

# Rhode Island Bar Journal

Rhode Island Bar Association Volume 73. Number 6. May/June 2025



**Rethinking Common Law Marriage  
in Rhode Island**

**Overview of the RI Workers'  
Compensation Court Mediation Program**

**Understanding The Stepped-Up Basis  
Tax Rules and Intentionally Defective  
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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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## A Grateful President



*Front row (l-r):* Ana Dominguez, Elisa King, Erin Cute, Madeline Benner. *Back row (l-r):* Theresa Gallo, Allison Baker, Susan Fontaine, Susan Cavalloro, Christopher S. Gontarz, Esq., Kathleen Bridge, John Ellis, Julie Amato, NaKeisha Torres.

**“This is your Bar Association, and it is only as good as we all make it.”**

As incoming President of the Rhode Island Bar Association, I set forth an agenda I hoped to follow during my term. I set the agenda, but soon the agenda set me, with a flow of events that were unforeseen when I started my term in July. I knew we had to deal with upgrading our website and database to make it more intuitive and easier to navigate, which will be successfully completed in May. We also undertook the dedication of the Ada Sawyer Conference Room and celebrated the Bar Foundation’s naming of the John A. Tarantino RI Bar Foundation Conference Room. We coordinated with the Bar Foundation on repairs to the Law Center building, including resealing all windows and doors and replacing the interior carpeting, with all work scheduled for completion this fall. We began moving away from relying on virtual meetings and reinstating in-person meetings for committees and the House of Delegates.

What was unexpected was the lengthy process involving the RIBA and the amended Law Enforcement Bill of Rights statute that was enacted at the end of the legislative session, as well as dealing with the new federal administration’s Executive Orders that came in a flurry in January and February, which resulted in monitoring and diligent analysis to ensure compliance with the requirements of mandatory bars set forth by the United States Supreme Court in *Keller*. Fortunately, I did not have to deal with a bed bug crisis!

Throughout the year, the Executive Committee and the House of Delegates provided thoughtful insight and analysis that resulted in sound policies.

Once the policy choices are made, they are implemented by the hardworking staff at the Bar Association. In my final President’s Message, I want to dedicate this message to them and share the expertise and knowledge that they have demonstrated over this past term.

Our **Executive Director is Kathleen Bridge**, known to all of us as Katy. There is an axiom: you do not want to be the coach who replaces the legend. We are so fortunate that Katy is the exception. Helen McDonald is the legendary Executive Director of the Bar Association, and when she retired three and a half years ago, Katy succeeded her. Katy has not only upheld the high standards established by Helen, but has also consistently demonstrated exceptional leadership and a strong commitment to excellence. Katy has an encyclopedic knowledge of the Bar Association and its members. She has been invaluable during my term and provides steady leadership, thoughtful guidance, and consistent support for the staff. Katy is always open to assisting members of the Bar with their questions and concerns. Katy’s calm presence, deep institutional knowledge, and unwavering dedication keep the Bar Association running smoothly. Her commitment to the mission of the Bar and the people it serves is evident in everything she does.

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.

**Erin Cute – Communications Director**  
(and *RI Bar Journal* Managing Editor)

Erin oversees the Rhode Island Bar Association's *Rhode Island Bar Journal*, public relations, member communications, media inquiries, and event promotions. She manages the production of key materials such as the Annual Meeting brochure, Bar awards, and marketing content while ensuring consistent and effective messaging across all platforms. She serves as the primary liaison for media relations and organizational outreach. Additionally, she coordinates Law Related Education initiatives, supports committee communications, and leads the planning and execution of the Bar's

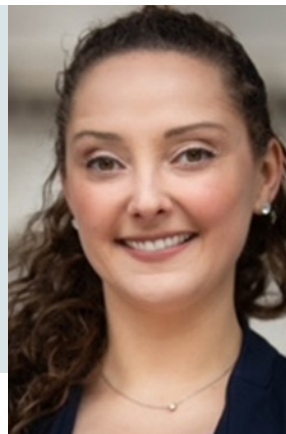
Leadership Academy—a year-long program that fosters professional development and engagement among emerging leaders in the legal community.

**Allison Baker – Programs Coordinator**

Allie is the friendly face greeting visitors to the RI Law Center. She supports the administration of Law Related Education programming and member engagement initiatives aimed at strengthening the Bar. She assists the Communications Director with project details and is responsible for front desk duties, including member inquiries and updating member resources.

## BUILD your **Client Base** and **SERVE** Your **Community** with the **Bar's Lawyer Referral Service!**

Attorney **Brianna Repetto**, a member of the Lawyer Referral Service, enthusiastically supports the program. *"Finding an attorney to guide you through the legal process during life's most critical moments can be quite daunting. The Lawyer Referral Service offers a much more intimate opportunity to connect the public with the right attorney compared to a simple internet search. I highly recommend this service for both members of the public and private counsel looking to give back or expand their business!"*



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](http://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](mailto:sfontaine@ribar.com).**

**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 magazine published bi-monthly, six times annually, and digitally distributed to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,300 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 signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in articles, interviews, columns, and editorials are not the official view of the Rhode Island Bar Association. Letters to the Editor are welcome.

**Article Selection Criteria**

- > Contributors are requested to submit article, book review, editorial, and interview topic ideas for approval to the Managing Editor prior to submission.
- > The *Rhode Island Bar Journal* gives primary preference to original articles, written expressly for first publication in the *Bar Journal*, by attorney and judicial 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 unless co-authored with a RIBA member. Law student members may submit articles co-authored by either a law school professor (not necessarily a RIBA member) or a RIBA member.
- > A maximum of two authors (co-authors) is permitted for article submissions.
- > Articles previously appearing in other publications are typically not accepted.
- > All submitted articles are subject to the *Journal's* Editor's 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 Editor reserves 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 Editor.
- > Submissions are preferred in a Microsoft Word format emailed as an attachment.
- > 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 photographs for publication consideration to:

**Rhode Island Bar Journal Editor Erin Cute**  
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### **NaKeisha Torres – Communications Coordinator**

NaKeisha supports the Communications Director in executing the Association's marketing, social media, and member communications strategy. She coordinates committee meetings, updates and maintains the website and attorney directory, manages social media accounts, and assists with the *Bar Journal* and promotional materials. Additionally, she oversees sponsor and exhibitor coordination for the Annual Meeting, manages listserv operations, and serves as a staff liaison for DEI initiatives.

### **Susan Cavallo – Office Manager**

Susan is responsible for overseeing daily office operations. She manages membership records, dues processing, as well as *Bar Journal* advertising and subscriptions. Additionally, she orders office supplies, oversees facility maintenance, and provides administrative support across departments. A longtime member of the Bar Association staff, Susan has served in various roles over the years, bringing deep institutional knowledge and continuity to the organization.

### **Renee Bourbonniere – Finance Director**

Renee oversees all financial operations of the Rhode Island Bar Association, ensuring accurate accounting, reporting, and compliance across all funds and grants. She manages payroll processing, dues invoicing, investment allocations, and grant reporting while maintaining financial records. Additionally, she collaborates with auditors for the annual audit and ensures timely submission of retirement contributions and regulatory filings.

### **Madeline Benner – Continuing Legal Education Director**

Madeline plans, develops, and oversees continuing legal education programs for Rhode Island Bar Association members, ensuring a diverse and comprehensive range of offerings that meet the evolving needs of legal practitioners. She manages all aspects of seminar programming, the Annual Meeting, and online training while collaborating with faculty, committees, and vendors to deliver high-quality educational content. Additionally, she monitors emerging legal education trends and supports program planners to maintain a robust and relevant CLE curriculum.

### **Julie Amato – CLE Coordinator**

Julie supports the planning and execution of continuing legal education programs, including seminars, live webcasts, and the Annual Meeting. She handles administrative tasks such as processing CLE accreditations, coordinating food and beverage needs, managing educational materials, and assisting with marketing and communications. Additionally, she provides customer support to members, researches legal trends and speakers, and troubleshoots issues during in-person and webcast programs.

### **Susan Fontaine – Public Services Director**

Sue is responsible for overseeing the Rhode Island Bar Association's Public Service Programs, ensuring effective legal assistance and access to justice for underserved communities. A longtime member of the Bar Association staff, Sue has played a central role in expanding and strengthening these programs over the years, growing them into the successful and impactful services they are today. She oversees daily operations of programs like the Lawyer Referral Service, Volunteer Lawyer Program, and others while leading volunteer engagement, coordinating legal clinics, and building partnerships with community



## **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 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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organizations. Additionally, she ensures compliance with program guidelines, tracks service metrics, advocates for program enhancements, and works on securing funding to sustain these vital services.

### Theresa Gallo – RI Bar Foundation Program Director

Theresa manages the Bar Foundation's operations, including maintaining the General Ledger System, reconciling bank statements, and coordinating with auditors to produce financial reports. She oversees the IOLTA program by liaising with financial institutions, tracking interest, ensuring attorney compliance, and administering grants through contract preparation, budget monitoring, and compliance reporting. Additionally, she facilitates Board and committee meetings, organizes fundraising efforts, plans major events such as the annual luncheon, and manages the Foundation's website and outreach initiatives, including law school fellowships and scholarships. She also oversees the Foundation's grant program, actively encouraging new organizations to apply while fostering strong, ongoing relationships with grantees.

### Elisa King – Public Services Senior Coordinator

Elisa assists the Public Services Director in managing key legal service programs, including the Lawyer Referral Service, Elderly Pro Bono Program, and U.S. Armed Forces Legal Services Project. She coordinates client intake, facilitates case referrals, and supports volunteer attorneys, ensuring that clients, including seniors and military personnel, receive appropriate legal assistance. Additionally, she engages in community outreach,

## IOLTA Honor Roll Banks

The Rhode Island Bar Foundation sends its grateful appreciation to the banks participating in our Interest on Lawyers Trust Accounts (IOLTA) Honor Roll Bank program. Many banks in Rhode Island participate in the Rhode Island Bar Foundation IOLTA Program, which is administered by the Rhode Island Bar Foundation. The IOLTA Program funds critical services in Rhode Island communities. Through IOLTA grants, thousands of our most vulnerable citizens receive free or low-cost civil legal services. The RI Bar Foundation would like to especially highlight our IOLTA Honor Roll Bank participants. These financial institutions agree to pay a net yield of at least 65 percent of the federal fund's target rate on IOLTA deposits. Their participation in the IOLTA Program exemplifies their commitment to upholding the Federal Community Reinvestment Act. Participating banks appear below:



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organizes legal clinics, tracks program statistics, and supports funding efforts to enhance access to justice.

#### Ana Dominguez – Lawyer Referral Services Coordinator

Ana manages the daily operations of the LRS program, ensuring individuals are connected with qualified legal professionals. She oversees client screening, case referrals, community outreach, and program administration while maintaining clear communication with the public and LRS panel members. With strong organizational and customer service skills, she ensures the program runs efficiently and effectively supports access to legal services.

#### John Ellis – Volunteer Lawyer Program Coordinator

John manages the Volunteer Lawyer Program (VLP), which provides legal assistance to low-income individuals in need of representation. He recruits, engages, and supports volunteer attorneys, organizes training and CLE sessions, and coordinates case placements for clients in various legal areas. Additionally, he collaborates with community organizations, tracks program metrics, and ensures compliance with ethical guidelines.

I have thoroughly enjoyed this past year as President of the Bar and urge all our members to become active in Bar activities. This is your Bar Association, and it is only as good as we all make it. Volunteer to participate in the VLP program, become a mentor, plan and teach a CLE, volunteer to speak on Law Day and for law-related events—all of these options and more are available to our members; utilize them.

A final thought I'd like to share with all our members: remember when you were sworn in as an attorney and counselor before a Justice of the Rhode Island Supreme Court, the final sentence of the oath: "...you will support the constitution and laws of this state and the constitution and laws of the United States."<sup>1</sup>

#### ENDNOTE

<sup>1</sup> Rhode Island Supreme Court rules, Art 11, Rule 8. ◇

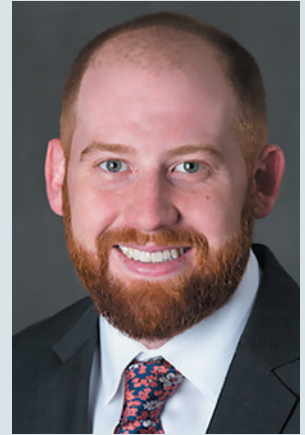
## Rhode Island Bar Foundation Spotlight

I extend a personal "Thank You" to each and every one of you for your support of the RI Bar Foundation, an organization that empowers our youth, supports pro bono efforts, and shapes the future of the legal profession. The RI Bar Foundation works to improve the public's understanding of the law and our judicial system. We strive to ensure citizens have full and equal access to justice through our legal system. This year, we received \$30,840 in Fellow donations, which represents an increase of \$2,940 from last year. Your generosity has been integral to this endeavor.

Armando E. Batastini, Esq.  
RI Bar Foundation President

## Serve Your Community with the Bar's Volunteer Lawyer Program!

Attorney **Joshua Nault**, a member of the Volunteer Lawyer Program (VLP), enthusiastically supports the program. *"I first became passionate about pro bono service as a law student at Roger Williams Law School, where I was awarded the Pro Bono Collaborative Award upon graduating for performing more than 250 hours of pro bono work over three*



*years. Now that I am in practice, I am very grateful to the Volunteer Lawyer Program for offering an opportunity for me to use my skills as an attorney to give back to my community. I appreciate the opportunity through the VLP to work directly, one-on-one with clients, and the chance to personally connect with them throughout the representation. As a state attorney, I am afforded a work-life balance that allows me the flexibility to take on VLP cases without sacrificing time in my professional or personal life. I would strongly encourage any attorneys who work in the public sector to consider volunteering with the VLP—not only because VLP clients would otherwise not be able to afford such professional help, but also for the rewards that come along with providing that help and connecting with your clients."*

Participation in our **Volunteer Lawyers Program** provides crucial legal assistance to those in need. Whether you have been an attorney for years or it is the beginning of your career, pro bono cases can provide the opportunity for you to explore new areas of law, and seasoned members of the Bar are available as mentors. Your involvement in VLP ensures marginalized individuals receive vital representation, playing a key role in fostering justice. Join today and you can make a difference in the lives of those who need it most.

**Applications and more detailed program information and qualifications may be found on our website [ribar.com](http://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](mailto:sfontaine@ribar.com).**

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# Rethinking Common Law Marriage in Rhode Island

This article is a special project by a participant of the 2023–2024 Leadership Academy, developed with feedback and edits from their mentor. It reflects the dedication and growth fostered within our program. We are proud to showcase the hard work and insights of our future leaders.



Adam G. Northup, Esq.  
Rhode Island Public Defender  
Providence

**“If a decedent dies testate, the issue of whether a common-law marriage existed may affect the validity of the will, as marriage revokes prior wills unless the will was executed in contemplation of the marriage..”**

Common-law marriage makes little sense in today’s world and should be evaluated by lawmakers to determine whether a brightline rule may better serve Rhode Islanders. It is outdated, confusing for the public, and contributes to increased litigation. This article proposes that the general public may be better served by adopting a brightline rule against common-law marriage in Rhode Island.

“Common-law marriage is ‘defined as a marriage which does not depend for its validity upon any religious or civil ceremony but is created by the consent of the parties as any other contract.’”<sup>1</sup> Prior to efficient transportation, there was a legitimate need for common-law marriage. “It ‘expanded to western America in the nineteenth century due to the lack of religious officials to perform marriage ceremonies and the difficulty of traveling.’”<sup>2</sup> In today’s modern age, it takes very little time to get a marriage license, there is a readily available method for a civil ceremony at a courthouse, and the difficulty in traveling, despite Rhode Islanders’ aversion to traveling more than 30 minutes, is non-existent compared to travel in the 1800s. In short, society has evolved beyond the usefulness that common-law marriage once provided.

Ten states (which include Rhode Island) and the District of Columbia currently allow for common-law marriages.<sup>3</sup> Some additional states recognize common-law marriages made prior to a certain date, but do not recognize new common-law marriages.<sup>4</sup>

The usefulness that common-law marriage previously provided is being overshadowed by the confusion around what is and isn’t a common-law marriage, and the fluid form of common-law marriages. In order to prove the existence of a common-law marriage in Rhode Island, it is necessary to prove, by clear and convincing evidence, that “...(1) the parties had the capacity to marry; (2) the parties seriously intended to enter into a mutual husband-wife relationship; and (3) the parties’ conduct was of such a character so as to lead to a belief in the community that they were married.”<sup>5</sup> The second element has been interpreted to include that the parties mutually intended to enter into the relationship and that the parties intended to be husband and wife at that present moment, as opposed to an engagement to be

married at some point in the future.<sup>6</sup>

The confusion arises in how common-law marriage cases have been decided, and the requirement of the parties intending to be husband and wife at that present moment. For instance, in *Sardonis v. Sardonis*, the Rhode Island Supreme Court upheld the finding of a common-law marriage based on the parties holding themselves out to be married while living in three different states, the woman receiving mail addressed to her as “Mrs. Marlene Sardonis,” the parties having two children together, and the man acknowledging that he was the husband when he supplied vital information for the second child at the time of the child’s birth.<sup>7</sup> Contrast that finding of a common-law marriage with the finding in *Luis*, where the Rhode Island Supreme Court overturned a common-law marriage finding despite the parties listing the male as husband on school forms, the parties having a child together, the man wearing a wedding ring, and the male’s family referring to the female as their in-law.<sup>8</sup> The Court in *Luis* determined that, because the parties were not consistent with how they held themselves out to the public, for example, filing taxes as single, applying for student loans as unmarried, and listing the female as Fiancée on the male’s 401(k) forms, that they were not common-law married.<sup>9</sup> In essence, the failure to act consistently as husband and wife was evidence that the parties did not have a present intention to be husband and wife at the time Ms. *Luis* alleged the common-law marriage began.

In *Sardonis* there was consistency in the parties intending to be married up until the end, versus *Luis*, who initially consistently held themselves out to be married and then thereafter routinely picked the times when it was most advantageous to be single. This element of “presently intending” to be married makes common-law marriage a fluid form of marriage, contributing to the confusion of what is and what isn’t a common-law marriage. With a civil ceremony, the parties are married at that singular moment in time, as evidenced

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by the marriage certificate, and remain married until they die or are divorced. If the parties are married for two years, then separate and live apart for three years, they are still married. That differs from a common-law marriage, which depends on when the story ends. If the parties believe they are entering into a common-law marriage and intend to be married to each other at that time, that does not automatically prove the existence of a common-law marriage because a court will look at the entirety of the relationship to determine if the parties actually had that lasting intent to be married. If the parties hold themselves out to be married for 20 years, then separate and live apart for three years, the holding in *Luis* suggests that would not likely be a common-law marriage. However, if the parties split at year 19, then it is more likely to be considered a common-law marriage. Thus, the hallmark of marriage, the lasting commitment the parties are making to each other, is not present in common-law marriages, as the parties can choose not to be together (just like a married couple that lives apart from each other), and the court can interpret that conduct to mean no marriage ever existed. That same logic does not apply to parties who have a marriage certificate.

Common-law marriage may engender and promote more litigation. The fact that common-law marriage is fact-driven equates to different interpretations and opinions. This leads to parties seeking courts to settle these disputes. This manifests, and has the potential to manifest, in a variety of ways. The obvious manifestation is one party trying to prove a common-law marriage to be able to obtain a divorce and a division of marital assets. A party could also seek to establish a common-law marriage of their former spouse to end alimony payments.<sup>10</sup>

This issue extends beyond the Family Court as marital status affects probate matters. For instance, a party may seek to establish a common-law marriage to get the protection of the state's probate laws when their partner of 30 years passes intestate, and a child from a prior relationship seeks to have the surviving party removed from the home, which was solely in the deceased party's name. The marital relationship in this context is the difference between a person being able to stay in the home or being kicked out with nothing at all.<sup>11</sup> If a decedent dies testate, the issue of whether a common-law marriage existed may affect the validity of the will, as marriage revokes prior wills unless the will was executed in contemplation of the marriage.<sup>12</sup>

Another example extends to insurance or Social Security benefits, where a party wants to establish a common-law marriage to be able to receive a higher benefit based on their common-law spouse's benefits. The solution in this example is the Social Security Administration's form that can be filled out to state that the parties had a common-law marriage.<sup>13</sup> In this context, the Social Security Administration is forcing the parties to make a written acknowledgement of the common-law marriage. This raises a question about what effect, if any, a document of this type would have in Rhode Island. Would a document of this nature, which clearly states the parties thought they were common-law married, be enough to prove a common-law marriage? What if the parties had this form but chose to cherry-pick their relationship status when convenient or financially beneficial? Whatever the answers to those questions may be, the intent of the Social Security Administration's form seems to be clarity in defining the parties' relationship. Similarly, outlawing common-law marriage in Rhode Island will force parties to clearly state their intent; either they both want to be married and will obtain



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The Rhode Island Bar Association Annual Meeting is scheduled on Thursday, June 12 and Friday, June 13, 2025, at the Rhode Island Convention Center. Here are a few highlights of our 37 fantastic workshops:

### **> Introduction to Federal Civil Practice**

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Criminal defense attorneys must understand how criminal convictions can impact non-citizen clients. This session offers practical tools for spotting immigration consequences, asking the right questions, and advising clients in an evolving legal landscape.

**New this year!** On Friday, we're hosting a **New Member Coffee Mixer, Headshot Event, and Closing Mixer**, offering a great opportunity to connect with colleagues and update your professional image. Also, don't forget to attend our **FREE** Annual Awards Reception on Thursday evening, following the last workshop of the day. The Bar's Annual Meeting will provide attendees with outstanding opportunities to learn, improve their practice, socialize with colleagues, and fulfill annual CLE requirements. This is one Meeting you don't want to miss! Visit [ribar.com](http://ribar.com) to view the detailed Annual Meeting brochure and to register for the Meeting today.

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a marriage certificate, or they won't, but what will be avoided is the second-guessing after the fact that leads to more issues and litigation.

Common-law marriage is confusing and messy. It is outdated and seemingly has outlived its usefulness. It creates more issues than it resolves, and the citizens of Rhode Island may be better served with a bright-line rule against common-law marriages. At the very least, the usefulness of common-law marriage in Rhode Island should be evaluated. It was even noted in *Luis*, that it is not "...the first time that we have noted that it is within the General Assembly's power to revisit and reevaluate this arguably outmoded doctrine."<sup>14</sup>

*Koegel, D.C.L., Common Law Marriage and its Development in the United States 7 (1922)).*

<sup>2</sup> *See id.*, at 503 (*Quoting Jennifer Thomas, Common Law Marriage*, 22 J. Am. Acad. Matrim. Law. 151, 155 (2009)).

<sup>3</sup> *See Feature\_New Beginnings The Legal Implications of Remarriage Versus Cohabitation*, 45 Fam. Adv. 25, at 26.

<sup>4</sup> *See id.*

<sup>5</sup> *See Luis*, 185 A.3d 497 (R.I. 2018) at 503.

<sup>6</sup> *See id.*, at 504.

<sup>7</sup> 106 R.I. 469 (R.I. 1970) at 472-74.

<sup>8</sup> *See 185 A.3d 497 (R.I. 2018) at 499-500.*

<sup>9</sup> *See id.*, at 499-501, 506-507.

<sup>10</sup> *See Feature\_New Beginnings*, 45 Fam. Adv. 25, at 26.

<sup>11</sup> (*See R.I. Gen. Laws 33-1-5 which grants a surviving spouse a life estate in any real estate of the decedent*).

<sup>12</sup> *See R.I. Gen. Laws 33-5-9.*

<sup>13</sup> *See* <https://www.ssa.gov/forms/ssa-754.pdf>.

<sup>14</sup> *See Luis* at 503. ◇

#### **ENDNOTES**

<sup>1</sup> *Luis v. Gaulger*, 185 A.3d 497 (R.I. 2018) at 502-03 (*Quoting Otto E.*

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# Overview of the RI Workers' Compensation Court Mediation Program



**Dominique Tannous, Esq.**  
RI Workers' Compensation  
Court, Providence

**“The mediation program’s overall success rate reflects its effectiveness in assisting the Court and attorneys in managing cases more efficiently.”**

I currently serve as a judicial law clerk at the Rhode Island Workers' Compensation Court (hereinafter WCC). In this role, I have the opportunity to observe the success and inner workings of the Workers' Compensation Court's Mediation Program founded by Chief Judge Robert M. Ferrieri. In preparing this article, I interviewed Michael Schwartz, who works as the attorney for the WCC. Attorney Schwartz was an accomplished trial attorney, arbitrator, and mediator prior to joining the Court, where he helps to supervise the law clerks, assists with the Appellate Division, and serves as one of the mediators along with the judges of the Court.

The Court's mediation program was established in 2016 to assist in resolving contested petitions before the Court and to allow for an efficient and timely case dispute resolution mechanism.

The initial concept of the program called for retired judges to mediate contested petitions referred by agreement of the parties into mediation. The instant success of the program sparked a demand that led to the inclusion of current judges serving as mediators. The increase in mediations also resulted in an Administrative Order authorizing Attorney Schwartz to mediate cases.

The mediation program is structured so that if a matter is pending before a Worker's Compensation judge, a case can be referred to mediation. Either the attorneys request for their case to be mediated, or the judge will offer to the parties the option of mediation. Reasons for accepting mediation range from the costs of litigation to the complexity of the issues at hand.

Once the parties agree to mediation, the trial judge enters a mediation Order mandating that the parties file a mediation statement. This statement affords the attorneys an opportunity to argue their position and to highlight valuable information that could help the parties understand why settling the case may benefit the employee and employer. It should be noted that the mediation statements are confidential and are only given to the mediator.

Oftentimes, while the case is being mediated, the underlying trial is continued to see if a resolution is accomplished. However, the trial judge can require the underlying trial to move forward

throughout the process.

The Court employs mediation as a supplementary tool to facilitate the Court process during pretrial conferences, initial hearings, trials, and appeals. For example, in trials requiring significant preparation and incurrence of costs by the attorneys and their clients, having an alternative dispute resolution option could lead to a more efficient and timely resolution. Notably, the Court's mediation program is of no cost to the parties.

Mediation generally lasts two hours, but there is no strict timeline for resolving a case. Oftentimes, it requires more than one session. Delays can occur due to factors beyond the parties' control, such as awaiting approval from the Center for Medicare and Medicaid Services for a proposed Medicare set-aside or due to unexpected surgery or treatment of the injured employee.

If mediation is unsuccessful, regardless of the reason, the parties proceed to litigate their case before the trial judge. The trial judge is not involved with the mediation and is precluded from mediation sessions and negotiations. If the mediation results in a lump sum settlement of the case, the trial judge will hear said settlement.

Interestingly, even when there are no pending petitions or disputes before the Workers' Compensation Court, the parties can file a petition to mediate their claim. Also, due to a recent amendment in 28-35-58, in cases where an injured worker has a third-party claim and there is a dispute over reimbursement owed (relative to the third-party lien) or the period of suspension, the court, by agreement of the parties, shall assign the dispute to the Workers' Compensation Mediation program for attempted resolution.

The mediation program's overall success rate reflects its effectiveness in assisting the Court and attorneys in managing cases more efficiently. In 2022, 247 cases were mediated, achieving an 86% success rate. In 2023, 248 cases were mediated, with an 83% success rate. In 2024, 250 cases were

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The Rhode Island Bar Association's Continuing Legal Education (CLE) programming success relies on dedicated Bar members who volunteer hundreds of hours to prepare and present seminars every year. Their generous efforts and willingness to share their experience and expertise help to make CLE programming relevant and practical for our Bar members. We recognize the professionalism and dedication of all CLE speakers and thank them for their contributions.



Below is a list of the Rhode Island Bar members who have participated in CLE seminars during March and April.

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mediated, yielding a 71% success rate, while 6.9% are still pending. Lawyers participating in the mediation program consider it highly beneficial and appreciate the advantages of court-appointed mediation, as evidenced by the number of cases mediated annually. Attorney Schwartz pointed out in our interview that trying to mediate a case has no downside, since it is always beneficial and there is nothing to lose. The worst outcome is that the case is not settled, leaving the parties in the same position as before but possibly with valuable insights gained from the process. This program has significant potential for continued expansion due to its success. ♦

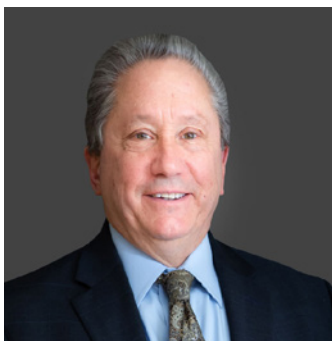
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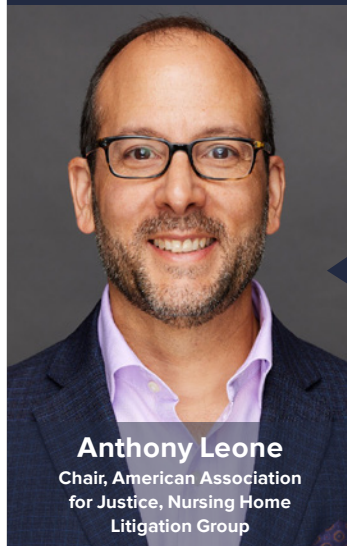
## RIBA Website and Database Upgrade

The Rhode Island Bar Association is excited to announce the upcoming launch of our new website and member database, designed to make it easier for you to stay connected and engaged. We've partnered with MemberCentral, a trusted provider for bar associations, to bring you a refreshed platform with improved functionality and a more intuitive design.

Expected to go live at the end of May, the new system will offer streamlined access to your member profile, CLE records, and event registrations. You'll also find simplified options for paying dues and joining committees. A new section dedicated to the Bar's public service programs will make it easier to get involved, and mentorship and Law Related Education (LRE) resources will be more accessible than ever.

Additional information and instructions will be emailed to members ahead of the launch. We look forward to sharing this updated experience with you soon.

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## Your Bar's 2025 Annual Meeting Highlights

### The Pillars of Effective Legal Writing

Thursday, June 12th, 2025  
Opening Plenary Session

*Bryan A. Garner, renowned authority on legal writing and longtime editor-in-chief of Black's Law Dictionary, brings his unmatched expertise to this dynamic session. Drawing from decades of experience and authorship of some of the most respected books on legal writing, Garner will uncover the most important—yet often overlooked—principles of motion practice and brief-writing. Whether you're a seasoned litigator or just sharpening your skills, expect a candid discussion that may challenge your assumptions and offer tools to improve your written advocacy.*



Professor Bryan A. Garner

**Professor Bryan A. Garner** is the award-winning author of more than 25 books. He writes on jurisprudence, lexicography, grammar, advocacy, and legal drafting. His magnum opus is the fifth edition of *Garner's Modern English Usage*, published by Oxford University Press—a thousand-page book that uses big data in the assessment of English words and phrases. In the legal world, he is best known as the editor in chief of the past six editions of *Black's Law Dictionary*, the most widely cited lawbook in the world.

He holds the title of Distinguished Research Professor of Law at SMU Dedman School of Law, where he has taught since 1990. He also teaches at the University of Texas School of Law.

In *D Magazine*, the noted writer Paul Kix called Professor Garner the “foremost lexicographer of our time.” Writing in *Harper's* magazine, the late novelist and essayist David Foster Wallace called Professor Garner “a genius, though of a rather particular kind. He's both a lawyer and a lexicographer, which seems a bit like being both a narcotics dealer and a DEA agent.”

The RIBA assumes no responsibility for opinions, statements, and facts in any Annual Meeting program. Neither the opinions expressed in any program nor its content represent the official view of the Rhode Island Bar Association or the views of its members.

**Please see your 2025 Rhode Island Bar Association Annual Meeting Brochure for more information about the Meeting's 37 CLE-credited seminars, social events, and other interesting and informative activities. Visit the Bar's website, [ribar.com](http://ribar.com) to register today! Please note, to save \$25, you must register before May 23, 2025.**

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# Volunteers Serving Rhode Islanders' Legal Needs

The Rhode Island Bar Association applauds the following attorneys for their outstanding pro bono service through the Bar's Volunteer Lawyer Program, Elderly Pro Bono Program, Ask a Lawyer Clinics, and Legal Clinics during February 2025 and March 2025.

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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.

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## PRO BONO PUBLICO RESOLUTION

In 2008, the Rhode Island Bar Association House of Delegates adopted the following policy and urges its members to act accordingly.

We urge our members to engage in public service. Recognizing the continuing need for legal assistance for economically disadvantaged citizens attempting to obtain legal services in our state, we as an association are mindful of the opportunity that is present for us to fulfill our moral, ethical and social duty to those who have limited or no access to the legal system. We therefore reaffirm our strong commitment to the delivery of legal services to the poor by strongly urging each member of this association to render pro bono publico legal services in accordance with Rule 6.1.

The association urges all attorneys, as well as law firms, government and corporate employers to support, endorse and adopt a Pro Bono policy that will encourage open participation by associates and employees.

Be it resolved that in order to implement the above statement of policy the association urges each member to join and participate in a Volunteer Lawyer Program of the Rhode Island Bar Association.

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# Understanding the Stepped-Up Basis Tax Rules and Intentionally Defective Grantor Trusts



**Marc J. Soss, Esq.**  
FL Estate Planning  
Lakewood Ranch, FL

**“The basis for calculating any taxable gain is “stepped up” to the value of the asset on the decedent’s date of death.”**

On January 1, 2024, the Federal Gift and Estate Tax Exemption amount increased to \$13.61 million (from \$12,920,000 in 2023 and adjusted for inflation in 2025). In Rhode Island, the state estate exemption limit increased to only \$1,774,583. A Bill was introduced in January 2024 to increase the amount to \$4,000,000, but it died in Committee. This amount means that estate planning must have a stronger focus on income tax planning, specifically the step-up in basis rules and capital gains income tax rates.

## Stepped-Up Basis Rules

When an asset is passed through inheritance, there are no income tax implications until the asset is sold. The basis for calculating any taxable gain is “stepped up” to the value of the asset on the decedent’s date of death. The appreciation during the decedent’s lifetime will be untaxed, subject to the estate tax exemption. However, the rule does not apply to retirement assets (401(k) plans or IRAs).

## Capital Gains Rules

When an asset (securities, bonds, art, gold, real estate, business interests, etc.) is sold, any resulting gain will be taxed as a capital gain (long or short term). Assets that are sold at a profit after being owned for longer than one (1) year are classified as long-term capital gains and taxed at not more than fifteen (15%) percent (20% for certain high-income individuals). In contrast, assets that are sold at a profit after being owned for less than one (1) year are classified as short-term capital gains and taxed at ordinary income tax rates, as high as thirty-seven (37%) percent. These income tax rules apply to assets owned by an individual and sold during their lifetime. However, different Federal Income Tax rules apply to assets that are inherited.

## Intentionally Defective Grantor Trust

A popular estate planning tool to remove assets from an estate for estate tax purposes is an Intentionally Defective Grantor Trust (“IDGT”). An IDGT allows an individual to remove assets from their estate while continuing to be treated as their owner for income tax purposes and shield future asset appreciation from any estate tax. All the while, the grantor continues to pay the trust’s income taxes. A transfer to an irrevocable trust

is a “completed gift” at the time of the transfer. The grantor will not hold a beneficial interest in or a retained power over the Trust property (certain decision-making provisions that would require the trust asset to be included in the grantor’s gross estate).

Many estate planners have taken the position that because the IDGT assets remain taxable to the grantor for income tax purposes, the beneficiaries are entitled to a stepped-up basis upon death. At a taxpayer’s request to address this issue, the IRS issued Revenue Ruling 2023-2 on March 29, 2023. It is important to note that a Revenue Ruling is binding on the IRS and can be relied upon by any taxpayer but does not have the same impact as a law or a Tax Court or appellate decision.

## Revenue Ruling 2023-2

The issue in question is the language in IRC Section 1014(b)(9), which requires grantor trust assets to be included in the estate of the grantor to receive a basis adjustment. In contrast, IRC Section 1014(b)(1) only requires that the asset be acquired by bequest, devise, or inheritance and does not require inclusion in the grantor’s estate.

The analysis begins with IRC Sec. 1014(a), which provides that “the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged or otherwise disposed of before the decedent’s death, be... the fair market value of the property at the date of the decedent’s death” (or, in the case of an election under Sec. 2032 or 2032A, the value determined under that section). Sec. 1014(b) defines seven (7) types of property<sup>1</sup> as having been acquired or passed from a decedent in three broad categories: (i) Property acquired by bequest, devise or inheritance, or by the decedent’s estate from the decedent; (ii) a surviving spouse’s one-half share of community property held by the decedent and the surviving spouse; and (iii) other property includible in the gross estate of a decedent under Sec. 2001 or 2044 (Secs. 1014(b)(2), (3), (9), and (10)).

For property to receive a basis adjustment

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## Your Bar's 2025 Annual Meeting Highlights

### What Judging Taught Me About Advocating for Clients

Friday, June 13th, 2025  
Closing Plenary Session

*What do judges really think about advocacy? Judge Lara E. Montecalvo of the United States Court of Appeals for the First Circuit shares the key advocacy lessons she wishes she knew as a lawyer. Drawing on her experience transitioning from advocate to judge, she offers a candid perspective on judicial decision-making and practical strategies for more effective advocacy. RI Bar President Christopher Gontarz and Annual Meeting Chair Cassandra Feeney join Judge Montecalvo on stage as she shares her insights. Whether you are a new attorney or a seasoned practitioner, this discussion provides valuable takeaways to strengthen your approach in the courtroom.*



Hon. Lara E. Montecalvo  
U.S. Court of Appeals for  
the First Circuit Judge

**Judge Montecalvo** was appointed to the United States Court of Appeals for the First Circuit in September 2022. She graduated from Swarthmore College in 1996 and earned her J.D., magna cum laude, from Boston College Law School in 2000.

She began her legal career as a trial attorney in the Department of Justice in Washington, D.C., where she litigated civil tax matters in the federal courts. Beginning in 2004, Judge Montecalvo started her public defender career as a trial attorney and litigated cases for nearly seven years in the Rhode Island trial courts. From 2010 to 2020, she served as an appellate attorney in the Rhode Island Public Defender's Office and was the Chief of the Appellate Division from 2014 to 2020.

Nominated by former Rhode Island Governor Gina M. Raimondo, Judge Montecalvo served as the Rhode Island Public Defender from 2020 to 2022.

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under § 1014(a), the property must be acquired or passed from a decedent. For property to be acquired or passed from a decedent for purposes of § 1014(a), it must fall within one of the seven types of property listed in § 1014(b).

In issuing the Revenue Ruling, the IRS took note of the fact that upon the decedent's death, the Trust asset(s) were not "bequeathed," "devised," or "inherited" within the meaning of § 1014(b)(1). A "bequest" is the act of giving property (usually personal property or money) by will.<sup>2</sup> The Supreme Court has defined the term "bequest" as a "gift of personal property by will."<sup>3</sup> A "devise" is the act of giving property, especially real property, by will.<sup>4</sup> An "inheritance" is property received from an ancestor under the laws of intestacy or property that a person receives by bequest or devise.<sup>5</sup>

Further, citing *Bacciocco v. United States*,<sup>6</sup> in which "the court found that property transferred in trust prior to the decedent's death is not bequeathed or inherited because it did not pass either by will or intestacy." However, "to be considered property acquired or passed from a decedent, the property must be includible in the gross estate of the decedent for estate tax purposes." The IRS concluded that none of the three categories were applicable and there was no step-up in basis because the assets in the trust were not acquired or passed from a decedent as defined in Sec. 1014(b), but "the beneficiary is receiving the assets from the trust, which does not constitute assets being 'bequeathed' or 'devised' by the grantor on the grantor's death." As a result, each asset's basis after the grantor's death was the same as the basis immediately before the grantor's death and no step-up in basis applied.

## Conclusion

Subject to another IRS Revenue Ruling being issued with similar facts and a different conclusion, Revenue Ruling 2023-2 made it abundantly clear that while IDGT assets remain taxable to the grantor for income tax purposes, they do not constitute assets being "bequeathed" or "devised" by the grantor on the grantor's death." As a result, the beneficiaries are not entitled to a stepped-up basis upon the grantor's death and will be subject to both Federal and State estate tax on the assets in their estate and those in the IDGT.

## ENDNOTES

<sup>1</sup> Section 1014(b)(1) – Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent; Section 1014(b)(2) – Property transferred by the decedent during life in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before death to revoke the trust; Section 1014(b)(3) – In the case of decedents dying after December 31, 1951, property transferred by the decedent during life in trust to pay the income for life or on the order or direction of the decedent with the right reserved to the decedent at all times before death to make any change in its enjoyment through the exercise of a power to alter, amend, or terminate the trust; Section 1014(b)(4) – Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will; Section 1014(b)(6) – Property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State; Section 1014(b)(9) – Property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property must be included in determining the value of the decedent's gross estate under chapter 11 or under the 1939 Code; and Section 1014(b)(10) – Property includible in the gross estate of the decedent under § 2044 (relating to certain property for which the marital deduction was previously allowed).

<sup>2</sup> Black's Law Dictionary (11th ed. 2019).

<sup>3</sup> *United States v. Merriam*, 263 U.S. 179, 184 (1923).

<sup>4</sup> Black's Law Dictionary (11th ed. 2019).

<sup>5</sup> Black's Law Dictionary (11th ed. 2019).

<sup>6</sup> 286 F.2d 551, 554-55 (6th Cir. 1961), *aff'd*.

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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](http://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](mailto:kbridge@ribar.com) or 401-421-5740.



## Bar Association Room Dedications Celebrate Legacy and Leadership

This spring, the Rhode Island Bar Association hosted two special events at its headquarters to recognize the legacies of individuals who have made a lasting impact on the state's legal community.

On March 3, 2025, what would have been her birthday, the Bar Association, in collaboration with the Rhode Island Women's Bar Association, dedicated its small conference room in honor of **Ada L. Sawyer**, the first woman in Rhode Island to sit for and pass the Bar exam. The ceremony celebrated Sawyer's trailblazing accomplishments and her influence on generations of women in the legal profession.

The program featured remarks from Rhode Island Supreme Court Associate Justice Maureen McKenna Goldberg, Rhode Island Superior Court Presiding Justice Alice B. Gibney, current RI Women's Bar Association President Lisa Kresge, Esq., and Denise Aiken, Esq., who has extensively researched and written about Sawyer's legacy in the *Rhode Island Bar Journal*. Attendees included members of the judiciary, legal community, and Ada's relatives.

On April 22, 2025, the Bar Association, in collaboration with the Rhode Island Bar Foundation, held a second ceremony to officially dedicate the **John Tarantino Conference Room** (formerly the Foundation Room). This honor was made possible through the generosity of Past Foundation President Michael McElroy and the Foundation's Board of Directors, who wished to recognize John Tarantino's significant contributions to both the Bar and the Foundation.

John Tarantino is a Past President of both the Rhode Island Bar Association and the Rhode Island Bar Foundation, and he currently serves as CEO of the Papitto Opportunity Connection. Through his leadership and generosity, both personally and through the Papitto Opportunity Connection, he has helped the Foundation establish numerous scholarships supporting aspiring law students and advancing access to legal education in Rhode Island.

Speakers included Immediate Past Bar Association President Nicole J. Benjamin, a longtime mentee of Mr. Tarantino, and current Bar Foundation Vice President David Bazar. Following the ceremony, guests enjoyed a reception with complimentary food and drinks,

joined by members of the Foundation Board and representatives from the Papitto Opportunity Connection.

Together, these dedications reflect the Bar Association's commitment to celebrating those who have paved the way and strengthened the Rhode Island legal community.



Ada L. Sawyer Conference Room Dedication.



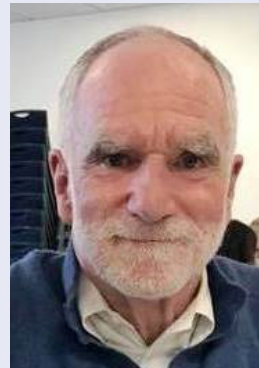
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## Practice Standard 8.3

### SECTION 8: DEEDS

#### PRACTICE STANDARD 8.3

#### DESCRIBING SUBDIVIDED LAND

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by **John A. Comery, Esq.**, at their meeting on February 20, 2025, voted unanimously to submit the following Proposed Practice Standard 8.3 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes, no later than June 1, 2025, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail: 41 Sharpe Drive, Cranston, RI 02920 or email: [kbridge@ribar.com](mailto:kbridge@ribar.com)

The recording of an approved subdivision plan that merges two or more parcels of land or divides an existing parcel into multiple lots changes the legal description of that land. Thereafter, the land should be described with reference to the lot or lots on the recorded subdivision plan.

The new description can refer to the name of the parcel or parcels designated on the plan, such as "Parcel A" or "Proposed Parcel B," the new perimeter metes and bounds of the parcel, or both.

Under R.I. Gen. Laws § 45-23-39(e)(6), the recording of a subdivision plan constitutes the acceptance by the municipality of any street or other public improvement or other land intended for dedication. Thus, the public acquires the right to any such streets. Unless the plan actually labels a street as "Private Right of Way" or words to that effect that show no intent to dedicate the street, it should be presumed to be dedicated to the public.

As for private streets, all persons who purchase a lot on the plat acquire a private easement over all of the streets shown on the plat.<sup>1</sup> Further, a lot owner acquires title to the centerline of the private street abutting the lot, unless the lot owner's grantor explicitly reserved title to the street from the deed.<sup>2</sup>

After the recording of the approved subdivision plan, the subdivider should not simply ignore the effect of the subdivision by conveying to a third party using the pre-subdivision legal description. The requirements of R.I. Gen. Laws § 45-23-65(d) must be followed if the intent is to rescind the subdivision.

<sup>1</sup> *Robidoux v. Pelletier*, 120 R.I. 425, 436, 391 A.2d 1150 (1978).

<sup>2</sup> *Anthony v. City of Providence*, 18 R.I. 699, 703, 704 (1894).

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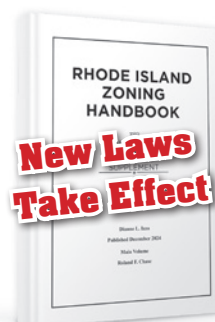
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# Desert Deliberations

## American Bar Association Delegate Report – Mid-Year Meeting 2025



**Robert D. Oster, Esq.**

ABA Delegate and Past Rhode Island Bar Association President

I attended the ABA Midyear Meeting in Phoenix in February 2025 and left with a strong sense that the ABA is doing exceptional work in advancing the interests of lawyers, upholding the Rule of Law, and advocating for our clients' rights. On February 3, I attended the full-day session of the House of Delegates, the ABA's policy-making body. In the days leading up to that session, I participated in meetings to discuss proposed Resolutions and attended a variety of other sessions over the course of four days. While in Phoenix, I also had the opportunity to visit the Sandra Day O'Connor Courthouse and explore the modern municipal buildings that are part of a surprisingly compact Downtown Phoenix.

Separate meetings of the National Association of Bar Executives and the National Conference of Bar Presidents were held concurrently with the House of Delegates sessions. I had the pleasure of attending several informative programs from those meetings alongside our Rhode Island delegates: RIBA President Christopher Gontarz, RIBA President-Elect Patrick "Buzz" Guida, and immediate past RIBA President Nicole Benjamin, who had the honor of being elected to the governing Board of the National Conference of Bar Presidents. I also had the privilege of serving in the House of Delegates with attorneys Lynda Laing and Tom Lyons—Lynda serves as the State Bar Delegate to the ABA, and Tom is a member of the ABA Board of Governors—as well as Meredith Howlett, Rhode Island's Young Lawyer Delegate to the ABA.

After the presentation of the Colors and the Honor Guard, the Delegates were welcomed, as is customary in the host city, by the Mayor of Phoenix and Arizona Governor Katie Hobbs. The House then considered and voted on a range of policy Resolutions. The Young Lawyers Division of the ABA has been especially active in bringing forward proposals focused on flexible work arrangements and encouraging mandatory time away from practice to help relieve the pressures of billable hour demands.

We were addressed by current ABA President Bill Bay, who emphasized why the ABA matters. In 2024–2025, the ABA will offer 800 CLE programs, produce 40 podcasts a day, and host 100

conferences and events, including 300 accredited programs. The ABA's Free Legal Answers platform has also received more than 15,000 calls, along with its continued leadership in providing resources and networking opportunities for lawyers. By the time you read this, there have been several important decisions made by the new administration that have directly impacted the ABA's policies, including funding and the practice of law. Despite the changing times, the ABA has always stood strongly for the Rule of Law and against unwarranted attacks on our profession, judges, and the judiciary.

In addition to attending the House of Delegates, I participated in committee meetings of the Nominating Committee, the State Membership Chairs Committee (where I serve as Rhode Island's Chair), the Committee preparing for the 250th Anniversary of the Signing of the Declaration of Independence, the Antisemitism and Islamophobia Study Task Forces, the Women's Caucus, the LGBTQ+ Caucus, the New England Bar Association meeting, and as many other sessions as I could fit into two busy days. Staying informed by attending meetings and building relationships is a vital part of serving as a Delegate to the ABA.

The ABA remains the largest professional organization in the world and continues to lead the legal profession during challenging times. Participation allows us to strengthen our own practices and stay informed about developments that will shape the future of our profession. I encourage membership for these and many other reasons. I remain humbled and honored to represent the Rhode Island Bar Association in the ABA and welcome any questions or concerns. When I am not seeing clients or in court, I can be reached by email or phone and am always happy to discuss ABA practices and policies. ♦

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.

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- **Use quotation marks:** Search exact phrases by placing them in quotes (example: "copyright law").
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- **Try Advanced Search:** The fields in this section help you get precise results without memorizing search operators.
- **Check spelling:** Misspelled terms won't match anything in the index.
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# In Memoriam

## John J. Finan Jr., Esq.

John J. Finan, Jr., of Cumberland and Green Hill, died on April 8, 2025. He was the husband of Anita (Genest) Finan. A graduate of Providence College ('52) and Georgetown Law School ('57), John ran his own law practice for over 50 years. He and his wife enjoyed traveling extensively, including biking trips through Europe and Asia. In addition to his wife, John is survived by his sons, Michael (Louise) and Jeffrey (Elaine) of South Kingstown, six grandchildren, and ten great-grandchildren.

## Carol L. Gray, Esq.

Carole L. Gray died on Friday, February 14, 2025. She was born in Providence to the late George A. and Ethel L. Gray. Carole was a graduate of St. Mary's of the Visitation Academy and Rhode Island College and received a master's degree from Brown University. She taught math at Warwick Veterans High School for 35 years. Carole also received a law degree from Suffolk University and was admitted to the RI Bar in 1981. She is survived by her brothers, George A Gray (wife Paula) and Paul E. Gray (wife Sandra), and nephews.

## James A. O'Leary, Esq.

James A. O'Leary, of West Warwick and Edgewood, died peacefully on February 12, 2025. He was the husband of Jeanne (Ellis) O'Leary. Born in Providence, he was the son of the late Dr. James and Lucy O'Leary. A graduate of La Salle Academy, Providence College, and Suffolk Law School, Jim served as a Captain in the U.S. Army during the Vietnam War. Stationed in Ben Tre, he led intelligence operations and commanded a platoon through numerous missions, including during the Tet Offensive. He was awarded multiple commendations for his service, including the Bronze Star. Upon returning to Rhode Island, he opened a law office in downtown Providence, where he practiced real estate law for more than 50 years, many of them alongside his son. In addition to his wife, Jim is survived by his children: Sean O'Leary (Jennifer), Erin Casey (Kevin), Tara Bergeron (Mark), and Meghan O'Leary; and seven grandchildren. He also leaves his sister, Mary Ann O'Leary.

## Hon. Everett C. Sammartino

Everett C. Sammartino, 93, died on March 31, 2025. He was the husband of Madeline A. (Catanzaro) Sammartino. Born in Providence, Everett was a son of the late Pasquale and Giovanna (Paolisso) Sammartino. Everett was a graduate of Brown University and Boston University School of Law. He worked for the US Attorney's Office for 30 years and later served as a Magistrate for the Rhode Island Family Court. He was also a law professor at Roger Williams University. In addition to his wife, Everett is survived by his children, Everett Jr., Michael (Katherine), Ann Marie Sammartino and Pamela Barber, and multiple grandchildren. Everett was predeceased by his siblings: Louis, Alfred, and Elizabeth Sammartino, and his son-in-law, Randy Barber.

## Hon. Bruce M. Selya

Judge Bruce M. Selya, 90, of Providence, RI, and West Harwich, MA, died on February 22, 2025. He was the husband of Cynthia M. Selya. Judge Selya was one of the longest-serving federal appellate judges in the nation, authoring more than 1,800 published opinions—more than any judge in the history of the U.S. Court of Appeals for the First Circuit. He also holds the distinction of being the longest-serving federal judge in Rhode Island and the only person of Jewish faith ever appointed to the federal bench from the state. A graduate of Classical High School, Harvard College (magna cum laude), and Harvard Law School (cum laude), Judge Selya began his legal career clerking for Chief Judge Edward W. Day in the U.S. District Court for the District of Rhode Island. He entered private practice before being nominated by President Ronald Reagan to the federal bench in 1982. Four years later, he was appointed to the First Circuit Court of Appeals, where he served actively until taking senior status in 2006. He also served in a number of national judicial roles, including chair of the Judicial Conference's Committee on the Judicial Branch, judge on the Judicial Panel for Multidistrict Litigation, and Chief Judge of the U.S. Foreign Intelligence Surveillance Court of Review. Judge Selya was committed

to legal education and held faculty appointments at Boston College, Boston University, and Roger Williams University law schools. He also played an instrumental role in shaping legal education and governance at Roger Williams University School of Law. Outside the courtroom, Judge Selya was active in civic life, serving on the boards of Bryant University, Lifespan, and the Jewish Federation of Rhode Island, among others. He received numerous honors, including the Brandeis Medal for Distinguished Legal Service, the Rhode Island Heritage Hall of Fame induction, and the Chief Justice Joseph R. Weisberger Judicial Excellence Award. In addition to his wife, he is survived by two daughters, Dawn Selya and Lori Ann Young (Daniel); six grandchildren; two great-granddaughters; and his sister, Susan Jane Rosen (David).

## Elliot Taubman, Esq.

Elliot Taubman died on December 24, 2024. Born in Hartford, CT, he was the son of William and Miriam Taubman. Elliot attended the University of Connecticut School of Law, after which he began his legal career. He worked at legal services offices in Hartford, Norwich, and New London, later joining the National Consumer Law Center. He went on to serve as Assistant Attorney General in both New Mexico and New York. In 1982, Elliot established a law practice on Block Island and became actively involved in various nonprofit organizations. He is survived by his wife, Jennifer Lee, and daughter, Rebekka Kai; his five siblings: Andrea White; Allan and Kathy Taubman; Steve and Manena Taubman; Ilene and Mark Coman; Sheldon Taubman and Claire Morduch; as well as many cousins.

## John P. Toscano Jr., Esq.

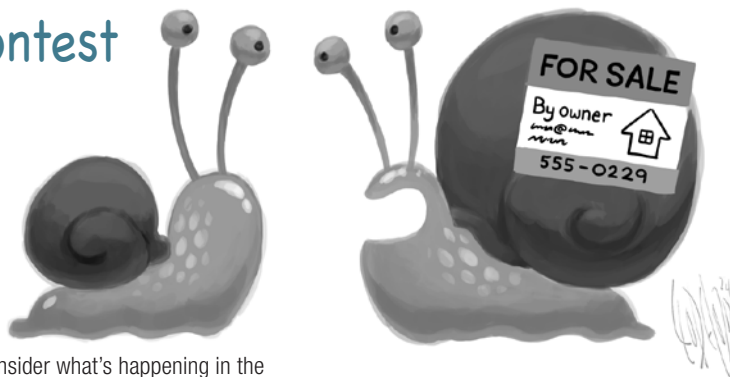
John P. Toscano, Jr., 88, of Westerly, died on Saturday, November 9, 2024. He was the husband of Nancy Ann Gencarella. Born in Westerly to the late John P. and Marietta Toscano, he graduated from Westerly High School in 1955, earned an A.B. in Political Science from Providence College in 1959, and graduated cum laude from New England School of Law in 1963. He was admitted to the Massachusetts and Rhode Island Bars, the U.S. District Court (RI), and the U.S. Supreme Court. Since 1966, Mr. Toscano maintained a private practice in the Toscano Building in downtown Westerly, home to his father's century-old haberdashery. He served as Assistant Public Defender, Town Solicitor for Charlestown, and Probate Judge for Hopkinton, Charlestown, and Westerly. He was appointed the first Chief Justice of the Westerly Municipal Court and served multiple terms as Municipal Court Judge between 1989 and 2000. From 1982 to 2022, he was Solicitor for the Misquamicut Fire District and was named Solicitor Emeritus in 2023. In addition to his wife, he is survived by his children, John III (Kari), James, and Mary Nancy; and four grandchildren.

## Marcia McCabe Wilbur, Esq.

Marcia Joan McCabe Wilbur, 79, died on Monday, March 17, 2025. Born in Providence, she was the daughter of Chief Judge Francis J. McCabe and Mary Ellen (O'Leary) McCabe, and the wife of Michael F. Wilbur. Marcia was a lifelong resident of the East Side of Providence. She attended St. Sebastian's School and Elmhurst Academy, Convent of the Sacred Heart. She was a 1963 graduate of the Mary C. Wheeler School in Providence. She received her bachelor's and master's degrees from Boston University, and her Juris Doctor from Boston College Law School in 1971. She was a member of the Rhode Island Bar Association for fifty-four years. Marcia began her law career as legal counsel to the Rhode Island Department of Mental Health, Retardation and Hospitals. After the birth of her daughter, she maintained a small private practice focusing on conservation, land use, and environmental law. She was a member of Wannamoisett Country Club for over forty years. She was also a member of the Block Island Club and served as Secretary of the Board of Trustees for many years. She remained actively involved in alumni activities and organizations at Boston College Law School. In addition to her husband, Marcia is survived by her daughter, Mary Alice Wilbur-Daly, Esq., and her husband, Dr. Brian P. Daly of Providence; her grandson; her sister, Mary Ellen McCabe Cannon, Esq., of Providence; and her brother, Dr. Francis J. McCabe, Jr., and his wife Paola, of Cushing, ME.

# 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 March/April



"You guys are dead to me..."

TIMOTHY J. MORGAN, ESQ.

**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](mailto:ecute@ribar.com) with "Caption Contest for May/June in the subject line.

**Deadline for entry:** Contest entries must be submitted by June 1st, 2025.

*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

**Brad R. Pelletier, Esq.**, has opened his own practice **Pelletier Law, LLC**, 300 Front Street, Lincoln, RI 02865. (401) 580-3059 [Brad@PCLawRI.com](mailto:Brad@PCLawRI.com) [pclawri.com](http://pclawri.com)

The law firm of **Pelletier Marshall & Clark** has changed its name to **Marshall & Associates**, 655 Mendon Road, Suite 2G, Cumberland, RI 02864. (401) 727-4100 [marshall-associatesri.com](http://marshall-associatesri.com)

## Title Standard 3.21

### BAIL RECOGNIZANCE LIENS

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by **John A. Comery, Esq.**, at their meeting on December 15, 2024, voted unanimously to submit the following Proposed Title Standard 3.21 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes, no later than June 1, 2025, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail: 41 Sharpe Drive, Cranston, RI 02920 or email: [kbridge@ribar.com](mailto:kbridge@ribar.com)

Under R.I. Gen. Laws § 12-13-22(b), the lien created in favor of the State of Rhode Island by the recording of a bail recognizance notice continues until the Attorney General (for matters for which sureties are given in Supreme Court or Superior Court), or the clerk of the Family Court or District Court (for matters for which sureties are given in those courts) executes a release of the lien.

Bail recognizance notices recorded less than ten (10) years from the date through which a title is examined must be discharged.

It will not be necessary to obtain a discharge of a bail recognizance notice recorded more than ten (10) years prior to the date through which title is examined, provided that (a) there is no record notice of an action pending to enforce the lien, and (b) no party to the transaction has actual knowledge of pending or threatened enforcement proceedings.

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