

Rhode Island Bar Journal

Rhode Island Bar Association Volume 71. Number 3. November/December 2022



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As a member of the Rhode Island Bar Association, I pledge to conduct myself in a manner that will reflect honor upon the legal profession. I will treat all participants in the legal process with civility. In every aspect of my practice, I will be honest, courteous and fair.

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Front Cover Photograph by Brian McDonald

The Newport Art Museum/The John N. A. Griswold House, Newport, RI Built in 1864 by Richard Morris Hunt in the American Stick style, the John N. A. Griswold House is one of the earliest buildings in that style. The house was added to the National Register of Historic Places in 1971, and was designated a National Historic Landmark in 2000. It is now one of the galleries of the Newport Art Museum. The Museum's galleries feature selections from a growing permanent collection, notable special exhibitions, and showcase over 600 contemporary regional, national and international artists annually.

Diversity, Equity, and Inclusion



Mark B. Morse, Esq.
President
Rhode Island Bar Association

“...we hope to make our Bar Association stronger to help us deliver justice with a greater appreciation and perspective of views that are often underrepresented or faintly heard.”

“There were never in the world two opinions alike, no more than two hairs or two grains; the most universal quality is diversity.”

*De Montaigne, Michel Eyquem
Essays, Book II, ch. 37. (1580)*

A primary emphasis for this year, and continuing into the future, is the Bar’s focus on diversity, equity, and inclusion. Immediate Past President Lynda Laing wrote about this in her President’s Message in the May/June 2022 issue of the *Bar Journal* and voiced many of the concerns that led to the establishment of our DEI Committee. I promised Lynda and the Bar Association that I would do all that I could to continue this important work.

The charge of the DEI Committee is straightforward and compelling:

The Committee will meet regularly to discuss DEI-related matters of interest to the membership and to make recommendations that will foster a sense of equity and inclusion among members. The Committee will also propose DEI-related CLE and Annual Meeting programming, networking events with affinity legal organizations, and resources for the membership.

Thus, by its terms, the work of the DEI Committee will permeate throughout Bar Association activities to encourage diversity and inclusion among our membership. It will, justifiably so, impact our committees and our legal education programs. Through this process, we hope to make our Bar Association stronger to help us deliver justice with a greater appreciation and perspective of views that are often underrepresented or faintly heard.

The RI Bar Association DEI Committee is chaired by Sarah Oster Kelly and Hamza Chaudary. The Committee was formed as a result of a Task Force chaired by RI Superior Court Associate Justice Linda Rekas Sloan in 2021 following a call to action from bar associations across the country. The Task Force was formed in an effort to integrate diverse perspectives in our activities and educational programming and to encourage and cultivate social intercourse among all members of the Rhode Island Bar, elevate attorneys of diverse backgrounds to positions of leadership within the Association, and promote interest in the practice of law among diverse populations. One of the first

steps the Task Force took to accomplish these goals was by conducting an online survey among the Bar membership concerning members’ experiences with DEI-related issues within the practice. Following the survey and a year of intense meetings, the Task Force made recommendations to the Bar Association Executive Committee. The Executive Committee, with slight modification, approved the recommendations for presentation and approval by the House of Delegates.

Featured among the Task Force’s recommendations is a pledge which invites law firms and legal departments to commit to encouraging DEI within their ranks. The Pledge is aspirational and voluntary. Also included is a DEI Action Plan Checklist that illustrates specific tasks that can be performed to fulfill the goals of the checklist. The Pledge and Checklist can be found on the newly established Diversity, Equity, and Inclusion page on the Bar Association’s website at: ribar.com/for-attorneys/diversity-equity-and-inclusion/. The DEI page also includes a variety of resources available to promote DEI among our membership. The Bar also circulates a quarterly DEI Newsletter to Bar members. The purpose of the newsletter is to bring attention to steps the Bar is taking to be more inclusive and to share relevant information about diversity and inclusion in the legal profession.

At a recent conference of bar leaders, I had the opportunity to hear from other state and bar leaders about the initiatives taking place in their communities and bar associations to encourage DEI. I can tell you from what I heard at the conference, Rhode Island is very much in front of the issues that are under consideration.

We have a very active Judiciary that is leading the way on issues relating to DEI. The Committee on Racial and Ethnic Fairness in the Courts, chaired by RI Supreme Court Associate Justice Melissa Long, was established in 2021 and has produced a series of videos featuring Justice Long, RI Family Court Associate Justice Lia Stuhlsatz, RI

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Superior Court Associate Justice Luis Matos, and RI Workers' Compensation Court Associate Judge Keith Cardoza. In each of the videos, they describe their personal experiences dealing with issues of race relations and inclusion, and how it has shaped their views on the Bench. The videos are available for viewing on the Rhode Island Judiciary's website: courts.ri.gov/PublicResources/fairness/Pages/default.aspx

As part of our efforts to continue placing emphasis on DEI in the legal profession, our 2022 Annual Meeting Opening Plenary, Stand and Deliver, featured a panel of speakers moderated by RI Superior Court Associate Justice Linda Rekas Sloan which included Justice Long, Judge Stuhlsatz, Attorney Hamza Chaudary of Adler, Pollock and Sheehan (current co-chair of our DEI Committee) and Attorney Josh Xavier of Partridge, Snow & Hahn. The panel discussed the value of multi-culturalism and representation in all aspects of the legal system, including the legal workforce and Rhode Island Judiciary, and addressed how organizations can attract and retain employees from a broad range of backgrounds. Our closing Plenary featured award-winning trial attorneys Keith and Dana Cutler, who discussed the important topic of "Authentic Inclusiveness." Our goal is to include an equal number of DEI-related programming at the 2023 Annual Meeting.

Our 2022 Aon-sponsored ethics seminar top-

ic concerned civility in law firms but addressed issues of tolerance for persons who think or react differently in the work environment. The Bar Association DEI website offers a score of other DEI-related seminars that are available online in our on-demand catalogue.

Our mission to foster diversity and inclusiveness among our ranks is far from over. We have a long way to go to achieve many of the goals set forth in our Pledge. They are, however, goals worthy of our efforts, and as we continue to move closer to these objectives, our membership will reap the benefits through a more robust and more durable Bar Association. ♦

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Rhode Island Bar Journal

Editorial Statement

The *Rhode Island Bar Journal* is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges, and others interested in Rhode Island law. The *Bar Journal* is a paid, subscription magazine published bi-monthly, six times annually and sent to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,000 individuals. Covering issues of relevance and providing updates on events, programs, and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted, and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

Article Selection Criteria

- > The *Rhode Island Bar Journal* gives primary preference to original articles, written expressly for first publication in the *Bar Journal*, by members of the Rhode Island Bar Association. The *Bar Journal* does not accept unsolicited articles from individuals who are not members of the Rhode Island Bar Association. Articles previously appearing in other publications are not accepted.
- > All submitted articles are subject to the *Journal's* editors' approval, and they reserve the right to edit or reject any articles and article titles submitted for publication.
- > Selection for publication is based on the article's relevance to our readers, determined by content, and timeliness. Articles appealing to the widest range of interests are particularly appreciated. However, commentaries dealing with more specific areas of law are given equally serious consideration.
- > Preferred format includes: a clearly presented statement of purpose and/or thesis in the introduction; supporting evidence or arguments in the body; and a summary conclusion.
- > Citations conform to the Uniform System of Citation
- > Maximum article size is approximately 3,500 words. However, shorter articles are preferred.
- > While authors may be asked to edit articles themselves, the editors reserve the right to edit pieces for legal size, presentation, and grammar.
- > Articles are accepted for review on a rolling basis. Meeting the criteria noted above does not guarantee publication. Articles are selected and published at the discretion of the editors.
- > Submissions are preferred in a Microsoft Word format emailed as an attachment or on disc. Hard copy is acceptable, but not recommended.
- > Authors are asked to include an identification of their current legal position and a photograph, (headshot) preferably in a jpg file of, at least, 350 d.p.i., with their article submission.

Direct inquiries and send articles and author's photographs for publication consideration to:
Rhode Island Bar Journal Editor Erin Cute
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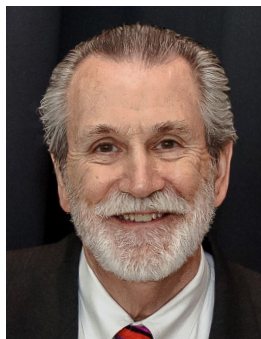


Attorney Sean McAteer, a member of the Lawyer Referral Service, enthusiastically supports the program. *"The Lawyer Referral Service is an excellent way to expand your client base. Potential clients often just need advice, but often enough they have good cases."*

Membership in the Rhode Island Bar Association's Lawyer Referral Service (LRS) is an excellent and inexpensive way to increase your client base and visibility within the community while expanding public access to legal representation. Optional special LRS projects include: **Senior Citizen Center Clinics** throughout the year and the state; **Reduced Fee Program** offered to qualifying clients; and the **Arts Panel** for local artists' legal needs all offer unique opportunities for increasing your business while you provide an important public service to your community.

Applications and more detailed program information and qualifications may be found on our website ribar.com in the Members Only section. You may also request information by contacting Public Services Director Susan Fontaine at 401-421-7799 or email sfontaine@ribar.com.

Introducing Our New Fellows



Michael R. McElroy, Esq.
President
Rhode Island Bar Foundation

“Diversity in any organization is strength.”

In my last President’s Message, I proudly announced that at our 2022 Annual Meeting, we welcomed 20 new Fellows into the Rhode Island Bar Foundation. This is the largest new Fellow class that I am aware of.

I thought you might be interested in learning more about this new class of Fellows. The 2022 class is quite diverse. It consists of 11 women and 9 men. The class also consists of 3 persons of color. There are 14 new Fellows who work in private practice, 5 who work in government, and 1 who works in-house in a corporation. Here they are:

Meredith A. Benoit
Deputy General Counsel at the Rhode Island Supreme Court

Leon C. Boghossian
Partner at Hinckley Allen

Daniel E. Burgoyne
Counsel at Partridge Snow & Hahn

Eileen K. Cheng
Deputy Counsel at the Office of the Governor

Jeffrey B. Cianciolo
Partner at McLaughlin-Quinn

Leah J. Donaldson
My Partner at McElroy & Donaldson

Mary Cavanagh Dunn
Partner at Blish & Cavanagh

Deborah A. George
Senior Associate General Counsel at Molina Healthcare

Jenna Giguere
Attorney at the Rhode Island Dept. of Environmental Management

Christian R. Jenner
Partner at Partridge Snow & Hahn

Kirsten E. Kenney
Partner at Hinckley Allen

Paul M. Kessimian
Co-managing Partner at Partridge Snow & Hahn

Zachary M. Mandell
Attorney at Mandell, Boisclair & Mandell

Sally P. McDonald
Partner at Cameron & Mittleman

Hon. Joseph A. Montalbano
Associate Justice of the Rhode Island Superior Court

Kristin Barkett Pettey
Attorney at Roberts, Carroll, Feldstein & Peirce

Jason C. Preciphs
Attorney at Roberts, Carroll, Feldstein & Peirce

Joelle C. Rocha
Partner at Duffy & Sweeney

George W. Watson, III
Partner at Robinson & Cole

Cynthia Wilson-Frias
Chief of Legal Services at the Rhode Island Public Utilities Commission

What a great group! Diversity in any organization is strength. I am hopeful that in the coming years, some of the new Fellows in this year’s class will seek to become members of the Foundation Board and/or officers of the Foundation. I also hope that these new Fellows will encourage other lawyers they know to become Fellows, provided they meet the criteria for being a Fellow.

Membership as a Fellow is a professional honor. Fellows are selected from those members of the Rhode Island Bar Association whose professional, public, and private careers have demonstrated their outstanding dedication to the welfare of the community and maintenance of the objectives of the Rhode Island Bar Foundation. Fellows are asked to contribute \$1,500 over a five-year period.

As set forth in Article 1 of the Foundation By-Laws, the purposes of the Foundation include the following:

- To foster and maintain the honor and integrity of the profession of law;
- To study, improve and facilitate the administration of justice;
- To promote the study of the law, research therein, and the diffusion of knowledge thereof;
- To cause to be published and to distribute addresses, reports, treatises and other literary works on legal subjects;
- To promote suitable standards of legal education;
- To pay funds to any tax-exempt corporation, trust, fund or foundation for any of said purposes; provided, however, that no part of the

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Rhode Island Bar Foundation

Founded in 1958, the Rhode Island Bar Foundation is the non-profit philanthropic arm of the state's legal profession. Its mission is to foster and maintain the honor and integrity of the legal profession and to study, improve and facilitate the administration of justice. The Foundation receives support from members of the Bar, other foundations, and from honorary and memorial contributions.

Today, more than ever, the Foundation faces great challenges in funding its good works, particularly those that help low-income and disadvantaged people achieve justice. Given this, the Foundation needs your support and invites you to complete and mail this form, with your contribution to the Rhode Island Bar Foundation.

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net earnings of the Bar Foundation shall insure to the benefit of any private member or individual, and provided further that no part of its activities shall consist of the carrying on of propaganda or otherwise attempting to influence legislation; and

- To support the delivery of legal services to those without sufficient means to secure them otherwise.

In recent years, most of the Foundation's annual grants have been directed to non-profit organizations that support the delivery of legal services to the poor.

I am very proud of the work of our Foundation and I am pleased and thankful that so many Rhode Island attorneys joined our ranks this year as Fellows. I hope next year is even better! ♦



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Attorney To Attorney Referrals

A Primer on Powers of Attorney



Joshua Simon, Esq.
Day Pitney LLP
Providence

“A severe car accident could unexpectedly and immediately necessitate emergency medical care, and without a durable power of attorney for health care in effect, there could be uncertainty...”

The COVID-19 pandemic has illustrated, among other things, that many variables in a person's life are beyond his or her control. Although uncertainty continues to be the new normal, executing or updating a “durable power of attorney” and a “durable power of attorney for health care” allows a person (the “principal”) to delegate the management of their affairs to a trusted advocate (the “agent”) in the event the principal ever needs someone to make decisions on his or her behalf. These two documents, which are incredibly powerful and can be beneficial in an incalculable number of circumstances, are discussed in detail in this article.

As with most legal documents, state law controls the creation and operation of a durable power of attorney and a durable power of attorney for health care. As such, these documents differ from state to state. Even basic terminology associated with powers of attorney varies across state lines (for example, Massachusetts refers to a power of attorney for health care as a “health care proxy”).¹ While virtually every state has some form of reciprocity such that a validly executed durable power of attorney for health care by a resident of one state will be recognized as valid under another state's statutory scheme if that individual is seeking medical care out-of-state,² it is critically important that a person wishing to execute powers of attorney consult the relevant law of that person's state of residence, particularly if that individual splits time during the year between multiple states.

Many states, including Rhode Island, provide for statutory forms of a durable power of attorney and a durable power of attorney for health care.³ These statutory forms are often optional,⁴ and regardless of whether the statutory forms are used, when preparing or reviewing a durable power of attorney, it is still necessary to cross-reference the appropriate state law to ensure that such a document will be valid. In addition, as with all legal matters, extreme caution should be used when utilizing “internet forms” as the templates for these documents. An internet form printed from a website that is noncompliant with some aspect of relevant state law (whether in terms of its execution formalities, permitted provisions, etc.) could

result in the document being rejected and deemed invalid at a critical time when an important medical, financial or legal decision needs to be made on behalf of the principal. Rather, a person seeking to execute these documents should consult with an attorney who is knowledgeable and experienced with their preparation and use.

Types of Power of Attorney

A durable power of attorney for financial and legal matters is the broader of the two types of power of attorney documents.⁵ At its core, this document enables a principal to appoint an agent to act on his or her behalf for almost any purpose (other than medical decision-making).⁶ The agent “stands in the shoes” of the principal and can do virtually anything on the principal's behalf that the principal would otherwise be able to do for himself or herself, including the execution of documents. For example, an agent can sign tax returns⁷ and mortgage documents,⁸ as well as conduct banking, including making withdrawals⁹ and authorizing stock transactions,¹⁰ conducting business at the DMV,¹¹ and purchasing and selling real estate on the principal's behalf.¹²

A durable power of attorney for health care is more limited in its scope in that it only applies to medical decision-making on behalf of the principal. However, it is equally powerful as it enables an agent to make any medical decision that the principal would otherwise be able to make.¹³ A power of attorney for health care may also include “living will” provisions that set forth the principal's wishes with respect to artificial life support in the event that he or she is in a persistent vegetative state with no reasonable expectation of recovery.¹⁴ In addition, a durable power of attorney for health care can include the principal's wishes with respect to organ donation.¹⁵

There are several important differences between a durable power of attorney and a durable power of attorney for health care. For one, under Rhode

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Rhode Island Heritage Hall of Fame to Induct Judge and Lawyer

On Sunday, October 30, 2022, the Rhode Island Heritage Hall of Fame inducted deceased RI Superior Court Associate Justice Walter R. Stone. Justice Stone fought as a Marine in the Vietnam War and was a recipient of the Purple Heart. He directed the Rhode Island Foundation from 1998 to 2007 and was an original director of the Heritage Harbor Foundation (2015-2017).

The Rhode Island Heritage Hall of Fame also inducted deceased attorney Herbert F. DeSimone. DeSimone served as Attorney General of Rhode Island from 1967 to 1971. In 1985 he became Rhode Island Director of Transportation and also served as Director of the Providence Industrial Development Corporation.

The Rhode Island Heritage Hall of Fame was created in 1965 to honor “any individual who has brought credit to Rhode Island, brought Rhode Island into prominence, and contributed to the history and heritage of the state.”

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Island law, a principal can name multiple agents to act simultaneously under a durable power of attorney for financial and legal matters, whereas he or she can only name one agent at a time under a durable power of attorney for health care.¹⁶ Although multiple agents can serve together under a durable power of attorney for financial and legal matters, this arrangement triggers additional consideration when drafting the power of attorney document – specifically, does the principal wish for each agent to be able to act independently, or is unanimous action required? While there is no right or wrong answer to this question (because it is dependent on the wishes of the principal), it is very important to give thought to how this provision will affect the real-world practicalities of using a durable power of attorney to act on a principal's behalf.¹⁷ If multiple agents are named and unanimity is required, then in order to complete a transaction or take action on the principal's behalf, multiple signatures or verifications will be required, which could be difficult depending on the physical locations of the agents, particularly if urgent action is required. On the other hand, if multiple agents are named and any of them acting alone can bind the principal, then it is possible for there to be conflict or disagreement among the agents.

Another important distinction between the two types of powers of attorney is that the power of attorney for health care *only* takes effect when the principal is incapacitated,¹⁸ whereas the power of attorney for financial and legal matters can be drafted to take effect immediately upon its execution. In Rhode Island, a durable power of attorney for financial and legal matters can either be effective immediately – which allows the agent to act on the principal's behalf even though the principal still has capacity – or it can be “springing,” meaning it only takes effect if the principal is incapacitated. Again, this is a decision for the principal to make, but there are a few major advantages to having the document take effect immediately upon signing. First, doing so avoids having to prove to a financial institution or other agency that the principal is incapacitated, which can be onerous if there is no diagnosed condition or the principal is suffering during the early stages of a cognitive decline. Second, there are circumstances where a principal may want an agent to act on his or her behalf while he or she does have capacity, as in the following real-world example: A married couple has a child in college and the student has taken out student loans. Both parents are required to co-sign the loan documents, but one of them is unable to sign because they are out-of-town. If the unavailable spouse has named the other spouse as agent under a power of attorney that took effect upon execution, the available spouse could sign on behalf of the principal and submit the documentation before the principal returns home. Another instance where a principal with capacity may want an agent under a durable power of attorney for financial and legal matters to act on his or her behalf can arise when an elderly widowed parent is relying on his or her adult child(ren) to manage his or her finances, especially if the deceased spouse was primarily responsible for handling the joint finances during their lifetime.

Who Should Execute Durable Powers of Attorney?

Although durable powers of attorney are generally included as part of a comprehensive estate plan, they can also be standalone documents. In addition, durable powers of attorney are not just advisable for seniors and unmarried individuals—they are worthwhile documents for younger adults and married

persons as well. A common misconception is that because a person is married, he or she does not need to execute durable powers of attorney as his or her spouse can simply act on his or her behalf. In reality, a number of actions – such as signing tax documents on behalf of a spouse – require the express granting of specific authority to the spouse in order for them to act in a valid manner. Moreover, because a power of attorney for health care permits a person to express his or her wishes with respect to medical treatment, there are many reasons why it is advisable for someone in good health to execute such a document. For example, a person might have religious beliefs that affect his or her medical decision-making that he or she wishes to be taken into account in the event of incapacity, or a person might have strong beliefs one way or the other concerning the use of life-sustaining treatment that he or she has not communicated to the person who would ultimately be tasked with making important medical decisions. A severe car accident could unexpectedly and immediately necessitate emergency medical care, and without a durable power of attorney for health care in effect, there could be uncertainty, both as to who is responsible for making medical decisions for the incapacitated individual and as to what decisions he or she would want made. As an example, consider a husband and wife with two adult children: If the married couple is in a severe car accident, which child would be responsible for making the medical decisions for them? A durable power of attorney for health care answers this question in the manner that accurately reflects each parent's wishes.

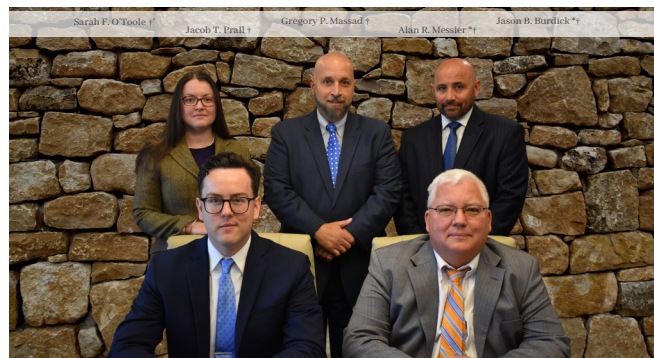
Typically, the execution of a durable power of attorney for health care will also be accompanied by a HIPAA¹⁹ release or authorization, either as a standalone document or as part of the health care power of attorney. A HIPAA release authorizes access to a principal's protected health care information, including medical records, to the principal's health care agent(s). One advantage to structuring the HIPAA release as a standalone document is that the release can be made to take effect upon signing—in which case it could be used as desired as a tool of convenience to enable a health care agent to speak freely with a principal's medical providers. For example, a person could rely on a HIPAA release to obtain test results or medical records on behalf of a spouse.

Considerations and Precautions

The most important consideration to be made with respect to durable powers of attorney is the obvious one—deciding who should be named as an agent. The guiding factor in this regard is trust—the agent must be someone whom the principal trusts. There are no special qualifications an agent must possess, but he or she must be a person whom the principal trusts unconditionally to follow his or her wishes and act in his or her best interests. A person does not have to name the same individuals under the different types of powers of attorney; one can name a spouse or other family member as a health care agent but name an accountant or attorney as an agent for financial and legal matters.

Furthermore, the principal needs to consider if there are any limitations or other conditions he or she wishes to impose under the powers of attorney. For example, if the principal owns his or her own business, should the agent have the authority to act with respect to the business—or should the business be beyond the scope of the authority of the agent?

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Annual Meeting Workshop Proposals Due November 9!



Kathleen Wyllie, Esq.



Leslie Lloyd Mullings Ocean, Esq.

Annual Meeting Planning Committee Co-Chairs

Do you have a workshop suggestion for the 2023 Annual Meeting? How about ideas for speakers? The Annual Meeting Planning Committee is looking for your input!

The 2023 Annual Meeting will be held in person at the Rhode Island Convention Center on Thursday, June 1st and Friday, June 2nd. Each year, the Annual Meeting Planning committee's goal is to develop two days of legal education that will meet the diverse needs of Rhode Island practitioners at many levels of experience and areas of legal practice.

Please consider submitting one or more workshops for consideration to help us plan a program that will meet the needs of the bar membership. Initial proposals consisting of a brief description of the proposed workshop are due by **November 9, 2022**.

To access the 2023 Annual Meeting workshop proposal form please **click here**, or visit the Bar's website at ribar.com and click on the Continuing Legal Education dropdown menu and select the 2023 AM Proposal Form. Please contact CLE Director Madeline Benner at 401-421-5740 or mbenner@ribar.com if you have any questions.

Requirements for Execution

For a Rhode Island statutory form durable power of attorney for financial and legal matters, there is a requirement that the document be notarized,²⁰ but there is technically no other witness requirement. When a non-statutory form durable power of attorney is used, it is still advisable to have the document notarized. Because the power of attorney may be presented to financial institutions or other entities that are accustomed to seeing such documents witnessed and notarized, it is advisable to have the power of attorney witnessed by at least one disinterested witness in addition to being notarized, regardless of the form of the document.

A statutory form durable power of attorney for health care under Rhode Island law is required to be witnessed by either two qualified adult witnesses or one notary public.²¹ Again, because health care providers are accustomed to reviewing the statutory form, if a different form is used it is advisable to follow the same witness requirements. Under Rhode Island law, the following individuals are prohibited from acting as a qualified witness under a durable power of attorney for health care: (1) the person(s) designated in the document as a health care agent or alternate health care agent; (2) health care providers; (3) employees of health care providers; (4) operators of community care facilities; and, (5) employees of operators of community care facilities.²² Moreover, at least one of the two witnesses or the notary must sign an acknowledgment that he or she is "not related to the principal by blood, marriage, or adoption" and that he or she is "not entitled to any part of the estate of the principal" upon the principal's death, either under a will or by operation of law.²³

Termination and Revocation

Powers of attorney terminate as a matter of law at the principal's death. Oftentimes, after a person has passed away, his or her next of kin will attempt to deal with the marshaling of bank accounts and other assets under the purported authority of a durable power of attorney, particularly if the decedent had been suffering from declining health and the relatives were already assisting with the decedent's financial affairs during the end of his or her life. However, it is important to note that the authority under a durable power of attorney automatically ends at the moment of death.

A durable power of attorney can terminate prior to death in accordance with its terms if the document specifies an earlier time of termination. Occasionally, a power of attorney will grant an agent authority for a limited period of time. This is typically done when the power of attorney is being executed in connection with a specific transaction, for example, to give the agent authority to sign on behalf of the principal at the closing for the purchase or sale of a home. However, in the majority of cases, it is preferable not to include a termination date in the power of attorney to ensure maximum flexibility.

In some states, a divorce has the effect of terminating any appointment of the former spouse as agent under a durable power of attorney.²⁴ Rhode Island is not such a state. In Rhode Island, a former spouse named as an agent under a durable power of attorney (whether for financial, legal, or health care matters) continues to have the authority to bind the principal. Therefore, in the event of a divorce, it is critical for an individual to revisit his or her existing documents to be sure that the appointments

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continue to match his or her wishes going forward.

A person can revoke a validly executed durable power of attorney at any time. Such revocation can be accomplished by executing a new durable power of attorney that includes a revocation of any prior powers, or by executing a standalone revocation document.²⁵ In the event of a revocation, the principal should provide copies of the revocation to every person and institution which received or may have received a copy of the executed power of attorney.

Storage of Executed Powers of Attorney

For a durable power of attorney for financial and legal matters, because the agent is given so much power and particularly if the document is made effective immediately upon execution, it is generally advisable not to give the agent copies of the document unless and until it becomes necessary for him or her to act. The principal should keep the originals (or copies of the originals) in a safe place. The principal may wish to provide copies to his or her attorney or other trusted advisor so that the attorney or advisor is aware of the document's existence. The attorney or advisor can also be entrusted with providing a copy to the agent if or when it becomes necessary, either at the request of the principal or if the principal becomes incapacitated. It is also a good idea for the principal to execute multiple original counterparts of the durable power of attorney for financial and legal matters because financial institutions (or other entities acting at the instruction of an agent) may ask to see an original, and if multiple entities require review of an original at the same time, there could be a delay in taking action.

While the principal should also maintain the original (or a copy of the original) of the health care power of attorney, he or she should provide a copy to his or her primary care physician, to be kept in his or her chart. The principal should provide any other medical specialists he or she regularly sees with copies of the health care power of attorney as well.

Updating Existing Powers of Attorney

Even though a durable power of attorney will not expire during a person's lifetime (absent a termination date specified in the document), as a general rule, it is advisable for a person to review his or her powers of attorney every five to ten years. Such a review is important so that the person can be sure the individuals named as agents continue to be the best fit for those roles. Especially if a power of attorney was executed many years prior, a person may misremember who he or she named in the document, specifically in the case of alternate agents. In addition, even if there are no changes to be made to the documents, it is advisable to update the powers of attorney every five to ten years to avoid receiving pushback from an institution or person viewing a decades-old document.

Final Thoughts

Executing durable powers of attorney is a worthwhile endeavor for any adult, as it is impossible to predict when such a document could be useful or beneficial. In the absence of durable powers of attorney, if a person becomes incapacitated, the mechanism for ensuring that someone has the authority to act as a decision-maker for that person with respect to legal, financial, and health care matters is the court appointment of a guardian. However, from a time, cost, and efficiency standpoint,



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Seeking Law Related Education Program Attorney Volunteers: Update Your Preferences Today!

Your Bar Association supports law related education (LRE) for Rhode Island children and adults through three longstanding programs: *Lawyers in the Classroom* and *Rhode Island Law Day* for upper and middle school teachers and students, and the *Speakers Bureau* for adult organizations. Responding to LRE requests, Bar volunteers are contacted, based on their geographic location and noted areas of legal interest, to determine their interest and availability.

Following a recommendation from the Bar's Diversity and Inclusion Task Force and to enhance both the Lawyers in the Classroom program as well as the Speakers Bureau, topics related to DEI in the legal profession have been added to our current areas of focus. The following topics were added to attorney LRE signup forms and volunteers are requested for these, and all other areas of focus:

Lawyers in the Classroom

- Title VII as it relates to students/schools
- Equal opportunity and affirmative action

Speakers Bureau

- Title VII and Employment Law
- Civil Rights
- Harassment in the workplace

If you are interested in serving as a LRE volunteer, please go to the Bar's website at ribar.com, click on **FOR ATTORNEYS**, click on **LAW RELATED EDUCATION**, click on **ATTORNEY ONLY LRE APPLICATION**. All Bar members interested in serving as LRE volunteers, now and in the future, must signup this year, as we are refreshing our database.

Questions? Please contact Director of Communications Erin Cute at ecute@ribar.com or **401-421-5740**.

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it is preferable to avoid having to institute guardian proceedings, and these can be avoided with valid powers of attorney in place.

Again, it is essential that a person wishing to execute powers of attorney consults with an attorney familiar with the applicable state law, as it is not just critically important to ensure the documents are valid, but it is also extremely important to ensure that the documents operate as intended and do not create unanticipated complications.

ENDNOTES

¹ See *Mass. Gen. Laws ch. 201D*.

² See, e.g., *R.I. Gen. Laws § 23-4.10-11*.

³ *R.I. Gen. Laws §§ 18-16-2, 23-4.10-2*.

⁴ While the Rhode Island statutory forms for both types of durable powers of attorney are not exclusive, documents that comply with the statutory forms are deemed valid. *R.I. Gen. Laws §§ 18-16-1, 23-4.10-10*.

⁵ See *In re Paplauskas*, Nos. 2018-161-M.P., 2018-162-M.P., 2018-163-M.P. (R.I. May 29, 2020) (“A durable power of attorney, if not strictly limited, has the potential to give an individual considerable power over the life and property of another.”).

⁶ See generally *R.I. Gen. Laws §§ 18-16-1 to 18-16-12*.

⁷ *R.I. Gen. Laws § 18-16-11(a)(2)*.

⁸ *R.I. Gen. Laws § 18-16-3(a)(9)*.

⁹ *R.I. Gen. Laws § 18-16-6*.

¹⁰ *R.I. Gen. Laws § 18-16-5*.

¹¹ *R.I. Gen. Laws § 18-16-12*.

¹² *R.I. Gen. Laws § 18-16-3*.

¹³ *R.I. Gen. Laws § 23-4.10-2*.

¹⁴ *Id.*

¹⁵ *R.I. Gen. Laws § 23-4.10-2*.

¹⁶ Even though only one person can be empowered to act at a given time under a durable power of attorney for health care, it is generally a good idea for a person to name one or more alternate health care agents, successively, in case the initial agent is unavailable.

¹⁷ If more than one agent is named and the power of attorney itself is silent as to whether unanimity is required, the default rule under Rhode Island law in such a scenario is that all agents are required to act together. See *R.I. Gen. Laws § 18-16-2(f)*.

¹⁸ See *R.I. Gen. Laws §§ 23-4.10-2, 23-4.10-5*.

¹⁹ *Health Insurance Portability and Accountability Act of 1996*.

²⁰ *R.I. Gen. Laws § 18-16-2(b)*.

²¹ *R.I. Gen. Laws § 23-4.10-2*.

²² *Id.*

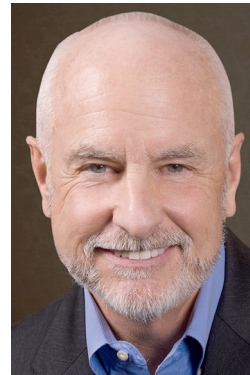
²³ *Id.*

²⁴ See, e.g., *Mass. Gen. Laws ch. 201D § 7* (stating that a health care proxy that names a former spouse as health care agent is revoked upon the divorce of the principal and the former spouse).

²⁵ See *R.I. Gen. Laws §§ 18-16-2, 23-4.10-3*. ♦

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If Equity Is No Stranger to Admiralty, What's Up With The Limitation of Liability Act of 1851?



John K. Fulweiler, Esq.
Fulweiler LLC
Newport

“This can render a brutal result in the recreational boating world where the vessel values are generally low yet the injuries are sometimes massive.”

With 400 miles of coastline, an “Ocean State” moniker, some thirty islands, and home to the largest estuary in New England (Narragansett Bay), it’s hard for a lawyer barred in Rhode Island to avoid the maritime law. The key though, is not to trip over the maritime law. Maritime legal issues get complicated because they’re old and poorly (read: haphazardly) resolved. My elevator ride legal class always includes two lessons: cruise ship tickets are mostly enforceable, even with their ubiquitous one-year time limit for suit, and the Limitation of Liability Act of 1851 can be very difficult for the novice to defend against.¹

How much injustice has this Act wrought in its 62,670 days of existence?

Passed by Congress in March 1851, the Act allows a vessel owner to limit damage claims to the value of its vessel at voyage’s end plus pending freight. A vessel owner can seek to limit liability for “loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity or knowledge of such owner[.]”² Federal courts have exclusive jurisdiction over suits brought under the Act, and limitation actions are tried to the federal bench.³ In practice, the Act has been raised as a defense in a wide range of actions, from passenger and crew injury claims to cargo damage, recreational boating incidents, salvage awards, and fire claims. If you’re curious about what objective the Act might foster, the Supreme Court explained that the Act’s intent was to encourage shipbuilding and to induce investment in the maritime industry.⁴ (This is an oft-cited (if not, the only) explanation many courts give in seeming hand-wringing justification of the Act’s inequities.)

The Act is conjured up in two ways. Most perniciously, an initial pleading is filed in federal court titled something like a “Petition to Seek Exoneration from or Limit Liability.” Akin to what might be its very distant cousin the bankruptcy filing, the Petition sets in motion a rolling stone of sorts whereby the Court issues an order prohibiting the filing or continued prosecution of any claims against the vessel owner and initially establishing the post-voyage value (a/k/a the “Limitation Fund”). Concurrently, the court’s order will require all claimants to file an Answer to

the Petition and a claim against the vessel owner within a relatively short period of time (usually around 45 days). Yes, you’ve read that right; whatever statute of limitations you thought applied doesn’t because the Act dramatically (and sometimes, scarily) shortens the time frame by which to prosecute your client’s claim against the vessel owner. On the bright side, a vessel owner must file such a petition within six months of first receiving written notice – and yes, there’s a barge hold filled with case law on what precisely constitutes “written notice.”⁵

If the six-month period has passed, a vessel owner raises the Act as an affirmative defense. In this situation, the owner doesn’t have to adhere to the procedural requirements of giving notice, posting a bond, etc. all as laid out in Fed. Rule Civ. P. E.⁶ When raised as an affirmative defense, the Act loses some of its potency but can still require attention to, among other things, how the court will handle the actual adjudication of this defense as the process can vary between courtrooms and jurisdictions.

And lest you’re worried that your status as a part-owner, shareholder or mortgagee of the vessel might not qualify you as owner to seek limitation, have no fear. Regrettably, the jurisprudence imparts a broad construction of the term, claiming (yes, you guessed it) that this approach continues to induce and encourage shipbuilding.⁷

Once the Act is invoked, a burden-shifting matrix is ultimately used to determine whether a vessel owner can limit its liability. First, the claimant must show the owner is liable for the loss either by establishing the vessel’s unseaworthiness (basically meaning a defect with the vessel or its operation) or the negligence of the crew. With that showing made, the vessel owner can only limit its liability if it proves it wasn’t privy to or lacked knowledge of the unseaworthy condition or negligence. The owner’s “privity or knowledge” can be actual or constructive, meaning that in ad-

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dition to showing a lack of actual knowledge or the cause of the loss, the owner must also demonstrate it has “availed itself of whatever means of knowledge are reasonably necessary to prevent conditions likely to cause losses.”⁸ The First Circuit notes the term “privity or knowledge usually implies some degree of culpable participation or neglected duty on the shipowner’s part: that, for example, it committed a negligent act, or knew of an unseaworthy condition but failed to remedy it, or through the exercise of reasonable diligence could have prevented the commission of the act or the onset of the condition.”⁹

The successful owner gets to limit its liability to the post-voyage value of its vessel, ie. the Limitation Fund. This can render a brutal result in the recreational boating world, where the vessel values are generally low yet the injuries are sometimes massive. And I agree with you, it’d only seem fair the Limitation Fund include the vessel owner’s insurance proceeds, but this is (*generously*) a disputed issue. Many (okay, the majority of) decisions refuse to include the policy in the Limitation Fund; maybe two decisions have (kind of) held otherwise.¹⁰ Still, there’s an argument that including liability insurance in the Limitation Fund doesn’t offend the Act, and the jurisprudence holding otherwise seems sort of reflexive and daisy-chained together. That is, this author believes that justice (the motive power of our legal system) is advanced by including liability insurance. Indeed, the vessel owner purchases liability insurance for the express purpose of paying claimants when legally liable, so why should insurers reap the windfall of secreting their policies behind what is (in the kindest way) a shipwreck of a law?

There are exceptions and permutations to the Act. The single claimant exception is perhaps the best known and most widely litigated exception in that it seeks to stay the limitation proceeding. A single claimant essentially stipulates that he or she will be “right back” once the claim is adjudicated before a jury like any other civil case. That is, the successful single claimant with judgment in hand returns to the federal bench to resolve whether a vessel owner can limit its liability. Multiple claimants can sometimes wriggle into this exception with the properly worded stipulation. This is sometimes referred to as a “Beiswenger” exception in reference to the 1996 Eleventh Circuit decision unpacking its mechanics in the multi-claimant arena.¹¹

The Act is only one of many injustices found in maritime law. The Death on the High Seas Act, the Walker Doctrine, the Admiralty law’s economic loss rule, the poor societal outcomes yielded by Maintenance & Cure, and on and on. In this author’s view, the admiralty law needs what in maritime speak we call a “refit” to modernize and make seaworthy many of its odious injustices. Whatever the case, know and understand that even if you roll up your trousers and just wade about the shallows of the admiralty law, you can still get soaked!

ENDNOTES

¹ *Limitation of Liability Act*, 46 U.S.C. § 30501, *et seq.*

² *Transporter Marine, Inc. v. Newfield Expl. Co. (In re Transporter Marine, Inc.)*, 217 F.3d 335, 339 (5th Cir. 2000).

³ *In re Savage Inland Marine*, No. 1:19-CV-00536, 2020 U.S. Dist. LEXIS 257112, at *5 (E.D. Tex. Dec. 16, 2020).

⁴ *Norwich & N.Y. Trans. Co. v. Wright*, 80 U.S. 104, 121, 20 L. Ed. 585 (1871). And yes, you’re likely (and rightly) perplexed. *American shipbuilding has been on a precipitous decline since World War II. In this author’s opinion, the Act’s sole purpose is to benefit the rather murky world of marine*

insurance as it's a handy cudgel by which to beat down many an injury and cargo loss claim.

5 46 U.S.C. § 30511(a) ("The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.").

6 See, e.g., *Bartoe v. Mo. Barge Line Co.*, 635 F. Supp. 2d 1020, 1031 (E.D. Mo. 2009) (A plain reading of the statute compels my conclusion that the procedural requirements of § 30511 regarding time limitations and the posting of a bond apply when the action by owner for limitation is brought. Section 30511 does not state that it also applies to the "general limit of liability" under §30505. Because Defendants raise limitation of liability as an affirmative defense and did not initiate a limitation of liability action, they are not required to post a bond or security.) (internal quotation marks omitted).

7 *In re Complaint for Exoneration from or Limitation of Liab. Of Shell Oil Co.*, 780 F. Supp. 1086, 1089 (E.D. La. 1991) (The term "owner" is not defined in the Limitation of Liability Act. Cases have construed it as an "un-technical word" which should be given a broad construction so as to achieve Congress' purpose of inducing and encouraging investment in shipping.).

8 *Wash. DOT v. Sea Coast Towing, Inc.*, 148 F. App'x 612, 613 (9th Cir. 2005).

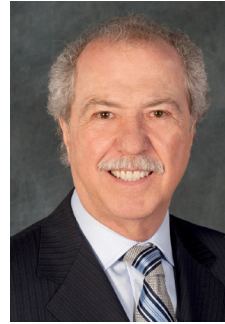
9 *Carr v. PMS Fishing Corp.*, 191 F.3d 1, 4 (1st Cir. 1999) (internal quotation marks omitted).

10 *Renfrow v. Silver Spray Seafoods, Ltd. Liab. Co.*, No. 03-6039-TC, 2003 U.S. Dist. LEXIS 25634, at *3-4 (D. Or. Oct. 15, 2003) (All reported case law on this issue makes clear that limitation funds under the Limitation of Liability Act do not include proceeds or policy limits from any insurance the vessel owner carries.); *Petition of Chadade S.S. Co.*, 266 F. Supp. 517, 522-23 (S.D. Fla. 1967) (holding hull insurance and protection and indemnity insurance were to be included as part of the patrimony of the vessel.); *N.Y. Marine Managers, Inc. v. Helena Marine Serv.*, 758 F.2d 313, (8th Cir. 1985). In that case the court directed the insurance company (New York Marine) to deposit the policy proceeds minus disbursements into the registry of the court.

11 *Beiswenger Enters. Corp. v. Carletta*, 86 F.3d 1032 (11th Cir. 1996). ◇

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Below is a list of the Rhode Island Bar members who have participated in CLE seminars during the months of September and October.

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BOOK REVIEW

Lawyers as Leaders

by Deborah Rhode



Jenna Giguere, Esq.

“As a pathway to more effective leadership, self-awareness requires reflections on the lawyers’ talents and passions as well as re-assessing tolerance for risk, failure, conflict, competition, and pressure.”

Lawyers serve as leaders within their employment contexts, in nonprofit service; and, lawyers account for a large number of government positions, disproportionately high compared to the percentages of other professions. Author Deborah Rhode, a law professor at Stanford, wrote *Lawyers as Leaders* to address the perceived problem that the topic of leadership for lawyers has been mostly missing in legal education and professional development.

Rhode identifies several obstacles to leadership learning, including a lack or fear of critical feedback and undervaluing learning that does not appear to lead to immediate recognition. Rhode recognizes that some lawyers might think leadership development is a “touchy-feely” endeavor beneath their intellectual sophistication, viewing work on interpersonal skills with that token lawyer skepticism. *Lawyers as Leaders* dispels those hesitations with concrete and well-supported leadership development advice.

Rhode supports the value of leadership study for lawyers with a reference to the “paradox of power”: the characteristics that help lawyers rise to positions of power are not necessarily the same characteristics needed to be successful in the leadership role. Rhode identifies common lawyer characteristics such as skepticism, competitiveness, urgency, autonomy, and achievement orientation. She contrasts them with the characteristics of successful leaders, including integrity and honesty, self-awareness and control, social awareness and empathy, forward-looking vision, and inspiration. As a pathway to more effective leadership, self-awareness requires reflections on the lawyers’ talents and passions as well as re-assessing tolerance for risk, failure, conflict, competition, and pressure.

Six leadership styles are introduced, adding context about the intersection of these styles with common lawyer characteristics. For example, under the Coercive/Intimidating Style heading, Rhode observes that “informational intimidation” may be a successful lawyer behavior in a trial. However, when the lawyer is acting in a leadership capacity, that tendency hinders the goal of understanding and inspiring others. As another example, under the Coaching Style heading, Rhode touches on the problem of retaining junior lawyers, noting that a major cause is lack of guidance and professional development opportunities. Thus, adopting a Coaching Style into the lawyer-leaders repertoire has real benefits for the organizations lawyers lead.

Rhode provides an overview of leadership capabilities that leaders should acquire: decision-making, influence, innovation, conflict management, and communication. Rhode elaborates on cognitive biases that impair sound decision-making and advocates for the avoidance of “group think.” Four strategies of influence are discussed: authority, reciprocity, social influence, and association. Rhode observes that lawyers tend to be resistant to change, elevating the importance of cultivating the leadership capacity of innovation.

Covered conflict management strategies include collaborative problem-solving, knowing the lawyers “best alternative to a negotiated agreement,” drawing strength from imagining situations in which the lawyer feels calm and confident, and empathic listening. Five elements of successful communication capability are discussed: objectives, audience, substance, presentation, and preparation. It is noted that lawyers tend toward impatience in conversation, often lacking attention to facial expressions and body language, which attention can be developed through the lawyer’s leadership improvement path.

Turning to leadership ethics, Rhode illustrates the importance of the topic with the statistic that less than a fifth of Americans surveyed would highly rate attorneys’ ethics. Rhode informs the reader about the four characteristics of ethical conduct: moral awareness (ethical issue-spotting), moral reasoning (identifying ethically sound courses of action), moral intent (identifying values to prioritize in decision-making), and moral behavior (acting on ethical decisions). Rhode shares how the Watergate scandal prompted the American Bar Association requirement of law school ethics classes, along with the positive news that early adulthood education in ethics significantly shapes the lawyer’s moral compass.

Rhode challenges lawyers to create ethical cultures in the organizations in which they work. In addition to implementing ethical best practices and protecting whistleblowers, lawyers should invite critical feedback and solicit diverse perspectives. As part of her discourse on ethics, Rhode touts

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It's Not Too Late to Sign Up For Your 2022-2023 Bar Committees!

If you have not yet signed up as a member of a 2022-2023 Rhode Island Bar Association Committee, you can still do so! Bar Committee membership runs from July 1st to June 30th.

Even Bar members who served on Bar Committees last year must reaffirm their interest for the coming year, as Committee membership does not automatically carry over from one Bar year to the next. Bar members may complete a committee registration form online or download and return a form to the Bar.

We anticipate offering Bar committee participation in a hybrid manner starting in the fall, whenever possible, to accommodate those who would prefer to attend meetings virtually.

For more information, visit the Bar's website under For Attorneys – Bar Committees. Anyone signing up for Bar committees after August 12th can do so by contacting the Bar's Membership Services Coordinator NaKeisha Little at (401) 421-5740 or nlittle@ribar.com.

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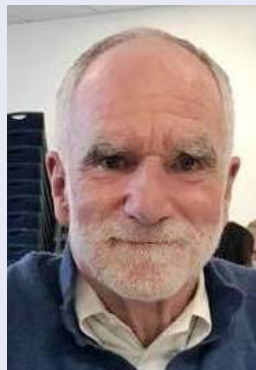
the benefits of pro bono work both to society and to the lawyer, noting the health benefits of volunteering as well as gaining experience and networking. Citing the ABA model "aspirational" standard of fifty hours a week (1 hour per week), Rhode shares concern that only a quarter of lawyers meet that aspiration.

Especially noteworthy, the book dedicates a chapter to diversity in leadership. After providing a history of discrimination in the profession, Rhode identifies systemic factors that continue to disadvantage populations that are underrepresented in legal leadership positions. These include unconscious stereotypes, selective mentoring and networks, and inflexible workplace structures. Rhode's insight on the evidentiary issues in anti-discrimination law is used to stress the moral and business case for legal leaders to push on diversity initiatives. Elaborating on the business case, Rhode cites the "Call to Action: Diversity in the Legal Profession" pledge, through which companies have signaled decisions to limit relationships with law firms that are not meeting diversity demands.

Rhode's advice to aspiring leaders from underrepresented groups is to seek challenging assignments, solicit frequent feedback, develop strategic mentoring relationships, cultivate a reputation for effectiveness, consider leadership training or coaching, and master time management. Rhode's advice to organizational leaders is to form a diverse committee to identify diversity challenges, develop responses, and monitor their effectiveness, to consider the role of affinity groups, and to focus on an effective mentoring program. Rhode recommends robust monitoring with quantitative and qualitative data points on advancement, retention, assignments, satisfaction, mentoring, and work/family conflicts through surveys, focus groups, exit interviews, and bottom-up evaluations of supervisors.

The book also features chapters on leadership scandals, leadership in law firms, and leadership for social change (with case studies of the civil rights and gay marriage movements).

In conclusion, I enthusiastically recommend reading this book. It is well-written, insightful, and enhanced with great examples of lawyer-leaders and memorable famous quotations. As a testament to the author's significant research, the book is enriched by extensive footnotes. *Lawyers as Leaders* discarded the assumption that "great leaders are born not made" and encouraged the reader that the "best leaders are the best learners." Another theme prominent throughout the book is that the most impactful leaders help cultivate new leaders. I'll close with a call to action: invest time in leadership development, for yourself, and by giving back to aspiring leaders. Are you ready to forge a legal leadership legacy? ♦



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US Armed Forces Legal Services Project

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For information and to join a Bar pro bono program, please contact the Bar's **Public Services Director Susan Fontaine** at: sfontaine@ribar.com or **401-421-7758**. For your convenience, Public Services program applications may be accessed on the Bar's website at ribar.com and completed online.

Do you or your family need help with any personal challenges?

We provide free, confidential assistance to Bar members and their families.

Confidential and free help, information, assessment and referral for personal challenges are available **now** for Rhode Island Bar Association members and their families. This no-cost assistance is available through the Bar's contract with **CorpCare Lawyer Assistance Program** and through the members of the Bar Association's Lawyers Helping Lawyers (LHL) Committee. To discuss your concerns, or those you may have about a colleague, you may contact a LHL member, or go directly to professionals at CorpCare who provide confidential consultation for a wide range of personal concerns including but not limited to: balancing work and family, depression, anxiety, domestic violence, childcare, eldercare, grief, career satisfaction, alcohol and substance abuse, and problem gambling.

The CorpCare helpline provides counseling resources that quickly and professionally assist you in handling problems affecting your personal or

work life. Counselors answer the phone 24/7 to provide immediate support and assistance. Simply pick up the telephone and call **866-482-8378** for confidential, round the clock support. Virtual telehealth consultations with a counselor are available upon request. Bar members can also access a wide variety of resources online by visiting corpcareep.com and enter the Life Advantage code: RIBALAP.

Lawyers Helping Lawyers Committee members choose this volunteer assignment because they understand the issues and want to help you find answers and appropriate courses of action. Committee members listen to your concerns, share their experiences, offer advice and support, and keep all information completely confidential.

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SOLACE, an acronym for Support of Lawyers, All Concern Encouraged, is a new Rhode Island Bar Association program allowing Bar members to reach out, in a meaningful and compassionate way, to their colleagues. SOLACE

communications are through voluntary participation in an email-based network through which Bar members may ask for help, or volunteer to assist others, with medical or other matters.

Issues addressed through SOLACE may range from a need for information about, and assistance with, major medical problems, to recovery from an office fire and from the need for temporary professional space, to help for an out-of-state family member.

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer email

SOLACE Helping Bar Members in Times of Need

network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

To sign-up for SOLACE, please go to the Bar's website at ribar.com, login to the Members Only section, scroll down the menu, click on the SOLACE Program Sign-Up, and follow the prompts. Signing up includes your name and email address on the Bar's SOLACE network. As our network grows, there will be increased opportunities to help and be helped by your colleagues. And, the SOLACE email list also keeps you informed of what Rhode Island Bar Association members are doing for each other in times of need. These communications provide a reminder that if you have a need, help is only an email away. If you need help, or know another Bar member who does, please contact Executive Director Kathleen Bridge at kbridge@ribar.com or 401.421.5740.

Committee Corner

In an effort to promote more involvement in our Bar committees, the *Journal* will now feature brief reports from a few committees in each issue. The reports will include summaries of recent meetings, the committee's goals for the year, and/or projects the committee is currently working on. If you decide that you would like to join one of the committees below or any of our 27 Bar committees, please contact Membership Services Coordinator NaKeisha Little at nlittle@ribar.com.



Continuing Legal Education Committee

Collin E. Bailey, Co-Chair
Krista J. Schmitz, Co-Chair

The Continuing Legal Education Committee assists in the planning and administration of the Association's annual program of continuing legal education for members of the Bar. Committee meetings resumed in September and CLE programs for the 2023 reporting year have begun. We are excited to offer programs both virtually and in-person.

Currently scheduled programs can be found on the Rhode Island Bar Association website under the CLE calendar. In addition to live programs, we have an extensive on-demand catalog that provides CLE seminars on a wide range of topics from both local

and out-of-state speakers.

We are in need of speakers on topics that relate to real estate law, employment law, family law, and diversity, equity, and inclusion. Any members who have program ideas or who are interested in presenting a topic can reach out to Madeline Benner, CLE Director, via email at mbenner@ribar.com. Any members interested in serving on this important committee are welcome to join.



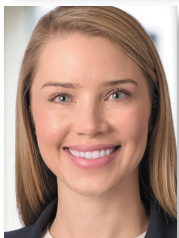
Diversity, Equity, and Inclusion Committee

Hamza Chaudary, Co-Chair
Sarah Oster Kelly, Co-Chair

The Diversity, Equity, and Inclusion Committee was established in 2022 to continue the great initiatives developed by the RIBA Diversity & Inclusion Task Force. The Committee will regularly meet to discuss DEI-related matters of interest to the membership and to make recommendations that will foster a sense of equity and inclusion among members. The Committee will also propose DEI-related CLE and Annual Meeting programming, networking events with affinity legal organizations, and resources for the membership.

The Committee had their first full meeting in September. As the Committee is tasked with the review of DEI initiatives set forth following the work of the Task Force, members are being assigned to subcommittees to improve, build upon, or propose new initiatives. The four subcommittees are: Leadership/Pipeline, Outreach, Education, and Communications/Messaging. Subcommittee meetings will be scheduled monthly between meetings of the full Committee.

The Committee is also currently working on 2023 Annual Meeting workshop proposals as well as regular annual CLE programming related to DEI. Any members interested in serving on this important committee are still welcome and encouraged to join.



Ethics & Professionalism Committee

Kyla Pecchia, Co-Chair
Keith E. Fayon, Co-Chair

The Ethics and Professionalism Committee convened virtually on Tuesday, October 11, 2022. The charge of the Committee includes making recommendations to the Bar Association in order to foster the highest possible standards of ethics and professionalism. As has become tradition, the Committee invites the R.I. Supreme Court Office of Disciplinary Counsel to attend and present current issues at the first meeting of the year.

Deputy Disciplinary Counsel Maria R. Lenz attended and spoke about law firm succession planning and wire transfer fraud—issues which

are actively affecting members of our Bar. The Committee is preparing a proposal for an Annual Meeting CLE, jointly with the Office of Disciplinary Counsel, on best practices for succession planning to ensure client rights are protected in the event of attorney incapacity or death. Ms. Lenz reminded the Committee her office is available any time for questions.

The Committee will hold topic-based meetings to discuss ethical issues within the practice of law unless directed otherwise by the Executive Committee. We encourage members of the Bar to bring ideas and issues to the Committee. The Committee also welcomes invitations for joint meetings with other Bar committees.



Government Lawyers Committee

Kara DiPaola, Co-Chair
Lynne M. Radiches, Co-Chair

The first meeting of the Government Lawyers Committee (GLC) was held on Thursday, October 6, 2022, from 12:30 pm – 1:30 pm, using the Zoom format, at which time members of the GLC got better acquainted by taking turns introducing themselves to the group. After stating where they work, describing the work of their particular agencies, and informing all present about their responsibilities, everyone shared something about themselves that was not related to the law. At the conclusion of the introductions, it became clear that the GLC is comprised of talented and experienced attorneys whose outside interests are diverse and compelling. The GLC was fortunate to welcome guest speaker Ernest Almonte at their first meeting. Mr. Almonte,



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the Executive Director of the Rhode Island League of Cities and Towns, captivated GLC members on the topic of *Leadership in the Public and Private Sectors*. Mr. Almonte's approach to preparation, decision-making, and collaboration contained information from which all GLC members will benefit. The GLC plans to offer the maximum of (2) CLE credits allowed this year, with details about those presentations to be shared as they are developed. Additional meetings of the GLC are scheduled for: November 3, 2022; December 1, 2022; February 2, 2023; March 2, 2023; and April 6, 2023. A social event is expected to take place in May of 2023, the date and details for which have yet to be determined. The GLC is pleased to welcome new members throughout the year.

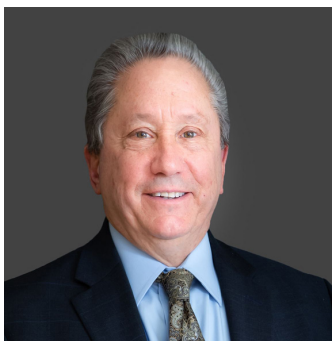
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Lawyers Helping Lawyers Committee

Nicholas Trott Long, Chair

The Lawyers Helping Lawyers Committee serves as a confidential resource to Bar members and their families, providing support and encouragement when needed. Committee volunteers give generously of their time to help their colleagues. Their primary role is to lend an ear and assist in making an appropriate referral to professional resources. The communications between lawyers seeking help and members of the Committee are *strictly confidential*, even within the Committee itself. Lawyer-Committee member contacts are noted only for statistical purposes and no names are ever mentioned.

The RIBA recently contracted with CorpCare, which provides professional clinical assessments and facilitates getting appropriate treatment for Bar members and their family members. CorpCare offers up to eight professional and confidential counseling sessions; work-life programs that include eldercare referrals, childcare referrals, and assistance with financial referrals; and 24/7/365 availability of Master's level therapists. Counselors answer the phone 24/7 to provide immediate support and assistance. Simply pick up the telephone and call 866-482-8378 for confidential, round-the-clock support. Virtual telehealth consultations with a counselor are available upon request. Online resources are also available to Rhode Island Bar members. Bar members can access these resources by visiting: Client Resources | CorpCare Associates, Inc. (corpcareap.com) and enter the Life Advantage code: RIBALAP.

The Committee is currently working on 2023 Annual Meeting workshop proposals, outreach to affinity groups and local bar associations, and content for the *Rhode Island Bar Journal*. Any members interested in serving on this important committee are welcome to join.



Superior Court Bench Bar Committee

Zachary Mandell, Co-Chair

Jennifer Sylvia, Co-Chair



The Superior Court Bench Bar Committee is excited for the 2022 – 2023 year. The co-chairs, Zachary Mandell, Esq. and Jennifer Sylvia, Esq. are working to expand the Committee's projects and involvement with the Court. One of the goals the Committee is currently expanding on, is last year's recommendations to continue some of the technological advances that were started due to the necessity of the COVID pandemic. The Committee looks to suggest protocols specifically for remote depositions, which could be useful in certain circumstances, but protocols are needed to safeguard the process. The

Committee is also looking into options of expanding a Courtroom 4 mediation program to assist with the cases on the Trial Calendar. Lastly, the Committee is seeking to arrange a meeting for members of the Bar to get to know Judges from Superior Court. Zachary and Jennifer are open and welcome to new members, as well as any suggestions and recommendations to make this a successful year to assist all Bar Members.

Some Like it Hot*

American Bar Association Delegate Report

Annual Meeting 2022



Robert D. Oster, Esq.
ABA Delegate and Past Rhode
Island Bar Association President

The American Bar Association (ABA) House of Delegates met in August 2022 in Chicago. Chicago had an August like ours in Rhode Island, very hot and dry. The atmosphere inside the House of Delegates was a little cooler as the Mayor of Chicago welcomed and addressed the House. The ABA is the largest professional association of lawyers in the world and still leads the way in advancing the core principles of the rule of law. As expected, there was serious discussion of many issues in the current news cycle such as **Roe v. Wade**, Ukraine, racism, and the like. As to the practice of law itself, there were Resolutions on criminal procedure, copyright and IT, child endangerment, Native American and Indigenous populations, international law, cyberbullying, mental health, and bar admissions, to name some, but this list is not exhaustive by any means.

The ABA, when founded over one hundred years ago, reflected the times and was not a diverse organization. Today, it is one of the most diverse deliberative policy-making bodies in the world. We are proud of our new leaders: Deborah Enix-Ross, a self-described “girl from Harlem” and a leading international attorney, is the current ABA President, Mary Smith will be the first Native American to assume the position of President in 2023-2024, and Reginald Turner, a great bar leader from Detroit, Michigan, is the Immediate Past President of the ABA. It must be said that not every ABA position on a point of law may be to our liking, but the emergence in diversity, equity, and inclusion in the ABA and the Bar is welcome.

In addition to attending the House of Delegates meeting, for a day and a half, I attended several grassroots committee meetings. The National Caucus of State Bar Associations, of which I am a former President, had informative discussions on pending Resolutions. I also attended the General Practice, Solo and Small Firm Division. The New England Bar Association met and discussed governance, substantive Resolutions, and was visited by many of the candidates for ABA office. I am proud to have just been appointed to the House’s Impact and Resolution Review Committee by the Chair of the House, with whom I also served on the Bylaws Committee of the House. Although my term on the Gun Violence committee ended, I

closely follow their deliberations as well as several others of interest to our Bar in Rhode Island.

Attendees were addressed by a prestigious panel on the hot-button topic of election law in this country. Some of the speakers included Judge J. Michael Luttig, a former federal judge, Bakari Sellers, a rising star of national politics, and other panelists. Judge Luttig opined on the last presidential election and what that meant for American democracy. Sellers and others see hope but caution for future elections.

Associate Supreme Court Justice Stephen Breyer was awarded the ABA Medal, its most prestigious award, after recently retiring from the bench. We were addressed by John Levy, Director of the Legal Services Corporation, of which the ABA has been a longtime supporter. He once again sounded the alarm about the availability of legal services for underserved populations and the desperate need for further expanded funding to plug the hole in the justice gap, especially in the context of the COVID pandemic.

I cannot in this column address every aspect of the House meeting and welcome any comments or questions regarding my participation as RI Bar Delegate to the ABA. It is truly an honor and privilege to serve the great RI Bar this way. I would be remiss if I did not mention the recent passing of Justin Holden, Esq., my predecessor in the ABA, who encouraged me and mentored me along the way.

**Some Like It Hot, starred Jack Lemmon and Tony Curtis and was an 1960s comedy ahead of its time.*

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December 5 **A Complete Refresher of Expungement Law in RI**
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December 8 **In the Middle: Optimizing Time and Billing Through Technology**
Thursday
 12:30 – 1:30 p.m., 1.0 credit
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December 15 **Fundamentals of Senior Injury, Abuse, Neglect, and Wrongful Death Cases**
Thursday
 RI Law Center, Cranston
 12:00 – 1:30 p.m., 1.5 credits
Also available as a LIVE WEBINAR!

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In Memoriam

David W. Gervasini, Esq.

David W. Gervasini, of Bradford, RI, born in Westerly, RI, died on August 19, 2022. He was the son of the late Robert Gervasini and Elizabeth Gervasini. David is survived by his mother, Elizabeth Gervasini; his children, Hillari DeGiacomo (Gaetano), Kevin Gervasini (Katie) and Michael Gervasini (Meggie Pringer); the mother of his children, Gina Gervasini; his siblings, Robert Gervasini (Teresa), Gary Gervasini (Deborah) and LuAnn Shoemaker (Kenneth); his granddaughters, and nieces and nephews. He was predeceased by his grandson, Anthony J. Gervasini.

Vernon A. Harvey, Esq.

Vernon A. Harvey, of Newport, died on July 4, 2022. He was born on January 2, 1923 in Newport to Bernard & Mabel Harvey. He was the husband of the late Elizabeth Burdick Harvey. Vernon attended RI State College and received his law degree from Boston University. Vernon was a retired Naval Lieutenant Commander; he served in the US Navy with the Occupational Forces at Hiroshima and Nagasaki. He started his law practice with Judge Arthur Carrellas and Joseph Libby but was called back into the Navy to serve in the Korean War. Vernon served many years as a Trustee for the Robert B. Cranston & Theophilus T. Pitman Fund, the Newport Hospital Board, and was also a past Grand Master of the Masons. Vernon was predeceased by his wife and five other siblings. He is survived by many nieces and nephews.

Robert D. Kilmarx, Esq.

Robert D. Kilmarx, 94, of Verona, PA, died on Wednesday, September 21, 2022. Bob was born May 21, 1928, in New York City to Elizabeth (Harris) and Sumner D. Kilmarx. He was the husband of the late Mary Kilmarx. Bob attended the Southern Arizona School for Boys and graduated from St. Paul's School in Concord, NH, and then from Dartmouth College as chairman of the Undergraduate Council and varsity football manager. Bob earned his law degree at Harvard and then served for two years in the 8th Naval District Legal Office in New Orleans. He joined the Boston law firm of Sherburne, Powers & Needham in 1955 and, six years later, became a partner. In 1965, he settled in Barrington, RI, working with the Industrial National Bank, first as a Vice President and then as Executive Vice President and member of the board of directors. He returned to the law in 1975 and became a founding partner of the firm Davis, Jenckes & Kilmarx. He was a member of the Rhode Island Supreme Court Disciplinary Board and the Environmental & Energy Law Committee of the Rhode Island Bar Association and advocated for land conservation in the state. Bob served in many alumni leadership positions at Dartmouth College and was very active in the civic life of Rhode Island. Bob is survived by his sons and daughters-in-law, John and Beth Kilmarx, and Peter and Nichaphat Kilmarx, and several grandchildren. He was predeceased by his wife, Mary Kilmarx and his daughter, Elizabeth Kilmarx.

George M. Landes, Esq.

George M. Landes, 78, of Pine Glen Drive, died on Friday, September 9, 2022. He was the husband of Martha L. Landes. Born in Providence, he was the son of the late Orrin and Edith (Jacques) Landes. George was a graduate of the University of Rhode Island and Suffolk Law School. While at the University of Rhode Island, he was a member of Theta Delta Chi fraternity. After graduation from URI, he was active in alumni affairs. He became president of the Fast Break Club and also president of the Century Club. George was an attorney serving the Rhode Island community for over 50 years.

David M. Merchant, Esq.

David M. Merchant, 85, died on October 2, 2022. He was born on July 1, 1937 in Providence, RI, the son of the late Mason B. and Helen (Leavitt) Merchant. Dave was the husband of Brenda (Sherman) Merchant for 63 years. He was a graduate of Moses Brown School, Brown University, and Duke Law School. David worked for Citizen's Bank for 36 years, as vice president and trust officer. For many years, he was treasurer for the Brown Club of RI where he enjoyed helping produce the annual Brown Pops Concert on the main green. He also served many years as treasurer for the Audubon Society of RI where he was instrumental in facilitating the building of a nature center in Bristol, RI. He also extended his treasurer expertise to the Acoaxet Club in Westport Harbor. In addition to his wife, he is survived by his children, Rebecca Merchant (Terry DeLeo), Gregory Merchant (Heidi), three grandchildren, and two nieces and nephews. He was predeceased by his daughter Jennifer (Merchant) LaPierre and brother John S. Merchant.

Richard S. Rosenstein, Esq.

Richard S. Rosenstein, 75, of Lake Worth, FL, died on August 23, 2022. Richard is survived by his wife, Jill Rosenstein; and two daughters, Sarah Rosenstein and Deborah Rosenstein.

Thomas E. Sparks, Esq.

Thomas E. Sparks, 59, of Lincoln, died on September 3, 2022. Born in Philadelphia, PA, he was the son of the late Byron and Candida (Bonanni) Sparks. Tom was the owner of Sparks Law, serving Massachusetts, Rhode Island, and Connecticut – but most of all, the city and people of Woonsocket. Tom is survived by his three children, Anna Deaton and her husband, Alex, of Charlotte, NC, and Ryan and Elyse Sparks, both of Seattle, WA; his former wife, Lisa Parker, of Greenville, RI; his brother, Chris Sparks, of Gilbert, AZ; his grandson; and his fiancé, Delia Wilson, of Lincoln, and her two daughters.

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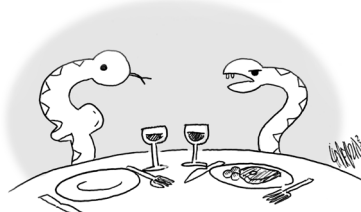
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Caption This! Contest

We will post a cartoon in each issue of the *Rhode Island Bar Journal*, and you, the reader, can create the punchline.



Winning caption for
September/October



"I'm sorry, but the points that you tried to make in your brief are very difficult for me to swallow."

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How It Works: Readers are asked to consider what's happening in the cartoon above and submit clever, original captions. Editorial Board staff will review entries, and will post their top choices in the following issue of the *Journal*, along with a new cartoon to be captioned.

How to Enter: Submit the caption you think best fits the scene depicted in the cartoon above by sending an email to ecute@ribar.com with "Caption Contest for November/December" in the subject line.

Deadline for entry: Contest entries must be submitted by December 1st, 2022.

By submitting a caption for consideration in the contest, the author grants the Rhode Island Bar Association the non-exclusive and perpetual right to license the caption to others and to publish the caption in its Journal, whether print or digital.

Lawyers on the Move

Sheri L. Montecalvo, Esq. is now of counsel at the firm of **Salter McGowan Sylvia & Leonard**, 56 Exchange Terrace, 5th Fl., Providence, RI 02903.
401-274-0300 smontecalvo@smsllaw.com smsllaw.com

Samuel A. Budway, Esq. is now an associate at **Chace Ruttenberg & Freedman, LLP**, One Park Row, Suite 300, Providence, RI 02903.
401-453-6400 sbudway@crfllp.com www.crfllp.com

Mary B. (Poirier) Catala, Esq. is now an associate at **Chace Ruttenberg & Freedman, LLP**, One Park Row, Suite 300, Providence, RI 02903.
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You have a lot to share, and your colleagues appreciate learning from you. We are always in need of scholarly discourses and articles, and we also encourage point-counterpoint pieces. Or, if you have recently given, or you are planning on developing a Continuing Legal Education seminar, please consider sharing your information through a related article in the *Rhode Island Bar Journal*. While you reached a classroom of attorneys with your CLE seminar, there is also a larger audience among the over 6,500 lawyers, judges, and other *Journal* subscribers, many of whom are equally interested in what you have to share. For more information on our article selection criteria, please visit the Bar's website, under News and *Bar Journal*, and click *Bar Journal* Homepage. The Editorial Statement and Selection Criteria is also on page 4 of every issue. Please contact Communications Director Erin Cute at 401-421-5740 or ecute@ribar.com if you have any questions.

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