

Rhode Island Bar Journal

Rhode Island Bar Association Volume 68, Number 4, January/February 2020



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Lean Government

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Front Cover Photograph by Brian McDonald

The Providence Athenæum, Providence, RI The Providence Athenæum is an independent, member-supported library and cultural center located in Providence. Opened in 1838, the library is open to the public and offers many free programs, while members are permitted to borrow materials.



Teach Your Children Well



David N. Bazar, Esq.
President
Rhode Island Bar Association

My daughter would have benefited from being on a mock trial team or attending a Law Day presentation. As lawyers, we have many opportunities to help students understand our legal system.

I was driving to court the other day thinking about topics that would be appropriate for a President's Message. I hope the fourth message is the most difficult. Then a song came on the radio. Crosby, Stills, Nash & Young singing these lyrics:

You who are on the road
Must have a code that you can live by
And so become yourself
Because the past is just a good-bye.
Teach your children well

That was enough to get me thinking about an important topic. Teaching civics to our children has been an important issue for many years. Retired Supreme Court Justice Sandra Day O'Connor has made a post-court legacy developing iCivics to help bring civic knowledge to a new generation of students. It also reminded me of lessons I tried to teach to my children.

When my daughters were young, I had the pleasure of driving them from East Greenwich to the Providence Country Day School each morning. Well, at least until they turned 16. It was a time when children didn't have cell phones so they actually had to talk to you. It really didn't matter the topic; the discussion was what mattered. One Monday morning, I had to go to courtroom 4C for an arraignment in Sixth Division District Court. I told my daughter that we were going to court before she went to school. I thought that this would be a good chance for her to see how the justice system works.

We arrived in the courtroom before all the activity began. Apparently, the Providence Police had a busy weekend. While we were waiting for the judge to take the bench, the sheriffs led out prostitutes in handcuffs who had been rounded up the night before. Soon after they came out, the judge took the bench and my client was arraigned.

Once we got back to the car, I asked my daughter what she thought about the process. She responded, "I'm not sure about the process, but that jury was really sleazy." My thought? I was really proud that she knew they had been put in the jury box.

My daughter would have benefited from being on a mock trial team or attending a Law Day presentation. As lawyers, we have many opportunities to help students understand our legal system. The RI Legal Education Foundation's Mock Trial Tournament immerses students in a case that they have to both prosecute and defend. Attorneys participate in this program as performance judges, coaches, administrators and in countless other ways.

The next Law Day is Friday May 1, 2020. The theme is *Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100*. This is particularly appropriate for the Rhode Island Bar as we will also be celebrating Ada Sawyer and the 100th anniversary of the first woman being admitted to the Bar. If you have children in school or are otherwise connected to a school, inform them of the benefits of participating in Law Day and the Mock Trial program. I also encourage Bar members and the Judiciary to participate. You will find that it as rewarding for you as it is for the children you will be teaching well. ♦

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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.

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 signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in editorials are not the official view of the Rhode Island Bar Association. Letters to the Editors are welcome.

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 Kathleen Bridge
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Bar's VLP-Sponsored Seminar Series Helps to Place 40 Pro Bono Cases

The Bar's Volunteer Lawyer Program (VLP), in collaboration with the Public Service Involvement Committee, sponsored a three-part Continuing Legal Education series offered free to all members of the Bar's pro bono programs who agreed to accept a case prior to attending. The series, *Saw It on the Internet*, gave attendees the opportunity to witness seasoned members of the bar portray the essential aspects of a contested custody hearing where electronic evidence is at the forefront, including the direct and cross exam

of the plaintiff and expert witness. Each session featured the trial for the first hour followed by a discussion with the audience regarding the panel's methods and tactics. The VLP was able to place more than forty pro bono family law cases as a result of the program. The Bar Association thanks the panelists for their time and expertise. If you weren't able to attend one or all of these sessions, they are available On Demand on the Bar's website. If you join a pro bono program and agree to take a case, you can view it for free!



Barbara L. Margolis, Esq., Hon. Brian P. Stern, Rhiannon Huffman, Esq., and Mark Spencer of Arsenal Consulting kicked off the series with "Available Electronic Evidence and How to Access It"



Janne Reisch, Esq., William K. Wray, Jr., Esq., Victoria S. Lombardi, Esq., Hon. Karen Lynch Bernard, and William J. Balkun, Esq. put on a lively presentation during session two: "Direct & Cross Examination of Fact Witness."



Mark Spencer of Arsenal Consulting, Susan Jeannette Famiglietti, Esq., Hon. Feidlim E. Gill, Brian Lamoureux, Esq., and William J. Balkun, Esq. finished the series with "Direct & Cross Examination of Digital Evidence Expert Witness"



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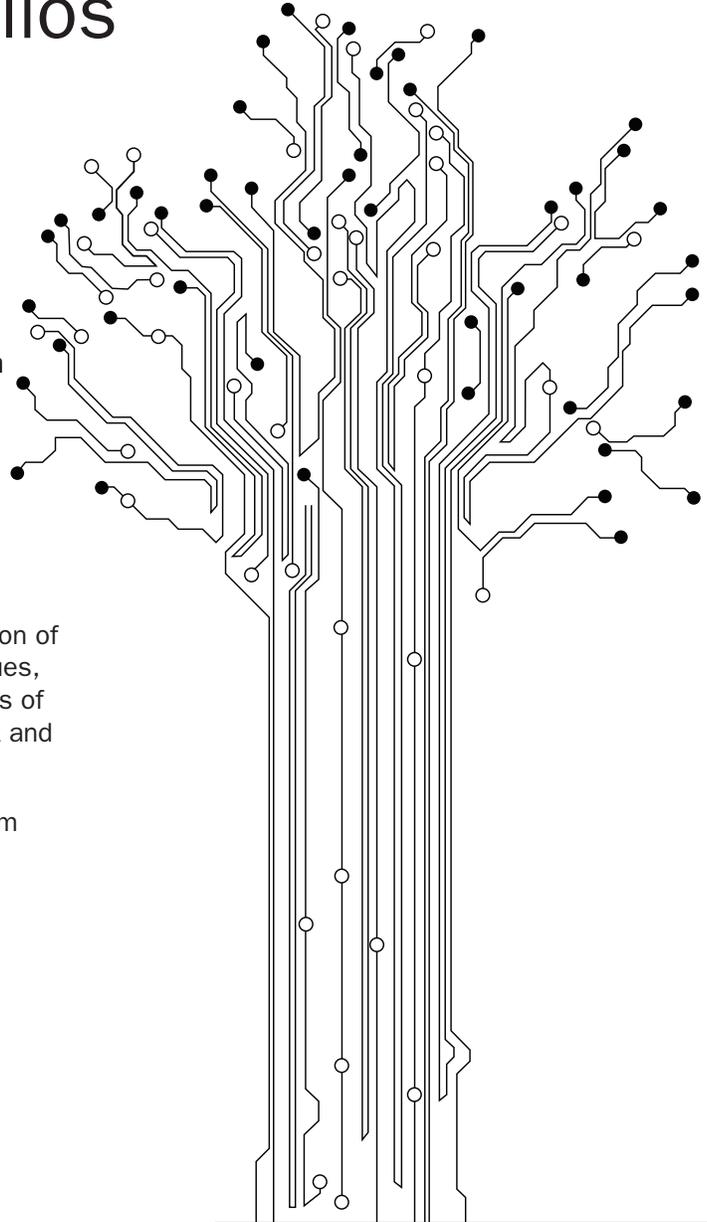
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Keeping the Lights On



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

Did you know that since 1989, through the continuing generosity of the family of Thomas F. Black, Jr., and the Champlin Foundation, your Rhode Island Bar Foundation has awarded 64 law school scholarships totaling \$655,000 to deserving law students?

And did you know that since 1985, the Foundation has also awarded grants totaling over \$24 million (using funds earned from your IOLTA accounts) to non-profit organizations, primarily organizations that provide legal services to the poor?

Jennifer L. Wood, executive director, explained to me that much of their work focuses on low-income consumers with disabilities as well as those who are seriously ill, elderly or have very young children in the home.

In 2015, based on data gathered through individual cases, the Center brought class action litigation to require that the Division of Public Utilities and Carriers (DPUC) and National Grid consistently and fairly provide the required protections

to individuals with disabilities and seriously ill individuals facing utility service termination. This case resulted in two detailed settlements in 2016: one with National Grid and the second with the DPUC.

In addition to individual representation in termination cases and impact litigation, for the past three years, the Center has represented the interests of low-income consumers in all relevant PUC rate setting and utility regulatory hearings.

For example, this summer the Center represented a former public safety officer, now retired due to a disability, who experienced a utility service termination that could have resulted in his hospitalization, due to medical equipment needs. This hard-working father had made the payment required to keep electrical service on, but due to both bureaucratic and technical problems, his utility service had nonetheless been terminated. Through immediate intervention by the Center, his utility service was restored and he was able to move back into his home.

Every day, your IOLTA funds, administered by the Rhode Island Bar Foundation, are helping the disadvantaged in Rhode Island obtain access to justice.

Thank you! ♦

Through immediate intervention by the RI Center for Justice, his utility service was restored and he was able to move back into his home.

Rhode Island Probate Court Listing and Judicial Communications Survey on Bar's Website

The Rhode Island Bar Association regularly updates the Rhode Island Probate Court Listing to ensure posted information is correct. The Probate Court Listing is available on the Bar's website at ribar.com by clicking on **FOR ATTORNEYS** on the home page menu and then clicking on **PROBATE COURT INFORMATION** on the dropdown menu. The Listing is provided in a downloadable pdf format. Bar members may also increase the type size of the words on the Listing by using the percentage feature at the top of the page. The Bar Association also posts a chart summarizing the preferences of Superior Court justices relating to direct communications from attorneys, and between attorneys and the justices' clerks which is updated yearly. The chart is available by clicking **MEMBERS ONLY** on the home page menu and then clicking **JUDICIAL COMMUNICATIONS**.

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[When] Will RI Adopt Electronic Wills?



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The principal change is that the parties may be in the physical or electronic presence of the testator, the signatures may be electronic, and the document may be stored electronically.

For a will to be valid in Rhode Island, R.I. Gen. Laws § 33-5-5 requires a writing signed by the testator, or someone else at his or her direction, to be acknowledged in the presence of at least two attesting witnesses present and signing at the same time. The statute has not been amended since 1956, back when IBM's state-of-the-art computer weighed 2,000 pounds.

People are already creating wills on electronic devices as if the words on a screen were equivalent to paper. An e-will is not one that a person downloads from the Internet for \$50, prints, and signs. Those offer their own set of problems. Nor is it a digital scan of the paper version of an executed will. An e-will exists only in the cybersphere, might be witnessed via a video hookup, and is signed and notarized electronically. A few courts have already admitted such wills.

Non-Statutory Electronic Wills

In 2013, Australian courts admitted into probate a will that had been created on a DVD¹ and another on an iPhone² shortly before the decedents committed suicide, relying on the harmless error rule, which excuses "harmless" defects in the execution of a will if the testator's intent can be proven by clear and convincing evidence. One of the Australian courts also relied on a statutory definition of a writing that included writings "capable of being produced or reproduced."³ In 2017, an Australian court even admitted an unsent text message as a will.⁴ The facts of these cases were such that the courts were satisfied with the will's genuineness and the testator's capacity and intent.

The harmless error rule is also followed in a small number of states in the U.S. but not Rhode Island. In 2013, an Ohio court admitted under the harmless error rule a will written with a Samsung Galaxy stylus on the device and properly witnessed.⁵ Recently, a Michigan court liberally interpreted the harmless error rule to admit an electronic document that only had the decedent's typed name because the court found that it was clearly intended to be a will.⁶

No Rhode Island opinions have yet equated an electronic document with a "writing" as required

by R.I. Gen. Laws § 35-5-5, but there are also none that hold an electronic document is not a writing. However, electronic court filing is now mandatory in most courts. The best course of action is for Rhode Island to define how the probate courts will handle an e-will before some family has to spend thousands of dollars litigating it. As of January 1, 2020, Florida, Nevada, Indiana, and Arizona have laws governing electronic wills.

Electronic Wills Statutes

Electronic wills present the same issues as paper wills: capacity and undue influence, witnesses and execution, revocation, and storage. Below are some highlights of the choices that legislatures have made to deal with these issues. The words and phrases in quotation marks are not clearly defined in the statutes and, in the opinion of this writer, ambiguous.

Capacity and Undue Influence

Every attorney must assess whether a client has the capacity to make a will and whether someone is exercising undue influence. E-wills do not affect the attorney's obligation to exercise good judgment; however, allowing witnesses to be present only in via audio-video communication may give rise to concern as they might not be able to fully assess capacity. A video recording raises issues also. Some attorneys do not do video signing ceremonies now because a recording can be used to supersede the attorney's judgment about capacity and influence if presented to a court or jury. However, representing a client that the attorney has only met via the Internet might make fully assessing capacity and undue influence difficult.

Florida has addressed this issue. An e-will may be witnessed and notarized remotely, unless the testator is a "vulnerable adult" as defined by the state's Adult Protective Service's statute.⁷ A vulnerable adult is one who cannot "perform the normal activities of daily living or...provide for his or her own care or protection" due to age or disability.⁸ This may be a reasonable compromise between expediency and precaution.

Authentic Execution

How is a probate court to know that the

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signature at the end of a will is that of the decedent? What does “presence” mean since Princess Leia appeared before Obi-Wan Kenobi on Tatooine? The current statutes vary in their answers to these fundamental questions.

The current statutes vary on the definition of presence. Indiana and Arizona follow the traditional rule: the testator and witnesses must be in each other’s “actual” or “physical” presence.⁹ Florida requires a video recording of the signing ceremony but allows virtual presence. In Nevada, however, an e-will need only have an electronic notary authentication *or* the electronic signatures of at least two witnesses *or* an “authentication characteristic” of the testator, such as a fingerprint, retinal scan, voice recognition, facial recognition video recording, a digitized signature, or “other commercially reasonable authentication using a unique characteristic of the person.”¹⁰ This means a will could be admitted to probate without the need of any witnesses. (Nevada also allows drive-thru marriage ceremonies.)

Florida defines an electronic signature as “an electronic mark visibly manifested in a record as a signature with the intent to sign that record.”¹¹ The Arizona and Indiana e-will acts copy the language of the Uniform Electronic Transactions Act used in commerce to define electronic signature as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”¹² Only twenty states recognize nuncupative (oral) wills, so it remains to be seen whether any jurisdiction will allow an electronic sound as a signature.

In addition to the electronic signature, Nevada’s Electronic Wills Act also recognizes a “digitized” signature, a digital image of an actual signature, as one of the authenticating characteristics for e-wills, which might result in an e-will having two mismatched signatures of the testator¹³ because an electronic signature often does not look like an actual signature.

Self-Proving

The self-proving affidavit streamlines probate for everyone from the heirs to the probate judge because a notary public vouches for its authenticity and it is made on oath or affirmation. The states have taken different approaches to self-proving e-wills.

The Indiana statute does not require the signatures of a self-proving declaration to be notarized but does require the will to be “electronically finalized” by incorporating into the e-record the standard language about the testator and witnesses being in each other’s physical presence and the testator’s capacity and willingness to act.¹⁴ Arizona and Nevada require an e-notary to attach an e-signature and seal and to be in the “exclusive control of a qualified custodian at all times” for a will to be self-proving.¹⁵

In Florida, if the will is witnessed remotely, the electronic notary must ask a testator seven questions about age, alcohol or drugs, undue influence, voluntariness of signing and accessing the video conference, and the name of everyone in the room. If any of the answers are affirmative, the will is only valid if witnesses are in the testator’s physical presence.¹⁶ The e-will must, also, designate a qualified custodian who must have custody at all times before the will is offered for probate.¹⁷

Revocation

A paper will is easy to revoke because there is only one



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original that can be physically destroyed or superseded. Physical revocations are more difficult with an electronic will as multiple, identical “original” copies may exist. A Nevada e-will may be revoked by another will, whether electronic or paper, or by intentionally “cancelling, rendering unreadable or obliterating” it.¹⁸ In Arizona, the testator must direct the qualified custodian to revoke an e-will with the same formalities required for execution of a will;¹⁹ however, Arizona also recognizes holographic wills.²⁰ Does this mean that a “handwritten” revocation on a tablet will be accepted? What if the electronic handwriting is not the same as the testator’s usual handwriting, as is often the case? This scenario sounds like a money-maker for handwriting experts.

To revoke and supersede an e-will in Indiana, the testator must make “best efforts” to contact all custodians and direct them in writing to permanently delete and render it unreadable and non-retrievable. A custodian or attorney who receives a written request to revoke must sign an affidavit and make it a “permanent attachment” to the copy of the will that was revoked, then give it back to the testator,²¹ which seems to contradict “permanently delete and render unreadable.” Also, even a document that has been permanently deleted and rendered unreadable and non-retrievable remains a ghost on the cloud server for up to 120 days.

Florida requires deletion, cancelling, rendering unavailable or obliterating an e-will “with the intent, and for the purpose, of revocation, as proved by clear and convincing evidence.”²² Florida’s extensive qualified custodian requirements go a long way to assure the cancellation was the testator’s desire.

Storage: By Whom?

To keep originals or not to keep? That is the question. Many attorneys keep original wills hoping the heirs will come back for the probate, but how many of us are storing original wills for clients with whom we have had no contact for years? Has the client moved to another state? Gone to a different lawyer for a new will or self-drafted a new version? Died? How long must we store them? Does your office keep only a digital copy of the original paper document now? These questions arise with e-wills, but the states that have enacted statutes have addressed the solution in different ways.

All the statutes require a qualified custodian for different reasons but define their duties differently. In Nevada, a person other than an heir or devisee qualifies as a custodian by “affirmatively agreeing” in writing to serve as one and can only be released from the duty when another qualified custodian takes over.²³ In Arizona, a “qualified custodian” may not be a devisee or related to the testator or a devisee, must maintain a system that protects the records, and must store a visual record of the testator and witnesses and any identification used at the signing ceremony plus an audio/visual recording of the ceremony.²⁴

Indiana allows a testator to appoint in writing any adult as custodian but then defines custodian as any person other than the testator, an attorney, a personal representative or distributee.²⁵ The custodian has the responsibility to use “best practices and commercially reasonable means” to maintain privacy and security and guard against disclosure or alteration among other things,²⁶ which pretty much limits custodians to professional cloud storage providers. In May 2019, the Indiana Legislature authorized its Supreme Court to set up the Statewide Estate

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Planning Documents Registry where e-wills, trusts and powers of attorney may be registered,²⁷ but it appears not to be up and running as of this writing.

The Florida Legislature seems to have carefully considered the pitfalls in the earlier statutes and tried to correct them. The Florida statute sets forth detailed requirements for a qualified custodian, including a bond and liability insurance, confidentiality, and Florida residency and domicile. Furthermore, the custodian's duties about storage and revocation are clearly delineated. The Florida County Clerks, who are elected officials, are considering setting up a system for storing e-wills with the clerks' offices.

Official storage by the county clerks or the courts may be the best solution because public entities would provide continuous authentication and require only a one-time filing fee rather than annual fees that might be charged by commercial storage vendors.

Storage: How long?

The legislatures have answered a question many attorneys have: "How long do I have to keep a will?" The states' answers seem unmanageable. Arizona and Indiana impose a 100-year requirement unless the custodian knows the testator is deceased and a probate has been opened, then the custodian only has to keep it five or ten years.²⁸ Nevada expects a custodian to keep the record for 150 years.²⁹ This might work if a public entity is the custodian, but a commercial entity is not likely to store documents for which an annual fee is not being collected. Florida sets more realistic limits: If the custodian is told the testator is deceased, it must deposit the e-will with the court. A Florida custodian may destroy the record five years after probate has been concluded or twenty years after the testator's death, whichever occurs first.

Given the many unanswered questions that first attempts at e-wills have exposed, the Uniform Law Commission has proposed some standards.

The Uniform Electronic Wills Act

On July 17, 2019, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Electronic Wills Act (UEWA). A committee of Uniform Law Commissioners spent two years researching, debating and listening to public comments before writing an act that may serve as a guide for state legislatures.

Much of the thirteen sections of the UEWA merely codify the way we already operate in the modern world. "Electronic presence" for witnesses is defined as at least two individuals "in different locations" but "in real time" as if they were physically present in the same location. "Sign" means "to execute or adopt a symbol," not a sound, or to "affix to or logically associate with the record an electronic symbol or process" with the concurrent intent to authenticate or adopt a record.

The UEWA affirms that the state laws and principles of equity apply to an e-will as they would to a paper will (Section 3) and provides several options for defining jurisdiction: (1) where the testator is physically located when the will is signed or (2) the testator's domicile or residence when the will is signed or when the testator dies (Section 4).

Execution (Section 5) requires a record that is "readable as text at the time of signing," ruling out the Weird Sisters, Siri




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or Alexa, as scribes. The other requirements are much like the requirements for a paper will or should be made to match the existing requirements of the adopting state: two witnesses and acknowledgment before a notary. The principal change is that the parties may be in the physical or electronic presence of the testator, the signatures may be electronic, and the document may be stored electronically.

States may or may not adopt the harmless error rule (Section 6), and revocation of an e-will works substantially like revocation of a paper will (Section 7). An e-will may also be self-proving whether or not the testator and the witnesses are in the same physical location as long as the usual oaths are properly administered by a notary (Section 8).

Custody is the biggest difference between the UEWA and the state statutes. The UEWA does not require a “qualified custodian” but rather allows any individual to create a certified copy of an e-will by affirming under penalty of perjury that it is a “complete, true, and accurate copy of the electronic will” (Section 9). The UEWA scheme recognizes how electronic wills have been used by the public to date while the states rely on public or commercial custody without allowing for the person who needs an immediate solution.

Conclusion

It is not a matter of whether Rhode Island will allow e-wills, but when. For good or bad, many people today think of their electronic devices as extensions of themselves. Courts without a specific statute have used the tools they already have to recognize a testator’s clear intent as expressed in a digital format. A review of the statutes of the handful of states allowing e-wills reveals the potential pitfalls that prompted the Uniform Commission to lay out its own guidelines for states to follow. It may be time for the members of the Rhode Island State Bar to decide what role the attorneys of this state should play in shaping this inevitable change before a software vendor can influence the legislature.³⁰

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- 2 *Mellino v. Wnuk & Ors* (2013) QSC 336.
- 3 *Id* at 2, citing the *Acts Interpretation Act of 1956*.
- 4 *Re Nichol* (2017) QSC 220.
- 5 *In re: Estate of Javier Castro, Deceased 2013-ES-00140* (Ct. Comm. Pl. Lorain County, Probate Div., Ohio, June 2013).
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- 7 *Florida Stats.* 732.522 (3).
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24 *Ariz. Rev. Stat. § 14-2520.*

25 *Ind. Code Ann § 29-1-21-3 (4).*

26 *Ind. Code Ann. § 29-1-21-10.*

27 *Indiana SB0518.*

28 *Ariz. Rev. Stat. § 14-2522 B.; Ind. Code Ann. 29-1-21-12 (b).*

29 *NRS 133.330 1.(b)(5).*

30 *Willing.com, which advertises “Legal Wills Made Easy,” has already lobbied in a couple of states for its version of an electronic will act. See DeNicuolo, Dan. “The Future of Electronic Wills.” Bifocal, a Journal of the ABA Commission on Law and Aging. Vol. 38, Issue 5, October 15, 2018. ◇*



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CBD is Legal...Right?

The Complex Federal and State Legal Framework of Cannabidiol



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CBD appears to be everywhere—gas stations, health food stores, gyms, and smoke shops. There are CBD infused barbecue sauces, pet treats, and makeup currently on the market. Big celebrities, such as former Patriots player Rob Gronkowski and lifestyle maven Martha Stewart, are getting into CBD endorsements.¹ So, what exactly is CBD, and is it legal?

What is CBD and Why Do People Use It?

CBD is an abbreviation for cannabidiol, which is a compound derived from the cannabis plant. The cannabis plant has been broken down into two classifications under federal and most state laws—hemp and marijuana. The key difference between the two classifications comes from the percentage of Delta-9-tetrahydrocannabinol (“THC”) in each plant. THC has psychoactive properties and is the reason why individuals who use marijuana experience a “high.”² CBD is the second most prevalent active ingredient found in marijuana after THC. On its own, CBD does not induce psychoactive effects or a “high” upon use. CBD can be found in cannabis plants that fall under either hemp or marijuana, in varying percentages based on the specific plant. However, most of the CBD being sold outside of marijuana dispensaries is extracted from the cannabis plant that falls under the hemp classification.

Individuals turn to CBD products for a wide variety of reasons ranging from anxiety, minor inflammation, insomnia and pain management.³ Some users of CBD claim the compound has been “life-changing.”⁴ A European Journal of Pain study found decreased inflammation and pain from topical use of CBD, and noted its effectiveness in reducing symptoms of arthritis.⁵ CBD comes in a wide variety of products and forms, such as

topical creams, tinctures, and edibles, or can be consumed by smoking raw hemp flower. There are products that are made from CBD isolate, which is just the CBD extracted from the cannabis plant, as well as “full spectrum CBD,” which is CBD with the other cannabinoids found in the plant.

The CBD market is currently big business and is expected to continue to grow. According to a study by BDS Analytics, the CBD market is projected to exceed \$20 billion within the next five years.⁶ Large Canadian cannabis companies (where all forms of cannabis are legal) are looking at major acquisitions of CBD companies within the US.⁷ Millennials and baby boomers are reported to be some of the largest consumers of CBD products.⁸

The Farm Bill

Why does CBD all of a sudden seem to be everywhere? A lot of that is due to the passage of the Agriculture Improvement Act of 2018 (commonly referred to as the 2018 Farm Bill). The 2018 Farm Bill explicitly exempted hemp (cannabis with less than .3% THC by dry weight) from the Schedule I of the Controlled Substances Act.⁹ The 2018 Farm Bill explicitly allows the transfer of hemp-derived products across state lines for commercial or other purposes. The legislation also expressly states that there is no prohibition on the movement of hemp and hemp-derived products in interstate commerce.¹⁰ That means hemp and hemp-derived products are no longer an illegal substance under federal law, with some important qualifications.

Hemp is one of the oldest industries, and records of hemp use date back to approximately 8000 BC. Many of the founding fathers, such as George Washington, Thomas Jefferson and John Adams, grew hemp as an agricultural crop. Hemp had a wide range of uses, including textiles, parchment and fuel. The Marijuana Tax Act, passed in 1937, heavily regulated hemp, as well as marijuana, and greatly reduced the prevalence of hemp and hemp-based products. In 1970, the government did away with the taxation approach and passed the Comprehensive Drug Abuse Prevention and Control Act, which effectively made all cultivation of cannabis illegal.¹¹

Unlike other agricultural products, such as wheat or soy, legalized hemp comes with significant restrictions under the 2018 Farm Bill. The Farm Bill ensures that any cannabinoid—a set of chemical compounds found in the cannabis plant—that is derived from hemp will be legal if and only if that hemp is produced in a manner consistent

It is important to note that even though the 2018 Farm Bill creates a potential legal pathway for hemp products on the federal level, there is a wide variety of approaches to hemp and CBD products in states across the country, creating a confusing patchwork of laws.

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with the Farm Bill, associated federal regulations, associated state regulations, and by a licensed grower.¹² First, in order to be considered hemp, the plant must contain .3% THC, otherwise it would be considered marijuana and, therefore, under federal law a Class 1 drug under the Controlled Substances Act.¹³ Second, the states are given authority to regulate hemp, but their state regulatory and licensing structure must be approved by the USDA in order to be in compliance with the Farm Bill.¹⁴ Under the Farm Bill, state departments of agriculture must consult with the state's governor and chief law enforcement officer to devise a plan that must be submitted to the secretary of USDA. Under federal law, a state's plan to license and regulate hemp can only commence once the secretary of USDA approves that state's plan. In states opting not to devise a hemp regulatory program, USDA will construct a regulatory program under which hemp cultivators in those states must apply for licenses and comply with a federally-run program. Finally, the federal law details possible punishments for violations, pathways for violators to become compliant, and even which activities qualify as felonies under the law, such as repeated offenses.¹⁵

FDA and CBD

After the passage of the 2018 Farm Bill, there was a public sentiment that hemp, and hemp derivatives such as CBD, had a pathway to complete legalization on the federal level. The Food and Drug Administration's stance on CBD has made the waters murkier, however. In June 2018, the Food and Drug Administration ("FDA") approved the drug Epidiolex, made by GW Pharmaceuticals, which is used to treat two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome.¹⁶ The drug includes CBD as an active ingredient, which means that the FDA has now approved CBD as a drug.¹⁷ The cost of an annual supply of Epidiolex is \$32,500, according to GW Pharmaceuticals.¹⁸ Under the Food, Drug and Cosmetics Act, if there have been substantial clinical investigations into a compound before it is used as a nutritional supplement, then the compound (CBD) cannot be introduced into interstate commerce as a nutritional supplement. In addition, once anything has been approved as a drug, it is then prohibited from being introduced into interstate commerce in any food or sold as a nutritional supplement.¹⁹

The FDA has recognized the tension between their classification of CBD as a drug, and the wide use of it as a nutritional supplement. On May 31, 2019, the FDA held a public hearing on the issue and accepted public comments.²⁰ Because hemp is seen in many states as a solution to both the decline in tobacco farming and a boost to US farmers, there are many politicians working to push the FDA to permit some form of CBD as a nutritional supplement.²¹ Perhaps an odd bedfellow for the cannabis world, Senate Leader Mitch McConnell has publicly pushed the FDA to move on CBD regulations that would permit the sale of CBD as a nutritional supplement.²²

To date, the FDA's priority has been on enforcement against CBD manufacturers or retailers who have made unsubstantiated health claims. Some examples of such claims are that CBD can treat Alzheimer's, Parkinson's, ADHD, or cure cancer.²³ Even while the FDA's enforcement at the federal level has been restricted to what they consider are unsubstantiated health claims, any business selling CBD currently in interstate commerce is risking enforcement by the FDA. Because of the FDA's stance on CBD, many businesses involved with the product are finding

that they have great difficulty with obtaining banking services and credit card processing, with many CBD retailers getting dropped by their credit card processing companies with little notice.²⁴ In addition, the US Patent and Trademark Office will not permit the registration of any trademark for CBD in food or dietary supplements because of the FDA's position. This has resulted in interesting intellectual property strategies for CBD consumable products, such as relying on state-level trademark registrations, registering duplicate "dummy" product lines without the CBD added to the products, and copyrighting logos, among other strategies.

State Laws in Rhode Island and Massachusetts

On the state level, Rhode Island and Massachusetts have taken markedly different approaches to CBD, and particularly, consumable forms of CBD. In 2016, Rhode Island passed the Hemp Growth Act, which established two types of hemp license: growers and handlers of industrial hemp.²⁵ These two license types did not address the manufacturing or production of products with CBD, or retail of CBD products.²⁶ Those two gaps were addressed this year in Article 15 of the 2020 budget bill, which added licenses for CBD Distributor and CBD Retailer. The amendments to the Hemp Growth Act also included expanding the handler licensing to include processing and manufacturing of CBD products.

Even more interesting is that Article 15 expressly defines a CBD consumable as "any product meant for ingestion, including, but not limited to, concentrates, extracts, and cannabis-infused foods and products which contain cannabidiol derived from a hemp plant as defined in this section." Both the definitions for the new license types of CBD Distributor and CBD Retailer would expressly give the license holders permission to distribute or retail consumable CBD. The statute also requires that any consumable CBD is in compliance with applicable food safety regulations and requirements, including those promulgated by the Department of Health. The Department of Health spokesman was quoted in an NBC 10 report on CBD as stating that the Department of Health is currently working with the Department of Business Regulation to develop regulations to ensure safe CBD consumables.²⁷ Considering that the Rhode Island Department of Health has adopted the FDA's regulations, it will be interesting to see how the regulations address issues with the FDA's current stance on CBD.²⁸

In contrast, the Massachusetts agency tasked with regulating hemp and CBD in the Commonwealth, the Massachusetts Department of Agricultural Resources (MDAR), has taken a very strong stance on the prohibition on the sale of consumable CBD products.²⁹ Currently, in MA, there are two license types available through MDAR: grower and processor. In a June 12, 2019 statement, MDAR stated that the following products are prohibited from sale within Massachusetts: "Any food product containing CBD; Any product containing CBD derived from hemp that makes therapeutic/medicinal claims; Any product that contains hemp as a dietary supplement; Animal feed that contains any hemp products; Unprocessed or raw plant material, including the flower that is meant for end use by a consumer."³⁰ As a result, local departments of health and law enforcement in Massachusetts have started closing down CBD shops and pulling CBD product from the shelves of stores.³¹ Enforcement by local agencies or law enforcement has varied widely from town

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to town, with some towns largely leaving CBD businesses alone and others aggressively shutting businesses down. All of this has created a very uncertain and unstable environment for any CBD business in Massachusetts. There has been legislation introduced into the Massachusetts legislature to permit the sale of consumable CBD in Massachusetts, but as of the time of this writing, it is unclear whether it will gain enough traction to pass.³² Interestingly, in Massachusetts, anyone over 21 is able to walk into an adult use marijuana dispensary and purchase marijuana-derived consumable CBD without any problem from the state.

It is important to note that even though the 2018 Farm Bill creates a potential legal pathway for hemp products on the federal level, there is a wide variety of approaches to hemp and CBD products in states across the country, creating a confusing patchwork of laws. There are states that still classify hemp plants and their derivatives as marijuana under their state criminal laws, and other states that require a medical marijuana license to possess CBD. For example, a 69-year-old North Carolina woman was arrested in Florida at Disney World in May of 2019 for possession of CBD because she did not have a Florida issued medical marijuana prescription.³³ Florida has since passed new laws that permit the sale of CBD without a medical marijuana prescription, with certain requirements.³⁴ Before the Texas legislature recently legalized the possession of CBD in the state, passengers traveling through Dallas-Fort Worth International Airport were frequently arrested for possession of CBD, some even charged with felonies.³⁵

What's Next for CBD?

In the coming years, it will be extremely interesting to watch how the regulation of CBD will play out on both the federal and state levels. Many feel that the “cat is out of the bag” for CBD’s use as a nutritional supplement, and the priority should be on creating a regulatory structure that protects consumers and ensures high quality and safe products. With the major players at the table, primarily the pharmaceutical industry supporting CBD’s classification as a drug, and tobacco and agricultural states along with CBD businesses supporting CBD as a nutritional supplement, it will be important to see whether the FDA creates a carve-out for certain forms of CBD permitted as a nutritional supplement. In Rhode Island, the rollout of the new CBD licenses could create a large economic boom for the state as businesses pushed out of Massachusetts because of the restrictions on CBD and confusion around enforcement look for a state with a more favorable environment.

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On November 14th, at the RI Law Center, John S. Foley, Esq., of Foley-Cerilli, PC, presented "How to Impanel a Civil Jury in Superior Court." The program reviewed how the process of civil jury impanelment in the Superior Court is controlled by statutory requirements and procedures that trial lawyers must know and know how to implement. This has become more important in recent years as trial judges have begun to use alternate impanelment methods, sometimes to a party's disadvantage, in an effort to speed up the impanelment process or encourage juror engagement in the proceedings. The presenter also discussed several strategic aspects of impanelment, including identifying the worst and second-worst voir dire questions ever. This program is now available On Demand through the Bar's website.

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32 Zeninor Enwemeka, *Bill Filed To Legalize CBD Products Made From Hemp In Mass.*, WBUR News (July 3, 2019), <https://www.wbur.org/news/2019/07/03/cbd-hemp-bill-massachusetts>.

33 AP and Staff, *Woman Arrested for CBD Oil at Disney World Demands Apology*, NBC6 News (May 14, 2019), <https://www.nbc.com/news/local/Woman-Arrested-for-CBD-Oil-at-Disney-World-Demands-Apology-509919201.html>.

34 Marcia Heroux Pounds, *'Fresh from Florida' hemp products on their way with new law*, South Florida Sun Sentinel (Jun. 26, 2019), <https://www.sun-sentinel.com/business/fl-bz-hemp-cbd-new-law-20190626-vgqbkpuiravfcx6gpspvxspq-story.html>.

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Rhode Island Women Lawyers: Past, Present, & Future

This series was inspired by Roger Williams University School of Law's annual *Women in Robes* event, and was created in alliance with their exciting new project *The First Women*, which recognizes and honors the first women of the Rhode Island bar.



Lise Iwon, Esq. (left) and Peg Laurence, Esq. (right)

I wanted to change the world and help those in need," explained Lise Iwon when describing why she left her job as a teacher in Wisconsin to attend law school in New Hampshire. As a 1L at the Franklin Pierce Law Center, she met Margaret "Peg" Laurence, who later became her partner in life and in law. Together, they were committed to leading their lives in the pursuit of helping others.

After law school, Peg and Lise founded Laurence & Iwon in Wakefield, RI. While Peg worked primarily in real estate law, Lise focused on family law, working at times as a court-appointed advocate for abused or neglected children and working for the American Civil Liberties Union ("ACLU").

As a lesbian litigator, Lise bore witness to shocking incidents of unconscionable behavior performed by members of our bar.

In one case where she sought a restraining order on behalf of her client, opposing counsel requested a chambers conference. Lise had never participated in a chambers conference, but was appalled when opposing counsel alleged that Lise's client was performing sexual services for money. Lise clarified for the judge that the statement was untrue and said, "If this is how chambers conferences go, I am walking out," which she did. Outside of chambers, opposing counsel confronted her about why she left. She

explained that he had lied to the judge—to which he then threatened her, saying Lise should "watch her back."

During another chambers conference held to discuss an agreed-upon dismissal of a traffic ticket, a judge, while smoking a cigar, ordered Lise to spit out her mint because he "hated the scent of mint." He stated he recognized her as working with the ACLU and "marching in a gay pride parade." He revealed troubling prejudice as he went on to tell her that since gay people do not belong on this planet, he should be able to kill them if he wanted to. He also told her that babies of gay couples should not be able to be born. Despite the judge functionally telling Lise that he thought he should be able to kill her, she attempted to break the tension stating, "Well, it is a good thing we are not in the same family, as our holiday dinners would be tense." After leaving chambers, the prosecuting police officer and her client (also a lawyer) urged her to file a complaint. She felt that she could not because she had to practice before that judge.

In yet another chambers conference, it was very clear the judge and opposing counsel were very close, as they chatted about recent parties, dinners, and extracurricular activities they and their family did together. The judge then looked to Lise and said, "Okay honey, what is your case about?" Lise explained her case, which was a straightforward constitutional infringement matter supported by the law. The judge asked opposing counsel his thoughts, who simply said he disagreed, and the judge agreed and dismissed her case. Lise questioned the "old boys club" system, where practicing law was more about who you knew and not about the law. "I went to law school for this?" she thought, though she was not deterred. In fact, this made her want to do more. "I like to make things happen."

Eventually, Lise did encounter some behavior that was so appalling that she felt compelled to file complaints with disciplinary counsel—one against an attorney and another against a judge. Lise noted that "they were scary times" for her



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as those complaints wove their way through the system. The investigation of the attorney (who was ultimately suspended) took years, during which time Lise had to continue to practice against the attorney, who would speak ill of her among the bar and threaten her. During the investigation, however, she could not respond to his negative comments or even defend herself.

As to the complaint filed against the judge, many members of the bar thanked her for being the one to finally step up and intervene with such a concerning figure. The judge was ultimately removed from the bench.

She found the strength to fight injustice in the bar due to the unconditional love and support of her wife: "I could not have done it without Peg. She is the one who made it all possible." In addition to the support from Peg, Lise added, "You need a village of love," reflecting that one of the best things she did while practicing was to start a small group of women lawyers who met one time per month to share information and practice tips.

Lise's work paid off for the advancement of her clients and the Rhode Island bar. She has been recognized and honored with two awards from the American Bar Association. In 1996, she was awarded with the Pro Bono Publico Award, and, in 2015, she was awarded the Stonewall Award, recognizing lawyers who have considerably advanced lesbian, gay, bisexual and transgender individuals in the legal profession and successfully championed LGBT legal causes. In addition to her national recognitions, she was the first lesbian president of the Rhode Island Bar Association and gained the bar's support for same-sex marriage before the Marriage Equality Act. She also won a declaratory ruling for same-sex couples in Rhode Island to take the same marital deductions for estate taxes.

Although Lise retired from the practice of law in 2015, she continues to change the world and make things happen. She serves on twelve boards and organizes fundraisers, including the "Duffle Bag Bash," an event that collects duffel

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Like others, Lise echoes concerns of the evolution of the legal profession; she has observed increasing disrespect and decreased civility due to unreasonable expectations and entitlement. She encourages all lawyers to get involved with the Bar Association and all lawyers, including those who are retired, to give back. "You meet a lot of other lawyers who want to support you, mentor you, and improve the profession. It is inspirational when you help lift the profession and the community."

If you are interested in sharing your story, or know someone who is, please contact Cassandra L. Feeney at cfeeney@adlercohen.com and/or Etie-Lee Schaub at etieschaub@gmail.com. ♦

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6. Has gambling caused a decrease in your ambition or efficiency?
7. After losing have you felt you must return as soon as possible and win back your losses?
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9. Have you often gambled until your last dollar was gone?
10. Have you ever borrowed to finance your gambling?
11. Have you ever sold anything to finance gambling?
12. Have you been reluctant to use “gambling money” for normal expenditures?
13. Has gambling made you careless of your welfare or your family's?
14. Have you ever gambled longer than you had planned?
15. Have you ever gambled to escape worry or trouble?
16. Have you ever committed, or considered committing, an illegal act to finance gambling?
17. Has gambling caused you to have difficulty sleeping?
18. Do arguments, disappointments or frustrations create within you an urge to gamble?
19. Have you ever had an urge to celebrate any good fortune by a few hours of gambling?
20. Have you ever considered self destruction or suicide as a result of your gambling?

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You may also contact, in confidence, any member of the Lawyers Helping Lawyers Committee or visit the website site of Gamblers' Anonymous, a self-help group that has assisted many persons with gambling problems; gamblersanonymous.org.

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Opinion

Lean Government



Jenna Giguere, Esq.
Deputy Chief of Legal Services
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Regulation

I submit this opinion piece to share a few interesting points about the concept of “Lean” and how I strive to apply this concept in my practice as a government attorney.¹ I use the term “Lean” loosely here to refer to process improvement efforts that may range from tactical to strategic,² from “Go Dos” (like finding a question that can be eliminated from an application at the push of a few buttons) to more extensive Lean projects that undergo some level of design and development review. I believe that lawyers in government positions can offer valuable contributions to Lean initiatives and that sharing some thoughts on how they can do so will be of interest to the bar at large as consumers of government services.

Learning about Lean and going through several Lean projects has helped me develop a kind of Lean “radar” to help spot red flags, which leads to process improvement. For example, one such red flag is where more than one unit or person seems to be repeating the same work effort twice.³ This may occur as part of the supervisory chain (both attorney and paralegal doing the same step) or when different units have overlapping scopes (a document needs both policy review and legal review). When I see one of these red flags, it does not always indicate that a change/improvement should be made, but it does present an opportunity to ask questions.

I have found that government attorneys are in a great position to help identify the statutory, regulatory, or other legal barriers that policy makers must be aware of in implementing process improvement efforts. I also strive to stay informed of trends, for example, through involvement with associations of government leaders and lawyers and industry that provide opportunities to track what issues other states are facing, many of which may be expected to come to Rhode Island in only a matter of time. This enables “strategic sensing,” the capability to anticipate issues and trends so that an agency can act proactively rather than reactively.⁴

What I find to be the most chal-

lenging part of trying to apply Lean to legal work outcomes is metrics. How do you measure good legal work and good outcomes for legal cases? For example, while time to completion is a popular and effective measurement for licensing, it may not be as helpful in evaluating a legal outcome. As another example, an enforcement case may last a long time because the parties are making efforts to reach a settlement that is the most value-add solution for both sides. In that case, the added time to completion has actually added value.

Making space in our professional world for “Lean” raises the prospect that our work can continuously grow to be more efficient. As I continue to ponder these ideas, I look forward to gaining and building insights throughout my career.⁵

ENDNOTES

¹ I encourage readers interested in applying Lean to explore the variety of resources available about Lean in general and as applied to legal practice and government. In addition to several trainings in Lean, my self-study has been focused on a book entitled *Building High Performance Government through Lean Six Sigma* by Mark Price, Walter Mores, and Hundley M. Elliotte (McGraw Hill, 2011).

² Price, Mores, and Elliotte, Pg. 54.

³ Price, Mores, and Elliotte, Pg. 42-43.

⁴ Price, Mores, and Elliotte, Pg. 76.

⁵ See Chapter 8 of Price, Mores, and Elliotte. ◇

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12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a LIVE WEBCAST!
- January 24**
Friday
Clearing the Record: Sealing and Expunging Criminal Convictions
Rhode Island Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a LIVE WEBCAST!
- February 6**
Thursday
Basic Crash Reconstruction for Civil Litigators
Rhode Island Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a LIVE WEBCAST!
- March 25**
Wednesday
Planning for and Administering an Estate – A Practical Skills Seminar
Rhode Island Law Center, Cranston
9:00 a.m. – 3:00 p.m., 4.0 credits + 1.0 ethics

*Times and dates subject to change.
For updated information go to ribar.com*

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~ **SAVE THE DATE** ~
Rhode Island Bar Association
Annual Meeting
June 18 & 19, 2020
Rhode Island Convention Center

Reminder: Bar members may complete six credits through participation in online CLE seminars. To register for an online seminar, go to the Bar's website: ribar.com and click on CONTINUING LEGAL EDUCATION on the left side menu.



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House of Delegates Letters of Interest – Due February 14, 2020

Involvement in the activities of our Bar Association is a richly rewarding experience. One way to become familiar with Bar Association activities is by serving as a member of the House of Delegates. For those interested in becoming a member of the Bar's Executive Committee and an eventual Bar officer, House of Delegates' membership is a necessary first step. To learn more about Rhode Island Bar Association governance, please go to the Bar's website.

The Nominating Committee will meet soon to prepare a slate of officers and members of the 2020-2021 Rhode Island Bar Association House of Delegates. The term of office is July 1, 2020 – June 30, 2021. If you have not already done so, to be considered for appointment to the House of Delegates, please send a letter of interest no later than **February 14, 2020**.

PLEASE NOTE: Current members of the Bar's House of Delegates who wish to be considered for reappointment must also send a letter of interest by this date.

Letters of interest should include the member's length of service to the Rhode Island Bar Association (i.e., participation in Committees and positions held in those Committees; community service to the Bar Association and outside the Bar Association, and positions held outside the Bar Association). Testimonials and letters of recommendation are neither required nor encouraged. Direct and indirect informal contact by candidates or those wishing to address candidates' qualifications to members of the Nominating Committee is prohibited. Please send letters of interest to:

HOD Nominating Committee Chairperson
Rhode Island Bar Association
41 Sharpe Drive
Cranston, RI 02920

Or, you may send your letter of interest to Helen Desmond McDonald, Executive Director by fax: (401) 421-2703, or email: hmcDonald@ribar.com

There will be an Open Forum at the Bar Headquarters at a date in February or March to be determined at which candidates for the House of Delegates and for Officer Position(s) may, but are not required to, appear before the Nominating Committee and further explain their candidacy. Candidates for officer positions and candidates for the House at large will be given up to ten minutes each to speak (or as determined by the Chair). Candidates who elect to address the Nominating Committee are encouraged to present their vision of how they would advance the mission of the Bar through their service in the office.

Any member planning to make a presentation at the Open Forum must inform Executive Director Helen McDonald, prior to the Forum via email: hmcDonald@ribar.com or telephone: (401) 421-5740.

HONOR ROLL

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, US Armed Forces Pro Bono Project, Foreclosure Prevention Project, and Legal Clinics during October and November 2020.

OCTOBER 2019

Volunteer Lawyer Program

Stephen J. Angell, Esq., *Bazar & Associates, P.C.*
Michael A. Castner, Esq., *Jamestown*
Kenneth Kando, Esq., *Warwick*
Robert H. Larder, Esq., *Woonsocket*
Mark B. Laroche, Esq., *Providence*
Karen Lyons, Esq., *Barrington*
Laurie A. Meier, Esq., *Providence*
Lori J. Norris, Esq., *Law Office of Lori J. Norris*
R. Andrew Pelletier, Esq., *Pelletier Law Group*
Shelley G. Prebenda, Esq., *Law Office of Shelley G. Prebenda*
Janne Reisch, Esq., *Janne Reisch, Attorney at Law*
Benjamin E. Reiss, Esq., *Wright Law Associates, Inc.*

Elderly Pro Bono Program

Armando E. Batastini, Esq., *Nixon Peabody, LLP*
John A. Beretta, Esq., *Law Office of John A. Beretta*
Michael A. Castner, Esq., *Jamestown*
Richard P. Kelaghan, Esq., *Cranston*
Charles T. Knowles, Esq., *Wickford*
Richard E. Kyte, Jr., Esq., *Warwick*
Tracy A. Loignon, Esq., *Warwick*
Felicia A. Manni-Paquette, Esq., *Azzinaro, Manni-Paquette*
Adam G. Northup, Esq., *Law Office of Adam G. Northup*
Thomas B. Orr, Esq., *Law Office of Thomas B. Orr*
Christine DaNave Patterson, Esq., *Law Office of Christine D. Patterson*
Janne Reisch, Esq., *Janne Reisch, Attorney at Law*
Jennifer M. Reynolds, Esq., *The Law Office Howe & Garside, Ltd.*
Gregory P. Sorbello, Esq., *Peter M. Iascone & Associates, LTD.*
Christine Anne Stowell, Esq., *Tate & Latham LLC*
Timothy M.F. Sweet, Esq., *The Law Office of Timothy M.F. Sweet, LLC*
Susan D. Vani, Esq., *Providence*

NOVEMBER 2019

Volunteer Lawyer Program

Neville J. Bedford, Esq., *East Providence*
Andrew M. Cagen, Esq., *Providence*
Joseph P. Carroll, Esq., *Woonsocket*
Michael A. Castner, Esq., *Jamestown*
Tracy A. Loignon, Esq., *Warwick*
John T. Longo, Esq., *Citadel Consumer Litigation, PC*
Frederic A. Marzilli, Esq., *Marzilli Law Offices*
Susan M. Pires, Esq., *The Law Office of Susan Pires*
Charles A. Pisaturo, Jr., Esq., *Providence*
Shelley G. Prebenda, Esq., *Law Office of Shelley G. Prebenda*
John S. Simonian, Esq., *Pawtucket*

Elderly Pro Bono Program

Joanne C. D'Ambra, Esq., *Cranston*
Michael A. Devane, Esq., *Devane & Devane Law Offices*
Patrick O. Hayes, Jr., Esq., *Corcoran, Peckham, Hayes, Leys & Olaynack, P.C.*
Jane Fearing Howlett, Esq., *Bristol*
Frank J. Manni, Esq., *Johnston*
Felicia A. Manni-Paquette, Esq., *Azzinaro, Manni-Paquette*
Arthur D. Parise, Esq., *Warwick*
Christine DaNave Patterson, Esq., *Law Office of Christine D. Patterson*
Peter J. Rotelli, Esq., *East Providence*
Gregory P. Sorbello, Esq., *Peter M. Iascone & Associates, LTD.*

US Armed Forces Pro Bono Project

Priscilla Facha DiMaio, Esq., *Providence*
Stephanie P. McConkey, Esq., *Simapi Law Associates, Ltd.*
Charles A. Pisaturo, Jr., Esq., *Providence*

The Bar also thanks the following volunteers for taking cases for the Foreclosure Prevention Project and for participating in Legal Clinic events during October and November.

Foreclosure Prevention Project

Andrew M. Cagen, Esq., *Providence*

Legal Clinic

Sandra Terry Dobson, Esq., *North Kingstown*
David F. Reilly, Esq., *Law Office of David Reilly*
Gregory P. Sorbello, Esq., *Peter M. Iascone & Associates, LTD.*

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.

SOLACE

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Helping Bar Members in Times of Need

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

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 Helen McDonald at hmcDonald@ribar.com or 401.421.5740.

Casemaker Tip: Folders in Casemaker4



Casemaker4 allows you to store documents you find over the course of your research. Using the **Folders** feature, you can access your documents from anywhere you can access the internet.

The first thing you will need to do is **create a new folder**. You can create a folder at any time by clicking on the folder link in the upper right or the **Folder** menu option under the **My Account** menu. In addition, if you are on the document you wish to save, you can click

the **Save to Folder** icon and type a name for your folder into the **New Folder** field and click the + button.

Once a folder has been created, you can save to your folder at any time. Just click the **Save To Folder** icon from the **Document Toolbar**, choose your folder, and click **Save**. If you prefer to drag and drop, simply click the Folder icon, and this time choose the

folder you would like to use and click ok. This allows the icon to represent the folder you have chosen. Next click and drag the title of the document to the grey toolbar area. Your chosen folder name will appear, and you can drop the document title on top of it.

When you are ready to view the contents of a folder, click the **Folders** link in the **Features** toolbar or the **Folders** option under **My Account**. Once there, on the left of your screen is a listing of all of your folders. Clicking your folder will display its contents in the central area of the page. Once the folder is open you have the opportunity to move, rename, and delete the entire folder using the options menu at the top of the folders list. On the right you can use the corresponding check boxes to move an individual document to a different folder, or to add it to the print queue, print directly, download, email, or remove. Don't worry if you have accidentally deleted a document, or folder, that you need. You also have access to a **Trash** file.

A free member service to all Rhode Island Bar Association attorneys, Casemaker's 24 hours a day, 7 days a week, 365 days a year, online legal research improves lawyers' ability to stay current with the law and provides cost effective client service.

To access Rhode Island Casemaker, connect to the Rhode Island Bar Association website at ribar.com.



Memories of Judge John E. Orton III



John Austin Murphy, Esq.
Morneau & Murphy
Jamestown

Viewing Judge Orton's obituary in the Providence Journal brought back memories of my contacts with that kind and compassionate man.

As a prosecutor in the office of the Rhode Island Attorney General, I appeared before him on a number of occasions. Defense counsel and their clients seemed to welcome their cases being heard before Judge Orton. But in truth, all parties knew that they would get fair treatment from him.

Judge Orton seemed not to consider himself anything other than a lawyer who was lucky to get a lifetime judicial appointment. There wasn't an ounce of arrogance or sense of entitlement in him. He seemed to have genuine affection for the attorneys who appeared before him, and never sought to embarrass them or treat them harshly.

I know this from personal experience.

Once, when I was fairly new to the prosecution team, I handled a sentencing before Judge Orton. I had personally interviewed the elderly victims of a home invasion and robbery, a crime to which the defendant was pleading guilty without any plea bargain. I knew well the victims' side of the case. But I didn't know the mitigating factors that defense counsel was going to bring forward. These included the defendant's military service as a Marine in Vietnam, with drug abuse issues arising upon the completion of that service.

I didn't take into account the Judge's sensitivity to those mitigating factors. At the sentencing hearing, I acted in a brash manner, letting my inexperience get the better of me. When it became clear that the Judge was going to impose a rehabilitative sentence as opposed to the lengthy jail term I was recommending, I kept on arguing for jail. And kept on, repeatedly, forcing the Judge to finally have to say to me, more than once, "I don't want to hear it."

Ultimately, I got the message. But for years afterward, a veteran daily watcher of court proceedings would say to me any time he saw me in the courthouse corridors, "I don't want to hear it!"

Despite that incident, which, with some judges, might have poisoned a relationship, Judge Orton went out of his way to be friendly to me. Once,

when I was standing at a bus stop in Edgewood, waiting for a bus to take me to work, Judge Orton pulled his car over, picked me up, and we rode into Providence together. I asked him what caused him to take the long drive through Edgewood, and he said he was checking the Providence River to see if there were ducks gathering there. The Judge was an outdoorsman of some note.

On another occasion, late in the day, just before Christmas, I handled an emergency matter before Judge Orton. After the proceeding, he invited me into his chambers. We seemed to be the only people in the courthouse. He pulled a bottle out of his desk drawer, and we toasted the holiday.

My last case before Judge Orton involved me acting as defense counsel for a friend, himself a Marine who had become a drug abuser and committed a series of serious crimes. This was years after my first encounter with the Judge, described above. But I remembered that he would be open to consideration of rehabilitative alternatives to jail. And I worked hard, within the rules and procedures of the court, to make sure the case came before Judge Orton. I also made sure that the defendant's personal efforts at rehabilitation and amends to his victims were fully disclosed before sentencing.

I won't go into all the details. But, Judge Orton again showed real compassion, understanding, and a willingness to grant a second chance, albeit carefully circumscribed, to a person who had seriously stumbled.

Florida

Edmund C. Sciarretta, Esq.
Suffolk Law

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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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RHODE ISLAND BAR ASSOCIATION'S

Online Attorney Resources (OAR)

Exclusively designed to help Bar members receive and offer timely and direct assistance with practice-related questions.

OAR provides new and more seasoned Bar members with the names, contact information and Bar admission date of volunteer attorneys who answer questions concerning particular practice areas based on their professional knowledge and experience. Questions handled by **OAR** volunteers may range from specific court procedures and expectations to current and future opportunities within the following **OAR** practice areas:

- | | |
|---------------------------|------------------------------|
| Administrative Law | Business Law |
| Civil Law | Creditors and Debtors |
| Criminal Law | Domestic/Family Law |
| Federal Court | Probate and Estates |
| Real Estate | Workers' Compensation |

TO CHOOSE YOUR OAR OPTION:

- Bar members with questions about a particular area of the law.
- Bar members willing to volunteer as information resources.

Go to the Bar's website at **ribar.com**, login to the **MEMBERS ONLY**, and click on the **OAR** link.

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Thanks to Our CLE Speakers

The success of the Rhode Island Bar Association's Continuing Legal Education (CLE) programming 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 helps 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 the months of November and December.

William J. Balkun, Esq.
Law Office of William J. Balkun

Hon. Feidlim E. Gil
Associate Justice
Rhode Island Family Court

Barbara A. Barrow, Esq.
Moore, Virgadamo & Lynch, Ltd.

Jane F. Howlett, Esq.
Howlett Law, Inc.

John P. Barylick, Esq.
Of Counsel, FoleyCerilli, PC

Meredith F. Howlett, Esq.
Howlett Law, Inc.

David N. Bazar, Esq.
Bazar & Associates, P.C.

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Nicole J. Benjamin, Esq.
Adler Pollock & Sheehan, PC

Anthony R. Leone, Esq.
Leone Law, LLC

Leon C. Boghossian III, Esq.
Hinckley Allen

Nicholas Trott Long, Esq.
Attorney-at-Law

Steven J. Boyajian, Esq.
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Kelsey E. McDonald, Esq.
Rhode Island Public
Defender's Office

David D. Curtin, Esq.
Rhode Island Disciplinary
Counsel's Office

Henry Monti, Esq.
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Arthur DeFelice, Esq.
Rhode Island Department
of Attorney General

Thomas C. Plunkett, Esq.
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Thomas M. Dickinson, Esq.
Law Office of Thomas M. Dickinson

Lynn E. Riley, Esq.
Cameron & Mittleman, LLP

Michael A. DiLauro, Esq.
Rhode Island Public Defender's Office

Hon. Pamela Woodcock Pfeiffer
Associate Judge

Susan Jeannette Famiglietti, Esq.
Rhode Island Family Court

Rhode Island District Court

John S. Foley, Esq.
FoleyCerilli, PC

Are you looking for answers to practice-related questions?

Try the Bar's dynamic List Serve!

Since its inception under the sponsorship of Past Bar President Michael McElroy, our Bar's List Serve has grown exponentially in participating members and in a wide range of answered questions. From nuances of the Rhode Island Courts e-filing system to requests for local and out-of-state referrals, List Serve members are providing each other with timely answers. List Serve topics encompass a wide range of practice areas including consultants, traffic violations, medical marijuana, landlord/tenant, divorce, *pro hac vice*, immigration and more!



Free and available for all actively practicing Rhode Island attorney members, the Bar's List Serve gives you immediate, 24/7, open-door access to the knowledge and experience of hundreds of Rhode Island lawyers. If you have a question about matters relating to your practice of law, you post the question on the List Serve, and it is emailed to all list serve members. Any attorney who wishes to provide advice or guidance will quickly respond.

If you have not yet joined the List Serve, please consider doing so today. To access this free member benefit go to the Bar's website: ribar.com, click on the **MEMBERS ONLY** link, login using your Bar identification number and password, click on the **List Serve** link, read the terms and conditions, and email the contact at the bottom of the rules. It's that easy!



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8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer) Rhode Island Bar Association 41 Sharpe Drive, Cranston, RI 02920					
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Editor (Name and complete mailing address) Rhode Island Bar Journal Mark B. Morse, Editor-in-Chief, 41 Sharpe Drive, Cranston RI 02920					
Managing Editor (Name and complete mailing address) Kathleen Bridge, Managing Editor Rhode Island Bar Journal 41 Sharpe Drive, Cranston, RI 02920					

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the name and address of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)	
Full Name	Complete Mailing Address
Rhode Island Bar Association	41 Sharpe Drive, Cranston, RI 02920

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box <input checked="" type="checkbox"/> None	
Full Name	Complete Mailing Address

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one) The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: <input type="checkbox"/> Has Not Changed During Preceding 12 Months <input type="checkbox"/> Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)			
13. Publication Title Rhode Island Bar Journal		14. Issue Date for Circulation Data Below September 2019	

15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		6850	6850
b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	3686	3571
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 (include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	2991	3008
	(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®		
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail®)		
c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))		6677	6579
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541		
	(2) Free or Nominal Rate In-County Copies included on PS Form 3541		
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g., First-Class Mail)	56	57
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	20	60
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))		76	117
f. Total Distribution (Sum of 15c and 15e)		6753	6696
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))		97	154
h. Total (Sum of 15f and g)		6850	6850
i. Percent Paid (15c divided by 15f times 100)		98%	98%

16. Electronic Copy Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Paid Electronic Copies		0	0
b. Total Paid Print Copies (Line 15c) + Paid Electronic Copies (Line 15a)			
c. Total Print Distribution (Line 15f) + Paid Electronic Copies (Line 15a)			
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<input type="checkbox"/> If the publication is a general publication, publication of this statement is required. Will be printed in the _____ issue of this publication.	
<input type="checkbox"/> Publication not required.	
18. Signature and Title of Editor, Publisher, Business Manager, or Owner Kellen D. McDonald Executive Director	
Date	12/3/19

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In Memoriam

DeWitte T. Kersh, Jr., Esq.

DeWitte Talmadge "Tal" Kersh, Jr. died on November 18, 2019. He was born in 1930 in Galion, Ohio, and lived in Providence and Waterville Valley, NH for most of his adult life before moving to The Landings on Skidaway Island, GA. He served two years as a Naval Lieutenant during the Korean War and was active in the Naval Reserve where he achieved the rank of Full Commander. Tal received his Bachelor of Science and J.D. degrees from Cornell University. He practiced law for 45 years and was a partner at the former law firm of Tillinghast, Collins and Graham in Providence. He was a member of the RI and NH Bars. He served on several Bar Association committees and was a Rhode Island Bar Foundation Fellow. He was a senior fellow of the Inn of Court, chairperson of the Family Court Bench Bar Committee, and fellow of the American Matrimonial Lawyers Association. He held a master's degree in taxation from Boston University and was a member of the American Arbitration Society. Tal was president of the Greater Providence Rotary Club, chairman of the Rotary Charity Foundation, and recipient of Rotary's Paul Harris award. He was chairman of the Waterville Valley Board of Selectman and chaired the Waterville Valley Planning, Charity Foundation, and Zoning Boards. He was also president of the Turks Head Club, the Cornell Club, chairman of the Advisory Board of the Salvation Army, and board member of the First Unitarian Church in Providence. He is predeceased by his daughter, Kristen. He is survived by his wife, Sharon R. Kersh, formally of Providence, and currently of Waterville Valley, NH and Savannah, GA; his sister, Diana Kersh Miller, of Roanoke, VA; a son, Dewitte Talmadge Kersh III, of New York City; a daughter, Sarah Kersh Veitch, of Alta Dena, CA; his stepdaughters, Sloane DeAngelis Pilgrim and Brook DeAngelis Rowan, both of RI; and 12 grandchildren.

Stephen G. Lipman, Esq.

Stephen I. Lipman, 78, of Newport and Boston, MA, passed away Friday, September 27, 2019. He was the husband of Nancy (Mercier) Isherwood, and the late Marguerite (Jordan) Lipman. He was born in Boston to the late Jack H. Lipman and Dora (Solov) Lipman Michaelson. In addition to his wife, he is survived by his children, Roger Lipman, his wife Jasmine, and their triplets, Maxx, Amelia, and Frankie of Arlington, MA; Jake Lipman and her husband Philip Rothman of New York, NY; Andrew Lipman of Brooklyn, NY; and Katherine Lipman of Somerville, MA. He is also survived by his stepson Christopher Isherwood of Newport, RI, and close family friend, Elisa Franklin of Randolph, MA.

Hon. Joseph F. Rodgers, Jr.

Joseph F. Rodgers, Jr., retired Presiding Justice of the Rhode Island Superior Court, 78, of South Kingstown, died Friday, December 6, 2019. He was the husband of Donna (Boudreau) Rodgers to whom he was married for 53 years. Born in Providence, he was the son of the late Joseph F. and Gertrude L. (Moan) Rodgers. Judge Rodgers was raised in South Providence where he was educated by the Sisters of Mercy, first at St. Michael's School and later at Bishop Tyler Elementary School. In 1958, at the age of 16, he graduated from La Salle Academy. He then attended Providence College and graduated in 1962. At the urging of the Honorable Edward P. Gallogly, he received his law degree from Boston University School of Law and was admitted to the Rhode Island bar in 1967. While attending law school he was the recreation director of the Joslin Recreation Center from 1964-1968 and also a signal switch operator for the New Haven Railroad. He began his legal career with the firm of Brown, Rosen, Gentile, and Rodgers in Providence in 1967. He

remained an associate of the firm until May 7, 1974 when he was appointed by Gov. Philip Noel to the position of Associate Judge of the Rhode Island District Court at age 32, the youngest judge ever appointed to that or any other statewide court in Rhode Island history. Prior to his appointment to the District Court, he was elected to the State Senate at a special election in January 1968 to complete the term of one his many mentors, Edward Clement, and served three more terms. As a member of the Senate, he was vice chairman of the Senate Labor Committee (1970-1972) and chairman of the State Judiciary Committee (1973-1974). He was selected by the National Democratic Party in 1972 to serve on the Commission to Study the Method of Selecting a Vice President Nominee. At that time, he was also President of the Young Democrats of Rhode Island. In November 1976, at the age of 35, Governor Noel once again asked him to serve the state and elevated him to the position of Associate Justice of the Superior Court, the youngest ever appointed to that court at that time. On June 19, 1991 Governor Bruce Sundlun appointed him as the Presiding Justice of the Superior Court, which he held with distinction until his retirement in August 2009. During his judicial career, he was appointed by Governor J. Joseph Garrahy to chair a commission to study the election laws in Rhode Island and was appointed by the Supreme Court to chair the Commission on Judicial Tenure and Discipline from 1980-1986. In 1983, he was appointed to the National Conference of the Rights of Victims of Crimes, one of two judges from each state, which conference significantly altered the way crime victims were treated in the justice system. While a judge, he taught courses on law at the National Judicial College in Reno, Nevada, Providence College, Roger Williams University, and the Community College of Rhode Island, educating many members of the law enforcement community. As Presiding Justice of the Superior Court, he implemented many changes that made the court more customer friendly for the public, litigants and jurors. He was a member of the Board of Directors at Butler Hospital and Ocean Tides in Narragansett. He was elected to the Providence Recreation Hall of Fame, La Salle Academy Hall of Fame (2004), the R.I. Heritage Hall of Fame (2009), and received an honorary degree from his alma mater, Providence College. He belonged to a number of fraternal organizations, including the Irish Kings and the Friendly Sons of St. Patrick, and he was a longtime member of the Pt. Judith Country Club. Besides his wife, Donna, he leaves his sons Joseph F. Rodgers III and Edward (Ted) Rodgers; his daughter, Superior Court Associate Justice Kristin E. Rodgers and her husband Scott Raynes; and his cherished granddaughters, Leigh Ann Rodgers and Sydney Raynes; and a sister, Jean R. Paterson. He was the brother of the late Marjorie McDonald.

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.



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 kbridge@ribar.com with "Caption Contest for January/February" in the subject line.

Deadline for entry: Contest entries must be submitted by February 1st, 2020.

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.

Winning caption for November/December



"Your wish is my command,
but only if you hold me harmless."

LOUIS A. DEQUATTRO, JR., ESQ., CPA

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Lawyers on the Move

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New Year New You

6 Tips to Help You Keep Your New Year's Resolution

1 Be Realistic

Taking on a large goal is tempting, but it can also set you up for failure. If the goal is too much of a stretch, it can fuel a downward cycle: lack of achievement, decreased motivation, and self-criticism. You'll give yourself your best shot at success if you set a goal that's doable and meaningful too.



2 Outline Your Plan

Because you won't just wake up and change your life, you not only need a plan for what to do, but also for what roadblocks you'll come across along the way. Decide how you will deal with the temptation to skip that exercise class or have that piece of cake.



3 Find a Partner

Whether it's your spouse, a friend, a coworker, or a coach, it's much easier to follow through on goals if you have a buddy. In the best-case scenario, you'll hold one another accountable. Tell your partner to go big on the motivation as it's much easier to succeed when there's someone rooting for you!



4 REWARD YOURSELF

If your focus is just on the endgame, it's easy to feel discouraged when progress plateaus. That's why it's crucial to recognize and reward the smaller successes along the way. Celebrate your success by treating yourself to something you enjoy that doesn't contradict your resolution.



5 DON'T BEAT YOURSELF UP

Perfection is unattainable. Obsessing over the occasional slip won't help you achieve your goal. Do the best you can each day and take one day at a time. Everyone has ups and downs; resolve to recover from your mistakes and get back on track.



6 STICK TO IT

Those unhealthy habits that you are trying to change took years to develop, so how can you expect to change them in just a matter of weeks or months? Experts say it takes about 21 days to form a habit and six months for it to become part of your routine. It won't happen overnight, so be patient!



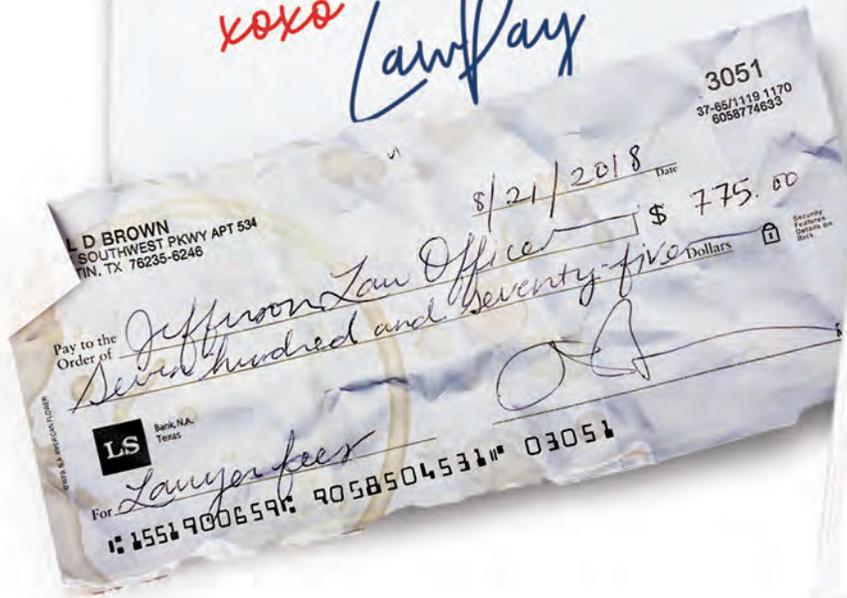
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