & continental breakfast begin at 8:30 a.m.
NH Bar Association Seminar Room, Concord
NHP New Hampshire Practice

PROGRAM PRICING

SEMINAR (preregistered): $209 NHBA Member; $159 Members in practice less than 3 years; $99 NHBA•CLE CLUB Members; $139 Paralegals, law office staff; $249 Other/non-NHBA affiliated. Walk-in on the day of the Program is an additional $15.

For more information go to nhbar.org/nhbacle

THE MUST HAVE PROGRAM!

23 Mistakes Experienced Contract Drafters *USUALLY* Make

with Lenné E. Espenschied

Wednesday
May 29

9:00 a.m. - 4:30 p.m.
360 min. Live
incl. 60 min. Ethics/Prof.

Webcast
In person

NHMCLE REPORTED

This seminar explains 23 typical stylistic and substantive drafting errors usually found in all kinds of transactions, including mergers and acquisitions, contracts for the sale of goods and services, licenses, real estate contracts, settlement agreements, employment and consulting agreements, partnership agreements, and much more. Novice and experienced drafters will learn highly practical techniques to advance their contract drafting skills to the next level. The seminar will recap some of the stylistic recommendations Ms. Espenschied has taught in New Hampshire before, using new examples drawn from a 2017 high-profile merger agreement.

The seminar also includes brand new substantive content on:

- the seven components of a basic indemnification provision;
- how to use these components to negotiate the best deal for your client even when the bargaining leverage is less than optimal;
- negotiating strategies for key merger concepts, like thresholds, baskets, materiality scrapes, and indemnification caps; and
- recent Delaware cases on the effect of corporate seals.

Last, but not least, this seminar will include an ethics hour with a discussion of 8 Rules of Professional Ethics that pertain specifically to transactional practice.

Lenné E. Espenschied
ATLANTA, GA

Ms. Espenschied practiced law in Atlanta, Georgia for 25 years, focusing on corporation and transactional representation of technology-based businesses. She is the author of two books published by the American Bar Association: *Contract Drafting: Powerful Prose in Transactional Practice* (ABA Fundamentals, 2nd Ed. 2015) and *The Grammar and Writing Handbook for Lawyers* (ABA Fundamentals, 2011).

See the website for more detailed information on Lenné!

What NH Bar Members had to say from her last presentation here at the NHBA!

- *About the best I have seen. Very useful.*
- *She was clearly very enthusiastic about the subject matter, which is always nice to see in a presenter.*
- *This is the second CLE I have done online with Attorney Espenschied. She was not afraid to directly tackle technical points of writing, and the case studies were spectacular.*
- *She was clear and concise. The audience also had some good questions.*

Check-in & continental breakfast begin at 8:30 a.m.
NH Bar Association Seminar Room, Concord

PROGRAM PRICING

Early Bird! Prepaid by May 1, $229* • Prepaid after May 1, $250*

**Price includes continental breakfast, lunch, refreshments and materials.*

Special Partnership with the Maine State Bar Association

The Cybersleuth's Guide to Fast, Free, and Effective Investigative Internet Research

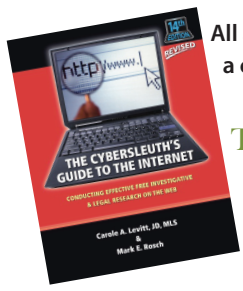
Wednesday
Jun 5

9:00 a.m. - 4:30 p.m.
360 min. credit
incl. 120 min. Ethics/prof.

Webcast
In person

NHMCLE REPORTED

In this fast-paced investigative research seminar, you will learn to create more effective Internet searches and also learn to use the new Casemaker4 platform for legal research.



All attendees will receive a copy of the speakers' 550-page book

The Cybersleuth's Guide to the Internet

(a $64.95 value)!

Mastering Google for Investigative/Due Diligence Research • Morning Program
9:00 - 12:15 p.m.

- Ethics: Duty to Google ~ *(New Hampshire Rules of Professional Conduct, Rule 1.1 comment 8; ABA Model Rules of Professional Conduct, Rule 1.1 comment 8)*
- Learn Google Tips and Tricks and Other Internet Search Strategies
- The Wayback Machine

Investigative and Legal Research: Casemaker, Websites & Social Media
1:15 p.m. - 4:30 p.m.

- The New Casemaker4 Platform
- Find Out How to Access Expensive Databases…for Free
- Master Quick and Easy Methods to Retrieve Background Information
- From Public Record and Publicly Available Sites
- Discover How to Use Social Media Sites For Investigative Research and Evidence…Ethically

For more information on the speakers and program information, go to our online catalog at **https://nhbar.inreachce.com/**

PROGRAM PRICING

Early Bird! *Prepaid* by May 8, $225 ● *Prepaid* after May 8, $250

Morning Only webcast $179; Afternoon Only webcast $179; Full day webcast $250

Indicate which Bar you belong to when registering.

Upcoming Live Webcasts from our Sharing Network

(No in-person attendance)

From the Bar Association of San Francisco:

The Keys to the House: Unraveling Damages in Real Property Sales (Part 1)
April 17 – 3:00-4:00 pm EST – 60 General NHMCLE Minutes

Patent Subject Matter Eligibility in 2019: Classified or Confused
April 24 – 3:00-4:00 pm EST – 60 General NHMCLE Minutes

The Keys to the House: Unraveling Equitable Remedies in Real Property Transactions (Part 2)
May 15 – 3:00-4:00 pm EST – 60 General NHMCLE Minutes

Learn more or register at nhbar.inreachce.com

Online Catalog Search Tips
Utilize the "Sort By" dropdown feature for faster results!
(Located on the upper right hand side of catalog pages)
For Upcoming Events, Sort by: "Event Date (Ascending)"
For Past Events, Sort by: "Recently Added"

For more information go to nhbar.org/nhbacle

$50 for 2 hours of ethics credit!

Breakfast Forum

13th Annual Ethics CLE

Friday
Jun 21

8:30 a.m. - 10:30 a.m.
120 min. Ethics/prof. credit

Webcast
In person

NHMCLE REPORTED

This annual CLE will provide a general update on developments in New Hampshire Professional Responsibility law, as well as a review of specific topics including how the Attorney Discipline Office decides to move forward with a case, how to make sure you follow the rules for IOLTA accounts, and the ethical limits of making public comments about a case.

Who should attend?

This CLE is our annual update and review of developing issues for all attorneys in practice.

FACULTY AND TOPICS

Brian R. Moushegian
NH Supreme Court Attorney Discipline Office, Concord
How the ADO Decides to Move Forward on a Case

Mark P. Cornell
NH Supreme Court Attorney Discipline Office, Concord
IOLTA Accounts - Remembering and Following the Rules

Mitch M. Simon
UNH School of Law, Concord
Conflicts in Insurance Defense - New Hampshire's Approach

Christine C. List
Orr & Reno, PA, Concord
The Ethical Limits When a Lawyer Makes Public Comments About Pending Litigation

Richard Guerriero
Program Chair/Ethics Committee Member, Lothstein Guerriero, PLLC, Keene

Check-in & full breakfast begin at 8:00 a.m.
NH Bar Association Seminar Room, Concord
NHP New Hampshire Practice

PROGRAM PRICING

SEMINAR (preregistered): $50 NHBA Members; $50 NHBA•CLE Club Members; $129 Non-NHBA members. Walk-in on the day of the Program is an additional $15.

CLE Online

Recently Added Online Seminars

The Top 10 Things Attorneys Should Know About Town Meeting
Original Date 3/5/2019 – 60 NHMCLE Minutes

Common Bankruptcy Issues
Original Date 3/7/2019 – 135 General & 60 Ethics/Prof. Minutes

First Party Homeowners' Insurance Claims
Original Date 3/13/2019 – 210 General NHMCLE Minutes

When Land Use and Environmental Law Collide
Original Date 3/19/2019 – 60 NHMCLE Minutes

A Practical Guide to Evidence
Original Date 3/22/2019 – 300 General & 60 Ethics/Prof. Minutes

Changing the World for Animals
(From the Bar Association of San Francisco)
Original Date 4/12/2018 – 75 NHMCLE Minutes

General Data Protection Regulation (GDPR) & U.S. Discovery Parts 1 & 2 (From Georgetown Law)
Original Date 11/15/2018 - 60 General NHMCLE Minutes Each

Cybersecurity: Developing a Privacy and Security Program, Regardless of Your Budget (From Georgetown Law)
Original Date 3/13/2018 – 75 General NHMCLE Minutes

Learn more or register at
nhbar.inreachce.com

NHBA • CLE REGISTRATION FORM

Send with payment to: NHBA•CLE, 2 Pillsbury Street, Suite 300, Concord, NH 03301 or FAX with MasterCard, VISA or Discover to (603) 224-3729
(please complete one form for each registrant)

Name _____ NHBA ID _____

Firm/Organization _____

Address _____

Phone _____ E-mail Address _____

Check box if NHBA•CLE Club Member ☐

Seminar Title	Date of Live Attendance	Book Only	DVD Purchase	CD Purchase	Fee

Payment Method

☐ Check enclosed (make all payable to NHBA) ☐ Please bill my ☐ MasterCard ☐ VISA ☐ Discover ☐ AMEX

☐ Billing Address (if different)

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Name on Card_____

SIGNATURE

For more information go to nhbar.org/nhbacle

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– Cheryl Ischy, Legal Administrator
Austin, Texas

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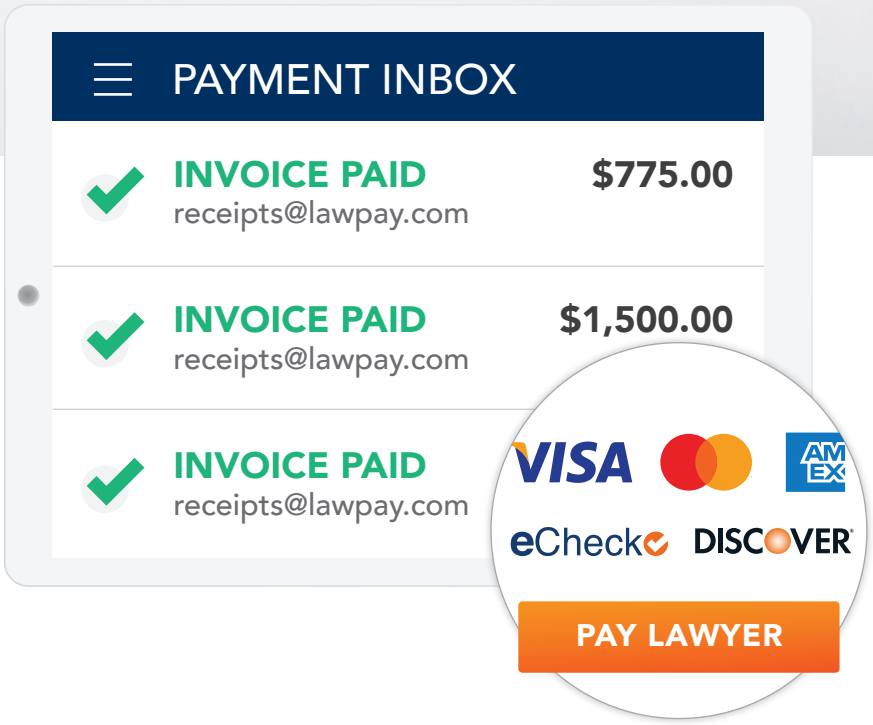

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