

## Treatment Courts Adapt to Meet Challenges

### Future Unclear for Family Drug Courts

**Granite State  
NEWS COLLABORATIVE**  
Connecting New Hampshire

By Annmarie Timmins

Two years ago, an independent review team saw an opportunity for a new approach to protecting New Hampshire's children through increased collaboration. After the team determined that the state's Division of Children, Youth and Families didn't have sufficient staff, training or services to adequately protect kids, it recommended increasing the availability and reach of the state's drug courts to help.

"[T]hese courts have shown promise in addressing the treatment needs of substance-abusing parents who are child welfare involved, and there is a body of evidence supporting the use of drug

courts for child welfare populations," the New Hampshire Child Welfare Quality Assurance Review said.

Since then, the state has adopted several of the team's recommendations — including more rapid access to treatment — but there's been less progress on creating a court specifically for child protection cases where parents are misusing substances. Cost has been one obstacle.

A legislative study committee charged with investigating the feasibility of a family drug court in New Hampshire met twice and concluded last October that creating one would be "very expensive" and a huge undertaking but did not comment on its potential merits.

The committee referred the question to the legislative com-

**FAMILY** continued on page 22

"Close to 65 percent [of participants] have substantial trauma in their lives or in their backgrounds. Dealing with that is important in addition to and in conjunction with the substance abuse disorder."

— NH Superior Court Chief Justice Tina Nadeau



By Anna Berry

Drug courts weren't new to Audrey Clairmont. As a licensed social worker, she worked with a number of drug courts in the Boston area early on in her career before she helped launch the drug court in Merrimack County in 2017.

So far, she's found that there's no New Hampshire advantage when it comes to a critical piece of the puzzle for successful diversion programs — resources.

"In Boston, if a client relapses, [they] get them into stabilization that day," Clairmont says. "We just don't have the infrastructure here for that and it's unfortunate because the client is losing out."

"The criminal justice system is going to pick them up before we can. You know it's an issue when it's a relief to hear they got arrested — the alternative would have been worse."

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### PRACTITIONER PROFILE

## Gregoire Follows in Family Footsteps

By Kathie Ragsdale

When Jason Gregoire was a boy, he remembers visiting his father's law offices on the 16th through 18th floors of 1000 Elm Street in Manchester and marveling at how small the world below looked.

"The cars looked so tiny and the people looked so tiny," he says of those sojourns to see his dad, Daniel, then a corporate health care attorney for Sheehan Phinney. "It blew my mind when I was four or five or six years old."

Thirty years later, Gregoire's own three youngsters enjoy the same view when they visit him — on the 17th floor of 1000 Elm St. in Manchester, where Gregoire is a health care attorney for Sheehan Phinney.

"I feel like our stories are inextricably intertwined," he says of his father, now general counsel for Magellan Health.

He didn't always see himself following in his father's footsteps.

An Auburn native who attended Catholic schools in Manchester before graduating from Pinkerton Academy in Derry, Gregoire planned on being a pharmacist when he set off for the University of Connecticut.

He admired a family friend who owned a chain of New Hampshire pharmacies and "was like a local celebrity."

But once at UConn, Gregoire found he missed the high school sweetheart he'd left behind, Kiele, that he didn't like UConn and, more than that, he didn't like his chosen field.

"So midway through, I said, 'I always thought about being a lawyer and this pharmacy thing isn't for me,'" he says.

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Hayes and Wyn Gregoire look out the window of their father's law office at Sheehan Phinney.

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### Real Property Law

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## Please Join Free Legal Answers

By David McGrath

NH Ethics Rule 6.1 reminds us that “every lawyer has a professional responsibility to provide legal services to those unable to pay.” We all know we are so obligated, and understand that giving to Pro Bono makes us feel better about ourselves and enhances the profession. Yet, too many of us ignore the calling or lament that there is not an easier way to identify suitable Pro Bono opportunities. The new Free Legal Answers program, an initiative of the Pro Bono Referral Program at the Bar, provides all of us with an easy way to help those who cannot afford an attorney, and I urge you all to sign up today.

In short, the program recognizes that by providing people in need with basic legal information, we remove substantial and unnecessary barriers that impede their access to justice. Here is how the program works.

Once registered, you may either access NH Free Legal Answers from the Bar’s website or manage your account to email you questions in your chosen practice area(s). You may answer the questions that interest

**Board Perspective**



**By David W. McGrath**  
NHBA President

Sheehan Phinney  
Bass & Green,  
Manchester, NH

you whenever is convenient for you. Your responses are sent directly to the person seeking advice and are confidential; they are not posted anywhere. For conflict purposes, you can learn the identity of the person seeking advice, but they do not learn your identity.

The New Hampshire Supreme Court has added a helpful comment to clarify that the safe harbor in ethics rule 6.5 applies to the Free Legal Answers program: *For purposes of participation by New Hampshire lawyers in the ABA Free Legal Answers website (to*

*increase access to advice and information to clients who cannot afford an attorney), “one time consultation with a client” will include reasonably contemporaneous communication with a client, such as through an email exchange, online chat session, or other online messaging service, directly related to the matter initially discussed.*

In order to register, you need only follow these steps:

- Go to [nh.freelegalanswers.org](http://nh.freelegalanswers.org) OR on the NHBA homepage, click on NH Free Legal Answers found on the left-hand side of the page under “Legal Help & Info.”
- Click on Volunteer Attorney Registration, review and consent to the Attorney Agreement.
- Create your account, including setting a password.
- Look for a confirmation email from **nor-reply@freelegalanswers** with New User Verification in the subject line. If you don’t see this email, look in your junk, spam, or

MCGRATH *continued on page 8*

## Dispelling 5 Myths About Your Bar Association

By George Moore  
Executive Director



Recently the Bar News asked me to write an article about what had surprised me the most in my first year as Executive Director of the Bar Association. Without question, I am most surprised by the tremendous amount of persistent misinformation or lack of information that members have about what their association does or how it does it. These mistaken beliefs are pernicious, and give credence to the famous quote wrongly attributed to Winston Churchill and earlier to Mark Twain: “A lie gets halfway around the world while the truth is putting on its shoes.”

I’m proud of the Association and the numerous efforts and programs it runs for our more than 8,000 members. These programs are managed with a view toward phasing out what is no longer critical and introducing new programs that are more relevant to practitioners. The focus has been and continues to be on all members,

including lawyers in solo or small firms, which comprise the overwhelming majority of our membership. In many cases, the services and programs the Bar provides have a profound effect on members practicing law and they don’t fully realize it!

As executive director, I interact with many lawyers on a daily basis. In the course of these discussions I often learn that members have a misimpression about important aspects of their Association. Here are just five of these myths that I’m happy to dispel. To provide some method for measurement, I employ the Washington Post’s “5 Pinocchios” standard. In other words, the paper routinely grades statements based on how

distant they are from the facts.

1. I wasn’t in the job more than a couple of weeks when a member I’ve known for years said to me, “What I hate is that the Bar dues always go up and I get nothing for it.”

I think this statement deserves a full 5 Pinocchios! The fact is that the membership dues for the New Hampshire Bar Association haven’t gone up a nickel in the past 10 years. Since 2010, dues have remained flat at \$310 per year. Over that same time period, the cumulative inflation was over 18 percent, so we’re doing more with less.

MYTHS *continued on page 18*

### Clarification

An article on new staff members at the Bar Center on page 3 of the April edition of *Bar News* was incomplete. Yvonne Borghetti, intake and referral specialist with the NH Lawyer Referral System, has been married for 25 years.

### Correction

A paragraph was inadvertently excluded from “NH’s Journey to Amend the Statue of Limitations for Prosecutions of Sexual Assault” by Rachel Harrington, published on page 22 in the January edition of *Bar News*. The article has been corrected at [www.nhbar.org/publications/barnews](http://www.nhbar.org/publications/barnews).

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Senator Jeanne Shaheen (middle) recently received a Justice Award from the American Bar Association, which recognizes members of Congress for their commitment to justice, presented by ABA President Bob Carlson (right) and ABA Day Chair Deborah Enix-Ross (left).



On April 5, Leadership Academy class members had discussions with a number of state officials, including NH Sen. Majority Leader Dan Feltes, Sen. Cindy Rosenwald, Rep. Barbara Griffin, John Williams, Meredith Teleus, and Executive Councilor Andru Volinsky, to learn more about the legislative and executive branches of the state government.

## Congratulations to the 2019-2020 Board of Governors



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# Tracking Time to Save Time

*Tracking your billable and nonbillable hours can illuminate firm (in)efficiencies*

*Editor's note: This article was originally published in Law Practice, May 2019, by the American Bar Association and is reproduced with permission.*

By Laura Keeler

Legal professionals face a shortage of time. There is always more work that could be done in a day, but not enough hours to accomplish everything. Many professionals throw more hours at the problem instead of finding more efficient ways to manage their practices. According to the 2018 Clio Legal Trends Report, the utilization rate (i.e., the number of hours billed divided by the number of hours worked) for lawyers is only 30 percent. This means approximately one-third of the attorneys' workday is spent on billable hours. Furthermore, the realization rate shows that only 81 percent of

billable hours worked are invoiced, and the collection rate averages a mere 85 percent. Following those rates, American lawyers derive revenue from not quite 21 percent of their working time.

Attorneys can improve productivity by tracking how their time is spent. Making a habit of diligently tracking time will help capture the full extent of billable hours worked. Tracking categories of nonbillable hours can also help illuminate areas that are ripe for more efficient systems or outsourcing.

### An Overview of Tracking Time

No one enjoys tracking their time in tenths of hours worked, but for legal professionals it's a necessity. This is even true for firms that have alternate billing models as it provides benchmarks to assess whether the fixed-fee rate adequately correlates to the

value of time and effort spent. But what's the best method to track time?

Any time legal professionals bill must be accurate and in accordance with their jurisdiction's ethical and professional rules. Accurate billing is best achieved by contemporaneous timekeeping. Practitioners should strive to capture time in the most efficient method. They should consider whether stand-alone time and billing/accounting systems or ones integrated with full-scale practice management solutions fit better for their practice. Either can improve efficiency, especially on generating bills sooner and collecting faster. Finally,



attorneys must keep in mind that like any process in a law firm, each firm will customize its own set of systems and processes that work best for that office's culture and practice areas.

### Methods for Capturing Time

Both the amount of billable time and descriptions of billable tasks are recorded most accurately when they are billed contemporaneously with the task performed. If you try to reconstruct your billable tasks from memory later, you are apt to forget to enter components of the work performed. The longer you wait after the fact, the more time you lose. Be fair to the client as well as to yourself. If you put in a significant effort on a client's behalf, note it down as soon as possible.

TIME continued on page 19

## New Lawyers Column

# Celebrate New Lawyers Week, May 19-23

By Jenna Bergeron and Katherine Hedges

The New Lawyers Committee (NLC) is one of a number of committees of the NHBA that are made up of volunteers. The NLC focuses on programming, resources, and networking for attorneys who are admitted to the New Hampshire Bar Association within the last five years, whether they previously practiced in other states or are new to the practice of law. Being a part of the NLC is a great way to meet newer attorneys and give back to the legal community and community at large. Here are a few of the projects that the NLC is currently working on.

### Welcoming New Lawyers

The NLC organizes and/or participates in a number of activities to welcome new attorneys to the bar. Representatives of the NLC attend swearing-in ceremonies, and the group hosts an annual "Bench and Bar Meet and Greet" following the Practical Skills Course in December. The NLC also organizes and hosts a number of other networking opportunities for attorneys to



Bergeron



Hedges

socialize with other attorneys who have recently been admitted.

### Traps for the Unwary

"Traps for the Unwary" is a publication of the New Lawyers Committee that focuses on practice tips for newer members of the New Hampshire Bar. The NLC updates the publication every couple of years and is currently working on a new revision. The previous version can be found at: <https://www.nhbar.org/resources/traps-for-the-unwary>.

### Dinners with a Judge

The New Lawyers Committee hosts small group dinners with newer lawyers and state and federal judges, which give newer attorneys an opportunity to learn about the judiciary, get practice tips, and otherwise get to know the judges they will be appearing before.

### Volunteer Opportunities

The New Lawyers Committee seeks out opportunities to give back to the community. Recently, the NLC hosted Lawline to answer general legal questions being asked by members of the community. On May 19, the NLC is organizing a team to participate in the Walk Against Hunger to benefit Families in Transition—New Horizons. You can join the team by signing up at <https://support.fitnh.org/team/223563>.

### Other Ongoing Projects

The NLC has a number of other ongoing projects. Committee members are currently reorganizing our mentor program and look forward to relaunching it in a format that will be more rewarding for mentors and mentees. We have a number

of opportunities to participate in programs offered by the American Bar Association and are often able to participate in events hosted by new lawyers groups in neighboring states.

The NLC invites all members of the Bar to take advantage of our resources and programs. Please also let us know if there are other resources or programming that you think would be helpful. The president of the NH Bar Association appoints members to the New Lawyers Committee in the summer. If you are interested in helping to welcome attorneys who have recently joined the New Hampshire Bar, watch for the announcement seeking volunteers in the Bar News in the coming months or reach out to either Katherine Hedges or Jenna Bergeron to find out more about participating.

*Jenna Bergeron and Katherine Hedges are co-chairs of the New Lawyers Committee. Jenna Bergeron practices law in Massachusetts at Miller Law Group, and Katherine Hedges practices civil litigation and corporate law at Hage Hodes.*

## New Lawyers Week Schedule of Events

### Sunday, May 19

#### NHBA New Lawyers Team for Walk Against Hunger.

Join group at 11 a.m. at Veteran's Park in Manchester  
Register at <https://support.fitnh.org/team/223563>

### Wednesday, May 22

#### Student Debt CLE followed by Light Lunch & Ice Cream Social

Only \$25 for CLE credits and food included? Win win!  
Check-in and continental breakfast begins at 8:30 a.m.,  
CLE starts at 9 a.m., Ice Cream Social/Luncheon at noon  
at NH Bar Center. Register at [www.nhbar.org](http://www.nhbar.org)

### Wednesday, May 22

#### Fisher Cats Game, Manchester

Block of free tickets – RSVP to [lboisvert@nhbar.org](mailto:lboisvert@nhbar.org)  
Game starts at 6:35 p.m. at Fisher Cats Stadium

### Thursday, May 23

#### New Lawyers Committee Final Year-End Meeting – Open House

Pizza, salad and cake provided. 5:15 p.m.- 6:30 p.m.  
at NH Bar Center. RSVP to [lboisvert@nhbar.org](mailto:lboisvert@nhbar.org)



## Evolve Into an Information Secure Law Firm

Part 3 of a special three-part series on cybersecurity

By Cameron G. Shilling

Becoming information secure is an evolution. Law firms achieve success only over time, with concentrated effort and commitment, via the following process.

1. **Conduct a risk assessment.**
2. **Remediate vulnerabilities.**
3. **Implement a policy.**
4. **Train the workforce.**
5. **Engrain security in operations.**

The prior article addressed the team needed for this process. With the leadership of an experienced information security lawyer and outside IT security consultant, that team will shepherd the firm through this evolution, and the firm's business and IT managers will become its long-term information security leaders.

### Risk Assessment

The risk assessment involves employee interviews, a facilities inspection, technology diagnostics, and a privileged report.

The interviews and inspection are critical and illuminating parts of the assessment. The most important group to interview is the firm's in-house IT staff and (if appropriate) outside IT vendors. That meeting yields information vital to assess the security status and vulnerabilities of the firm's technology infrastructure, including its network, laptops and desktops, mobile devices used by employees, email, electronic record retention system, and cloud providers.

The next most important meeting is with the individuals responsible for the firm's business operations, revealing critical information about the electronic and hard copy systems for functions like time entry, billing, conflicts, client file management, financial accounting, and human resources. Interviews also are conducted with select lawyers, paralegals, and secretaries, to identify for each practice area the information created and collected, how it is accessed and used, applications and cloud providers involved, and unique activities of each practice.

Finally, a comprehensive facilities inspection identifies the risks inherent in external access to the building, internal physical

controls within the office, and security related to hard copy files.

The interviews and inspection are enlightening for firm leaders to recognize and gain an appreciation for significant and systemic risks. While each firm is unique, some of the more common vulnerabilities are as follows:

- Lack of encryption and firm management of laptops and mobile devices.
- No dual authentication for access to firm networks and email.
- Permitting employees to access the firm's network from outside the firewall without using a secure virtual private network (VPN).
- Lack of email encryption and other means for secure information and file transfer.
- No dual authorization for certain financial transactions.
- Lack of advanced malware, crypto lock, and threat detection and prevention.
- Inadequate or no workforce training and technology safeguards against common cyber-threats, like phishing, spear phishing, and social engineering.
- Lack of an electronic client file retention application, and inadequate or no access controls and logging for activities within client files.
- Plethora of hard copy documents and files on desks and in offices, conference rooms, storage rooms, file cabinets, archives, and off-site storage that are not adequately secure.
- Inadequate or no monitored security for some points of entry (e.g., windows), internal spaces (e.g., motion detection), and areas with highly sensitive information and equipment (e.g., server and network rooms).

Technology diagnostics are used in conjunction with the interviews and facilities inspection to reveal additional, more



hidden weaknesses. While diagnostics can be implemented to identify a wide variety of risks, some common uses are to find gaps and weaknesses in the firm's firewall and external-facing IT infrastructure, as well as vulnerabilities within the firm's network and computers, such as unsupported and unpatched applications and operating systems. Diagnostics also can identify specific passwords that are weak, or already compromised and available on the dark web. Results from the diagnostics are granular, providing the firm with a detailed, line-item accounting of certain issues to address during remediation.

The assessment concludes with a privileged report that compiles the identified risks. One benefit of working with experienced outside professionals is that they can consolidate the multitudes of risks into a manageable list categorized based on severity and difficulty of remediation, and they can suggest specific solutions using available and affordable applications suited to the firm's particular IT infrastructure, business operations, and culture. Another benefit is that the report should be understandable, without legalese or technobabble, so that it is a usable document.

### Remediation

Whereas the risk assessment can be concluded in a few weeks, remediation can take years, particularly for a firm just starting the process. Some measures are relatively easy and inexpensive, and can be accomplished quickly, such as laptop and email encryption, and certain dual authentication. Other measures take longer to implement, commonly because they involve costs that need to be budgeted, integration with network infrastructure, changes to established business processes, or cultural change.

Similarly, because managing information security with cloud providers and vendors requires due diligence and an information security agreement, and because third parties often resist those activities until it is time to sign a new services agreement, completing that process often takes years. Graduated progress is acceptable, as long as the firm remediates serious risks expeditiously, implements available safeguards promptly, and otherwise pursues remediation with reasoned determination.

### Policies

An information security policy is the memorialization of the firm's practices, for purposes of legal compliance and sound business operations. The policy both describes the measures the firm currently employs, as well as prescribes the techniques the firm expects to adopt or will investigate. Clients are increasingly asking about a law firm's infor-

mation security, and this policy is a document the firm can provide to help answer those questions. Also, like other business policies, this one outlines the responsibilities that certain employees have and establishes the internal rules that all employees must follow with respect to information security, providing a basis for workforce training.

### Training

It is axiomatic that employees are any organization's biggest risk. Technology does not cause information to be lost or stolen, people do. However, employees also can become a firm's best security guards. Converting a workforce from a risk into an asset requires effective ongoing training to raise awareness about the sensitivity of the information handled by the firm and the techniques that the firm has to do so securely, as well as actively engaging employees to help design and implement measures that make the firm both more efficient and more secure.

While initial comprehensive general training typically occurs after the firm implements its information security policy, concise periodic training should occur three to four times per year, focusing on topics to educate employees about threats (e.g., phishing), interesting security topics (e.g., personal security for employees and their families), and new security techniques that the firm is implementing. One of the best measures of whether an organization is information secure is whether its workforce is a proactive agent for security.

### Engrain Security

A year or two after completing the first risk assessment, a firm should conduct an abbreviated re-assessment, evaluating the issues that remain outstanding from the initial report, identifying new risks that may have arisen from recent cyber-threats or changes to the technology infrastructure or business operations of the firm, and reviewing security measures that may have become available since the prior assessment.

As the firm continues over the years to address these issues, the process should evolve from an activity that occurs episodically into an activity that IT and business leaders manage routinely as a part of their jobs. This process has no finish line — it is an evolution through which a firm integrates sound information security practices into business operations.

*Cameron G. Shilling is a director at McLane Middleton, where he founded and chairs the firm's Information Privacy and Security Group. Find out more at [www.mclane.com](http://www.mclane.com). Cam can be reached directly at 603-628-1351 or [cameron.shilling@mclane.com](mailto:cameron.shilling@mclane.com).*



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# 10 Steps to Easy License Renewal

## Deadline: Monday, July 1



### 1. ART Appreciation

The Attorney Reporting Tool (ART) found at My NHBar Portal, [www.nhbar.org](http://www.nhbar.org), enables attorneys to keep track of their legal education credits. CLE credit minutes taken from NH Bar Association programs automatically appear in ART; external program credit minutes must be entered into ART by the attorney attending the class.

*Tip: Videos posted at [www.nhmcle.org](http://www.nhmcle.org) will assist members in using ART.*

### 2. Make Way for Email

Starting on June 1, watch for an email from [billing@nhbar.org](mailto:billing@nhbar.org). Designate that email address as a safe-sender to be sure you receive the licensure renewal notice and other NHBA-related notifications.

### 3. Payment Made Easy

The June 1 email will contain a link directly to an online invoice with a payment function. Pay online with a credit card (VISA, MC, Discover or American Express) or send a check via U.S. Mail.

### 4. Check the Box

NH Pro Bono Referral System programs need your support — as federal and state funding sources diminish,

your contribution is needed now more than ever. Be part of a program that gives people in New Hampshire communities the opportunity for greater stability, for more hope, and a second chance in our mission of justice for all.

*Tip: Don't forget that all contributions to NH Pro Bono are tax-deductible!*

### 5. Assume TAC Form Is Required

Most active-status Bar members must e-file the Trust Account Compliance certificate, even if they are not actively practicing or do not have trust accounts. The online form asks eligibility questions and only requires members to fill in the necessary answers.

*Tip: Law firms with a single trust account can have the managing partner complete a single TAC form for all lawyers at the firm.*

### 6. Be Prepared

Make sure to have bank account information handy before starting to fill out the online trust account compliance certificate. The online filing system does not save information if you exit without completing the form.

*Tip: Attorney information such as IOLTA account numbers can be cut and pasted from other sources to avoid typing errors.*

### 7. Help Is Available

If you have questions about how much you owe, whether you filled out the trust accounting certificate correctly, or about NHMCLE reporting, there are resources to help. Look first to the NHBA's website at [www.nhbar.org](http://www.nhbar.org) to see if there are resources, found under the Resources tab, that can answer your question.

*Tip: Assistance is available by emailing [billing@nhbar.org](mailto:billing@nhbar.org) or call the member hotline at (603) 715-3279. Thank*

*you for your patience as our many bar members go through the licensure renewal process during this time. In most instances, inquiries will be addressed within 48 hours.*

### 8. Go for Green by July 1

Log-in to the compliance portion of the member portal, My NHBar. Members will see colored bars in the middle of the page — for NHMCLE, Trust Account Compliance, Annual NH Supreme Court fees and NHBA dues. Each of these boxes will be **RED** until payments and/or forms are processed. Three **GREEN** boxes mean a member has completed the necessary licensure renewal steps. A fourth box will appear after August 1 if you owe any delinquency fees assessed by the NH Supreme Court for late payment and/or filings.

*Tip: Submissions will be acknowledged on-screen or via email. The Member Portal may take up to 48 hours to display updates, meaning the boxes will turn from red to green.*

### 9. Check Your Messages

Correspondence from [billing@nhbar.org](mailto:billing@nhbar.org) will be retrievable from the "Messages" tab in the Member Portal, in case you have a question about what you have been asked to provide. The Licensure Renewal Dashboard will be available online starting June 1.

*Tip: Not every email from NHBA staff will appear in the Member Portal. Notices sent directly from [billing@nhbar.org](mailto:billing@nhbar.org) will appear.*

### 10. Update Member Info

Members are encouraged to check the accuracy of their contact information on the NHBA Member Directory. Updated photos may be sent to [memberrecords@nhbar.org](mailto:memberrecords@nhbar.org). *Tip: Getting it all done before July 1 saves time and energy!*

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# Members: Get Ready for the End of the NHMCLE 2018-2019 Reporting Year



The online Attorney Reporting Tool (ART) allows attorneys who have met the required credits to complete the reporting process in one place.

All NH Bar Association members who were in Active Status for more than six months during the reporting year (July 1, 2018 to June 30, 2019) are required to meet NH Supreme Court Rule 53 requirements by June 30, 2019.

NHMCLE compliance is reached when a member:

- Meets or exceeds the required minimum minutes shown in their ART My Record page; and
- Files the online Affidavit of Compliance in their ART account.

Several steps must be taken to complete the NHMCLE requirements in ART

1. First, go to [www.nhbar.org](http://www.nhbar.org) and then click “My NH-Bar Portal” located on the green toolbar in orange lettering. Login to your account. Once you’re in the portal, look on the right-hand side of the page and click on “NHMCLE Attorney Reporting Tool.” A box will drop down and then click on “Attorney Reporting Tool.” You will be brought directly to the current “My Record” page within NHMCLE ART. (If you are a new member, you can access “How To” videos by clicking on the

“Home” tab on the My Record page toolbar.)

2. Members should check Section C to assess whether the required minimum minutes have been met. (Need more information? View the short video under the “Home” tab to understand the data shown.)

**What to do next if you DO meet or exceed the requirements:**

- If the Ethics and Total categories in Section C meet or exceed the required minimums (shown in parentheses), then the member can file the ART Affidavit of Compliance when the Affidavit is available beginning June 1.
- Once the “Affidavit of Compliance” is filed, the 2018-2019 obligations are met. The NHMCLE Office suggests members print their Affidavit of Compliance and the “My Record” page to confirm the Affidavit process. Retain the Affidavit in the member’s office file for two years in the event of an audit.

**What to do next if you DON’T meet the requirements:**

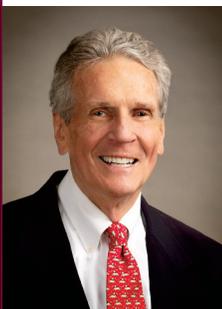
- If any categories in Section C **do not meet** the required minimums, then the member must attend and enter additional qualified continuing legal education courses to meet or exceed Rule 53 requirements. The ART Af-

fidavit cannot be filed until all minimums are met or exceeded.

- Members may take continuing legal education courses from any source so long as the course meets Rule 53 requirements. Members evaluate whether a course meets Rule 53. NH Bar CLE Department courses are entered in your ART account within 15 days or less of completion of the course. If you choose to attend a qualified course with a different provider, you must enter the course in your record under the “New Entry” tab. (View the short video on new entries under the “Home” tab to learn more.)
- Once required minimum minutes on My Record page are met or exceeded, members will be able to file the online Affidavit of Compliance when it is activated in June. See above.

The MyNHBar portal will show each member the status of each of their annual licensing requirements. The NHMCLE Dashboard button will be **red** if the 2018-2019 obligations are not completed. The NHMCLE Dashboard button will be **green** if all minimums are met and the Affidavit of Compliance has been filed.

## NHMCLE Attorney Reporting Tool “My Record” Page



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# Keystone to Red Teaming is Challenging Plans & Assumptions

Bryce G. Hoffman  
 Crown Business; 2017  
 Hardcover; 278 pages

Reviewed by Eric Cook

*"All plans are based on assumptions, all assumptions are based on understanding, and that understanding is frequently limited and often flawed. By challenging your assumptions, red teaming makes your plan stronger."*

At first, this book looked like any other business book that I have read. A flashy idea with some detailed plans on how to make your business better. Usually a detailed cookbook of a process that no company/firm that operates in the real world will ever truly attempt. Good team player that I am though, I put my head down and prepared to slog on through; all in the name of contributing to our community. Then lo and behold, I got sucked in on the first page. Look, a quote from "The Art of War" by Sun Tzu. What's this, a class taught by the U.S. Army at Fort Leavenworth? Then to top it all off, a reference to the movie "World War Z"! Good heavens, what have I lucked into? Red Teaming, it turns out, is a process by which plans and assumptions are challenged as a way to test their validity.

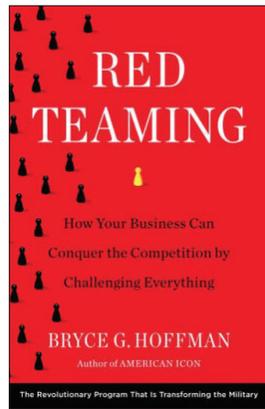
Red Teaming has been around for a long time. Wargaming is something military organizations have done for centuries as a way to test battle plans. The Catholic

Church has had an office of the promotor fidei, the "promoter of the faith," or as we might call it, the Devil's Advocate. His job was to challenge the veracity of claims of sainthood. More recently, the FAA and DHS run tests where they send agents through security at the airport to see if they can get through with guns and bombs and such.

The fundamental principle of Red Teaming is to test or challenge the assumptions, preparations or plans that you have made. We assume that metal detectors will prevent guns getting onto airplanes; DHS tests that by sending the armed agents through. Wargamers would test a battle plan by creating a "Red Team" to "play" the wargame as the opponent. The presumption that a claim to sainthood is valid is challenged by a vigorous investigation.

Post-September 11, Red Teaming has become institutionalized throughout our military, our government and increasingly so in our business communities. The author is in fact a consultant who sells his expertise in Red Teaming. He received permission from the Army to attend its in-house course on Red Teaming, taught at Leavenworth. He also visited the Marine program in Quantico VA, and the NATO program in Norfolk VA.

The World War Z reference came from



a part of the movie (the book is much, much better) where an Israeli person explains to Brad Pitt that in the wake of the Yom Kippur War in 1973, if nine people with the exact same information believe the same thing, then it is the duty of the tenth man to disagree. According to the author while the whole "Tenth Man" thing is not true, there is in fact a department in the IDF Intelligence Directorate whose job it is to Red Team

IDF assumptions.

The keystone to Red Teaming is to challenge. Too often we get sucked into going along with the party line, with not speaking out against our organization, and the result is often failure. Who hasn't been in that meeting where a cool new strategy is unveiled with great fanfare, only to fade into ignominy or worse six months later?

Hoffman's solution is to simply challenge. One can make this process of challenging as simple or complex as one wants. That is what makes it powerful and why I think this is one of the rare business books that brings value to the table.

It does contain a cookbook to set up your own Red Team. Eleven chapters, in fact, of steps and processes you can put in place. But unlike previous books I have reviewed for the Bar, this one gives you the tools to challenge in a manner that accommodates your real-life situation. Are you a one-lawyer firm? No problem, all you need to do is take a little bit of time, write out your plan and then question every assump-

tion in it. Are you a top five firm? Great, peel off some cash, hire a facilitator and put your management team through the paces. Either way you can improve your plan.

Better to test your plan in the comfort and safety of your own office or offsite retreat, than to get its flaws publicly and expensively handed to you in court.

If the key concept in "The Art of War" is "know" — know yourself, know your enemy, know your terrain; then the key concept in "Red Teaming" is challenge, look at every assumption and ask if it is valid. To be as good as Sun Tzu, you need a lot of spies. To be as good as Hoffman you need only question.

As always, the question I strive to answer for you my colleagues is, should you add this book to your already voluminous list of reading? The answer is yes. It has value. It's interesting. It's not too long. Drop by your local bookstore, fire up your Prime account, drop it into your Kindle and you too can start challenging the assumptions you and your firm make every day! (And, really, give the book "World War Z" by Max Brooks a try. It's a novel and "realistic" take on how society could crumble and renew using the zombie as a vehicle.)

Eric Cook is an attorney in Newmarket, New Hampshire.



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 – Louis D. Brandeis*

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## McGrath from page 2

quarantined email folder, and "whitelist" it so these messages do not get snagged in the future.

- Respond to the email, "Click to Verify Account," and await approval from the site administrator.
- Once approved, consider signing up for specific case categories by clicking on "Manage Subscriptions" after logging into the website. You will receive email alerts when a question is posted in your selected area.

The site has been up and running for several weeks and volume is starting to increase! To date, approximately 60 attorneys

have registered and dozens of questions have been answered. Despite the progress, there are always questions in the queue for people awaiting answers. The subjects cover a broad range of practice areas, including employment, wills/estates, housing/real property, consumer, family, health care, civil rights, special education and more. I have answered a couple employment law questions so far, and the process has been easy.

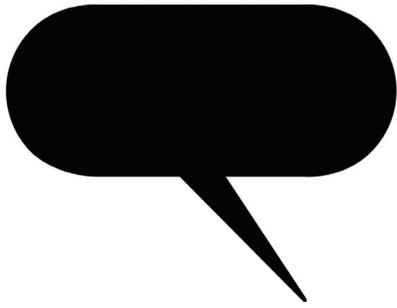
Please remember this: If you have any questions at all, please contact Ginny Martin, NHBA Legal Services Director, [gmartin@nhbar.org](mailto:gmartin@nhbar.org). She is there to help along with Pro Bono Coordinator Carolann Wooding, [cwooding@nhbar.org](mailto:cwooding@nhbar.org), who helps to administer the website.

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## Wellness Tip of the Month: Stop Office Gossip



Whether you are a victim of gossip or a contributor to it, there is no place for gossip in a healthy work environment.

*Gossip. (noun): Casual or unconstrained conversation or reports about others, typically involving details that are not confirmed as true.*

Gossip in the workplace is the death of teamwork. It kills morale, breeds distrust and disrupts productivity.



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*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.*

## NHBA Thanks CLE Committee



Members of the CLE Committee, recruited by Joanne Hinnendale, volunteered for LawLine on April 11. The participating attorneys included Dan Sklar, Kristin Fields, Dan Schwarz, Jack Crisp, Sara Crisp and Corey Belobrow.

Lawline was hosted at the Bar Center in April and staffed by members of the CLE Committee. They took 56 calls over a two-hour period, giving callers legal advice and information on many topics. Clients from seven counties called in with questions ranging from will fraud, car accidents, elder law, criminal law, and zoning issues. There was even a question regarding the co-parenting plan a former couple has for their dogs.

In attendance were attorneys Sara Crisp, Jack Crisp, Kristin Fields, Dan Schwarz, Dan Sklar and Corey Belobrow. We are extremely thankful for their participation in this important public service.

We are working on putting together

the 2020 Lawline schedule; Lawline is always held the second Tuesday of every month, from 6 p.m. to 8 p.m. Generally, it is held at a firm's location so that you may answer questions from your own office since we are able to forward Lawline calls to any land-based number. If you are looking to volunteer a couple hours of your time, once per year, please contact Yvonne Borghetti at [yborghetti@nhbar.org](mailto:yborghetti@nhbar.org). This past month we provided the largest pizzas you have ever seen for dinner and we're happy to reimburse you for take out!

Again, thank you to the CLE Committee participants and to all our volunteers. We couldn't provide this service without you.

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### Notable NH Verdicts & Settlements\*

<b>VERDICT</b> <b>\$8,500,00.00</b>	<b>Wrongful Death</b> Cyclist killed by tractor trailer
<b>SETTLEMENT</b> <b>\$4,250,000.00</b>	<b>Medical Malpractice</b> Delayed sarcoma diagnosis results in death
<b>SETTLEMENT</b> <b>\$3,750,000.00</b>	<b>Medical Malpractice</b> Mismanaged labor and delivery results in birth injury
<b>SETTLEMENT</b> <b>\$2,250,000.00</b>	<b>Medical Malpractice</b> Improper resuscitation at birth results in neurological injury
<b>VERDICT</b> <b>\$1,950,000.00</b>	<b>Medical Malpractice</b> Inadequate surgical monitoring results in blindness

\*The complete list of our record-setting verdicts and settlements can be viewed at: [www.lubinandmeyer.com](http://www.lubinandmeyer.com)

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## Bar Foundation Seeks Legal Heroes!

The Bar Foundation is now accepting nominations for the **2019 Robert E. Kirby Award** to be presented at the Annual Dinner on Thursday, September 12 at the Manchester Country Club.

In 1996, the **Robert E. Kirby Award** was created to honor Bob Kirby, a Concord attorney who passed away much too early in life but was still able to leave a lasting impression on the legal community. This award recognizes a young attorney (35 years old or younger) who demonstrates the traits of civility, courtesy, perspective and excellent advocacy. Many recipients of this honor have gone on to make their mark in NH legal history, including a US Senator, State Senator and judges from three different court divisions. Judicial representatives from each court make up the committee that chooses each year's recipient from the nominations received.

*"Receiving the Robert E. Kirby award was, at the time, and still remains, the most meaningful professional recognition I have received – not only because the namesake, Robert Kirby, was, by all accounts, a great lawyer and an even better person – but also because the characteristics it distinguishes are a reflection of the overarching ethos of New Hampshire legal practice: zealous*

*and conscientious advocacy while still being friendly, collegial, and supportive. For a young lawyer there is no better way, than this award, to come to the realization that 'I belong' with all of these experienced, supremely talented attorneys around the state who also exhibit the same kind of Robert Kirby qualities."* - **Nick Abramson, 2018 Kirby Award recipient**

*"The Kirby Award has expanded my ability to reach clients, attorneys, and more importantly, people in need. The honor of receiving the Kirby Award continues to open doors for me and allows me to expand my positive impact on those in the legal community and beyond."* - **Rory Parnell, 2019 Kirby Award recipient**

### Nominate a Legal Hero

If you know of someone within the New Hampshire legal community who you feel is worthy of the Robert E. Kirby Award, please submit your nomination by June 14, 2019. You can obtain nomination forms at [www.NHBarFoundation.org](http://www.NHBarFoundation.org) and click on the Awards tab on the right.



Past winners of the Robert E. Kirby Award at the 2017 dinner.

## Bar Foundation to Grant Nearly \$1 Million in IOLTA Funds

The NH Bar Foundation Board of Directors has approved \$950,000 for the FY 2019-2020 IOLTA Grants. Based on the recommendation from the IOLTA Grants Committee, the allocations will be:

<b>Legal Advice &amp; Referral Center</b>	<b>\$42,000</b>
<b>Disability Rights Center- NH</b>	<b>\$57,000</b>
<b>NHBA Modest Means Program</b>	<b>\$7,000</b>
<b>NH Pro Bono Lawyer Referral Service</b>	<b>\$217,000</b>
<b>New Hampshire Legal Assistance</b>	<b>\$560,000</b>
<b>Law School Loan Repayment Assistance</b>	<b>\$67,000</b>



Save The Date

# "Reaching New Heights"

Photo credit: EMS Schools

## 2019 Annual Dinner

**NEW THIS YEAR:**  
*Experience New Hampshire Silent Auction*

### Thursday, September 12 Manchester Country Club

All proceeds from this event support the charitable missions of the New Hampshire Bar Foundation to improve justice and to advance public understanding of the law.

## NEW HAMPSHIRE BAR FOUNDATION

Strengthening Justice for All



## Help us reach the most vulnerable citizens of New Hampshire

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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!

Please make your donation by May 31.

Visit [nhbarfoundation.org](http://nhbarfoundation.org) to donate

## NEW HAMPSHIRE BAR FOUNDATION

Strengthening Justice for All



## Community Notes

McDowell & Osburn is now McDowell & Morrissette in recognition of **Mark D. Morrissette's** contributions to the firm. Morrissette will continue to focus his practice on personal injury, workers compensation and medical malpractice.

The American Bankruptcy Institute announced that Bankruptcy **Judge Bruce Harwood** was named to a two-year term as the secretary for ABI's Executive Committee. An ABI member since 1989, Judge Harwood is a member of ABI's Board of Directors, past program co-chair of ABI's

Northeast Bankruptcy Conference and has served on ABI's Board of Directors' Communication, Information and Technology Committee and as Northeast Regional Chair of the ABI Endowment Fund's Development Committee.

The NH Campaign for Legal Services raised more than \$118,000 to support civil legal aid at New Hampshire Legal Assistance and the Legal Advice & Referral Center through sponsorships and individual gifts at the 2019 Campaign Kickoff Breakfast on Tuesday, April 16.



Above: **Stephanie Patrick**, executive director of the Disability Rights Center – NH, accepts the 4th Annual John E. Tobin, Jr Justice Award from the NH Campaign for Legal Services.

## Coming & Going

Gallagher, Callahan & Gartrell announced that **John Curran** has joined the firm as a shareholder and member in the litigation, municipal and insurance law departments.

CullenCollimore welcomed **Jonathan M. Shirley** as a partner. Shirley concentrates his practice on employee mobility and start-up litigation, franchise and trademarks law, copyright protection, and business ownership disputes.

**Nicholas Casolaro** recently joined Cleveland, Waters and Bass as a director. He focuses on business, intellectual property, employment and civil litigation matters.

Hinckley Allen welcomed **Owen R. Graham** as an associate in the Firm's Litigation Department in the Manchester

office. His practice focuses on commercial litigation, criminal defense, and employment law, property and trade disputes.

**Ellen Christo** of Hampton Falls has joined Revision Military as Head of Legal & Government Affairs. Revision Military is currently building their new Advanced Warfighter Equipment Development Center at Pease International Tradeport.

Bernstein Shur welcomed construction law attorney **Rick Gailuse** to the firm.

Morneau Law announced that Melissa A. Kowalewski has joined the firm. She focuses on family matters.

The Law Office of **Robert J. Moses** announced that effective May 1, the firm is located at Colonial Park, 7 Route 101-A in Amherst, NH, 03031.

## Local & Speciality Bar News



Attorney **James J. Tenn Jr.** received the Manchester Bar's Distinguished Service Award at the Annual Awards Dinner on April 16. The Manchester Bar also recognized judges from the circuit and superior courts who retired over the last year.

In photo, from left to right: Manchester Bar President Steve Dutton congratulates Jim Tenn on the Distinguished Service Award along with Richard Joyal, treasurer at Annual Awards Dinner.

### Brendon S. Browne

Brendon S. Browne, of Concord, NH passed away peacefully on Friday, April 12, 2019 at his residence. He was born on August 2, 1978, in Manchester, NH, the son of John F. and Linda A. (Allard) Browne.



Brendon grew up in Bedford and attended West High School. He graduated from the University of New Hampshire, *Summa Cum Laude*, Phi Beta Kappa, and obtained his Law Degree from University of New Hampshire Law School. His life spanned the political spectrum of New Hampshire politics. He was a State House Representative for Strafford County for 6 years. He was a political/field coordinator of many state democratic campaigns and was employed the last 5 years as the Director of Government Relations for the National Education Association- New Hampshire. (NEA-NH)

Brendon was an avid sports fan where you could find him rooting for the Patriots and Red Sox but his true passion was watching international soccer.

Brendon was a kind and gentle soul who loved his family, was a loyal friend and was best pals with Mabel, the family dog. He had a quick wit, could finish a logic puzzle in seconds and was an endless source of random facts. He never had a bad word to

say about anyone and was the most genuine person.

Members of his loving family in addition to his parents include; his sister, Chelsea Browne, many aunts and uncles, cousins, nieces and nephews.

*In lieu of flowers, family asks memorial donations be made to the New Hampshire Foundation for Teaching and Learning, 9 S. Spring Street, Concord, NH 03301 or to The New England Pet Partners, P.O. Box 534, Pelham, NH 03076. To view an online memorial, leave a message of condolence, or for more information please go to [www.phaneuf.net](http://www.phaneuf.net)*

— Concord Monitor

### Richard Clark Kimball Oldest Member of NH Bar

Richard Clark Kimball was born in late August of 1918, in New York City, and this past August was blessed to celebrate his 100th birthday, surrounded by dear friends and family. He passed away on April 28, 2019.



Richard is a descendent of the van Wyck family of New York City and Rhenen, Holland, where a tree has been planted at Prattenburg Castle in his honor.

Richard's parents were Charles W.

IN MEMORIAM continued on page 16

## Kathy's Blog



Kathleen Fortin  
Consultant

### Leadership—The Common Denominator to Success

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warmly welcomes  
**Melissa A. Kowalewski, Esq.**



to the team!

Melissa will primarily be handling family matters to include domestic violence restraining orders, divorce, parenting, and guardianships. She is a very empathetic person and cares very much for the well-being of people, which enables her to bring a client-centered approach to the emotional area of family law.

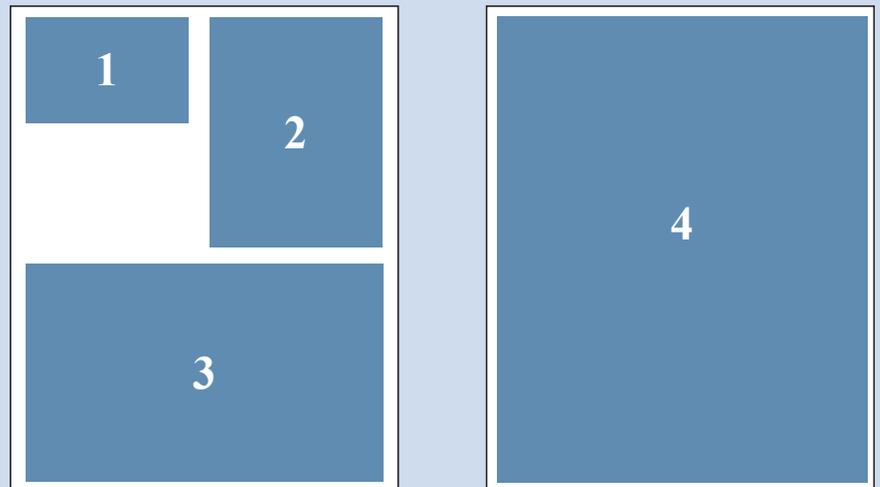
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## Professional Announcements

### Professional Announcements Rates and Sizes for June 2019-May 2020

Size Ad	Price	Width	Height
1.) 1/8 page horizontal	\$220	4.92	3.25
2.) 1/4 page vertical	\$410	4.92	6.75
3.) 1/2 page horizontal	\$595	10	6.75
4.) Full page	\$1180	10	13.63

Additional \$50 charge for color



Best wishes on your retirement!



**Attorney Diane Murphy Quinlan**

After 17 years of service to the **Roman Catholic Bishop of Manchester**, Diane Quinlan will retire from her position of Chancellor and general counsel on June 4, 2019.

In 2004, she was the first layperson appointed Chancellor in the diocese's 135 year history.

Congratulations Diane!



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Our contact information otherwise remains unchanged so that we can be contacted by phone at (603) 673-5260, by mail at P.O. Box 8, Amherst, NH 03031 or email at either

Heidi@robertmosesatty.com  
 Erica@robertmosesatty.com

We look forward to continuing to represent our current clients and to welcoming new clients who are also now being accepted.

We are proud to announce that the name of the firm has been changed to add Mark D. Morrissette in recognition of his substantial contributions to the firm.

Mark will continue to focus his practice on personal injury, workers compensation and medical malpractice.

We are excited to share this news and reaffirm our commitment to serving the legal needs of individuals for many years to come.

Please join us in congratulating Mark!

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We are pleased to announce that

## Attorney John Curran



has joined the firm as a shareholder and member in the Litigation, Municipal and Insurance Law departments.



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## CullenCollimore pllc

is pleased to welcome as a partner



### Jonathan M. Shirley

Jonathan concentrates his practice on employee mobility and start-up litigation, franchise and trademark law, copyright protection, and business ownership disputes.

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## WE ARE PLEASED TO WELCOME NICHOLAS CASOLARO TO THE CLEVELAND, WATERS AND BASS TEAM



**Nick Casolaro** is a graduate of the College of the Holy Cross and received his J.D. from the University of New Hampshire School of Law in 2011. Since then, he has represented businesses and individuals in complex commercial litigation and employment matters at one of New Hampshire's largest law firms and has been recognized for the past several years as a Rising Star by New England Super Lawyers. Admitted to practice in New Hampshire and Massachusetts, Nick will join Cleveland, Waters and Bass as a Director and will assist clients with a variety of business, intellectual property, employment and civil litigation matters.



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# New Hampshire Bar Association PRO BONO HONOR ROLL

## March and April 2019 Attorney Honor Roll

The attorneys listed here each accepted one or more cases referred by the New Hampshire Pro Bono Referral Program during the month of March and April 2019. Gold stars indicate attorneys who accepted more than one Pro Bono case during the course of the month.

### BELKNAP

Allison Ambrose  
Shawna Bentley  
Dennis Ducharme  
Jeremy Eggleton

### CARROLL

Anne Barber  
Robert Young

### CHESHIRE

Christian Lund  
Kenneth Walton

### GRAFTON

Quentin Blaine  
Kevin Carr  
Dawn DiManna  
Kristin Sheppe  
Dennis Thivierge

### HILLSBOROUGH (N)

Heidi Ames  
Mark Beaudoin  
Devin Bolger  
Jacqueline Botchman ★  
Nicholas Brodich  
Erin Bucksbaum  
Vera Buck  
Talia Burghard  
Stephanie Burnham  
Ashley Campbell  
Timothy Chevalier  
Edward Cross  
Stephen Martin  
Olivier Sakellarios ★  
Kirk Simoneau ★  
Eric Sommers

### HILLSBOROUGH (S)

Sandra Bloomenthal  
David Buckley  
Kathy Cellamare  
Colin Jean  
Melissa Kowalewski ★  
Gregory Martin  
Kevin Rauseo  
Lyndsay Robinson ★

Tanya Spony ★  
Shawn Sweeney

### MERRIMACK

Randi Bouchard ★  
John Brandt  
Cassandra Brown  
Joseph Conti  
John Garvey  
Michael Lewis  
Thomas Neal  
James Shepard  
Andrew Winters

### ROCKINGHAM

Ann Barber ★  
Cindy Bodendorf  
Stephanie Burnham  
Dawn Dimanna ★  
Scott Harris  
Donald Hebert  
Robert Hunt  
Rebecca McBeath  
Philip Pettis  
Kirk Simoneau ★  
Richard Spead  
Joanne Stella

### STRAFFORD

Lisa Walker

Special thanks to attorneys providing advice and unbundled services at Pro Bono clinics in March and April:

### Plymouth Periodic Payment Hearings

Quentin Blaine  
Kristin Sheppe

### Criminal Record Annulment Clinic

Donna Brown  
John Draghi  
Debra Dupont  
Karl Durand  
Neil Nicholson  
Lisa Walker

## First Quarter 2019 Law Firm Honor Roll

Our thanks to the following law firms who made it possible for their attorneys to participate in Pro Bono. This list includes firms whose attorneys accepted cases from January through March 2019. This list does not include the hundreds of firms whose attorneys have ongoing cases.

### BELKNAP

Westcott Law  
Minkow & Mahoney Mullen

### CHESHIRE

Bradley & Faulkner

### GRAFTON

Baker & Hayes  
Simpson & Mulligan

### HILLSBOROUGH (N)

Backus Meyer Branch  
Bernstein Shur Sawyer & Nelson  
Butenhof & Bomster  
Hage Hodes  
Harvey, Mahoney & Bakis  
McLane Middleton  
Nixon Peabody  
Nixon Vogelmann Slawsky & Simoneau  
Primmer Piper Eggleston & Cramer  
Sakellarios & Associates  
Shaughnessy Raiche  
Wadleigh Starr & Peters

### HILLSBOROUGH (S)

Barry & Honorow  
Bloomenthal Law Office  
Chadwick Fricano Weber  
Morneau Law

Shepherd & Osborne  
Smith-Weiss & Shepard

### MERRIMACK

Brown Bouchard & Randall  
Davis Hunt Law  
Greenblott & O'Rourke  
Law Offices of Martin & Hipple  
McCandless & Nicholson  
McDonald Rogers & Lorman  
Orr & Reno  
Sulloway & Hollis  
Upton & Hatfield

### ROCKINGHAM

Driscoll Law Office  
Herbert & Dolder  
Parnell Michels & McKay  
Sisti Law Office

### STRAFFORD

Burns, Bryant, Cox, Rockefeller & Durkin  
Nary, Norris & Schlapak

### OUT-OF-STATE

Mullaney & Lund

“No one is useless in this world who lightens the burdens of another.”

– Charles Dickens



## Check the Box Support ProBono

Check the box on your annual dues statement to make a tax-deductible donation to the NHBA Pro Bono Referral Program. Your contribution supports the legal efforts of volunteer attorneys, making a real difference for the most vulnerable and needy in our communities.

“It’s satisfying work, and it makes the world a better place.”

– Marilyn Mahoney,  
Manchester attorney

“Your program changed my life for the better.”

– Kelsey G.  
Divorce client





# 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:

\$140 per person (covers green fees and cart costs in addition to a tax-deductible donation to the Pro Bono Program)

\$119 for Attorneys Admitted to the NHBA after 2014

Golfers may sign up as a team or individually; single players will be matched up with teams. The field is limited to the first 120 players. All payments are due by August 2, 2019. Checks made out to the “NH Pro Bono Program” may be sent to NH Pro Bono Program, 2 Pillsbury Street, Suite 300, Concord, NH 03301. Credit Card payments accepted through the online store at [www.nhbar.org](http://www.nhbar.org).

Please email: [probono@nhbar.org](mailto:probono@nhbar.org) for links to online registration form, or, for returning players, just send us an email with your team information. Thank you!

Please make checks payable to:  
NH Pro Bono Program  
2 Pillsbury Street, Suite 300  
Concord, NH 03301



Questions? Call 603-715-3203  
Sue Alexander - Coordinator  
[salexander@nhbar.org](mailto:salexander@nhbar.org)  
Ginny Martin - Program Director  
[GMartin@NHBar.org](mailto:GMartin@NHBar.org)

## Thank you to our new & returning “early-bird” sponsors!

### Closest-to-the-pin Contest

Exchange Authority

### The Golf Carts

Devine Millimet

### Hole Sponsor

Granite Recovery Centers  
McLane Middleton

### The Putting Contest

NEEBCO

### Tee/Pin Sponsors

Patti Blanchette  
Cross Insurance  
Fiduciary Trust  
Hess Gehris  
Jackson Lewis  
Judge Robert Morrill  
O'Connor & Drew  
Savings Bank of Walpole

### Donation

Wescott Law

More sponsorship opportunities available—please call Donna Parker 715-3263, or email [dparker@nhbar.org](mailto:dparker@nhbar.org).

## Gregoire from page 1

“I transferred to Northeastern and got into political science and the pre-law program ... I went from being a mediocre pharmacy student to a top-of-the-class pre-law student.”

Gregoire says he was attracted to the “air of professionalism” surrounding lawyers as well as the profession’s commitment to service.

“Every day, my dad ironed his shirt and put on his suit and a tie and to a little kid that was intriguing,” he recalls. “Sheehan Phinney also has a really rich history of community service. As I got older, I thought ‘That’s great. Not only can he be a professional but the firm supports his ability to give back to the community.’”

While in college, Gregoire studied in London for six months, working with a member of Parliament who was close to David Cameron, who later became prime minister.

“I got a chance to meet and get to know David Cameron,” he says. “It was the coolest thing I’ve ever done.”

Vermont Law School followed, and Gregoire earned his juris doctor in 2010, along the way serving as a summer associate at Cleveland, Waters and Bass one year and at Sheehan Phinney the next. Sheehan Phinney offered him a job after graduation, and he has been there since.

His health care concentration, he says, is “a total fluke.”

“I started out at Sheehan Phinney as a business litigator,” he says. “I wanted to be in court. I was on the moot court team at Vermont Law. I loved trial class. I loved being on my feet. I loved civil procedure.”

But when an associate was needed to help with a will contest case, the trajectory of his career path changed.

“It was my first trial with a partner and he really liked my work,” Gregoire says.

Six months later, that led to his being assigned to a case in which the firm represented Exeter Hospital and St. Joseph’s Hospital in their challenge of the state’s Medicaid Enhancement Tax, which they contended was unconstitutional.

“That case exposed me to health care in New Hampshire,” Gregoire says. “I was on weekly phone calls with all 26 CEOs of New Hampshire hospitals, meeting with [then] Gov. Hassan, the commissioner of revenue administration, legislative officials. It was an incredible experience for me as a fourth- and fifth-year associate.”

Ultimately, “a global settlement led to the tax remaining in effect, but with significant concessions made, almost restructuring the way the tax was calculated,” he adds.

His work had not gone unnoticed by



Jason Gregoire as a boy, with his father, Daniel.

Katherine Hanna, chair of the health care group at Sheehan Phinney, who was looking for an associate who could take over her practice when she retired — she offered the position to Gregoire, who accepted.

Hanna remains a fan.

“Jason brings to his practice a unique blend of skill, diligence, compassion and exuberance,” Hanna says. “In the midst of his busy professional life, he also places a premium on serving the community and being a conscientious dad to his three young children.”

Dr. Christopher Daniell, owner of Concord Otolaryngology/Head & Neck Surgery, likewise says Gregoire has provided “exceptional guidance through both favorable times and times of turbulence.”

“He has a quick grasp of the legal issues and has an unfailing ability to find equilibrium between what the law may allow and what strategies beyond mere legal recourse are required to bring resolution,” Daniell adds. “Understanding all parties, appreciating when, where and how to leverage, and to advocate diplomatically is his stock-in-trade.”

True to his commitment to community involvement, Gregoire serves on the boards of the New Hampshire Providers Association, a not-for-profit trade group that represents the interests of the state’s substance abuse treatment facilities, and the New Hampshire Long Term Care Foundation, which provides scholarships to employees who work in long-term care facilities. Active in the New Hampshire Health Care Association, he also does speaking engagements for health care trade groups.

A former chair of the conservation commission in his adopted town of Exeter, he



The Gregoire family: (from left) Kiele, holding Zoe, and Jason, with Hayes and Wyn.

is also active on the trails committee there, reflecting a love of the outdoors he tries to share with his family.

He married Kiele, his high school sweetheart, and the two are parents to sons Hayes, 6, and Wyn, 3, and daughter Zoe, two months.

“I try really hard to be home at night to get there for bedtime and on weekends

spending time with the kids and getting them into nature,” Gregoire says. “I love to hike, trail-run, surf over in North Hampton and do a little overnight backyard camping.”

“I absolutely love being a dad,” he adds.

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

## In Memoriam from page 11

Kimball and Mary (Coffin) Kimball, both of NYC. His brother, Cyril V.W. Kimball, MD, and sister, Natalie M. Kimball, both pre-deceased him.

Richard was a devoted and loving husband, married 67 years to his wife Eleanor D. Kimball, who passed in 2009. The two were inseparable. Richard and Eleanor are survived by their two daughters, Susan E. Rice and her husband, Robert E. Rice, Jr., of Rowley, MA, and Melanie A. Watson and her husband, Gregory W. Dayton, of Lancaster, NH. Richard was also a beloved grandfather to his two grandchildren, Julia (Watson) Parise of Colchester, Vermont, and Benjamin Watson, who is currently receiving his doctorate in Chinese medicine in Asheville, North Carolina. This was something Richard was enormously proud of. Richard was also very proud of his great grandson, Leonardo Parise who is the child of Julia and Andrew Parise. Leo was born just before Richard turned 100.

Richard was admitted as an attorney and member of the Bar in the states of New York, Florida and New Hampshire, and practiced as an attorney for many years in Lancaster, with his wife, Eleanor as his assistant. Before that he was Vice President and Trust Officer at the Indian Head North Bank in Littleton, New Hampshire.

Richard also practiced as an associate attorney with the law firm of Gasser & Hayes in New York City, and was Vice President and Senior Trust Officer at the Bank of Clearwater in Clearwater, Florida. He also was a Vice President and Trust Officer at the First National Bank in St. Petersburg, Florida and was an associate attorney at McFarland, Ferguson, Allison & Kelly in Tampa, Florida.

Richard graduated from Syracuse University, School of Law second in his class, with a jurist doctorate and served in the Navy and Coast Guard during World War II. He was also a member of the cavalry in Michigan in 1938.

Richard was an avid runner, gardener, golfer and hiker, having done New Hampshire’s portion of the Appalachian Mountain Trail. He had a wonderful sense of humor, and was seldom seen without Eleanor and one of his many golden retrievers by his side.

A graveside service with military honors will be held on Thursday, May 30 at 3:30 pm in Littleton, NH at the Wheeler Hill Cemetery on Rte 135. Please also join the family at the Mountain View Grand in Whitefield, NH, in the Eisenhower Library on Thursday, May 30th at 4:30 p.m. following the Service.

*Richard loved animals and supported their causes. In lieu of flowers, it would be greatly appreciated if you were to make a donation to Guiding Eyes for the Blind in honor and memory of Richard, who loved a good dog! The organization will name a puppy after Richard if all donations total \$5,000. Your generosity is very much appreciated. Guiding Eyes for the Blind, Headquarters and Training Center: 611 Granite Springs Rd., Yorktown Heights, NY 10598.*

<https://www.guidingeyes.org>.

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



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2. At a recent CLE, a longtime member came up to me and out of nowhere explained, “You know I always wanted to tell someone that the thing that bugs me about the Bar Association is that my dues have to go pay for all those legal services for the poor.”

I would assign this misstatement 3 Pinocchios, largely based on the fact that the legal services organizations are somewhat complicated, and many people misapprehend what the various organizations do. Nevertheless, the fact is that the New Hampshire Pro Bono system, along with the other Bar Association legal services programs such as Free Legal Answers over the internet, are all funded by separate grants and organizations such as the United Way and the IOLTA program. No Bar dues go to paying for any of the salaries or programs put forth by the New Hampshire Pro Bono system, or its affiliates.

3. On another subject, I was told, “The Bar keeps making it harder and harder to stay in compliance with all these CLE hours and affidavits.”

This is a statement worth 4 Pinocchios. Let’s be clear: the compliance components are the requirements of the Supreme Court and their MCLE committee. The same holds true for the fines. The Bar Association, at the request of the Court, administers the programs to ensure that lawyers are timely with their filings and avoid the fines. Rather than make compliance harder, the Bar endeavors to ease the burden of compliance at every stage. The Bar receives hundreds of phone calls and emails requesting assistance in the final steps of the process. Believe it or not, this is New Hampshire and members still get personalized, one-on-one assistance from members of the Bar staff to bring their CLE requirements and trust accounting affidavit into acceptable form. Likewise, the Bar

spends considerable time in outreach programs to train lawyers and legal assistants in using the Attorney Reporting Tool (ART) and the member portal to provide an early online road map.

4. I have also heard on more than one occasion from members that the Bar is controlled by the big firms and lawyers who don’t have to meet a payroll every week.

This generalization receives 3 Pinocchios. While the larger firms in the State are always very active in our Bar Association, the fact is that 21 of the 35 past presidents of the Bar Association have been from solo practices or small firms. The same mix is true for committee chairmen and section members, all of whom are significantly populated with small firm and solo practitioners.

## Find these and other Member Resources at **NHBAR.ORG**

### Stay in Compliance

311 Attorney License Renewal

### Manage Your Membership

Membership ID Card  
Request Letter of Good Standing

### Manage Your Practice

Lawyer Referral Service  
Law Office Back-up  
Bar Center Meeting Space

### Professional Development

Job Board  
Lawyer Referral Service  
NHBA•CLE Courses

### Vendor Directory

### Networking & Career Support

Practice Area Sections  
New Lawyers Committee  
Dispute Resolution

### Serve the Community

Pro Bono Opportunities  
A Lawyer & Judge in Every School  
Write for Bar News

### Professionalism & Ethics

NH Litigation Guidelines  
Criminal Jury Instructions  
Rules of Professional Conduct

### Affinity Partners

Casemaker – FREE!  
Clio and MyCase Discounts  
LawPay – Free Trial!

5. Finally, several months ago, I was dumbfounded to hear a member tell me that the Bar Association really didn’t do anything for him and his solo practice.

Jumpin’ Jehosephat! If I could assign 6 Pinocchios to the statement I would, but in the exercise of discretion I will limit to the 5. The fact is that the Bar Association provides myriad services targeted to solo and small firm practitioners and advertises them extensively. With most of these programs, the Bar subsidizes the cost so that the practice enhancer is either free or at a reduced cost. A few examples include (see sidebar for more):

- **Research and business tools:** Casemaker is provided free of charge to all members of the association, and is heavily used by our members. In 2018, there were over 2,000 active Casemaker accounts being utilized by our members, resulting in almost a quarter-million active searches — all done for free. However, Casemaker is only the tip of the iceberg. As for law practice management, the Bar Association has negotiated special offers for members to use Law Pay along with Clio and My Case, which are invaluable services helping to manage busy and increasingly complicated law practices.
- **Services to help run and grow your practice:** Having a problem with the client, or with another lawyer? The Bar offers a free mediation and arbitration program through its Dispute Resolution Committee. Members of

the committee are some of the most experienced mediators and arbitrators in the state, and as a member service the Bar provides this free service to all members of the Association. Looking for work? Consider the Lawyer Referral Service (LRS). This Bar service last year produced over \$1,600,000 in fees for our members and made over 2,800 full fee referrals. If you have insurance needs, the Bar recently entered into an exclusive endorsement with Amity Insurance Agency. While Amity specializes in Attorney Liability Insurance, it also provides a wide range of other valuable coverages such as workers’ compensation, employment practices liability, general liability, and cyber liability coverages, all applicable to law offices big or small. The Bar monitors the performance of Amity, to ensure that members are getting the best coverage at the best price.

- **Legal education opportunities:** Of course, probably the best known and largest member benefit is the part of the Bar Association that produces over 50 Continuing Legal Education programs a year, and recently launched a series of one-hour “Learn@Lunch” programs that are available remotely. Based upon statistics from the ABA, our legal education efforts provide more programming hours than virtually any other state for our size bar.

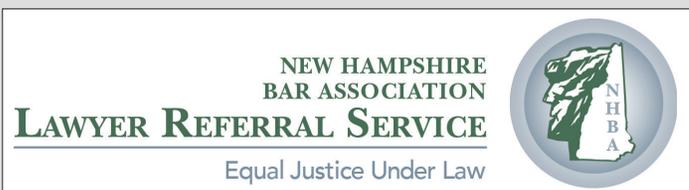
Peering into the future a little bit, the Bar is presently working on a technology program that will bring one-on-one free consultation to bar members by nationally recognized legal technology experts. Technology being an ever-increasing driving force in practice, this serves as an important example of the Bar’s efforts to improve the relevance of its member offerings.

So, in conclusion, I would say I was truly surprised by how many members don’t really understand the Bar Association’s services and benefits. There are a long list of programs and offerings that are not profiled in this article that undoubtedly go unknown to many members.

Here is a plea: please familiarize yourself with the Association’s many offerings, and a good place to start is the Bar’s website at [www.nhbar.org](http://www.nhbar.org).

I think it was Michel de Montaigne, way back in the 16th century, who said, “Nothing is so firmly believed as that which is least known.” Some things never change. As time goes by, I intend to make it my mission to better educate members, so we can all happily arrive at a no Pinocchio world, at least as concerns your Bar Association.

## Lawyer Referral Service Launches Referrals for Attorney Discipline Issues



The Association’s Lawyer Referral Service (LRS) is now offering confidential referrals for attorneys seeking counsel for ethical or attorney discipline issues before the Attorney Discipline Office or Professional Conduct Committee.

With input from the NH Ethics Committee and the Attorney Discipline Office, the LRS oversight committee developed experience standards for attorneys wishing to receive referrals to advise and/or represent attorneys facing grievances, including proceedings before the Professional Conduct Committee. In addition to the experience standards, all LRS attorneys must carry professional liability insurance.

“LRS is not just a source of attorney referrals for the public, it is

also a source of referrals between Bar members,” said Brad Kuster, Chair of the LRS Subcommittee. “Attorneys may not know who to call if they receive a notice of complaint, but can now request referrals to attorneys with experience in handling these cases, anonymously if preferred.”

LRS panel members agree to provide up to a 30-minute consultation for no more than \$25, if at all. After that, panel members charge their usual legal fees.

To request a referral, call (603) 229-0002 or request a referral online at [nhbar.org/lawyer-referral-service](http://nhbar.org/lawyer-referral-service). Attorneys interested in joining the panel to receive these referrals can find more information by clicking “Join LRS” at [nhbar.org](http://nhbar.org).

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For practitioners who are accustomed to manually capturing their time on paper, some professionals write the details of the time spent, the client or matter and a description of the task on time sheets or in dedicated time-tracking notebooks. The details on the sheets are then subsequently entered into the billing database by the practitioner or another staff member. For practitioners who want to manually capture their time, they should avoid keeping details across multiple notebooks or Post-it notes, as they'll waste time searching for the notes to bill.

A more direct method to record time is having individual timekeepers (e.g., lawyers, paralegals or limited license legal technicians) electronically input their time straight into billing systems. This avoids the duplication of writing out the details on paper and then transferring notes into the billing system later.

Some time and billing systems are free-standing programs. For example, TimeSolv, Time59 and Bill4Time offer time tracking, trust accounting features and LEDES invoicing in robust solutions. EBillity's Time Tracker Legal may appeal to solos looking for ease and affordability. Tabs3 has a desktop-based program that can run customizable reports. Tali is a voice-based time-tracking application that can integrate with several programs.

Time and billing features are directly integrated with most law practice management solutions, such as Clio, MyCase, Rocket Matter and PracticePanther, among others. Legal technology is constantly evolving to add features that increase functionality and improve organizational management.

### Time-saving Features in Billing Programs

Numerous features in time and billing systems provide efficiencies. Here are some highlights:

- Digital voice assistants allow users to log time entries and start or stop timers without needing to type on a keyboard. Considering that most people speak faster than they type, this can be a quick way to capture time when time is limited. Entries can be reviewed, edited and synced to client management systems.
- Automatic timers allow users to start and stop time rather than tracking time manually by looking at a clock. Some programs allow users to have multiple draft entries in the background so that they can switch back and forth quickly. Automatic time-tracking systems can run in the background on computers or mobile devices.
- Other helpful features include automated electronic bill reminders, integration with electronic payment processing services, billing systems that can handle multiple payment methods and currencies, client portals, client lead generation tracking, text expansion and provisions to make tracking fixed-fee matters simpler.

Whichever system is chosen, it's useful to have a list of standard abbreviations and phrases for common tasks that the office performs. As a default, attorneys can also use codes, such as the ABA's Uniform Task-Based Management Litigation Code Set. Having a list of standard abbreviations or codes also makes reviewing and editing prebills faster and easier as you will have more consistency.

### Tracking Nonbillable Hours to Highlight (In)efficiencies

Tracking categories for nonbillable hours can illuminate areas that could benefit from increased efficiencies or be outsourced. This is particularly true for areas within billing and financials, marketing, firm organization and administration.

For firms spending a significant amount of time on billing and financials, lawyers could utilize technology systems and/or consultants that perform financial assistance for legal services, such as electronic payment processing software, law practice management software with built-in enhancements for time and billing, bookkeeping services that specialize in helping law firms or consultants who assist with generating bills and collections. It's recommended that lawyers choose services that specialize in helping legal professionals and that those services comply with the rules of professional conduct.

Tracking nonbillable time can also illustrate the significant amount of time spent on marketing and business development. Legal professionals may find it's a better use of time to outsource to services or consultants that handle firm website design, search engine optimization and internet marketing services. For example, attorneys should consider whether it would be a productive use of time to devote numerous hours to learning about websites and making websites look professional versus outsourcing and using that time for billable hours. Not every task related to running a practice is in an attorney's wheelhouse, and that's okay. Outsourcing nonbillable tasks to people who are highly proficient at what they do allows attorneys to concentrate on the areas in which they are more proficient, such as practicing law.

If tracking your time reveals that too much time is spent on firm organization and administration, upgrading to a more robust law practice management solution could help. Also, attorneys should determine whether clerical work is taking longer because office equipment, hardware and software are not functioning at capacity. You may be losing significant time if they're freezing, jamming or causing work-arounds. The 2019 Solo and Small Firm Legal Technology Guide is a good resource for recommendations.

To free up administrative time, consider scheduling tools such as Calendly or FindTime, or subscribing to virtual receptionist firms. When contracting with each vendor, be sure to thoroughly vet the service and confirm its compliance with the rules of professional conduct, especially regarding conflicts and confidentiality.

### Conclusion

Attorneys can benefit from incorporating time-tracking programs into their daily routines. Once legal professionals have a better sense of where the time in their day goes, both billable and nonbillable, they'll be able to incorporate time-saving techniques to increase efficiencies in their firms.

*Laura Keeler is the member services and law practice management coordinator at NHBA. Contact her: LKeeler@nhbar.org. ©2019. Published in Law Practice, May 2019, by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association or the copyright holder.*



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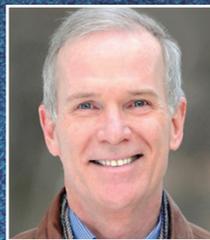
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## Treatment from page 1

But despite significant hurdles, local treatment court leaders have made adaptations to a national model to help the programs grow in a state with limited government funding. As New Hampshire's first drug court marks 15 years of operation, here's a look at how problem-solving courts have been working on the ground, from innovations to roadblocks.

### A Seat at the Table for Recovery Coaches

"When I was offered this [position], I said I wasn't doing it without a recovery coach," Clairmont recalls. "They're such an integral part of what we do."

A recovery coach is a non-clinical professional who supports a client diagnosed with substance misuse disorder. Many have personal experience in recovery and can become licensed by the state as certified recovery support workers with 46 hours of training, 500 hours of paid or volunteer work, and 25 supervision hours.

While most drug courts have a recovery coach available to participants as part of treatment, Clairmont decided to elevate the position to a core member of the team that meets at the courthouse each week. Although it's not a practice that's outlined in national standards, Statewide Drug Court Coordinator Alex Casale said Clairmont's idea was innovative, and worth proposing to other counties.

According to the National Association of Drug Court Professionals, studies haven't yet examined the impact of having community representatives such as peer mentors or sponsors on the drug court team beyond those representing law enforcement, the court system, and the treatment provider. However, "anecdotal reports suggest this practice can enhance team decision making and effectiveness," the Adult Drug Court Best Practice Standards note.

Clairmont has found that the lived experiences of the program's recovery coach, Reid Poosikian, create the best rapport with clients — "I think it's critical to have [recovery coaches] on the team... they should always have an alliance with the client."

Judge John Kissinger, who presides over the Merrimack County Drug Court and helped to found Keene's program, also sees the benefits of giving recovery coaches more input.

"That's a person who can really connect with the participants and relate their own experiences, which is a huge asset," he says.

And, Christopher Ruggles, the first graduate of the Merrimack County Drug Court, agrees.

"Technically, I could pretty much say [the team members] were all my recovery coaches ... but Reid and I have been to [AA] meetings before," he says. "Having someone else who's like you ... [is] very important."

### Trauma-Informed Justice

Another idea that has been reshaping the criminal justice sector is integrating trauma-informed care.

According to the "Pedagogy of Trauma-Informed Lawyering," research published by Temple University, "'Trauma-informed practice' is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner puts the realities of the client's trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client's trauma experience."

New Hampshire data show that a significant number of adults — nearly 50 percent — have experienced childhood trauma. And, a 2018 report found a link between those experiences and adults who are now unhealthy or engaging in unhealthy behaviors, according to the "Health Indicators in Adults and Adverse Childhood Experiences (ACEs)," published by the NH Dept. of Health and Human Services.

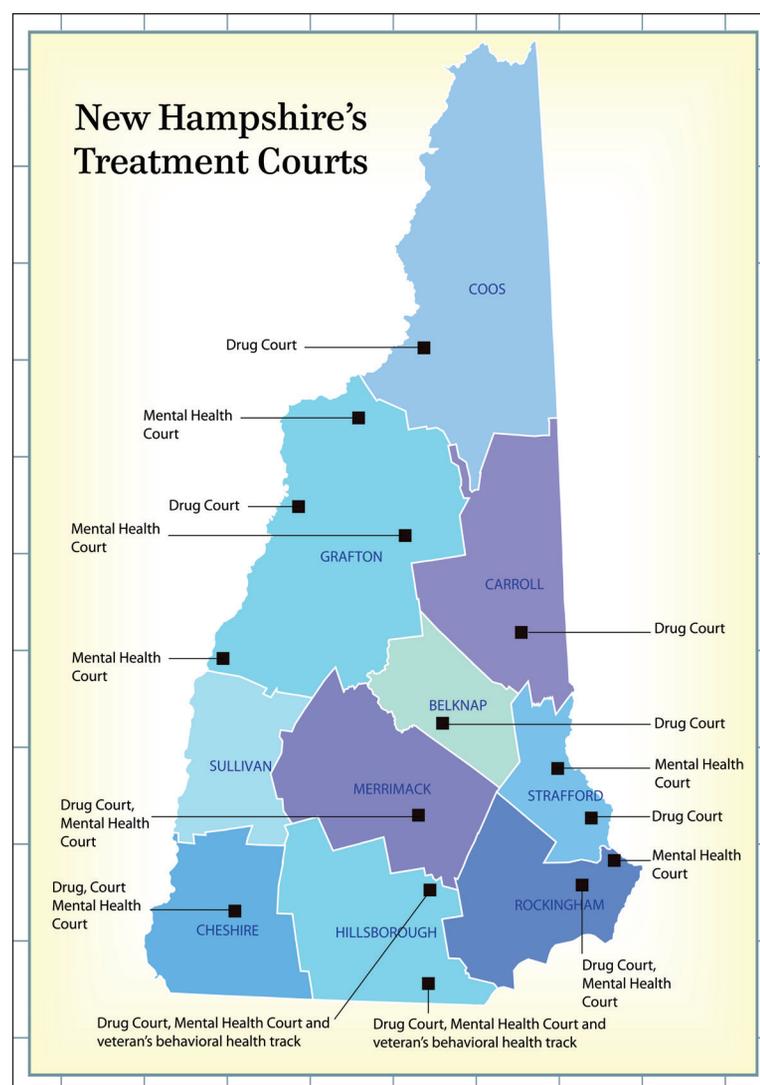
For example: "the percentage of heavy drinkers who experienced ACEs (61 percent) was larger than the percentage among those who do not engage in heavy drinking (49 percent)." ACEs include verbal, physical or sexual abuse as well as neglect or dysfunctional family conditions or events such as mental illness, substance abuse, domestic violence or incarceration. ACEs have been linked to adverse health outcomes in adults, including depression, substance abuse, cardiovascular disease, and premature mortality, the report says.

"Close to 65 percent [of participants] have substantial trauma in their lives or in their backgrounds," said NH Superior Court Chief Justice Tina Nadeau. "Dealing with that is important in addition to and in conjunction with the substance abuse disorder."

Strafford County Attorney Tom Velardi, who oversees the 15-year-old drug court in the Strafford superior court, as well as the Rochester mental health program in the circuit court, says his programs have been moving to trauma-informed care.

"Sometimes what you think clients need is an incomplete picture ... by ignoring the direct or vicarious trauma of the person receiving substance abuse treatment," he says. "Step one is opening your eyes to this issue."

Velardi acknowledges that the ap-



Information from the Judicial Branch. Cover: NH Superior Court Chief Justice Tina Nadeau speaks at Merrimack County Drug Court's first graduation.

Part II of an ongoing series examining the justice system's response to the state's behavioral health crises, produced by the Granite State News Collaborative. To learn more and read additional coverage, visit [www.nhbar.org/publications/BarNews](http://www.nhbar.org/publications/BarNews).

proach "may seem obvious in hindsight." In a Strafford County courtroom, for example, he says staff have talked about changing the room set-up — so treatment court participants aren't anxious about having people at their backs — and improving interactions to make clients more comfortable and avoid re-traumatizing them.

"What can I do to make this a more supportive atmosphere while still holding each of these clients accountable?" Velardi says of the new thought process. "Can we be doing something better? No specialty court should do more harm than it does good."

In Merrimack County, one example of using the trauma-informed approach happened when leaders made the decision two months ago to switch to a divided docket where women appear first in front of Judge Kissinger while the men wait outside.

"I'm very convinced that this helps the

people who are survivors of trauma," Kissinger says. "Female participants relate to team when they're called up individually. They're a lot more willing to talk about their circumstances and struggles ..."

Indeed, almost every one of the four women in drug court on April 1 in Concord was forthcoming and open in front of the judge — sharing the good and the bad.

"I've definitely had some cravings," one woman said. "Some days are worse than others ... I've been able to work through it so far."

Another woman was released from a residential treatment program three days before the court session.

"I did stay sober this weekend," she said, beginning to cry. "The first couple days ... that's the hardest."

The group of male participants, more than a dozen, more frequently had simple

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“yes” or “no” answers for Judge Kissinger when they approached the bench.

Drug court leaders aren't the only ones learning about trauma — Clairmont says participants learn more about their own experiences as the program progresses.

“Our clients have been so desensitized that they do not even really identify their experiences as traumatic when asked (likely because they are disassociating or using another defense mechanism),” she says.

If clients are asked in assessments whether they've experienced trauma, they often say no. But, if they're asked, “Have you ever been assaulted, raped, threatened or witnessed something of the sort?” Clairmont says clients often say yes.

Additionally, she says clinicians are mindful when putting groups of participants together in a peer group — “For example, if there is a woman with a significant trauma history with men and we have a male who has a history of DV [domestic violence] we will make sure to not put them together,” she says.

One of the groups, which provides evidenced-based curriculum for people with substance use disorder, is always divided by gender, allowing the clients to develop coping and stress management skills. With the right tools, they'll be able to manage symptoms of trauma and ideally, become strong enough to do more in-depth trauma work down the road, Clairmont says.

#### On the Horizon: More Integration?

As the state's treatment courts evolve, there's always room to improve, especially when experts say the third wave of the country's opioid epidemic — fentanyl — is cresting. While the number of overdoses in Manchester and Nashua dropped this spring, deaths from overdoses actually increased according to American Medical Response data. The state has received \$35 million in federal funding over the past year to launch a new response system called “The Doorway.”

Many of the state's most significant challenges, including treatment resources, housing and transportation, weighed on the minds of many drug court participants on April 1 in Concord.

Several of the participants who appeared in front of Judge Kissinger were traveling from sober homes and jobs miles away from Concord to their weekly court appearances. Many were desperately trying to get their drivers' licenses back.

A new inductee who had been in the program less than a week was going back and forth to the court from Concord Hospital, where his newborn son was detoxing.

“I have \$3 in my pocket,” said another man, biting his nails, who was looking for a bed in a residential program because his



“I think that it's a great model but its only one part of the way that we need to address people with substance abuse disorder and mental health problems who are connected with the [justice system].”

— Judge John Kissinger (applauding Christopher Ruggles (right), the first graduate of Merrimack County Drug Court, as Ruggles' daughter holds his certificate.)

family's patience was wearing thin. “Can I go back to work?”

With only one clean drug test to his record, he needed a full week of clean tests before Judge Kissinger would approve the request.

Another participant described anxiety and panic attacks as she wiped away tears — “That's why I used.” She tried to calculate how she would make it to another check-in the next day and attend a courtroom session later that week to fulfill her sanctions for the week.

“Oh boy ... oh boy,” she said under her breath. “Just getting a ride there...”

“I don't want to make this impossible for you,” Judge Kissinger responded, adding that he wanted to give her credit for being honest about her substance use. “I'm glad you're here.”

Ruggles, Merrimack County's first graduate, says he was “very lucky” to have a family to count on but he frequently saw other drug court participants stumble in recovery because of homelessness. Now that he's completed the program, he plans to lobby state lawmakers to support temporary housing for drug court participants.

“I know it's a longshot, but I need to try,” he says. “They deserve a chance and living on the streets is a 100 percent losing battle.”

The lack of resources means second chances aren't available to everyone. Of the approximately 1,000 felony charges a year in Merrimack County, Kissinger says drug court treats 60 to 70 people, or 6 to 7 percent.

“I think that it's a great model but its only one part of the way that we need to address people with substance abuse disorder

and mental health problems who are connected with the [justice system],” he says.

Velardi, the Strafford County Attorney, sees the need for better integration between the state's mental health and drug courts. For one thing, he says it's challenging to keep mental health courts running in the busy circuit court system, given the significant time judges must contribute to the program.

“We're talking about the exact same issues,” Velardi says. “It continues to surprise me that we don't have a more integrated approach which would deal with a client on a holistic basis ...”

Blair Rowlett is the community supervision director for Strafford County Community Corrections and oversees the mental health court. The Strafford County-Rochester District Mental Health Court has had 76 graduates since it was established in 2007 and the program currently serves 15 participants.

Rowlett says the idea of a “general treatment court,” where high risk and low risk offenders are mixed, might not be right for some of her clients — “Are they then victimized? I see some of my clients who would be very easily taken advantage of...”

While the county's mental health court boasts a 20 percent recidivism rate for its graduates, the program remains a pilot project with time donated by team members and weekly half-hour court sessions dependent upon the schedule of one judge.

Rowlett and others are watching a new piece of legislation, SB 51, that will establish a commission to study the expansion of mental health courts statewide, as there are currently no mental health courts operating in Belknap, Carroll, Coos, and Sullivan

counties.

Mental health court leaders are interested in establishing best practices because, unlike drug court, there are no national standards for mental health courts. Locally, there is also a need to gather statistics and measure success. The commission will submit a report on its findings before November 1, 2019.

Meanwhile, a 2016 independent review of the state's child welfare agency recommended increasing the availability and reach of drug courts to better protect children at risk and to create more “meaningful” collaboration between DCYF and the court system. (See story on page 1).

Clairmont is already trying to better integrate families into her drug court.

She says she was encouraged at a recent national drug court training to think of her court as a “family drug court” and not solely a support for the person trying to get sober. Research shows that outcomes improve when an individual's family is involved.

The Merrimack drug court now offers support groups for families and a class on sober parenting for drug court participants.

“The reality is that the populations are really the same,” she says. “Most of our clients have kids, have lost custody ... and [are] struggling to parent. ...”

“Ideally we would add a family case manager — that seat at the table is missing.”

Inside the state's oldest drug court in Strafford County, Velardi has turned to third and fourth chances for graduates who reenter the criminal justice system as the opioid crisis drags on.

“The longer you stay with the drug court, you're more likely to see people trying it a second or third time ... I think that surprises people,” he says. “You don't ever know when someone will take the opportunity that's presented through a specialty court.”

“You remain hopeful that they take that opportunity to start down a path of wellness for themselves ... [but] you're still weighing out the risk of having this person out in the community.”

With a mix of optimism and pragmatism, Velardi takes the long view.

“It's going to take us years to get out of this situation ... months and years for people to heal and get well,” he says. “We need specialty courts now more than ever in the absence of any real concerted community treatment options ... there's still a long way to go.”

*Anna Berry is the editor of publications for the Bar News, a member of the Granite State News Collaborative. (Disclosure: Berry's spouse is a member of the steering committee for the Merrimack drug court.)*

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mittee tasked with responding to the 2016 DCYF review. Sen. Dan Feltes, a member of that committee, said the group is focusing on legislation to intervene earlier in child protection cases.

“We need to get upstream and really do prevention,” said Feltes.

One bill that’s gained bipartisan support would reduce DCYF caseloads by adding 77 child protection positions to the existing 129.

But while Judge Susan Ashley said those are steps in the right direction, the legislative measures aren’t a replacement for what a specialized family drug court would offer. Ashley started the state’s first criminal drug court 13 years ago and is lead judge for the state’s Model Court Program.

A Family Drug Court, she said, would create a systematic approach to child protection cases that honors the seven essential practices recommended by the Federal Office of Juvenile Justice and Delinquency Prevention (see box).

It’s undeniable that substance-involved families need more support and services, according to state officials. DCYF petitions for termination of parental rights are up 60 percent since 2014. And while neither the courts nor DCYF has tracked how many of those petitions are related to substance misuse, it’s considered a significant factor.

“Anecdotally, I can say quite a lot are,” said Ashley.

### Goal: Family Reunification

The concept of a Family Drug Court

## 7 Essential Approaches to Child Protection

- a method to identify families in need;
- earlier access to substance use disorder services;
- increased management of recovery services and treatment compliance;
- improved family-centered and parent-child relationships;
- increased judicial oversight;
- a standardized use of sanctions, incentives and treatment;
- and a collaborative partnership across child welfare services.

*Recommended by the Federal Office of Juvenile Justice and Delinquency Prevention*

is not a novel one; at least 28 other states use them, including Maine and Massachusetts. Nor is it without support in New Hampshire; DCYF and the judicial branch have advocated for it.

Theresa Lemus, program director of Family Drug Court Training and Technical Assistance at Children and Family Futures in California has worked with many states to create these specialized courts. She said nearly 500 family drug courts are hearing cases now and another 100 are in the works.

Newer courts are intervening earlier, not waiting until a child has been removed from the home, she said.

“There is an old adage that you have to wait until [parents] hit rock bottom,” Lemus said. “But a lot of research says the earlier you identify parental substance abuse and intervene, the more likely [the] child ... never has to be split from the home.”

There have been 17 studies of family

drug courts since 2004 and the conclusions are consistent, Lemus said: Child protection cases in substance-involved families are about 54 percent more likely to end with reunification when they go through a family drug court.

The model differs from the 10 drug courts currently operating as part of the state’s superior court system in two significant ways: it wouldn’t take criminal cases or use jail as a sanction. Instead, it would be an option only for parents whose substance misuse has led DCYF to place their children in foster care and ask that their parental rights be terminated. Regaining custody would be tied to a parent’s success with substance use disorder treatment and, if pertinent, treatment of their behavioral health needs.

“Instead of criminal penalties hanging out there, it’s really family reunification that is of central focus and a kind of motivation for parents struggling with substance use disorder,” said Joseph Ribsam, director of NH DCYF.

In all other aspects, a family drug court would look a lot like the state’s existing drug courts, said Ashley.

The court would oversee the coordination of services and, thereby bring the kind of systematic approach Ashley sees as necessary. Parents would come to court weekly. They would work with a team that includes a judge, DCYF staff, treatment providers, the child’s guardian ad litem, the parent’s attorney, and a case manager. The team would encourage and support parents but also hold them accountable with drug tests and an expectation that they engage meaningfully in treatment. The court could fast-track a parent’s entry into substance use disorder treatment as well as mental health treatment if needed.

“The more we can do to intervene earlier and provide parents the ability to seek treatment and correct the issues, the earlier that is going to benefit the well-being of these children,” Ashley said.

Prior to the 2016 report, DCYF alone had not been able to give substance-involved families that kind of holistic, ongoing support, according to the review by The Center for the Support of Families. The team found:

- DCYF could not require treatment and had too few child protection workers to track whether families pursued it.
- The agency did not drug test parents when it assessed a report of abuse or neglect or before they reunited parents and children.
- “Safety plans” given to some families essentially asked that at least one parent stay sober when they had their children.
- Child protection workers did not consider the future risk of harm posed to a child by a parent’s sub-

stance use disorder because of a lack of training

- The agency often closed reports of child maltreatment — even when substance misuse was established — unless the child had obvious injuries, because the state’s legal threshold for proving child abuse and neglect was so high.
- DCYF workers had too few community options for treatment referrals.

Among the review team’s recommendations, was that of increasing the availability of drug courts in New Hampshire.

“In other places these courts have shown promise in addressing the treatment needs of substance-abusing parents who are child welfare involved, and there is a body of evidence supporting the use of drug courts for child welfare populations,” the report said.

Since the team’s review, criminal drugs courts have started in four additional locations. But those new courts do not focus on families and children.

### State Moves Forward with Other Programs

The state is not waiting for a family drug court to adopt many of the report’s recommendations.

The state Department of Health and Human Services introduced a new program, Strength to Succeed, last year that combines mental health and substance use services and more quickly connects families with drug, alcohol and mental health treatment as well as peer support.

Just prior to the release of the report, the state had amended the Child Protection Act in two important ways. There is now a rebuttable presumption of harm when a custodial parent is dependent on or abusing opioids. And, judges may order alcohol or drug testing at any stage of a child protection case.

DCYF has arranged for substance abuse awareness training for its caseworkers and attorneys to educate them on the potential future harm of a parent’s substance misuse. The state’s new hub and spoke system has made it easier for parents in child protection cases to access treatment.

And, in addition to requesting more child protection workers, lawmakers are considering a bill that would create a new statewide mobile crisis response and stabilization team for assisting children suffering from serious emotional disturbance. The team would work with the child’s wraparound-care coordinator to ensure needed treatments were provided and be part of a court-ordered treatment if the case went to court.

Although a new crisis team would not address parental rights cases, Feltes, the bill’s prime sponsor, said it is a valuable early family intervention tool that would help kids get help at home, in their community rather than in an institution. The measure passed the Senate unanimously and is before the House.

Lemus applauded New Hampshire’s recent attempts at early intervention — DHHS’s new Strength to Succeed and proposed legislation to reduce DCYF caseloads — without using a traditional family drug court model.

“I think it can look different, depending on the needs of the state.”

*Annmarie Timmins is a freelance writer based in Concord and an ongoing contributor to the Granite State News Collaborative.*



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# June Board Meeting Includes Amendments to Bylaws

NEW HAMPSHIRE BAR ASSOCIATION  
2019 Annual Business Meeting  
Friday, June 28th, 2019, 1:00 PM  
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President David McGrath - Presiding

## AGENDA

1. Call to Order
2. Secretary's Report
  - Minutes of the 2019 Midyear Membership Business Meeting
3. Old Business
4. New Business
  - Vote on proposed amendment to NHBA Bylaw Article IX, Section 2
  - Vote on proposed amendment to NHBA Bylaw Article IX, Section 6 (e)
  - Vote on proposed amendment to NHBA Bylaws Article IV, Section 3
5. Adjournment

*(Changes to amendments in bold)*

### Proposed Amendment to Article IV Section 3 of NHBA Bylaws

Amend the By-Laws of this Association to add a new section to address board leadership succession and renumber sections:

#### ARTICLE IV Officers and Employees

##### New Section 3

**If the President, President-Elect or Vice President is unable to serve their term due to any reason, each remaining Officer will accede to the next higher office such that the vacancy shall be at the Vice-Presidential position. The Association will immediately post a notice in the NH Bar News and provide 45 days for any potential candidate to apply for the open position. Thereafter, within no more than 45 days, the Association will conduct a special election to fill the vacancy under the same terms and conditions as a regular election. The Officer so elected will fulfil the term of Vice President as set forth in Article IV, Section 2, and will accede to the position of President-Elect at the time of the next**

### regularly scheduled election.

**Section 4. Secretary.** The Secretary, or designee, shall keep the minutes for all meetings of the Association and of the Board of Governors and shall perform all other duties assigned by the Constitution or these bylaws or prescribed by the Board of Governors.

**Section 5. Treasurer.** The Treasurer shall meet regularly with the Executive Director or designee and assist in developing and presenting regular financial reports to the Board of Governors at Board meetings and to the membership, as appropriate and shall serve on the Association Finance Committee.

**Section 6. Executive Director.** The Executive Director shall assist the Board of Governors and officers of the Association in the performance of their respective duties, shall be in charge of the headquarters of the Association, and shall perform such duties as the Board of Governors may prescribe. The Executive Director, or designee, shall serve ex officio, without vote, on all committees of the Association.

**Section 7. Immediate Past President.** The Immediate Past President shall perform such duties as shall from time to time be assigned by the President or by the Board of Governors and shall serve on the

Association Finance Committee.

### Proposed Amendment to Article IX, Section 2 of the NHBA Bylaws

Amends the bylaws to allow members with a status of inactive to serve on committees of the NHBA. Previously, a member was required to have a status of active in order to serve.

#### ARTICLE IX Committees, Task Forces or Other Work Groups

**Section 1. Classes.** The classes of Committees of the Association shall be:

(a) Standing Committees, created by the By Laws for the investigation and study of matters relating to the accomplishment of the general purposes, business and objects of the Association of a continuous and recurring character, within the limitations of the power conferred.

(b) Task forces or other work groups will be created by the President, by resolution of the Association or by the Board of Governors. Any groups so created will investigate and study matters relating to specific purposes, business and objects of the Association of an immediate and non recurring character. The scope and duration of the group's effort will be specifically described in the proposal for new action authorizing the group.

**Section 2. Appointments.** Unless otherwise stated in the creating provision, appointment of members to serve shall be made by the President. The Chair shall

be designated annually by the President, and the President shall have the power to fill vacancies. Voting membership shall be limited to active **and inactive** in good standing members of the Association.

### Proposed Amendment to Article IX Section 6 (e) of the NHBA Bylaws

Amends the bylaws to change the membership make-up of the finance committee.

(e) Finance Committee. This committee shall consist of at least eleven (11) members, the following **three (3)** members from the Board of Governors: President-elect, Vice President, and Treasurer and **eight (8)** additional Association members. The President-elect will Chair the Committee. It shall be the duty of this Committee to prepare and submit a proposed budget to the Board for each fiscal year. Except by a two-thirds vote of the Board of Governors, no unbudgeted commitment exceeding \$10,000 shall be authorized by the Board until the Finance Committee has vetted the proposal and provides its recommendation to the Board of Governors.

Unless undertaken by the Board of Governors, or a committee thereof, the Finance Committee shall annually oversee an audit of the books and records of the Association, and shall review the financial procedures and policies and make any recommendations deemed appropriate for the improvement of such procedures and policies, including the investment policy approved by the Board of Governors.

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Sometimes the best way to get ahead is to slow down.



## 2019 Annual Meeting Schedule-at-a-Glance

### Friday June 28th

- 11:30 – 1:00 pm BOG Meeting
- 1:00 – 1:30 pm Annual Business Meeting – All NHBA members welcome to attend
- 2:30 – 3:30 pm CLE Programming
- 5:15 – 5:45 pm COG Railway Documentary
- 6:00 – 7:00 pm Reception
- 7:00 – 9:00 pm Honors and Awards Banquet, 50-Year Member Recognition
- 9:00 – 11:00 pm Trivia Night – Family Feud

### Saturday June 29th

- 7:00 – 11:00 am Breakfast  
*(for those staying at the resort or lodge)*
- 8:15 am Meet the Shuttle for the Mount Pierce Guided Hike
- 7:30 – 8:30 am CLE Programming
- 8:30 – 12:30 pm Mount Pierce Guided Hike
- 9:00 – 11:00 am Family Guided Hike - Upper/ Lower Falls
- 9:50 am Meet the shuttle for the COG Railway
- 10:30 – 1:30 pm Mount Washington COG Railway *Free time for remaining guests to explore resort and area activities on their own.*
- 3:00 – 4:00 pm Prohibition Tea Party
- 5:45 – 6:30 pm President's Reception
- 6:30 – 9:00 pm President's Banquet & Leadership Academy Graduation
- 9:00 pm Entertainment: Comedian Juston McKinney *Back by popular demand with all new material!*

### Sunday June 30th

- 7:00 – 11:00 am Breakfast

## Congratulations to the 2019 Leadership Academy!



## NH Bar Announces Annual Meeting Award Recipients



Jennifer A. Eber



William C. Saturley



Chief Justice  
Robert J. Lynn

### Award for Distinguished Service to the Legal Profession

#### Jennifer A. Eber

Orr & Reno PA

In recognition of her dedicated work to write “Beyond High School” and educate students about the rights and responsibilities of adulthood, attorney Jennifer A. Eber will receive the Award for Distinguished Service to the Legal Profession. This award is presented to the nominee who best exhibits service to the public on behalf of the administration of justice.

### E. Donald Dufresne Award for Outstanding Professionalism

#### William C. Saturley

Preti Flaherty Beliveau Pachios PLLP,  
Board of Directors, NHBA Insurance  
Agency, Inc.

In recognition of his extensive service handling the negotiations and sale of the NHBA Insurance Agency to Amity Insurance Agency, attorney William C. Saturley will receive the E. Donald Dufresne Award for Outstanding Professionalism. The award honors the memory of E. Donald Dufresne and is presented to an attorney who best fits the following: “A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.”

### Justice William A. Grimes Award for Judicial Professionalism

#### Chief Justice Robert J. Lynn

New Hampshire Supreme Court

In recognition of his many contributions to the state as a justice of the New Hampshire Supreme Court for nearly a decade, Chief Justice Robert J. Lynn will receive the Justice William A. Grimes Award for Judicial Professionalism. The award honors the memory of Justice William A. Grimes and is presented to a judge who best fits the following: “The judges therefore should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men.” – John Adams, 1776

# Airbnb (or, the Uncertain Future of Short-term Rental Accommodations)

Part 1 of a two-part series on short-term rental accommodations.

By Jason Dennis

Air ... cease and desist. That is what Barbara Jenny and Matthew Beebe were told by the city of Portsmouth in August of 2017 relative to using a second home (advertised as “Lilac House”) as a short-term rental through Airbnb. Rockingham Superior Court (Schulman, J.) agreed with the city in a decision noticed June 22, 2018. The couple’s NH Supreme Court appeal (Case No.: 2018-0491), which has been at least partially funded by a GoFundMe campaign, was accepted on September 21, 2018. Briefs have now been filed by both sides. As of the date this issue went to press, Oral Argument had not yet been scheduled.

The legal dispute over the use of “Lilac House” may be the first short-term rental case of its kind to be heard by our Supreme Court here in New Hampshire, but it is representative of an increasing area of legal activity taking place not only across the country, but around the world.

By way of brief background, Airbnb — originally dubbed Air Bed and Breakfast because the founders’ first guests actually slept on air mattresses — officially launched in August of 2008. Although HomeAway.com, VRBO.com, Couchsurfing.com, BedandBreakfast.com, and even Craigslist all existed before Airbnb, it seems clear that Airbnb is the leading



home-sharing service today, with over 6 million accommodations in 191 countries and worth about \$30 billion. Airbnb CEO Brian Chesky had previously stated that Airbnb would be ready to go public this year, but it appears that the IPO is likely to be pushed into 2020.

Regardless of whether the general public will be able to own a piece of Airbnb in 2019, it is clear that home-sharing rental services are big business today. According to a Pew Research Center survey, 11 percent of American adults have spent a night in a private residence booked on a home-sharing website (although, according to the same survey, 53 percent of Americans had never heard of

the home-sharing concept). According to a separate Pew survey, approximately 1 percent of Americans have used a home-sharing site to rent out their property.

Here in New Hampshire, according to a dialogue on NHPR’s *The Exchange*, Granite Staters logged 113,000 short-term rental arrivals and collected \$15.3 million in rent last summer alone. In case you are curious about short-term rental numbers and statistics, the website [www.airdna.co](http://www.airdna.co) (no “m”) tracks short-term rental industry data.

So everything is all delightful destinations, surplus income, and lodging loveliness in the digisphere of short-term rentals, right? Well, sure, according to

supporters. Supporters maintain that services like Airbnb allow travelers to rent more affordable (and unique) lodging, to have more organic travel experiences, and also allow property owners to make extra income and/or earn enough to afford to pay their own mortgages or to pay high property taxes. There is also the argument that property owners’ private property rights should not be infringed upon by government regulation.

Not so fast, contend opponents. One thing that is clear is that not everybody supports the short-term rental concept. Opponents accuse the short-term rental movement of inflating housing prices and reducing the supply of available housing (referred to as “a big crisis in affordable housing” in the same dialogue on *The Exchange* referenced above), and harming neighborhoods, such as by eradicating neighborhood identities and causing overcrowding.

Additionally, the traditional lodging industry has argued that short-term rentals do not operate on an equal footing, in that they don’t have the same oversight and regulation as the traditional lodging industry. For this same reason, it has been argued that home-sharing is less safe than traditional short-term lodging. It is certainly not hard to find sensational short-term rental horror stories (hidden cameras, kidnapping, rape, death as a result of unsafe conditions, and even mur-

AIRC&D continued on page 33

## Entity Hijacking — The Latest Real Estate Fraud Scheme

By Jennifer Shea

Neither consumers’ ever-increasing appetite for more efficient ways to conduct transactions nor advances in real estate conveyance technology show any signs of slowing. More than ever before, real estate professionals are being called upon to push the boundaries of the speed in which a transaction can be completed to remain competitive. However, fraudsters are viewing this period of rapid evolution as a nefarious business opportunity with yet another unscrupulous scheme — entity hijacking.

Entity hijacking is the broad term being applied to any act in which fraudsters hold themselves out as having the requisite authority to execute documents on behalf of an entity, when they in fact have no such authority. Fraudsters are perpetrating these crimes through a variety of different schemes that include providing falsified operating agreements or corporate resolutions to a closing agent. In some states, in which the local Secretary of State may require information regarding current members to be filed annually, the fraudsters are simply filing an Amendment with the Agency to evidence a purported change in entity membership when no such change has occurred.

Entity hijacking is not so different from a recent residential transaction scheme uncovered in Massachusetts in which unsuspecting property owners facing foreclosure were contacted by fraudsters claiming to offer a lifeline in the form of foreclosure protection assistance. The

“Entity hijacking is the broad term being applied to any act in which fraudsters hold themselves out as having the requisite authority to execute documents on behalf of an entity, when they in fact have no such authority.”

fraudsters would then claim to be paying off a delinquent mortgage thereby “rescuing” the property from foreclosure. In fact, the fraudsters used documents purporting to be part of the “rescue” process to fraudulently hold themselves out as having authority to convey title to the property to a third party, who in turn sold the property to a bona fide purchaser.

Some scenarios that might warrant a closer examination of an individual or entity:

- Was the ownership of the entity recently changed? Recent changes just before a property transfer or encumbrance are highly suspicious and warrant additional questions and/or independent verification.
- Were any signors recently changed in the authority documents and/or was there a recent modification/amendment?
- Is there inconsistency in the signing authorities between the documents already recorded in the local Registry and the off-record documents being presented for review? While changes in signors is not unheard of, a review of the back

chain can often reveal who has signed documents on behalf of the organization in the past.

- Were the closing documents executed outside of the settlement agent’s control?
- Do the previous signatures of the entity members match and/or are the signatures consistent? Inconsistent signatures are a red flag in any transaction. If available, compare signatures with those in the entity documents to those in the back chain.

If an entity is involved in a transaction, a closing agent may consider review of the following documents to confirm the validity of the entity and the authority of the signor on any mortgage or deed in order to mitigate the risk of fraud.

1. **Incorporating Documents** (e.g. Articles of Organization, Articles of Incorporation, etc.). These governing documents dictate the business for the entity. Reviewing these documents can assist with identifying signatures required for the transfer or mortgage deed.

2. **Operating Documents** (e.g. Operating Agreement, By-Laws, Partnership Agreement, Certificate of Incumbency etc.). These documents govern who can sign on behalf of the entity in question. Review of these documents and any amendments thereto to verify you are dealing with the correct individuals, their authorization to conduct business on behalf of the entity and when they have authority. Review these documents holistically to verify they are consistent throughout. Also, consider any asset registers or statements, if available, to make sure the assets listed include the assets/property in question.
3. **Certificate of Good Standing**. A certificate of good standing, or similar document, will confirm the entity is up-to-date with the Secretary of State or that the entity is active and compliant with the State registration, rules and that it is authorized to conduct business in the state.

In advance of this article, Adam Schroader, Assistant Secretary of State, New Hampshire Corporation Division, was contacted to provide insight into entity-related fraud at the state level. The Assistant Secretary noted the important balance that must be struck between ease of access created by electronic filing with appropriate security measures to guard against entity hijacking-related fraud.

He explained, “The Secretary of State’s office and Corporation Division have been actively streamlining our

REAL ESTATE continued on page 33

## Small Cells in the Public Right-of-Way

By Thomas Hildreth

Since the advent of the smart phone in 2007, the year-over-year growth in throughput demand on the nation's wireless communications infrastructure has been meteoric. In response to that demand, and to lay the foundation for the next generation of wireless services (5G), mobile network operators (MNO) are seeking to densify their networks with "small cells." At the same time, recent changes in federal and state law are paving the way for small cells nationwide and, particularly, here in New Hampshire.

### About Small Cells

Small cells utilize utility poles, street lights, signs, traffic signal poles, and similar "street furniture" to place an antenna, RF radios, and support equipment at the pole locations to enhance network coverage and data speeds for the communities served. Designs typically involve attaching to a utility pole a single canister antenna, about the size of three one-gallon paint cans stacked on top of each other, within the communications space or upon the top of the pole, depending on pole owner requirements.

The antenna is connected with cables running down the pole to one or two remote radio heads attached to the pole, and a radio disconnect switch that will power down the antenna if crews will be work-

"[R]ecent changes in federal and state law are paving the way for small cells nationwide and, particularly, here in New Hampshire."

ing on or near the antenna, along with a power meter. Small cells are connected to MNO networks by dark fiber. The deployments are designed to blend into the existing environment as much as possible, typically utilizing existing pole locations, with equipment that resembles existing utility gear.

### Utility Pole Owners Required to Permit Wireless Pole Attachments Under Federal and State Law

Utility poles are typically jointly owned by the local electricity provider and the incumbent land-line telephone service provider. The federal Pole Attachment Act (47 USC §224) requires utility pole owners to grant non-discriminatory pole attachment rights to federally licensed wireless communications carriers. New Hampshire law imposes a similar obligation (N.H. RSA 374: 34-a; N.H. Code Admin. Rules PUC Part 1301).

Utility pole owners may deny an attachment request in only three cases: (1) where there is insufficient capacity; (2) for reasons of safety, reliability, and generally applicable engineering purposes; or (3) where the pole owner lacks authority

(47 U.S.C. § 224(f)(2); N.H. Code Admin. Rules PUC 1301.01). As a result of these laws, by the time a wireless carrier is ready to deploy a small cell in a particular municipality, the carrier already holds a license from the pole owners allowing the attachment.

### FCC Order Breaks Down Barriers Nationwide

In late September 2018, the FCC adopted an order entitled: "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," FCC 18-133, WT Docket No. 17-79, 85 FR 51867 (the "Order"), which took effect on January 14, 2019. The Order defines small wireless facilities by objective measures and establishes substantive regulations concerning permissible fees, shot-clocks for taking action on applications, aesthetic standards, and other non-fee requirements relating to the siting of small wireless facilities.

The Order specifically rejects prior judicial interpretations of the Federal Telecommunications Act of 1996 (TCA) requiring carriers to demonstrate a gap in service. It also clarifies that an effective prohibition

exists when a requirement materially inhibits a provider from densifying a wireless network, introducing new services, or improving existing service capabilities. Municipalities cannot condition approval of an application on an applicant's ability to prove the existence of a gap in service.

### State Law Regulation of ROW

Utility poles in New Hampshire public rights-of-way are approved under the provisions of N.H. RSA 231:159, et seq. Small cell attachments to existing, approved utility poles require no further approval because:

- N.H. RSA 231:160 only applies to proposals to erect or install "poles and structures and underground conduits and cables." A small cell will generally not require a new pole or structure (except in the case of a replacement pole); rather, a small cell is a self-contained facility attached to a single existing approved utility pole;
- Utility pole owner(s) are required by federal and state law to provide pole space to wireless telecommunications providers. Accordingly, such wireless attachments are "required in the reasonable and proper operation of the business carried on by [the pole owner]." (N.H. RSA § 231:161, VI, explains that the license initially granted for the pole covers not

SMALL CELLS continued on page 33



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# Form-Based Zoning: Necessary Flexibility or Subjective Nightmare?

By Trevor J. Brown

How to regulate “tiny homes,” the aesthetics of solar panels, and challenges surrounding workforce housing are just a few of the many land-use issues frequently raised in New Hampshire newspapers. Aside from proving coffee shop fodder, these front-page topics illustrate the seemingly ever-present debate many New Hampshire communities face over land use and zoning. With a challenging housing market and strong economy, some communities have started looking at alternatives to traditional zoning as potential way to promote growth.

Beginning in the 1920s, particularly in the wake of *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926), communities have sought to regulate development through zoning. While traditional zoning has focused on categorizing and dividing municipalities by separation of uses that are thought to be incompatible, in practice, it can be difficult to draw clean lines. Difficulties in drawing clear distinctions can be particularly acute in older, more established communities, such as in New England, where residential, industrial, commercial, or any number of other designations may overlap more so than in newer communities.

In contrast to traditional zoning, some municipalities are starting to look at an alternative approach that focuses on the character of a place as a way to regulate

“In contrast to traditional zoning, some municipalities are starting to look at an alternative approach that focuses on the character of a place as a way to regulate rather than on rigid land-use guidelines.”

rather than on rigid land-use guidelines. Known as form-based zoning, the primary organizing principle is the physical form, or “character” of a community. Rather than focusing on separation of distinct land uses, zoning districts are defined based on the desired character or appearance (i.e. form) of a street, block, or neighborhood. While development is still regulated, the rules and expectations emphasize character, rather than the rigid guidelines of traditional zoning.

In practice, given that form-based codes emphasize character and appearance, the resulting codes necessarily utilize graphics and tables, such as plan views, sections, elevations, and 3D images. These graphics, together with building standards guidelines, detailing, for instance, height restrictions, frontage requirements, and permitted architectural features, allows for a set of guidelines to form for each neighborhood in a community, illustrating what “forms” are acceptable.

While traditional regulations may provide set requirements for building setbacks, a form-based code would focus on where the front of a building should be

located in relation to other features on the property. With guidelines set out for each community based on the current appearance of a neighborhood, form-based codes aim to create a cohesive blend of styles, while also letting neighboring properties change organically over time.

For example, say a homeowner wants to build a porch on the front of their home. Other homes in the neighborhood have porches, though most, if not all, were build prior to the implementation of modern zoning regulations. Under traditional zoning requirements, it would be necessary for the homeowner to get a variance through the Zoning Board of Adjustment because of setback requirements.

Under a form-based code, however, that same homeowner would not need to obtain a variance through the Zoning Board of Adjustment, rather, they would be able to build the porch provided that it fits within the character of the neighborhood. Given that other homeowners in the same neighborhood have porches, the homeowner who wants a porch should be able to build one without needing a variance.

### Adoption & Implementation

Though still considered a “new” development, form-based codes have been in use across the country since the 1970s. Concord city staff began discussing the possibility of adopting a form-based code in late 2017, with the formal “kick-off” meeting occurring in February 2018. Concord aims to implement the form-based code in February 2020.

Other New Hampshire communities have had form-based codes on the books for much longer — Dover, for example, adopted a form-based code in 2008. At the same time, other communities have pushed back on such proposals. On their May 2018 Town Meeting ballot, for instance, Peterborough voters overwhelmingly rejected a “zoning simplification” amendment which would have included a form-based code.

While the exact prevalence of form-based codes in New Hampshire is unclear,

the NH Office of Strategic Initiatives’ annual municipal survey regarding land use regulations should shed some light on this issue once the results of the 2018 survey are published. The results and analysis will be available on the Office of Strategic Initiatives’ website once complete.

### Implications

Advocates for form-based codes view it as encouraging development by deemphasizing uses over building types and emphasizing the character of a neighborhood rather than micro-managing uses. By using existing developments as the template, form-based zoning is particularly attractive to communities concerned with preserving the historical nature of a given neighborhood. At the same time, by focusing on character rather than rigid uses, form-based zoning provides flexibility, thereby reducing the need for variances. Recognizing the reality that many different types of uses have historically operated in close proximity, for example, residential and commercial in a downtown setting, form-based codes recognize that if appropriate character standards are in plan, that multiple uses can generally be located in close proximity to one other, thereby further alleviating the need for variances.

Finally, proponents of form-based codes see it as more simple — by focusing on images and diagrams, the regulations are more accessible to the public versus jargon-laden codes. That being said, critics of form-based zoning see these points as significant drawbacks — with the subjective nature of “character” and reliance on images as adding uncertainty into the process.

### Conclusion

As selectboards, voters, and concerned citizens continue to debate the best way to regulate land use, form-based codes may present a viable, alternative means of promoting growth while also preserving the existing character of a community and ensuring that existing uses are not negatively impacted by new development.

*Trevor J. Brown is an associate at Sulloway & Hollis, P.L.L.C. in Concord, New Hampshire. He can be reached at 603-223-2838 and at tbrown@sulloway.com.*



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# Opportunity Zone Tax Benefits for Real Estate Investors

By Christopher E. Ratté

Move over 1031 Exchange, there's a new OZ in town. Opportunity Zones ("OZ" or "O-Zones") can provide substantial federal tax benefits for certain real estate investments.

Opportunity Zone tax benefits were created under the 2017 Tax Cuts and Jobs Act to help spur economic development and job creation in economically distressed communities. There are more than 8,700 Opportunity Zones nationwide. Each state has Qualified Opportunity Zones which were nominated by the state Governor and then approved by the Secretary of the Treasury. A list of all Qualified Opportunity Zones may be found on the IRS website along with a link to zoomable maps. Local maps and lists may also be found on the New Hampshire Division of Economic Development website.

Here in New Hampshire, most of the O-Zones are exactly where you might expect them: rural areas in the North Country and urban areas in cities like Laconia, Rochester and Manchester. A few O-Zones are more questionable though: the UNH Durham campus for example. How each Opportunity Zone was chosen is unclear, but the list is now set and cannot be changed.

Investing in Qualified Opportunity Zones can provide three federal tax benefits: deferred taxation; possible reduced taxation; and possible exemption from taxation.

First, you may defer capital gains tax on the sale of a capital asset, such as commercial real estate, by reinvesting the gain from that sale into an asset located in a Qualified Opportunity Zone. The tax will be deferred until you sell the O-Zone asset or until 2026, whichever is earlier.

Second, if you hold the O-Zone asset for certain specified periods, you will also receive a reduction in the capital gains tax you will eventually pay. If you hold the O-Zone asset for at least five years, then you will receive a 10 percent reduction in tax due. If you hold that asset for seven years, then you will receive a 15 percent reduction in tax due.

Lastly, if you hold the O-Zone asset for at least 10 years, then you will also receive a step up in basis on the sale of the O-Zone asset which will exempt you from paying any capital gains tax on that sale.

"Here in New Hampshire, most of the O-Zones are exactly where you might expect them: rural areas in the North Country and urban areas in cities like Laconia, Rochester and Manchester. ... Investing in Qualified Opportunity Zones can provide three federal tax benefits: deferred taxation; possible reduced taxation; and possible exemption from taxation."

Yes, that's right, there will be no capital gains tax due at all on the O-Zone sale, and that's in addition to the tax deferral and 15 percent reduction of the capital gains tax due from the first non-OZ sale. That's potentially a huge savings.

This is a program designed to encourage long-term investment into certain depressed areas. It is definitely not for short-term flippers.

### OZ vs. 1031 Exchange

The program has been slow to catch on with investors, mostly due to much confusion over the exact requirements to qualify. Only recently, on April 24, 2019, did the Department of Treasury issue additional guidance rules to clear up some of the confusion. In a nutshell, the taxpayer must take the gain from the sale of a capital asset, such as commercial real estate, and invest it into a Qualified Opportunity Fund.

A Qualified Opportunity Fund is a fund that was created specifically to invest in Opportunity Zones and at least 90 percent of its assets must be in Qualified Opportunity Zones. The fund must be a corporation or partnership (or an LLC taxed as a partnership). The fund may be a single-asset fund, multiple-asset fund, REIT, or a community fund. Anyone may create a Qualified Opportunity Fund by self-certifying on IRS Form 8896.

The OZ investment must be made within 180 days of the recognition of the gain, that is 180 days after the sale of the first asset. The fund must then make a substantial improvement to the O-Zone asset within 30 months. Only OZ properties purchased after 2017 are eligible.

Opportunity Zones can offer some substantial benefits over a 1031 Exchange. The biggest difference is that a 1031 will only defer the tax. You will still have to pay the tax at a later date. Opportunity Zones,

on the other hand, will defer the tax due and may also reduce the tax and possibly eliminate tax if you hold the property long enough.

Unlike a 1031 Exchange, Opportunity Zones do not require a "like kind" exchange. For a 1031 Exchange, if you sell an investment real estate then you must purchase a like kind investment real estate. Under the Opportunity Zone regulations, you may buy and sell any type of asset. For example, you may sell stock or a business and then purchase real estate in an Opportunity Zone.

Additionally, only the gain must be re-invested for Opportunity Zone tax benefits, not the entire sale proceeds. There is no "boot" concept in Opportunity Zones.

Opportunity Zones have been criticized by some claiming that the only beneficiaries are wealthy investors. Only time will tell if the program will actually bring in the funds necessary to revitalize eco-

nomically depressed areas. So far, investors have been reluctant to invest into the most depressed areas.

At a recent panel put on by the NH Commercial Investment Board of Realtors, Stuart Arnett from ADG Solutions noted that "Opportunity Zones will not make a bad deal into a good deal, but it might make a good deal into a slightly better deal."

The consensus of the commercial Realtors in the room was that the program had not created any increased demand in properties located in New Hampshire's Opportunity Zones.

It is unlikely that a small market like New Hampshire will draw in large institutional investors, but certain areas that are already actively developing, such as Downtown Manchester, could benefit from additional interest from local and regional investors. To help spur activity in less active locations, such as the North Country, the New Hampshire Community Development Finance Authority has created its own qualified fund called the Granite Opportunity Fund.

Real estate investors should speak with their tax advisor before making any investment into an Opportunity Zone, as the rules are quite complex and still in flux.

*Chris Ratté is an attorney in the Dover office of Shaheen & Gordon. His practice focuses on commercial real estate and business transactions.*

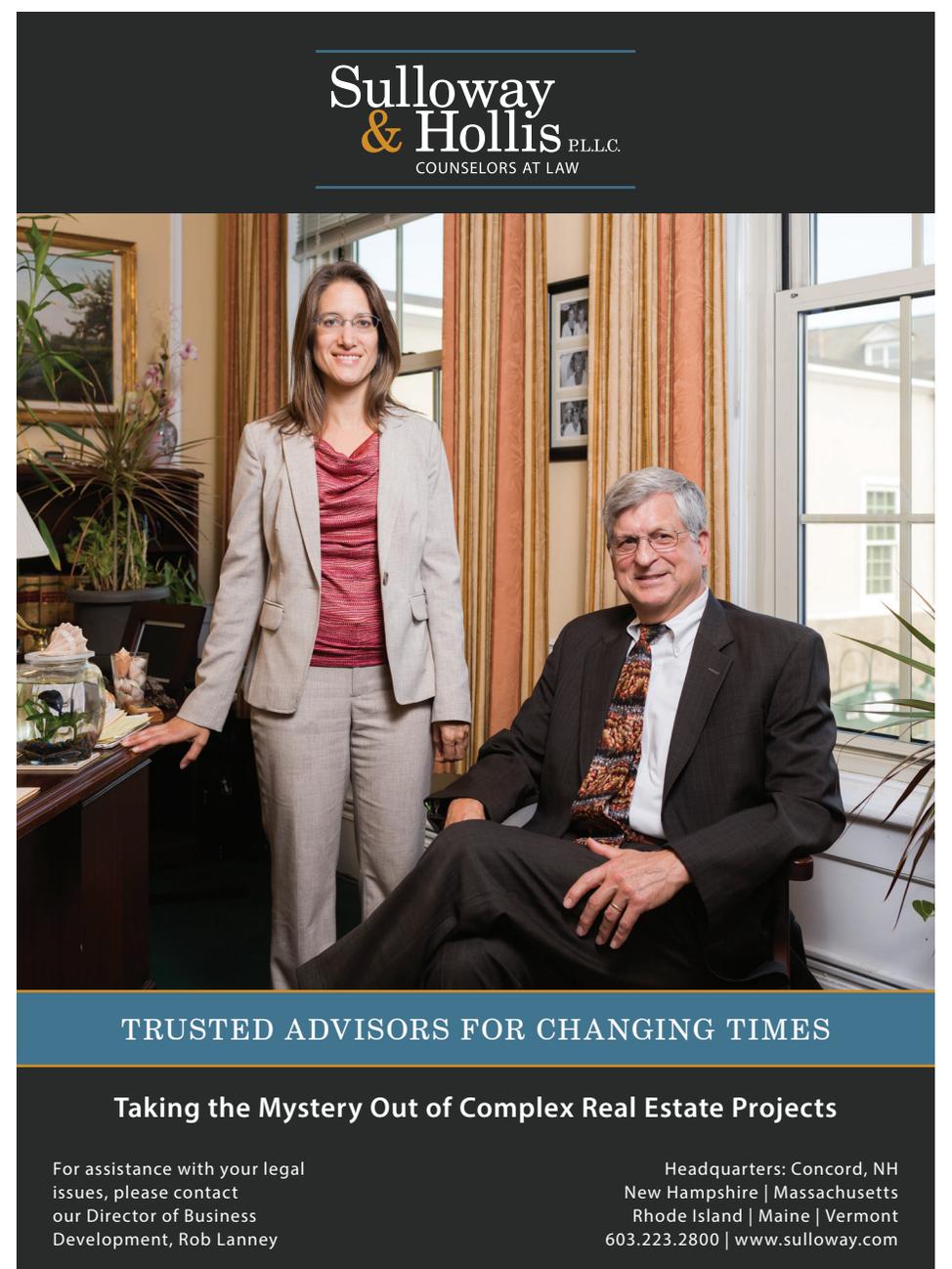


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## Road Bills Winding through the General Court — Highways to Summer Cottages and Private Road Maintenance

By Paul Alfano

The General Court is considering two bills of note dealing with roads this year. One bill would affect the non-maintenance period for highways to summer cottages, and the other is a renewed effort to impose maintenance obligations on owners of residential property on private roads.

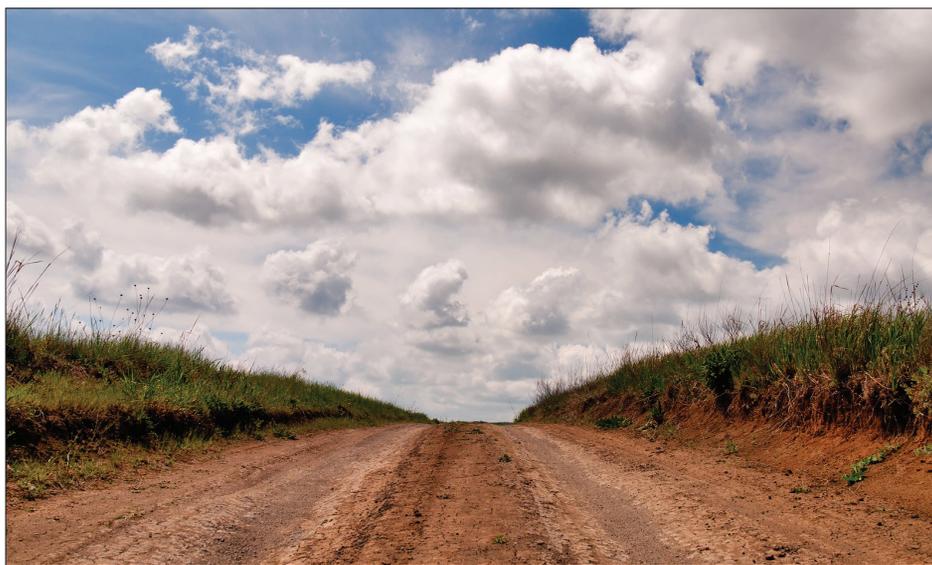
### Highways to Summer Cottages

Municipalities are exempt from maintaining highways to summer cottages from December 10 to April 10. RSA 231:79-81. These roads otherwise are full, Class V roads, meaning municipalities have the obligation of maintenance and repair.

The General Court created this exemption in 1893. The original statute did not contain the voting requirement under the current law, and neither the original nor the current statute define a highway to summer cottages.

The four-month exemption period has remained the same for the past 126 years, but SB 53, which has passed the Senate (as of this writing), would empower municipalities to extend the four-month exemption period to a longer period, but no earlier than November 15 or later than April 30.

Other than the sponsors and the New Hampshire Municipal Association, the lone member of the public to testify at the Senate Transportation committee hearing



was the road agent for the town of Washington. The road agent said he has been experiencing difficulties removing hard pack created by snowmobiles, OHRV and other recreational vehicles.

Interestingly, the hard pack problem likely would not exist but for the passage of laws permitting the use of snowmobiles and OHRVs on Class V and VI roads. Some citizens fought back this year with a bill that would have prohibited municipalities from authorizing the use of OHRVs on Class V roads (HB 498), but the House killed the effort.

### Private Road Maintenance

If you think you've seen this issue before, you have. Another attempt is being made this year to enact a law requiring owners of residential property on a private road to contribute toward the road's maintenance. Previous efforts failed to pass both chambers.

There are two backdrops of note. One is the New Hampshire Supreme Court's decision in *Village Green Condominium Association v. Hodges*, 167 N.H. 497 (2015), discussed in the May 2017 issue of the *Bar News*. In short, *Village Green* holds that, where there is an express easement with a right (versus an obligation) to maintain a way which both the servient (the property burdened by the easement) and dominant (the property with the benefit of the easement) owners have the right to use, the dominant owner has an obligation to contribute toward its maintenance. *Village Green* interpreted an easement, not a private road. While the rationale underlying *Village Green* may be difficult to avoid when applied to private roads, the distinction between an easement and a private road is not clear when a statute is involved. See, e.g., *Russell Forest Management, LLC v. Town of Henniker*, 162 N.H. 141 (2011) (interpreting RSA 674:41).

The other backdrop is an apparent refusal by the Federal National Mortgage Association (FNMA) to insure mortgages on properties situated on private roads without maintenance agreements among all the

owners. People who testified in favor of this year's bill, SB 39, assumed a statute imposing a maintenance obligation would satisfy FNMA.

While passage of SB 39 very well may facilitate more residential transactions by facilitating funding, a cynical lawyer might say passage of the bill in its current form would benefit lawyers the most. Consider:

- SB 39 does not define "private road." Disputes over the difference between an easement and a private road are not uncommon. RSA 674:41 is a particular breeding ground.
- Parties must contribute "rateably." As to what? Frontage? Distance from the nearest Class V road? By assessed value? (The 2017 version of this bill would have assessed responsibility "in proportion to the benefit received by each such property.")
- The law would apply only "in the absence of an express agreement or requirement governing maintenance." Testimony before the Senate Transportation Committee indicated a handshake agreement would suffice; written agreements are not required. The intent appears to preserve the innumerable verbal arrangements that have worked for years, but one unhappy owner now will have the option of claiming no such agreement exists.
- The bill mandates payment of the "reasonable" cost of "maintaining" the road. The drafters excluded repairs from this year's bill intentionally. Perhaps the ensuing litigation will provide helpful guidance on the difference between repair and maintenance in the context of roads.
- Only residential owners must contribute toward a road's maintenance. Commercial owners could get a free ride, although they would not have the power to force the residential owners to maintain the road.

The next hurdle facing SB 39 and SB 53 is to pass the House.

Paul J. Alfano, Esq. Paul can be reached at [paul@alfanolawoffice.com](mailto:paul@alfanolawoffice.com) or (603) 226-1188.

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# Equitable Subrogation

By John Willis

Equitable subrogation allows someone who has paid off a mortgage to take the priority position of the paid-off mortgage as a recorded lien. That occurred in three New Hampshire Supreme court cases: *Chase v. Ameriquest Mortgage Co.* (2007), *Bilden Properties, LLC v. Birin* (2013), and *Fifield v. Mayer* (1918).

In *Chase*, the property at issue was owned by Mr. and Mrs. Chase. Ameriquest held a mortgage on the property. According to the stipulated facts, Mr. Chase had forged Mrs. Chase's signature on Ameriquest's mortgage. Pursuant to a divorce agreement, Mrs. Chase became the sole owner of the property. Ameriquest initiated foreclosure proceedings against her. She filed a lawsuit seeking to enjoin the foreclosure. She argued that the statutory homestead exemption relieved her of any obligation to pay the mortgage, because her signature on the mortgage was forged. The New Hampshire Supreme Court agreed with Mrs. Chase regarding the homestead exemption statutes.

However, the court also agreed with Ameriquest that equitable subrogation applied. Ameriquest's mortgage had fully paid off a prior mortgage which was signed by both Mr. and Mrs. Chase. It would have been a windfall to Mrs. Chase to own the property free and clear of all mortgage debt, at the expense of Ameriquest. The New Hampshire Supreme Court quoted the trial court's description of that outcome as "inequitable."

The New Hampshire Supreme Court set forth four requirements for equitable subrogation, including that "subrogation may not work any injustice to the rights of others." In order to meet that requirement, the court held that equitable subrogation was only in the amount of the paid-off mortgage (\$71,300), not the amount of the new mortgage (\$74,439.78).

The court also noted that although Ameriquest allegedly was negligent in failing to uncover the forgery, under *Fifield* negligence on the part of a surety does not invalidate the right to subrogate and thus does not bar equitable subrogation.

The court held that another requirement for equitable subrogation, not being a volunteer, was met because Ameriquest paid off the prior mortgage to protect its



interest as a mortgagee. The other two elements were met because Ameriquest was not liable for the prior mortgage and Ameriquest fully paid off the prior mortgage.

In *Bilden Properties*, the property at issue was encumbered by mortgages granted by Austin James Properties, LLC, to Southern New Hampshire Bank in 2001 and the Birins in 2006. The mortgage granted to the Birins had an incorrect caption which identified the grantor as Austin James Development.

When the property was being sold in 2007, a title examination did not disclose the Birins' mortgage because it was indexed under "Austin James Development, LLC" instead of "Austin James Properties, LLC." Therefore, proceeds from the closing paid off Southern New Hampshire Bank's senior mortgages, but not the Birins' junior mortgage.

The New Hampshire Supreme Court held that despite the misindexing, the Birins' mortgage was in Austin James Properties, LLC's chain of title because another mortgage in that chain of title identified the grantor as "Austin James Properties, LLC a/k/a Austin James Development, LLC." The court considered that to be a sufficiently curious or suspicious fact that a purchaser should have investigated it by searching the grantor index under "Austin James Development, LLC."

Funds for the 2007 closing had come from both the purchaser, Bilden Properties, and the lender, TD Bank. Therefore, the

New Hampshire Supreme Court held that both Bilden Properties and TD Bank were equitably subrogated to the priority position of the Southern New Hampshire Bank mortgages. The court rejected the Birins' argument that equitable subrogation was barred by negligence of the title examiner, both because the trial court had found that the title examiner was not negligent and because the court had held in *Chase* and *Fifield* that negligence does not bar equitable subrogation.

In *Fifield*, the property at issue was a theater. It had been encumbered by a first

mortgage and a second priority position mechanic's lien that was held by the plaintiff. A refinance mortgage paid off the first mortgage but not the mechanic's lien. The defendants were sureties on the refinance mortgage.

The plaintiff argued that the sureties were not entitled to equitable subrogation because they were volunteers. The court rejected that argument because the sureties had expected that by paying off the first mortgage, they would acquire the same priority position as the first mortgage.

The court further held that even though the sureties were negligent in not discovering the mechanic's lien, that negligence did not prevent equitable subrogation. The court relied on **Hammond v. Barker** (1881), in which the failure to conduct a title exam was held to be insufficient to prevent subrogation. The court wrote in *Fifield*: "Indeed, in most of the cases upon this subject it is apparent that the mistake of the party claiming subrogation might have been avoided by reasonable investigation as to the state of the title." The court further explained that equity afford relief for mistakes.

*John Willis is a member of the New Hampshire and Massachusetts bars. As an attorney at Fidelity National Law Group in Boston, he handles real estate title litigation in both states. He graduated from Tulane Law School in 1989.*

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# Local Regulation of Agriculture Toolkit Now Available

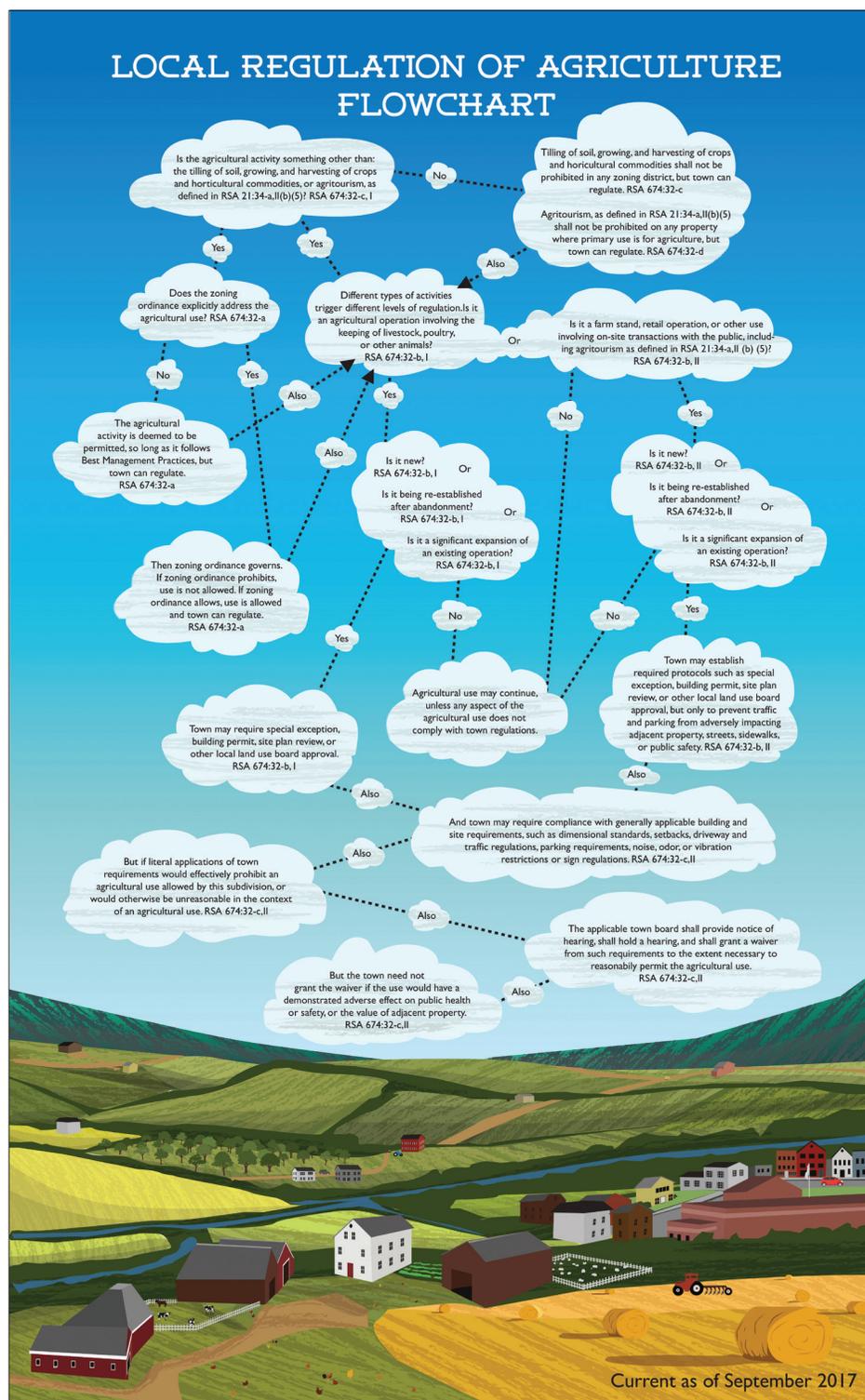
By Amy Manzelli and Theresa Walker

Conflicts surrounding farms are on the rise in New Hampshire, be it neighbors challenging farmers, farmers engaging in activities that stretch or exceed what constitutes agriculture, or entrenched attitudes about property rights. At the same time, farms are thriving and expanding across the state as farmers capitalize on consumer interest in locally grown and produced food and communities strive to become more economically and environmentally resilient. The New Hampshire Coalition for Sustaining Agriculture (Coalition), an ad hoc group of New Hampshire farmers, regulators, agriculture advocates and policy makers, identified the need for information for farmers and local officials about state laws governing agriculture and how local policies and regulations can help or hinder local agriculture.

With grant funding from Farm Credit Northeast AgEnhancement, the Coalition researched and developed the Local Regulation of Agriculture Toolkit. The Toolkit is designed to raise awareness of state laws governing agriculture and how those laws intersect with local regulations. The Toolkit includes:

- A checklist for assessing the farm friendliness of local regulations and policies;
- A flowchart of state laws governing farming and agricultural activities (current as of September 2017);
- A glossary of terms, and discussion on the relationship between state laws and town laws;
- A resource list of agencies, organizations, and publications for farmers and municipalities to address conflicts and pro-actively develop farm-friendly regulatory environments.

The Coalition established a project steering committee comprised of farmers, state, regional, and local planners, land use attorneys, and representatives from agricultural agencies and organizations. Project leaders conducted research designed to hear first-hand from farmers and municipal decision makers about the kind of information needed to support and regulate agriculture at the local level. Information was collected at



Part of the Local Regulation of Agriculture Toolkit, published by The New Hampshire Coalition for Sustaining Agriculture, developed with grant funds provided by Farm Credit East Northeast AgEnhancement.

the February 2017 NH Farm and Forest Exposition, November 2017 NH Municipal Association Annual Conference, and meetings with farmers and land use planners.

The draft Toolkit was developed and presented to stakeholders for review via a webinar hosted by the NH Food Alliance in January 2018 and at the February 2018 NH Farm and Forest Exposition. Project leaders presented the completed Toolkit at the April 2018 NH Office of Strategic Initiatives Planning and Zoning Conference. Copies of the Toolkit were distributed to all workshop participants via email, as well as interested parties at local and state government.

The Toolkit is now available via websites hosted by the NH Department of Agriculture, Markets and Food, NH Office of Strategic Initiatives, NH Association of Regional Planning Commissions, NH Farm Bureau, County Conservation Districts, Farm Credit East, Food Solutions New England, and other agencies.

The Coalition is working to secure grant funds to develop additional tools requested by local planners and farmers, including modified site plan review regulations that accommodate the unusual needs of agricultural businesses, such as farm-based stores and seasonal events.

To learn more, visit: <https://www.agriculture.nh.gov/publications-forms/documents/agriculture-regulation-toolkit.pdf>

Amy Manzelli is a member and owner of BCM Environmental & Land Law, PLLC with offices in Concord, NH and Portland, ME and practicing across Northern New England. She practices environmental, conservation, and land use law. Theresa Walker is consultant planner with the Rockingham Planning Commission and works with municipal officials on a wide variety of projects, including natural hazard mitigation planning, water quality and wildlife habitat protection, natural resource inventories, and the retention of the region's working landscape of farms and forests. Walker also serves on the Town of Durham Agricultural Commission.

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**Airc&d** from page 26

der).

The extreme of the endangered neighborhood identity argument can be illustrated by Paris, France, Airbnb's largest market. The argument could go something like this: Paris is only Paris because Parisians reside there and make the city what it is. If too many locals are supplanted by short-term renters, then Paris will lose the charm that has earned it the occasional nickname, the "City of Love." While such a slippery slope argument may not hold up as a winning legal argument; Sedona, AZ (which will be briefly discussed next month) presents at least one compelling case study; and, in any event, *les autorités constituées en Paris* have become concerned enough to take increasing measures to regulate home-sharing. For example, Parisian hosts must register with the city and can only rent out their homes for a maximum of 120 nights a year.

Similarly, hosts in Amsterdam are now limited to 30 nights a year. A more extreme example is Japan, where the government obliged Airbnb to cancel reservations of unregistered hosts by June 15, 2018. As a result, Airbnb removed approximately 80 percent of its Japanese listings overnight.

Regulation is now occurring at all levels: various home owners' associations, municipalities, states, condominium associations, etc. are all instituting regulations and restrictions that limit short-term rentals in various ways or ban them altogether.

At the state level, not all legislation restricts short-term rentals. Some states, including Arizona, Florida, Idaho, Indiana, Tennessee, and Wisconsin, have limited municipalities from regulating short-term rentals by enacting legislation that prohibits short-term rental bans.

In contrast, many states leave the decision-making to local municipalities. The regulations include zoning restrictions and regulations, registration requirements, and complete bans.

In 2010, New York banned the renting out of non-owner-occupied apartments for fewer than 30 days and enacted legislation that prohibits any advertising of these units as short-term rentals. New

York City also banned short-term rentals in many cases.

However, Airbnb and HomeAway.com have recently obtained a legal victory for hosting companies. Airbnb and HomeAway.com (both of which have sued New York City) obtained a preliminary injunction that has at least temporarily stopped a New York City regulation mandating that hosting companies provide the city's Office of Special Enforcement with information including addresses for their listings, full names of hosts, primary addresses, and whether hosts are renting out their entire home or just rooms. The 52-page decision by U.S. District Judge Paul Engelmayer was issued January 3, 2019. The regulation would have subjected companies to fines up to \$1,500 for each undisclosed listing. The preliminary injunction applies to both Airbnb's and HomeAway's cases.

Short-term renters attained another legal victory in Texas. The victory was a unanimous decision by the Texas Supreme Court last May which ruled in favor of a property owner who had been told by his homeowners' association that a deed restriction prevented him from renting out his home on a short-term basis. The deed restriction mandated that the home be used "solely for residential purposes." As such, part of the property owner's argument was that short-term rentals did, in fact, constitute "residential purposes"; so it is unclear how the decision might impact other short-term rental regulations and restrictions in Texas, or elsewhere.

Speaking of regulations and restrictions, next month's article will discuss New England short-term rental legislation, and also Airbnb's strategies to preserve the viability and profitability of its business model. Stay tuned.

*Attorney Jason B. Dennis is a general practitioner with Hastings Malia P.A., just across the NH border in Fryeburg, ME. His general practice includes municipal law and civil litigation. He can be reached at (207) 935-2061 or jdenis@hastingsmalia.com.*

**Real Estate** from page 26

services, converting previously mailed or in-person filings to electronic submissions. The Corporation Division is often, indeed, the first stop in registering or updating your business in New Hampshire; Over 93 percent of business filings here are now completed online or over our mobile interface. These offerings are secure and consistently evolving with modern user preferences and stringent PCI Compliance standards. I am pleased to report that the agency is unaware of instances such as 'entity hijacking' occurring with frequency in New Hampshire. It's important to note the penalties in our state for initiating these schemes are severe and can be criminal."

The Assistant Secretary also underscored the Agency's interest in community involvement and especially education, "Our agency offers educational sessions on the first Thursday of every month at the Corporation Division Office in the State House Annex. We actively participate in and host finger-to-the-pulse events ranging from young professional and chamber of commerce meetups to Small Business Administration presentations. We encourage any and all inquiries with our office about the process."

In conclusion, while many real estate professionals might be dubious about how to go about implementing a fraud prevention practice, we propose the first step is simply being aware of the different schemes and passing that information to your colleagues and support staff. As these schemes continue to evolve, and fraudsters become more brazen, it can be difficult to imagine someone undertaking such acts. Therefore, just reviewing examples of what is happening can be a powerful teaching tool in that it takes these schemes from the fantastic and difficult-to-imagine to instances where an attorney or processor might spot a similar red flag and take the requisite steps to dig a little deeper.

*Jennifer Shea currently serves as an underwriter for the New Hampshire region of First American Title Insurance Company. She is also currently the vice-chair of the NH Bar Association Real Property Section.*

**Small Cells** from page 27

only the pole itself, but also such other attachments and appurtenances which are required in the reasonable and proper operation of the business carried on by the license holder);

- N.H. RSA 12-K:10, IV, added to the state's wireless law in 2013, expressly prohibits municipal regulation of personal wireless services facilities (PWSFs) on utility poles. Ordinarily, the deployment of PWSFs in New Hampshire is governed by N.H. RSA 12-K. However, RSA 12-K:10, IV expressly provides: "**Notwithstanding anything to the contrary in this chapter, an authority may not mandate, require, or regulate the installation, location, or use of PWSFs on utility poles.**" The statutory exemption from regulation of wireless attachments to utility poles is consistent with RSA 12-K's exclusion of utility poles from the definition of "mounts" in RSA 12-K:2, XX.

**Notification to Municipality of Wireless Attachments**

The license to erect utility poles in a public right-of-way obtained through the process described in N.H. RSA 231:161 is assignable. RSA 231:170 enables a license holder to transfer "**all or any interest in any poles**" by appropriate assignment. The transferee is entitled to have and exercise said license "**to the extent necessary**" for use of the transferred property upon recording the assignment with the respective municipal clerk (RSA 231:170). If MNOs attaching small cells to utility poles file copies of their licenses from the pole owners with the municipal clerk, then municipalities will be able to keep track of small cell attachments to utility poles in public ROWs throughout the community.

*Tom Hildreth is a director in the Energy, Utilities and Telecommunications practice at the law firm of McLane Middleton, Professional Association. He can be reached at Tom.Hildreth@mcclane.com or 603-628-1177. McLane Middleton is the largest full-service law firm in the state of New Hampshire, with offices in Concord, Manchester and Portsmouth, as well as Boston and Woburn, Massachusetts.*



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# Supreme Court Hears Arguments for Amending Conduct Rule



Attorney Fred Potter spoke out against the amendment at the hearing.



Attorney Beth Deragon was one of many female attorneys to voice her support for the measure.



The Supreme Court justices asked numerous questions of those testifying about the change.

By Anna Berry

Two years in the making, a proposed amendment to the state's professional conduct rule for attorneys had a rare hearing in front of the New Hampshire Supreme Court on April 12.

Nearly 20 female attorneys attended to show their support for the amendment to Rule 8.4(g), and many shared personal experiences with harassment and discrimination on the job.

"Unfortunately, the rule is still needed — there are incidents happening now," said attorney Elizabeth LaRochelle.

She shared a recent example: when she was talking to a male attorney over the phone, he told her, "The way you argue turns me on."

"The anger, embarrassment, and shame I felt in that moment ..." LaRochelle recalled. "This is not something that hap-

pened 25 years ago. ... I'm not the only one this is happening to."

Attorney Sara Greene, representing the NH Supreme Court Attorney Discipline Office, came to the hearing with a proposal to amend Rule 4.4 rather than 8.4 as a compromise. Rule 4.4, Respect for Rights of Third Persons, says: "In representing a client, a lawyer shall not take any action if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, delay or burden a third person."

The ADO's office also opposed the amendment when the proposal came up for a public hearing in front of the Advisory Committee on Rules last year.

But Christina Ferrari, president of the New Hampshire Women's Bar Association, said LaRochelle's story illustrated why the current professional conduct rules aren't adequate.

In her case, a single instance of ha-

arrassment "had a profound effect," Ferrari said, and Rule 4.4 (a) wouldn't cover it — "[This] goes well beyond embarrassment, delay or burden..."

The proposal to amend Rule 8.4(g) dates back to early 2017, when the NHBA's Ethics Committee recommended a change in the NH Rules of Professional Conduct, based on the American Bar Association's Model Rules of Professional Conduct, which amended Rule 8.4 in 2016 to make many forms of harassment and discrimination ethical violations.

Members of the Ethics Committee have said that when New Hampshire adopted the ABA's model rules in 1986, language prohibiting action prejudicial to the administration of justice — a phrase that came to include harassment and discrimination — was not approved.

Attorney Rolf Goodwin leads the Ethics Committee's efforts and said the

journey to have the amendment reach the Supreme Court had already included compromises on both sides.

"It's been a unique approach and I think a very beneficial, healthy approach," he said.

Indeed, there were fewer opponents than at previous hearings although the testimony was no less fervent.

"I'm opposed to the rule because it's unconstitutional and it's a bad idea," said Michael Tierney, of the Catholic Lawyers Guild of New Hampshire.

Fred Potter, of the faith-based JustLaw NH firm, acknowledged that the concerns presented by the female attorneys were "horrible" but described the amendment as a social experiment.

"It's attempting to move the needle," he said. "It's attempting to reeducate attor-

HEARING continued on page 35

## Judicial Branch to Expand Text Message Reminder Program

By Anna Berry

A program to remind parties of court dates in divorce and parenting mediation cases reduced the failure-to-appear rate by 40 percent in six months — and attorneys say the program is a welcome addition to their practices.

"I don't think people can be reminded enough," said attorney John Durkin, of the Law Office of John F. Durkin, Jr., who focuses on family law.

While he already sees a high percentage of clients appear at mediations, Durkin said the new program is particularly helpful for people who don't have access to computers or smart phones.

Attorney Catherine Shanellaris, of Shanellaris & Schirch, had similar feelings.

"I know the court has a lot of trouble when the parties are unrepresented and those unrepresented parties often do not show up for mediation and don't pay the mediator," she said in an email to the *Bar News*. "The program is a great idea by the court and is an easy and convenient way for the parties to get a reminder about mediation."

In a press release, the Judicial Branch highlighted cost savings and increased access to justice as additional goals for the program.

"Failing to appear for a court hearing impacts many aspects of our court system," said Judge David D. King, administrative judge of the Circuit Court, in the release. "Parties are more likely to have their cases

delayed and may be required to pay their attorneys for wasted time. The absent party may also face contempt or other consequences. Court staff spends time rescheduling mediations, while the judicial officer involved could have heard another case on an already busy docket. It is clear that decreasing rates of failure-to-appear benefits all who seek access to justice."

The Circuit Court launched the program in 2018 for individuals scheduled for court-connected mediation in a divorce or parenting case. Individuals who chose to provide the Circuit Court with a cell phone number received three text messages reminding them of their mediation day and time: one each at seven days, three days, and one day before the event. The message also reminded them to bring a financial affidavit (a critical document before any negotiations) to the mediation and provided them the Information Center phone number to call with questions.

Now, the Judicial Branch is planning to expand the program to additional case types within the Circuit Court, as well as the Superior Court, and criminal cases may be next.

"I personally think it is a great idea," said attorney Donna Brown, of Wadleigh Starr & Peters who is also chair of the Bar's Criminal Justice Section, in an email to the *Bar News*. "I do this myself with all of my clients. You would be surprised how many people have 'spaced out' their court date and were grateful for the reminder."

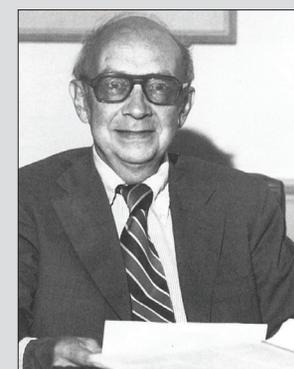
## NH Supreme Court Remembers Justice William Batchelder, 1926-2019

Chief Justice Robert J. Lynn issued a statement on May 8 regarding the death of retired Justice William F. Batchelder, who served on the state's highest court from 1981-1995 and on the Superior Court from 1970-1981. Justice Batchelder, of Plymouth, passed away on May 7 at 92 years old.

"The entire Supreme Court is deeply saddened by the death of Justice Batchelder," Lynn said. "We remember him as a treasured colleague, and a well-respected member of both the bench and bar. Even in retirement, he remained deeply interested in the court, law and history."

Lynn added: "Bill was friendly to all, outgoing and committed to seeing that justice was served. He thoroughly enjoyed being a judge on both the superior and supreme courts. We are grateful that he took the time to encourage younger judges who always found him to be supportive."

"I think the best tribute to Justice Batchelder is that because of his kind and caring nature, he never lost sight of what was truly important in life. For Bill, that meant



showing concern for the little guy and, most of all, loving his family, who adored him."

Justice Batchelder was a graduate of the University of New Hampshire and Boston University Law School and was admitted to the New Hampshire Bar in 1952.

Among his many professional honors, Batchelder received the New Hampshire Bar Association's Professionalism Award and the President's Award for Service to the Profession.

He was also recognized by Plymouth State University in 2009 with the Blair Medal for distinguished public service.

# New Hampshire Supreme Court Advisory Committee on Rules Public Hearing Notice

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, June 14, 2019, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before June 13, 2019 or may be submitted at the hearing on June 14, 2019. Comments may be e-mailed to the Committee on or before June 13, 2019 at:

[rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us)

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court  
Advisory Committee on Rules  
1 Charles Doe Drive  
Concord, NH 03301

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Telephone 271-2646). In addition, the changes being considered are available on the Internet (in the Appendix to the Public Hearing Notice) at: <http://www.courts.state.nh.us/committees/adviscommrules/notices.htm>

The changes being considered concern the following rules:

## I. 2019-001. Supreme Court Rules 12-D and 20. Non-Precedential Status of Orders.

*(This proposal would amend Supreme Court Rules 12-D(3) and 20(2) to make clear that orders issued in confidential cases should not be cited or referenced in pleadings or rulings.)*

1. Amend Supreme Court Rule 12-D(3), as set forth in Appendix A.
2. Amend Supreme Court Rule 20(2), as set forth in Appendix B.

## II. 2017-018. Supreme Court Rule 37. Attorney Discipline System. Access to Confidential Records.

*(This proposal would add subsection (c) to Supreme Court Rule 37(8), setting out a new procedure detailing when, and in what manner, the Attorney Discipline Office may access confidential court files.)*

1. Amend Supreme Court Rule 37(8), as set forth in Appendix C.

## III. 2019-005. Supreme Court Rule 48-B. Family Mediator Fees.

*(This proposal would delete and replace Supreme Court Rule 48-B.)*

1. Delete and replace Supreme Court Rule 48-B, as set forth in Appendix D.

## IV. 2018-012. Supreme Court Rule 57-A. Custody and Return of Documents Filed in Camera in Trial Courts.

*(This proposal would amend Supreme Court Rule 57-A to provide that in cases in which a defendant has not been convicted on any charge, a person with interest may request that records filed in camera be destroyed.)*

1. Amend Supreme Court Rule 57-A, as set forth in Appendix E.

## V. 2018-010. New Hampshire Rule of Criminal Procedure 50. Confidential Documents and Confidential Information.

*(This proposal would adopt on a permanent basis rules applicable to criminal*

*cases filed in Superior Court delineating the procedure for filing documents which are confidential in their entirety or contain confidential information, and for seeking access to documents or information that have been determined to be confidential.)*

1. Adopt on a permanent basis amendments to New Hampshire Rule of Criminal Procedure 50 which were adopted on a temporary basis, as set forth in Appendix F.

## VI. 2018-011. New Hampshire Rule of Criminal Procedure 50. Confidential Documents and Confidential Information.

*(This proposal would further amend New Hampshire Rule of Criminal Procedure 50 to make applicable to criminal cases in Circuit Court the rules delineating the procedure for filing documents which are confidential in their entirety or contain confidential information, and for seeking access to documents or information that have been determined to be confidential.)*

1. Amend New Hampshire Rule of Criminal Procedure 50, as set forth in Appendix G.

## VII. 2019-002. Circuit Court Rules. Civil Process Amendments Designed to Facilitate Electronic Filing.

*(This proposal would amend Circuit Court Rules to make the Circuit Court civil filing process consistent with the Superior Court civil filing process in order to facilitate the implementation of electronic filing in civil cases filed in the Circuit Court.)*

1. Amend Circuit Court – District Division Rule 1.3(D) (“Attorneys”), as set forth in Appendix H.
2. Amend Circuit Court – District Division Rule 1.3-A(A) (“Pleadings – copies to all parties”), as set forth in Appendix I.
3. Amend Circuit Court – District Division Rule 1.7 (“Argument of Counsel”), as set forth in Appendix J.
4. Amend Circuit Court – District Divi-

sion Rule 1.8 (“Motions”), as set forth in Appendix K.

5. Delete Circuit Court – District Division Rule 1.9 (“Depositions and Use of videotape depositions”), as set forth in Appendix L.

6. Delete Circuit Court – District Division Rule 1.10 (“Written interrogatories”), as set forth in Appendix M.

7. Amend Circuit Court – District Division Rule 1.21 (“Periodic Payments”), as set forth in Appendix N.

8. Amend Circuit Court – District Division Rule 1.27 (“Dismissal of Cases Pending Without Action”), as set forth in Appendix O.

9. Adopt Circuit Court – District Division Rule 1.28 (“Court Fees”), as set forth in Appendix P.

10. Delete Circuit Court – District Division Rules 3.1-3.28 (“Civil Rules”) in their entirety and replace them with the rules set forth in Appendix Q.

11. Amend Circuit Court – District Division Rule 5.3 (“Entry of Actions”), as set forth in Appendix R.

12. Amend Circuit Court – District Division Rule 5.6 (“Discovery and Continuances”), as set forth in Appendix S.

13. Amend Circuit Court – Probate Division Rule 169 (“Fees”), as set forth in Appendix T.

14. Adopt Circuit Court – Probate Division Rule 173 (“Name Change Actions”), as set forth in Appendix U.

15. Amend Circuit Court – Family Division Rule 1.3 (“Fees”), as set forth in Appendix V.

16. Amend Circuit Court – Family Division Section 9 (“Name Change Actions”), as set forth in Appendix W.

New Hampshire Supreme Court  
Advisory Committee on Rules  
By: Patrick E. Donovan, Chairperson  
and Carolyn A. Koegler, Secretary  
April 23, 2019

## Hearing from page 34

neys.”

In an email to the NHWBA following the hearing, Ferrari said she was “proud and moved” by members’ testimony.

“To those who testified in person and so bravely shared your experiences, I know that it was not easy to put yourself out there on a personal level, but the raising of your

voice up against inequality was an example to all and I believe it made a difference, regardless of the outcome of the Proposed Rule,” she wrote.

The last time the state’s highest court held a public hearing on a rule change was 2014. In addition to the testimony in April, 27 comments were submitted to the Supreme Court. Their decision is forthcoming.

## US Court of Appeals for the First Circuit

### PRESS RELEASE APPLICATIONS FOR THE FIRST CIRCUIT CRIMINAL JUSTICE ACT PANEL

BOSTON (April 16, 2019) — The United States Court of Appeals for the First Circuit is accepting applications to serve on the court’s Criminal Justice Act (“CJA”) Panel including: (1) applications from attorneys not currently on the panel; and (2) reapplications from panel members whose terms expire on September 30, 2019.

Instructions and application forms may be downloaded from the court’s website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov) under the ACJA Materials@ tab. They may also be obtained from the Clerk of Court, John Joseph Moakley United States Courthouse, One Courthouse Way, Suite 2500, Boston, MA 02210. Three paper copies of the completed form and attachments should be mailed to the Clerk and must be received no later than June 14, 2019 at 5:00 p.m.

For additional information, please contact Carmen Torres at (617) 748-9380 or CJA Coordinator George Kretas at (617) 748-9055.

## 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 Cardello, Justice	5th Circuit Courts
Sawako Gardner, Justice	7th Circuit Courts
Charles Greenhalgh, Justice	3rd Circuit Courts
John Pendleton, Justice	10th Circuit Courts

An evaluation may be completed online at [www.courts.state.nh.us](http://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 [Lcammatt@courts.state.nh.us](mailto:Lcammatt@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 June 17, 2019.

## R-2019-0002, In re April 8, 2019

### Report of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported a number of proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. The amendments would increase the fees charged to out of state counsel who seek to appear pro hac vice from \$250.00 to \$350.00.

On or before May 1, 2019, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments. An original and one copy of all comments shall be filed. Comments may also be emailed to the court at: [rulescomment@courts.state.nh.us](mailto:rulescomment@courts.state.nh.us).

The language of the proposed rules changes is set forth in the attached appendices A-H. For background regarding the proposals, please see the April 8, 2019 Advisory Committee on Rules Report, which is available at [courts.state.nh.us/committees/adviscommrules/reports/index.htm](http://courts.state.nh.us/committees/adviscommrules/reports/index.htm).

Copies of the April 8, 2019 Advisory Committee on Rules Report are also available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are available on the Internet at [courts.state.nh.us/rules/index.htm](http://courts.state.nh.us/rules/index.htm).

Date: April 16, 2019

ATTEST: Eileen Fox, Clerk

Supreme Court of New Hampshire



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

### I. Supreme Court Rules.

*(These amendments amend the Supreme Court rules to make them gender-neutral. An additional technical amendment to Supreme Court Rule 16(3)(i) expands the filing method for an appealing party to provide the Supreme Court with a copy of each of the decisions below that is being appealed or reviewed.)*

1. Amend Supreme Court Rule 5(2), as set forth in Appendix A.

2. Amend Supreme Court Rule 7(4), as set forth in Appendix B.

3. Amend Supreme Court Rule 15(3), as set forth in Appendix C.

4. Amend Supreme Court Rule 16, as set forth in Appendix D.

5. Amend Supreme Court Rule 17, as set forth in Appendix E.

6. Amend Supreme Court Rule 26(2), as set forth in Appendix F.

7. Amend Supreme Court Rule 28(2), as set forth in Appendix G.

8. Amend Supreme Court Rule 29, as set forth in Appendix H.

9. Amend Supreme Court Rule 31, as set forth in Appendix I.

10. Amend Supreme Court Rule 33(2), as set forth in Appendix J.

11. Amend Supreme Court Rule 36(2), as set forth in Appendix K.

12. Amend Supreme Court Rule 40(7)(c), as set forth in Appendix L.

13. Amend Supreme Court Rule 40(10)(g), as set forth in Appendix M.

14. Amend Supreme Court Rule 43, as set forth in Appendix N.

15. Amend Supreme Court Rule 46, as set forth in Appendix O.

16. Amend Supreme Court Rule 52, as set forth in Appendix P.

17. Amend Supreme Court Rule 52-A, as set forth in Appendix Q.

### II. Supreme Court Rule 36. Appearance in Courts By Eligible Law Students and Graduates.

*(These amendments allow students who have completed the 9-hour training program for the DOVE project to start supervised practice right away, rather than wait until the end of the spring semester of their second year.)*

1. Amend Supreme Court Rule 36, as set forth in Appendix R.

### III. Superior Court Rule 12(g). Motions for Summary Judgment.

*(This amendment deletes and replaces Superior Court Rule 12(g). The amendment requires both sides in the context of a motion for summary judgment to submit a single document identifying any undisputed facts and any disputed facts.)*

1. Amend Superior Court Rule 12(g), as set forth in Appendix S.

### IV. Rule of Professional Conduct 6.5 Nonprofit and Court-Annexed Legal Services Programs.

*(This amendment adopts on a permanent basis a comment following Rule of Professional Conduct 6.5 that the Court had adopted on a temporary basis.)*

1. Adopt on a permanent basis the comment following Rule of Professional

Conduct 6.5, as set forth in Appendix T.

### Effective Date

The amendments shall take effect on July 1, 2019. The amendment set forth in Appendix S shall be referred to the Advisory Committee on Rules. In June of 2020, the Advisory Committee on Rules shall begin to evaluate how the rule has worked in practice and as soon as possible thereafter, shall recommend whether the rule should remain in effect or should be amended further.

Date: April 19, 2019

ATTEST: Eileen Fox, Clerk

Supreme Court of New Hampshire



### ADM-2015-0072, In the Matter of Anthony P. Bistany, Esquire

On December 22, 2015, Attorney Anthony P. Bistany was suspended from the practice of law in New Hampshire for failing to file his 2015 trust accounting certificate.

Attorney Bistany recently filed his 2015 trust accounting certificate. He also filed a petition for reinstatement and, as required by Supreme Court Rule 50-A(2), he has provided evidence of his continuing competence and learning in the law and continuing moral character and fitness. Attorney Bistany states in his petition for reinstatement that he has paid all bar dues and court fees.

Attorney Bistany's petition for reinstatement is granted. Attorney Bistany is reinstated to the practice of law, effective immediately.

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

DATE: May 3, 2019

ATTEST: Eileen Fox, Clerk



### LD-2019-0004, In the Matter of Michael E. Anderson, Esquire

On April 18, 2019, the Professional Conduct Committee submitted a request from Attorney Michael E. Anderson to resign in accordance with Rule 37(11). In accordance with this rule, the Professional Conduct Committee submitted a recommendation that the resignation be accepted. Attorney Anderson's request was accompanied by his affidavit, which satisfies the requirements of the rule.

The court has reviewed the affidavit of Attorney Anderson and the recommendation of the Professional Conduct Committee. In accordance with Rule 37(11), Attorney Anderson's resignation from the bar is accepted.

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

DATE: May 3, 2019

ATTEST: Eileen Fox, Clerk



### LD-2017-0017, In the Matter of James E. Michalik, Esquire

On December 1, 2017, the Attorney Discipline Office (ADO) notified the Supreme Court that the respondent, Attorney James E. Michalik, had been convicted, on two occasions, of violating a domestic violence restraining order. See RSA 173-B:9, III. The court referred the matter to the ADO for further action, if appropriate.

The ADO filed a notice of charges alleging that the respondent, by his conduct, had violated Rules of Professional Conduct 8.1, 8.4(a), and 8.4(b), as well as Supreme

Court Rule 42(XIV). The respondent failed to respond to the notice of charges. In accordance with Supreme Court Rule 37A(III)(b)(3)(A), the respondent was deemed to have admitted the charges. A hearing on the issue of the appropriate sanction was scheduled before a hearing panel. The respondent failed to appear for the sanction hearing. The hearing panel recommended that the respondent be suspended from the practice of law for two years, and it recommended that the respondent be assessed the cost and expenses incurred by the ADO in investigating and prosecuting the matter. The Professional Conduct Committee (PCC) reviewed the hearing panel's findings and recommendation and approved the recommended sanction.

The PCC filed its recommendation for discipline with the court on December 17, 2018. In accordance with Rule 37(16)(c), an order was issued notifying the respondent of the PCC's recommendation. The order also notified the respondent and disciplinary counsel of their right to identify legal or factual issues that they wished the court to review. The order was sent to the respondent at the latest address that he provided to the New Hampshire Bar Association, but the order was returned by the United States Postal Service as undeliverable. In accordance with Rule 42E, notice sent to an address provided by an attorney to the New Hampshire Bar Association shall be deemed sufficient notice to the attorney of court action. Accordingly, the respondent is deemed to have been served with the order.

Neither the respondent nor disciplinary counsel requested review of any legal or factual issue. Having reviewed the PCC's recommendation and the record in this matter, the court concludes that briefing and oral argument is unnecessary.

The hearing panel and the PCC found that the respondent violated the following Rules of Professional Conduct:

1. Rule 8.1, by failing to respond to a lawful demand for information from a disciplinary authority;

2. Rule 8.4(b), by committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and

3. Rule 8.4(a), by violating the Rules of Professional Conduct.

The PCC also found that the respondent violated Supreme Court Rule 42, XIV by failing to notify the New Hampshire Bar Association of his residence and office address.

After reviewing the PCC's recommendation and record, the court accepts the PCC's findings and its recommendation as to the appropriate sanction. Accordingly, the court orders as follows:

(1) Attorney James E. Michalik is suspended from the practice of law in New Hampshire for a period of two years.

(2) Attorney Michalik is ordered to reimburse the ADO and PCC for the costs and expenses they incurred in the investigation and prosecution of this matter.

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

(4) Within 30 days of this order, Attorney Michalik 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 ADO.

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

DATE: May 6, 2019

ATTEST: Eileen Fox, Clerk

Need to schedule a Mediation?

Fast-track scheduling at [www.NHMediators.org](http://www.NHMediators.org)

April 2019

**Criminal Law**

**The State of New Hampshire v. Katharine Saintil-Brown, No. 2018-0222**  
**April 17, 2019**  
*Affirmed.*

- Whether the State presented sufficient evidence to establish that defendant was guilty of criminal neglect of an elderly adult, negligent homicide and failure to report where defendant lived with victim in her mobile home, knew that victim had fallen and could not get up, and allowed victim to lie in a pool of her own waste for five days before calling for emergency assistance.
- Whether the jury instruction at trial presented reversible error where it failed to accurately set forth the elements required to be proved by the State.

The victim was a 76-year old widow, suffering from depression following the death of her husband in 2012. As a result of her depression, the victim would not use the toilet (relieving herself wherever she happened to be sitting or standing), she did not shower or bathe, and did not maintain her home. The victim also did not attend to her medical needs and was “morbidly obese.” In September 2014, the defendant — the victim’s daughter — moved into the home to “take care of her.”

On February 12, 2016, the victim fell to the floor. The defendant attempted unsuccessfully to lift the victim from the floor. Thereafter, the defendant left the victim on the floor, in a pool of her own waste, for five days before calling the fire department for assistance.

When emergency responders arrived, the victim was covered in urine and feces, was disoriented, with low blood pressure and body temperature. They transported the victim to the emergency room where it was discovered that the victim had an ulcer on her left inner thigh and black, rotting flesh evidencing a severe soft tissue infection, most likely caused by victim’s lying on the hard surface of the floor and exposed to her own waste. Due to the victim’s health, treatment options were limited, and the victim died from sepsis a few weeks later.

**I. Sufficiency of Evidence**

In reviewing the sufficiency of the evidence, the Court “objectively review[ed] the record to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Francis, 167 N.H. 598, 603-04 (2015).

**A. Criminal Neglect.**

With regard to criminal neglect of an elderly adult, the Court determined that there was adequate evidence of both caregiver status (defendant bought groceries, prepared meals and fed the victim, in addition to undertaking to attempt to lift the victim after her fall) and neglect: “[t]he evidence presented was sufficient [for] a reasonable jury to conclude that by waiting five days before calling for assistance, the defendant failed to provide the care she agreed to provide.”

Additionally, as to causation, the Court determined that there was adequate evidence to conclude that leaving the victim on the floor for five days was the proximate cause of the infection that ultimately killed her. The jury did not have to credit defendant’s claim that victim would have refused help earlier because evidence was presented that the victim attempted to lift herself, but could not, and victim did not refuse treatment when the emergency responders arrived. Moreover, even if the victim had refused treatment, the firefighters would have assisted over her objection, not allowing the victim to remain on the floor in a pool of her own waste.

Furthermore, the Court determined that there was adequate evidence of recklessness given that defendant knew the victim had a tendency to relieve herself in place, knew the victim had fallen to the floor and could not get up, and searched the internet for symptoms of strokes and other ailments relating to the victim’s fall. Evidence had also been presented to show that the defendant told the victim on multiple occasions that she could not wait for her to die so she could inherit the victim’s money. Even though the defendant did not know specifically about the “necrotizing faciitis” that resulted in the sepsis, evidence was sufficient for the defendant to know that something was wrong and assistance was needed prior to the fifth day after the victim’s fall.

**At-a-Glance Contributor**



**Scott C. Owens**  
 Scott C. Owens is an associate in the litigation department at Marcus, Errico, Emmer & Brooks, P.C., with offices in Merrimack, NH and Braintree, MA.

**B. Negligent Homicide.**

With regard to negligent homicide, the Court determined that there was adequate evidence that a reasonable person would have been aware of a substantial and unjustifiable risk of death or serious bodily injury resulting from leaving a morbidly obese victim on the floor in a pool of her own waste for five days after a fall. Defendant should have been aware of the dangers of hypothermia and infection and, at least by the fourth day when she researched online, of potential stroke and other ailments.

**C. Failure to Report**

With regard to failure to report, the Court determined that there was adequate evidence that defendant knowingly failed to report that the victim was “incapacitated” in that she was unable to manage her affairs (feeding, hygiene, housecleaning) on her own. Defendant knew of the conditions and purported

moved into the house to assist. Moreover, defendant knew after the victim fell that neither the victim, nor the defendant, was able to lift her off the floor, where the victim was allowed to urinate and defecate on herself. No call was made to any social services worker.

**II. Jury Instruction Error**

In determining whether a trial court instruction to the jury is subject to plain error, the Court must determine: (1) that there was an error; (2) that the error was plain; (3) that the error affected a substantial right; and (4) that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. Here the Court assumed, without deciding, that the first three prongs of the test had been met, but nevertheless held that the trial court’s erroneous jury instruction did not seriously affect the fairness, integrity or public reputation of the proceedings.

Even assuming that the State was required to prove beyond a reasonable doubt either (a) that the defendant was able to provide care to the victim (but failed to do so) or (b) that she was unable to do so and that the inability was defendant’s own fault, the Court found that there was absolutely no evidence presented to show that defendant was unable to call for help prior to the fifth day. Rather, the evidence overwhelmingly showed that the defendant could have called for help sooner, but chose not to.

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April 2019

\* Published

## ATTORNEY'S FEES

4/22/19 Andrew Hall v. Loretann Gascard and Nikolas Gascard  
Case no. 16-cv-418-SM, Opinion No. 069

Prevailing plaintiff in art fraud case moved for an award of reasonable attorney's fees, invoking New Hampshire's "bad faith exception" to the general (American) rule that parties' bear the cost of their own legal fees. Specifically, plaintiff asserted that the defense was patently unreasonable and without any basis in the facts provable by evidence. The court noted that, while it might seem appropriate to award fees to a plaintiff who demonstrated, by clear and convincing evidence, that he had been defrauded, New Hampshire has not created such a blanket rule. And, while some cases involving fraud might involve defenses that are "patently unreasonable," this was not quite that case. Motion for attorney's fees denied. 12 pages. Judge Steven McAuliffe.

## BANKRUPTCY APPEAL

4/26/19 Joanne C. Evarts v. U.S. Bank Trust Nat'l Ass'n  
Case no. 18-cv-1224, Opinion No. DNH 071

Debtor in Chapter 13 bankruptcy objected to creditor's proof of claim. Following an evidentiary hearing, the bankruptcy overruled that objection and allowed the proof of claim. Debtor appealed, claiming the bank/creditor had improperly included in its proof of claim three categories of debt that she did not actually owe - all of which totaled more than \$70,000. After reviewing the record, as well as the parties' arguments on appeal, the court held that the debtor failed to demonstrate that the bankruptcy court's decision rested on either clearly erroneous findings of fact or an error of law. Accordingly, it affirmed the decision of the bankruptcy court. 19 pages. Judge Steven McAuliffe.

## CRIMINAL; EVIDENCE

5/2/19 United States of America v. Julio Colon  
Case No. 18-cr-33-22-JL, Bench Order - no written opinion.

The defendant in this drug-distribution case moved to suppress related to the stop and search of defendant's vehicle, a taxi allegedly used in drug deliveries. After oral argument and post-hearing briefing, the court denied this motion in an endorsed order. The court found that the evidence demonstrated probable cause to stop and search the vehicle pursuant to the automobile exception to the warrant requirement, and the probable cause could be imputed to the trooper making the stop under the collective knowledge doctrine. Judge Joseph N. Laplante.

## CRIMINAL, FOURTH AMENDMENT SEARCH

4/19/19 United States v. Steven Lessard  
Case No. 18-cr-033-JL-26, Bench order - no written opinion

A criminal defendant charged with participating in a drug conspiracy moved to suppress evidence obtained in the basement of his two-unit apartment building pursuant to a warrant authorizing a search of his first-floor apartment. During the search of the apartment, the executing officers discovered an internal door leading directly to the building's basement, in which the government seized fentanyl, cash, and guns. The defendant asserted that a house divided into two, apartment units was more akin to a traditional home, thus entitling him to a reasonable expectation of privacy in the basement. Further, he argued that the search was unreasonable because it intruded into an area that he shared with the building's second-floor tenant and superintendent. The court applied the Katz test and held from the bench that the defendant lacked a reasonable expectation of privacy in a common area basement shared with persons unrelated to the defendant and their invited guests. The court further held that if the defendant enjoyed a reasonable expectation of privacy, the government acted reasonably in concluding the basement was covered by the warrant. The court therefore denied the motion to suppress. Judge Joseph N. Laplante.

## EMPLOYMENT; EVIDENCE

4/25/19 Reyes-Caparrós v. Barr  
Case No. 15-cv-2229 (D.P.R.), 2019 DNH 070

After a three-week trial resulting in a plaintiff's verdict in this employment action, the defendant moved for judgment as a matter of law or a new trial on four bases. The court denied the defendant's motion. In doing so, the court concluded, among other things, that: (1) the defendant waived many of its arguments by failing to object or raise them during trial; (2) the defendant may be held liable for retaliating against what its management employees perceived as opposition activity by the plaintiff; (3) the defendant was not prejudiced by an advisory verdict on constructive discharge; (4) the defendant was not prejudiced by the court's limitations on evidence concerning other employees' claims against the defendant; and (5) the national-security exception to Title VII did not preclude the jury from considering certain actions by the defendant's employees as retaliatory. 76 pages. Judge Joseph N. Laplante.

## FLSA & UNJUST ENRICHMENT

4/1/19 David Camp and Keith Hadmock, on behalf of themselves and all others similarly situated v. Bimbo Bakeries USA, Inc. and Bimbo Bakeries Distribution, LLC.  
Case No. 18-cv-378-SM, Opinion No. 2019 DNH 063

Food distribution drivers brought FLSA action against defendants ("Bimbo Bakeries") claiming that they were improperly treated as independent contractors, rather than employees. As a consequence, they say they were deprived of overtime wages and other benefits. The court approved conditional certification of a collective action under the FLSA. Plaintiffs then moved the court to dismiss Bimbo Bakeries' counterclaim for unjust enrichment. That motion was granted. The court held that Bimbo Bakeries failed to plausibly allege that plaintiffs would be unjustly enriched if they were permitted to retain benefits they received as a consequence of being treated as independent contractors (e.g., federal tax deductions; income from advertising agreements they executed with Bimbo Bakeries). The court also denied Bimbo Bakeries' motion to reconsider its order of conditional certification of the collective. 14 pages. Judge Steven McAuliffe.

## IMMIGRATION, HABEAS PETITION

4/24/19 Hernandez Jandres v. Todd Lyons et al.  
Case No. 19-cv-130-JL, Bench order - no written opinion

The petitioner, an "arriving alien" from El Salvador, had been mandatorily detained without a bond hearing by Immigration and Custom Enforcement since August 2018, pursuant to 8 U.S.C. § 1225(b). He filed a habeas petition requesting a bond hearing to determine whether his prolonged detention was justified. ICE moved to dismiss the petition, arguing that neither the Fifth Amendment's Due Process Clause nor the present immigration framework entitled arriving aliens subject to the entry fiction to

individualized bond hearings at any point in their detention. The court did not decide the constitutional question. Instead, it assumed, without holding, that Due Process entitled arriving aliens to a bond hearing after their detention becomes unreasonably prolonged and proceeded to consider whether the petitioner's detention was unreasonable starting with the five "reasonableness" guideposts articulated in Reid v. Donelan, 819 F.3d 486 (1st Cir. 2016). The court concluded that the first, second, and fifth Reid factors weighed against habeas relief. Even though eight months in detention was a long time, it was not excessive given the nature of the petitioner's § 1225(b) detention, the progression of his immigration proceedings to date, and examples of habeas petitions from other districts granted after the Supreme Court's decision in Jennings v. Rodriguez, 138 S. Ct. 830 (2018). Although his case was before the Board of Immigration Appeals, the court found that his detention had a definite, albeit indeterminate, end point - the date of the final appellate decision - and would likely end before it became unreasonable in duration. The court found the third and fourth factors weighed in neither party's favor. Finally, it considered the nature of the petitioner's confinement as an additional factor and found his civil detention in a criminal jail weighed in favor of habeas relief. The court dismissed the petition. Judge Joseph N. Laplante.

## SOCIAL SECURITY

4/4/19 Nicole Paquet v. SSA  
Case No. 18-cv-205-JL, Opinion No. 2019 DNH 064

In this appeal from a denial of Social Security disability insurance benefit, the decision of the Acting Commissioner to deny those benefits was affirmed over claims that the Administrative Law Judge had: (1) erred at Step 2 of the sequential evaluation process by determining that her bulimia was not a severe impairment; (2) improperly weighed the opinions of her treating sources; (3) improperly assessed the credibility of her subjective complaints; and (4) inaccurately characterized the facts in the record. 28 pages. Judge Joseph N. Laplante.

## TITLE IX

4/17/19 Doe v. Trustees of Dartmouth College  
Civil No. 19-cv-13-JL, Bench Order - no written opinion

The defendant moved to dismiss the pseudonymous plaintiff's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of Title IX. The court granted that motion in part and denied it in part from the bench. Specifically, the court dismissed the plaintiff's Title IX claim, concluding that the plaintiff had not pleaded gender-based bias on the part of any individual who participated in his disciplinary proceedings. The court denied the motion to dismiss the plaintiff's contract-based claims for failure to state a claim.



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**ASSOCIATE** – Manchester: Morrison Mahoney LLP, a civil litigation firm, seeks an associate for its Manchester, NH office. The ideal candidate will have approx. 1-7 years' experience. Prior work in workers comp, premises, auto/truck, product, construction, and/or prof. malpractice liability is a plus. NH bar admission required. MA and VT helpful. Candidates should demonstrate strong research skills, writing skills, and academic record. To apply, please send cover letter and resume to [careers@morrisonmahoney.com](mailto:careers@morrisonmahoney.com).

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**ANYONE WITH KNOWLEDGE OF** a missing will for Richard G. Bell of Salem, NH, believed to be executed in 2016, please contact Attorney Linda O'Connell, 978-989-5187.



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Shaheen & Gordon, P.A., Attorneys at Law, is seeking an energetic and self-motivated Research and Writing attorney to join our Dover, New Hampshire office. The candidate must be licensed to practice law in New Hampshire and have relevant experience and/or coursework in legal research and writing. We will consider candidates with 1-3 years of experience. This role offers the candidate the opportunity to work collaboratively with experienced practitioners to provide support over different practice areas.

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The candidate must have a Juris Doctor degree from a recognized law school and be a member in good standing of the New Hampshire Bar. The salary is competitive and commensurate with experience. An excellent benefit package is also included. Please send cover letter, resume, and writing sample to: New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, c/o Dianne Martin, Chief of Staff or via e-mail at: [Dianne.Martin@doj.nh.gov](mailto:Dianne.Martin@doj.nh.gov)

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Issue Date	Ad Reservation Deadline	Final Ad Copy Due
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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
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## NH LIQUOR COMMISSION - ATTORNEY IV

Position # 44226 – Concord Office

Salary Range: \$69,088.50 - \$98,962.50

See \*total compensation information at the bottom of announcement.

The New Hampshire Liquor Commission currently has an attorney position available to supervise, integrate, coordinate, and evaluate all legal and legislative objectives and actions for the NH Liquor Commission.

### The Duties include:

- Reviews documents, contracts, and relevant issues on behalf of the Commission and its three divisions and provides legal advice regarding them.
- Conducts and provides legal research on various Commission Administrative Rules, Regulations, Issues, Policies, and State & Federal Laws.
- Assists with agency legislative issues, formulates strategy, and represents agency as required.
- Serves as an advisor to the NHLC senior management team by effectively communicating legal advice. Assists with legal hearings and prepares legal hearings Orders and Decisions.
- Represents Commission and manages lawsuits and legal proceedings, including criminal matters and appeals.
- Oversees compliance issues, interfacing with relevant State and Federal Agencies.
- Conducts legal programs and initiatives to ensure efficiency and consistency in application of Commission objectives and recommends corrective action.
- Works with the NH Department of Justice on legal matters as needed.
- Represents Commission at state and out of state conferences and seminars and prepares and presents legal training and presentations as required.
- Supervises personnel, including disciplining employees, solving personnel problems, developing work methods and writing evaluations.

**Requirements:** J.D. from an American Bar Association recognized law school, active member of the New Hampshire Bar Association and in Good Standing, six years' experience in the active practice of law, and a valid driver's license and/or access to transportation for statewide travel.

The Attorney IV is a confidential position.

### \*TOTAL COMPENSATION INFORMATION

The State of NH total compensation package features an outstanding set of employee benefits, including:

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- See this link for details on State-paid health benefits: <https://das.nh.gov/hr/benefits.html>
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- Dental Plan at minimal cost for employees and their families (\$500-\$1800 value)
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Legal Contract & Compliance  
New Hampshire Ball Bearings, Inc. - Laconia, New Hampshire

## Associate Attorney (Entry Level)

Please send resumes to: [nparker@nhbb.com](mailto:nparker@nhbb.com).

### JOB PURPOSE:

Provides legal support to the NHBB and affiliate Legal Departments.

### KEY RESPONSIBILITIES:

1. Coordinate compliance programs.
2. Review, revise and draft a broad range of contracts including, but not limited to confidentiality and non-disclosure agreements, purchase and pricing agreements, and sales agreements.
3. Review, revise and draft other legal documents and correspondence as needed.
4. Facilitate signature process for various legal documents and correspondence as needed and distributing copies of signed documents to internal clients and to the contract database.
5. Assists with tracking of internal requests for contract review and drafting. This will also include creating a new matter files or confirming files exists.
6. Stay current on federal, state, and local legal requirements in assigned areas by studying existing and new legislation; advising workforce on needed actions as directed.
7. Conduct legal research as needed.
8. Other duties as assigned or directed.

### Requirements:

- Juris Doctor with excellent academic and/or legal professional background
- Experience in manufacturing a plus
- Experience in contract law strongly preferred

### MINIMUM EXPERIENCE REQUIRED:

Entry level legal position.

### ADDITIONAL QUALIFICATIONS:

Requires working knowledge of contracting and interpretation of contract terms. Requires excellent written and verbal communication skills. Solid analytical skills. Excellent organizational skills, computer skills, inclusive research skills, proficiency in Excel and Power Point. Capable of working in a fast paced, rapidly changing environment. Ability to handle multiple priorities within firm deadlines. Initiative and ability to handle priorities/projects.

We are an equal opportunity employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability status, protected veteran status, or any other characteristic protected by law.

## Deputy Medicaid Director

NH Department of Health and Human Services

Position #9U404

Salary Range: \$77,609.48-\$108,149.08 USD

Administers the strategy, goals, and objectives of the Division of Medicaid Services (DMS) in close coordination with the Medicaid Director. Authorizes and directs senior-level policy development, evaluation, and administration; program operations; and the implementation of DMS policies and procedures. Includes establishing goals and objectives in support of the DMS strategic plan, identifying and evaluating alternatives for enhancing program and business operations, and leading an effective team of professional staff to achieve DMS objectives. Acts as Medicaid Director in the absence of the Director.

**Requirements:** Master's degree from a recognized college or university with a major study in public administration, health policy, finance, public health, public policy, law or a related field of study, and eight years of work experience in public administration, policy administration, business, management or a related field.

OR

Bachelor's degree from a recognized college or university with a major study in public administration, health policy, finance, public health, public policy, law or a related field of study, and nine years of work experience in public administration, policy administration, business, management or a related field.

**How to APPLY:** Please go to the following website to submit your application electronically through NH 1st: <https://das.nh.gov/jobsearch/>. A paper application may be sent to: New Hampshire Dept. of Health and Human Services, 129 Pleasant Street, Concord, NH 03301. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.

## Senior Policy Analyst-Substance Use Services

NH Department of Health and Human Services

Position #9U406

Salary Range: \$67,245.36-\$93,654.60 USD

Administer Division of Behavioral Health (DBH) objectives by authorizing, directing and executing the federal, statewide and interagency implementation of major Substance Use Services' initiatives, including substance use policy analysis; Medicaid State Plan benefits; Medicaid Managed Care Program; and New Hampshire's Building Capacity for Transformation Demonstration Waiver. Act as an official representative of DBH with internal and external stakeholders to provide information and educational supports regarding current and long-range goals, initiatives, and public policies in the area of substance use issues and services.

**Requirements:** Master's degree from a recognized college or university with major study in Business, Public, or Health Services Administration, Public Policy, Social Work, Psychology, Counseling, or other related field and Eight years' experience in a social service, health services or other public service program, five years of which must have been in a management level position involving administrative or supervisory duties concerned with program administration, program planning and evaluation, business management or related management experience.

OR

Bachelor's degree from a recognized college or university with major study in Business, Public, or Health Services Administration, Public Policy, Social Work, Psychology, Counseling, or other related field and Nine years' experience in a social service, health services or other public service program, five years of which must have been in a management level position involving administrative or supervisory duties concerned with program administration,

**How to APPLY:** Please go to the following website to submit your application electronically through NH 1st: <https://das.nh.gov/jobsearch/>. A paper application may be sent to: New Hampshire Dept. of Health and Human Services, 129 Pleasant Street, Concord, NH 03301. In order to receive credit for postsecondary education, a copy of official transcripts with a seal and/or signature MUST be included with the application. Please have transcripts forwarded to the Human Resources Office with the recruiting agency. Position will remain open until a qualified candidate is found. EOE.



# Continuing Legal Education GUIDE

May  
2019

[nhbar.org/  
nhbacle](http://nhbar.org/nhbacle)

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

## Calendar Overview

### MAY

**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 • 9:00 a.m. - Noon

#### Managing Student Loan Debt and Personal Finances

- In Person • Webcast
- 165 min. credit
- 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

**7** Friday • 9:00 a.m. - Noon

#### Innocent Spouse Relief from Joint & Federal Tax Liability

- In Person • Webcast
- 150 min. credit
- Concord • NHBA Seminar Room

**21** Friday • 8:30 a.m. - 10:30 a.m.

#### 13<sup>th</sup> 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

### JULY

**18** Thursday • 8:00 a.m. - 5:35 p.m.

#### Second Annual CLE by the Sea

- In Person
- Up to 360 credit minutes
- Salisbury, MA • Blue Ocean Event Center

### AUGUST

**6** Tuesday • TBD  
2019 Emerging Leaders' Summit

- In Person
- Credits TBD
- Manchester • St. Anselm College

## Upcoming Programs

- 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
- 37<sup>th</sup> Annual Tax Forum
- 19<sup>th</sup> Superior Court Judicial Forum
- Midyear Meeting 2020

## CLE HIGHLIGHT



### Virtual Learn@Lunch Webcast Series

#### 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.

#### Uniform Access to Digital Funds Act

October 15 • 12-1:00 p.m.

#### Polling Place/Election Issues

December 3 • 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](http://nhbar.inreachce.com)

## 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](mailto:cmoore@nhbar.org)

**Website** [www.nhbar.org/nhbacle](http://www.nhbar.org/nhbacle)

All webcast registrations must be made online.

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Greater Newburyport Bar Association in Partnership with  
The Massachusetts Bar Association, the Maine State Bar Association, The NH Bar Association,  
The MA Academy of Trial Attorneys, The MA Women's Bar Association and the LOMAP Massachusetts

## Second Annual CLE BY THE SEA N.E. STRATEGIC SOLUTIONS FOR SOLO AND SMALL LAW FIRMS

Thursday

July 18



Up to 360 min. NHCLE  
Credit



In person



For registration & more information go to  
[newburyportbarassociation.org/](http://newburyportbarassociation.org/)

Co-sponsored by the NH Society of CPA's and the NH Bankers Association

## 2019 Emerging Leaders' Summit

Tuesday

Time TBD

@Saint Anselm College

Aug 6



Credit TBD



In person



To register go to the [WWW.NHSCPA.ORG](http://WWW.NHSCPA.ORG) website  
under Professional Development  
or call (603) 622-1999

The program is being held at the  
**Institute of Politics, Saint Anselm College**

### SPECIAL PROGRAM FOR NEW ATTORNEYS

## Managing Student Loan Debt and Personal Finances

Wednesday 9:00 a.m. - Noon

May 22



165 min. credit



Webcast



In person



Are you feeling overwhelmed by student loan debt?

You're not alone. This seminar will give you practical tips for managing your student loans and personal finances. Don't let debt put your goals out of reach. Reserve your seat now!

- Discover strategies for managing your debt and monthly payments.
- Discover options to reduce or eliminate your loan debt and evaluate the pros and cons of each.
- Explore budgeting through interactive simulations and review the impact of debt, interest rates, and repayment terms on home-buying, retirement and other life events.

Presenters will share real-life examples of solutions attorneys have used to get their student loans under control. There will be plenty of time for questions at the end of the session. If you would like to ask a question anonymously, please submit it prior to the event by contacting Laura Devine ([LDevine@boyleshaughnessy.com](mailto:LDevine@boyleshaughnessy.com)).

#### FACULTY

- Laura D. Devine**, Program Chair, Boyle Shaughnessy Law PC, Manchester  
**Jenna M. Bergeron**, Miller Law Group, PC, Southborough, MA  
**Reid Butler, CPA**, The Guyton Group, Portsmouth  
**Adam S. Minsky**, Law Offices of Adam Minsky, Student Loan Law, Boston, MA



Check-in & continental breakfast begin at 8:30 a.m.  
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.

Featuring  
the entire NH  
Supreme Court

## APPELLATE ADVOCACY 2019

Wednesday 9:00 a.m. - 4:30 p.m.

Oct 30



360 min. credit  
incl. 120 min. Ethics/prof.



Webcast



In person



**Special Resources:**  
Attendees will receive copies of the  
newly revised Appellate Practice  
Manual produced by NHBA • CLE.

#### NH SUPREME COURT

- Hon. Robert J. Lynn**, Chief Justice, NH Supreme Court  
**Hon. James P. Bassett**, NH Supreme Court  
**Hon. Patrick E. Donovan**, NH Supreme Court  
**Hon. Anna Barbara Hantz Marconi**, NH Supreme Court  
**Hon. Gary E. Hicks**, NH Supreme Court

#### FACULTY

- Doreen F. Connor**, Program Co-Chair, Primmer Piper Eggleston & Cramer, Manchester  
**Theodore M. Lothstein**, Program Co-Chair, Lothstein Guerriero, PLLC, Concord  
**Eileen Fox**, Clerk, NH Supreme Court, Concord  
**Timothy A. Gudas**, Deputy Clerk, NH Supreme Court, Concord  
**Stephanie C. Hausman**, NH Appellate Defender Program, Concord  
**Christopher M. Johnson**, NH Appellate Defender Program, Concord  
**Daniel E. Will**, NH Attorney General-Dept. Of Justice, Concord

Additional faculty to be announced.

#### 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.



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



New Hampshire Practice

For more information go to [nhbar.org/nhbacle](http://nhbar.org/nhbacle)

THE MUST HAVE PROGRAM!

# 23 Mistakes Experienced Contract Drafters USUALLY Make

with *Lenné E. Espenschied*

Wednesday 9:00 a.m. - 4:30 p.m.

May 29

360 min. Live  
incl. 60 min. Ethics/Prof.

Webcast  
In person



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, 2<sup>nd</sup> 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**

Full day in person: \$250\*

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

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

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

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

Webcast  
In person



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 [nhbar.org/nhbacle](http://nhbar.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. Lorschach,** 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](http://nhbar.org/nhbacle)

Special Partnership with the Maine State Bar Association

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

Wednesday 9:00 a.m. - 4:30 p.m.

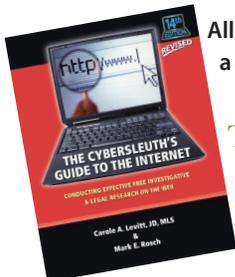
Jun 5

360 min. credit  
incl. 120 min. Ethics/prof.

Webcast  
In person



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

Full day in person: \$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 MESA CLE

(No in-person attendance)

### The 2019 Ethy Awards

Saturday, May 18 10:00 am - 12:00 pm  
120 NHMCLE Ethics/Prof. Minutes

### It's Not the Fruit, It's the Root: Getting to the Bottom of Our Ethical Ills

Tuesday, May 21 1:00-2:00 pm  
60 NHMCLE Ethics/Prof. Minutes

### Nice Lawyers Finish First

Wednesday, May 29 1:00-2:00 pm  
60 NHMCLE Ethics/Prof. Minutes

### Exit Row Ethics: what Rude Airline Travel Stories Teach About Attorney Ethics

Tuesday, June 4 1:00-2:00 pm  
60 NHMCLE Ethics/Prof. Minutes

Learn more or register for MESA CLEs by visiting our Website Calendar:  
[member.nhbar.org/calendar](http://member.nhbar.org/calendar)

## LOW-INCOME TAX PAYER PROJECT

# Innocent Spouse Relief from Joint & Federal Tax Liability

Friday 9:00 a.m. - Noon  
Jun 7 150 min. credit

Webcast  
In person



When a couple files a joint tax return, each spouse becomes jointly and severally liable for any federal tax assessed from the return. Section 6015 of the Internal Revenue Code allows the IRS to grant relief from this liability in certain circumstances through its innocent spouse procedures. This seminar will describe the three possible types of innocent spouse relief – “traditional” innocent spouse relief, relief by separation of liability, and equitable relief – and explain in detail how to advocate for a client seeking such relief and make an effective case to the IRS Innocent Spouse Unit.

#### Who should attend?

Those looking for in-depth training on an essential tax relief tool. Family law practitioners will learn to spot clients who may be eligible for this relief; tax controversy attorneys will hone their skills and learn new strategies and techniques.

#### SPEAKER

Jacqueline Lainez Flanagan, Janet R. Spragens Federal Tax Clinic, Visiting Associate Professor of Law, American University Washington College of Law.



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

#### PROGRAM PRICING

SEMINAR (preregistered): Current LITP volunteers or those willing to take a LITP case within the next year \$50; Others \$125.

## DOVE PROJECT

# Firearms Laws and Victim Safety

Wednesday Noon - 1:30 p.m.

Jun 19

150 min. credit

Webcast ONLY



Firearms issues are complex – particularly in domestic violence and protective order cases. To be competent in these challenging and high-stakes cases, attorneys must be knowledgeable of the State and Federal laws and procedures.

Join us as we examine firearms restraints imposed on a defendant under 173-B or 633:3-a and review the corresponding safeguards afforded to the plaintiff and protected individuals within civil protective order cases.

#### FACULTY

**Attorney Rob Hunt, Davis | Hunt Law, PLLC**

*Represents plaintiffs and defendants in civil protective order hearings.*

**Attorney Sean List, Backus, Meyer & Branch, LLP**

*Versed in state and federal firearms statutes, case law and the effects of civil protective orders on firearms ownership rights.*

**Officer Chris Martin, Peterborough Police Department**

*Responds to domestic violence “calls,” logistically carrying out firearms removals and processing.*

**Attorney Angelika Wilkerson, Dove Project, Asst. Coordinator/Moderator**

*This project is supported by Award No. 2015-VA-GX-0007 awarded by the Office for Victims of Crime, Office of Justice Programs and administered through the New Hampshire Department of Justice. Points of view in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

#### PROGRAM PRICING

This free program is only available to current Pro Bono Program and DOVE Project volunteer lawyers. Please contact Pam Dodge at [pdodge@nhbar.org](mailto:pdodge@nhbar.org) or Angelika Wilkerson at [awilkerson@nhbar.org](mailto:awilkerson@nhbar.org) with any questions or to inquire about joining the Pro Bono Program or DOVE Project panels.

For more information go to [nhbar.org/nhbacle](http://nhbar.org/nhbacle)

Breakfast Forum



13<sup>th</sup> Annual Ethics CLE

Friday 8:30 a.m. - 10:30 a.m. Webcast  
**Jun 21** 120 min. Ethics/prof. credit In person

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*

**Mitchell M. Simon**

Devine, Millimet & Branch, PA, Manchester  
*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  
 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.



**Recently Added Online Seminars**

**Charitable Trusts and Donor Advised Funds with NHCF**  
*Original Date 5/1/2019 – 120 General NHMCLE Minutes*

**Everything You Want to Know About the Uniform Transfer to Minors Act**  
*Original Date 4/23/2019 – 60 General NHMCLE Minutes*

**Drafting Wills and Trusts 101**  
*Original Date 3/29/2019 - 300 General & 60 Ethics/Prof. Minutes*

**Condominium Law 2019**  
*Original Date 3/27/2019 – 225 General Minutes*

**Best Practices for Operating and Closing a Legal Practice** *(From the State Bar of Arizona)*  
*Original Date 3/22/2019 – 120 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](http://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) \_\_\_\_\_ CREDIT CARD # \_\_\_\_\_ CVV CODE \_\_\_\_\_ EXP. DATE \_\_\_\_\_  
 Address \_\_\_\_\_ Name on Card \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
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**For more information go to [nhbar.org/nhbacle](http://nhbar.org/nhbacle)**



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Austin, Texas



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