

A photograph of a highly ornate bar interior. The room features a large, multi-tiered crystal chandelier hanging from the ceiling. The walls are decorated with intricate gold-colored moldings and a large mirror reflecting the room. In the foreground, there is a dark wood table with a red tufted chair and a red tufted sofa. A large vase of flowers sits on the table. The floor is covered with a patterned red and gold rug. The overall atmosphere is classic and elegant.

Rhode Island Bar Journal

Rhode Island Bar Association Volume 71. Number 5. March/April 2023

**Fear of Going Viral: Restricting
Public Employees' Troubling Off-Duty
Facebook Posts**

Medical Affidavit Procedure

**Lunch with Legends: Trailblazers,
Trendsetters, and Treasures of the
Rhode Island Bar**

Articles

9 Fear of Going Viral: Restricting Public Employees' Troubling Off-Duty Facebook Posts

Julie A. Sacks, Esq.

19 Medical Affidavit Procedure

Peter J. Comerford, Esq.

27 Lunch with Legends: Trailblazers, Trendsetters, and Treasures of the Rhode Island Bar

William J. Delaney, Esq. and Paul L. Keenan, Esq.

39

*“Connection is why we’re here.
We are hardwired to connect...”*

FEATURES

- | | | | |
|----|--|----|---|
| 3 | Civics, Civility, and Collaboration | 26 | Thanks to Our CLE Speakers |
| 4 | Build your Client Base and Serve Your Community with the Bar’s Lawyer Referral Service! | 28 | Fastcase Tip: Access Document and Search History |
| 5 | Rhode Island Bar Association Volunteer Lawyer Program – 36 Years of Pro Bono Service 1986-2022 2022 Highlights and Accomplishments | 28 | Establish Yourself As An Expert in An Area of Law |
| 7 | It Takes a Village | 29 | Invitation to Exhibit – Rhode Island Bar Association Annual Meeting, June 1 & 2, 2023 |
| 8 | Stay Connected | 30 | Bar Association Mentor Programs |
| 15 | Seeking Law Related Education Program Attorney Volunteers: Update Your Preferences Today! | 30 | Looking to Post or Search for a Job in the Legal Field? |
| 15 | Combine Profit & Public Service in 2023 with LRS | 31 | Committee Corner |
| 17 | 50 Year Club – A Funny Thing Happened on My Way to Law School.... | 32 | Lawyers Helping Lawyers |
| 18 | Honor Roll | 32 | SOLACE |
| 18 | Keep Your Directory Listing Up to Date! | 33 | Help Us Grow Our List Serve! |
| 20 | Mark Your Calendars! Rhode Island Bar Association Annual Meeting | 34 | Rhode Island Bar Foundation Seeks Law School Scholarship Applicants |
| 22 | Proposed Title Standard 3.19 Open for Bar Member Review and Comment | 35 | Proposed Practice Standard 8.2 Open for Bar Member Review and Comment |
| 22 | Proposed Title Standard 3.20 Open for Bar Member Review and Comment | 35 | Proposed Title Standard 8.8 Open for Bar Member Review and Comment |
| 23 | Government Lawyers Committee Sponsors Cannabis Law Update CLE | 36 | Rhode Island Municipal Court Listing |
| 25 | RI Bar Association Continuing Legal Education Seminars | 36 | Online Attorney Resources (OAR) |
| | | 37 | In Memoriam |
| | | 38 | Cartoon |
| | | 38 | Lawyers on the Move |
| | | 38 | Advertiser Index |

Front Cover Photograph by Brian McDonald

Clouds Hill Museum The house at Clouds Hill was built as a wedding gift for Elizabeth Ives Slater on her marriage to Alfred Augustus Reed, Jr., and was designed by William Walker & Sons. The home has never passed out of the original family’s stewardship. In 2000, Clouds Hill opened its doors to the public and in 2014 it was added to the National Register of Historic Places.



Editor In Chief, Eric D. Correia, Esq., LL.M.

Editor

Erin Cute

Editorial Board

Victoria M. Almeida, Esq.

Kendra Bergeron, Esq.

William J. Delaney, Esq.

Nicole P. Dyszlewski, Esq.

Michael B. Forte Jr., Esq.

Jenna Giguere, Esq.

Matthew J. Landry, Esq.

Kristen Sloan Maccini, Esq.

Kaylin M. Pelletier-Koenig, Esq.

Angelo R. Simone, Esq.

Hon. Brian P. Stern

Clint Douglas Watts, Esq.

RHODE ISLAND BAR ASSOCIATION

LAWYER’S PLEDGE

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

Association Officers

Mark B. Morse, *President*

Nicole J. Benjamin, *President-Elect*

Christopher S. Gontarz, *Treasurer*

Patrick A. Guida, *Secretary*

Executive Director

Kathleen Bridge

Direct advertising inquiries to the Editor, Erin Cute, Rhode Island Bar Journal, 41 Sharpe Drive, Cranston, RI 02920, (401) 421-5740.

USPS (464-680)ISSN 1079-9230

Rhode Island Bar Journal is published bimonthly by the Rhode Island Bar Association, 41 Sharpe Drive, Cranston, RI 02920.

PERIODICALS POSTAGE PAID AT PROVIDENCE, RI

Subscription: \$30 per year

Postmaster

Send Address Correction to:

Rhode Island Bar Journal

41 Sharpe Drive

Cranston, RI 02920

ribar.com

Civics, Civility, and Collaboration



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

“Zealous advocacy does not require the attorney to defer to every whim or desire of the client, nor does civility require the advocate to remain uncritical or acquiesce to every request from opposing counsel!”

This year, Law Day is being held on May 5, 2023, and the theme is *Cornerstones of Democracy: Civics, Civility, and Collaboration*.¹ This theme could not be more relevant. The pandemic has kept many of us isolated and remote. The toll this has taken is, in many ways, incalculable and still uncertain. As we regroup and begin live appearances and gatherings, we cannot discount the importance of civility to the bench, to our colleagues, and to our clients.

Civility is not only desired; it is written into the rules of professional conduct. The entire rules of professional conduct hinge on maintaining proper decorum, advocacy for the client, fairness to counsel, respect for the tribunal, and adherence to the law. Selected captions of some of the rules support these requirements.

Rule 3.3: Candor Toward the Tribunal
Rule 3.4: Fairness to Opposing Party and Counsel
Rule 4.1: Truthfulness in Statements to Others
Rule 4.4: Respect for Rights of Third Persons²

Civility permeates the rules of civil procedure as well. R.I.Civ. P. 37 provides in pertinent part:

Rule 37. Failure to Make or Cooperate in Discovery: Sanctions

(a) Motion for Order Compelling Discovery.

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

...

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 and 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. ***The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the informa-***

tion or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.³

(emphasis added)

In an article published by The American Bar Association on September 18, 2014, Jayne R. Reardon wrote:

The concept of civility is broad. The French and Latin etymologies of the word suggest, roughly, “relating to citizens.” In its earliest use, the term referred to exhibiting good behavior for the good of a community. The early Greeks thought that civility was both a private virtue and a public necessity, which functioned to hold the state together. Some writers equate civility with respect. So, civility is a behavioral code of decency or respect that is the hallmark of living as citizens in the same state.⁴

Sometimes there appears to be a tension between civility and zealous advocacy. There need not be. Zealous advocacy does not require the attorney to defer to every whim or desire of the client, nor does civility require the advocate to remain uncritical or acquiesce to every request from opposing counsel. An advocate can be uncompromising, yet maintain civility.

A colleague of ours, now retired, had a very successful family court practice. In every case of which I was aware of her involvement, she maintained a firm, often unyielding position on behalf of her client. Yet she did so in the most civil manner possible, always explaining why her client would not yield or why the proposal was unacceptable. She would involve her client in the ongoing negotiations, and provide the client options, but maintain a position, often testing it before the court. She was a zealous but civil advocate.

I am also aware of circumstances in which the advocate was no less zealous but failed to balance his zealousness with civility. One such instance involves a colleague who was undergo-

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

ing a tragic personal situation involving the critical illness of a close family relative. He was under order to produce certain documents by a particular time and requested an extension of time from the court to submit the documents. In his motion, he spelled out the reason for the request. The submission was not time-critical to any pending issues in the case. The opposing counsel objected. The hearing judge asked the reason for the objection, and counsel responded that “the client requested it.” The hearing judge was not happy and severely admonished counsel, reminding him of his obligation not to inflict pain just for the sake of it.

Another instance involved a case scheduled for a jury trial. The court requested pre-trial memoranda, and the advocate briefed an issue that would have effectively nullified the claims presented by his opponent. The position taken by the advocate was, however, untenable since the issue raised had been corrected by statute. This was brought to the attention of the advocate, who indicated that he had been aware of his untenable position all along but notwithstanding thought he should present it anyway. Very uncivil.

Many of us have had to deal with similar circumstances from time to time. We have also had bad days where we perhaps could have

been more civil in our conduct. Hopefully, they will remain a small exception to the rule. When they do occur, they stand out because they are offensive to our rules of conduct and interaction.

Thus, as we adjust from the isolation caused by the pandemic, let’s remember, as our Law Day theme notes, that the cornerstone of our democracy is *civics, civility, and collaboration*. Let’s then do our best to remain zealous, yet civil advocates and counselors.

ENDNOTES

- 1 *There is still time to volunteer to participate in Law Day if you have not done so already! Bar members interested in volunteering for this important program are asked to contact Director of Communications, Erin Cute by email at ecute@ribar.com.*
- 2 *Article V. Rules of Professional Conduct Preamble and ... – rhode island (no date). Disciplinary Board. Available at: <https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf> (Accessed: February 13, 2023).*
- 3 *Superior Court Rules of Civil procedure – rhode island (no date). Rhode Island Superior Court. Available at: https://www.courts.ri.gov/efiling/PDF/Rules-Superior_Court_Rules_of_Civil_Procedure.pdf (Accessed: February 13, 2023).*
- 4 *Reardon, Jayne, Civility as the Core of Professionalism (9/8/14 ABA Section: Business Law Today) https://www.americanbar.org/groups/business_law/publications/blt/2014/09/02_reardon/. ◇*

Rhode Island Bar Journal

Editorial Statement

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

Article Selection Criteria

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

Direct inquiries and send articles and author’s photographs for publication consideration to:
Rhode Island Bar Journal Editor Erin Cute
 email: ecute@ribar.com
 telephone: 401-421-5740

Material published in the *Rhode Island Bar Journal* remains the property of the *Journal*, and the author consents to the rights of the *Rhode Island Bar Journal* to copyright the work.

Build your Client Base and Serve Your Community with the Bar’s Lawyer Referral Service!



Attorney Samuel Kennedy-Smith, a member of the Lawyer Referral Service, enthusiastically supports the program. *“The Lawyer Referral Service is a fantastic opportunity to serve our Rhode Island community and a valuable referral resource for our area of practice, which is employee-side Labor and Employment litigation. Whether we end up taking on a representation or simply listening to someone’s difficulties before pointing them in the right direction, I am a very grateful participant in the program. The program is well run, worthwhile, and highly effective.”*

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

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

Rhode Island Bar Association Volunteer Lawyer Program 36 Years of Pro Bono Service 1986-2022 2022 Highlights and Accomplishments



Program Summary

2022 reflected 36 years of the Rhode Island Bar Association's administration of the Volunteer Lawyer Program (VLP). Our members continue to tirelessly provide legal assistance to those who cannot obtain legal representation either on their own or through other legal resources. The Bar Association continues to support and applaud Volunteer Lawyer Program members for the critical role they play every day in providing marginalized people with the legal assistance they need to improve the quality of their lives. Annually, VLP attorneys donate hundreds of hours of critically needed representation and protection through this structured program. These contributions are essential to our system of justice.

Resource Update

For over 18 years, dedicated bi-lingual staff have fielded calls and completed intakes for Spanish-speaking clients. Since 2021, Spanish-speaking clients have received the required paperwork in Spanish. Providing the translated paperwork has led to a quicker return of the required documents and, in turn, increased case placement. Pro bono translation services continue to be provided by One Voice Interpreting Service in Providence to assist non-Spanish-speaking VLP attorneys interested in representation with the assistance of an interpreter.

Throughout 2022, we continued to regularly pursue the recruitment of bi-lingual attorneys.

Mentoring

Frequent messaging continued in 2022 about the availability of mentors for any volunteer attorney interested in accepting a pro bono case. The requests for mentors for VLP cases ranged from those volunteer attorneys changing the focus of their current practice to those wanting to expand their areas of expertise. Upon request, mentors are available for the majority of VLP case types.

Education – Increasing Case Placement

Recruiting VLP members is essential to responding to the legal needs of the most vulnerable in our state. The most effective method of recruitment and retention of current members is through sponsoring and providing the benefit of free continuing legal education. This is accomplished annually in cooperation with the Bar's Continuing Legal Education (CLE) department and with the ongoing support of the Public Service Involvement Committee members and outstanding volunteer speakers.

Volunteer attorneys were given the opportunity to attend, free of charge, one or both of the following one-credit CLE seminars: *RI Family Court: Family Treatment Drug Court and Safe & Secure Baby Court*, and/or *Child Custody Issues and Role of the GAL*. All fifteen attorneys participating accepted a family law case prior to registration. These CLE seminars were offered in February and April 2022, respectively. Recommended and

planned by the Public Service Involvement Committee, “*Guardianship Practice – The Essentials*” was offered to volunteer attorneys free of charge in October 2022. This 3.5 credit seminar included a half-credit in ethics and was available as a live webinar or in person at the RI Law Center. The speakers, Brian Adae, Esq., Henry V. Boezi III, Esq., Michael J. Farley, Esq., Zachary K. Lyons, Esq., Kerry Reilley Travers, Esq., and moderator, Probate Judge Christine J. Engustian, discussed in depth the practicalities and procedures of guardianship practice as well as alternatives to guardianship, ethical concerns, and the guardianship process for unaccompanied minors seeking asylum.

Seminars sponsored by the VLP can be made available to view for volunteer attorneys who were unable to attend and are willing to accept pro bono cases.

In addition to the free seminars sponsored by the VLP, members who contribute and report thirty or more hours of pro bono service annually are eligible to receive CLE coupons to be used in the following calendar year. They are given the choice of attending one, three-credit seminar or three, one-credit “Food for Thought” seminars of their choice. Instituted in 2009, this policy reflects the Bar's longstanding support and encouragement of pro bono legal assistance and public service. Annually, 35-40 attorneys receive these coupons.

Volunteer Recognition

The dedication and commitment of our remarkable Pro Bono Award recipients was recognized at the Annual Awards reception at the 2022 Rhode Island Bar Association Annual Meeting. Over the previous two years, these volunteer attorneys contributed over 400 pro bono hours.

Timothy J. Robenhymmer, Esq., a prior recipient of the Pro Bono Publico Award in 1998 and member of the Volunteer Lawyer Program for 29 years, received the 2022 Continuing Service Award for his steadfast and distinguished service representing those in need for five plus years. Tracy A. Loignon, Esq., and John S. Simonian, Esq., were the recipients of the 2022 Pro Bono Publico Award for their commitment and service through the Volunteer Lawyer Program over a two-year period.

Please note, all three of these dedicated award recipients have continued to accept pro bono cases without hesitation.

Recruitment & Case Placement Strategies

Preparing and distributing pro bono case summaries to emphasize the critical need for legal assistance and encourage participation is ongoing. This was one of several effective methods of case placement, in addition to the traditional direct calls to panel members and blast emails. Themed appeals such as March Pro Bono Madness, National Volunteer Month, Thanks for Giving, and the 12 Days of Pro Bono were successful case placement promotions. For example, during National Volunteer Month in April, all volunteer attorneys who accepted a pro bono case were entered into a raffle to attend the two-day Annual Meeting for free. These special appeals resulted in 50 plus cases being placed.

Most potential clients contact the VLP by telephone to request pro bono service. The public is referred by the human service network, including the courts, Rhode Island Legal Services and other legal assistance agencies, Community Action Association Programs, senior citizen organizations, the Rhode



Timothy J. Robenhymmer, Esq.



Tracy A. Loignon, Esq.



John S. Simonian, Esq.

Island Bar Association website, law offices, and the internet.

In 2022, the public was assisted by volunteer attorneys with bankruptcy, collections, consumer, education, employment, guardianships, landlord/tenant, license registry, non-profit designation, probate matters, tort defense, and various family law issues. Although there is no longer specific funding available for foreclosure-related matters, we continue to receive requests from clients desperate to save their homes. We will continue to conduct intake for these matters, within the parameters allowed.

Collaboration

We continue to receive many requests for assistance with domestic violence, landlord/tenant, bankruptcy, divorce, custody, collections, guardianships, probate matters, etc. On an ongoing basis, we work closely with and collaborate with Rhode Island Legal Services with case placement, CLE trainings, and projects.

Join for Justice

VLP clients are prescreened daily by staff for financial eligibility. Volunteer Lawyer Program clients are families and individuals, including veterans and the elderly, in our communities statewide with nowhere else to turn for legal assistance.

Joining is a simple process, and mentors are available upon request. For more information about the Volunteer Lawyer Program, please contact Susan Fontaine at sfontaine@ribar.com or 401-421-7758. For your convenience, VLP membership applications may be accessed on the Bar's website at ribar.com and completed online. Once we receive your application, we will contact you.

The Rhode Island Bar Association's Volunteer Lawyer Program is funded by Rhode Island Legal Services, Inc., and the Rhode Island Bar Foundation.

RHODE ISLAND
Bar Association
1898

Thank You!

Thank you to Rhode Island Lawyers Weekly readers for voting the Rhode Island Bar Association #1 in legal education for five years in a row!

We offer over 40 CLE programs and live webcasts per year, as well as MESA CLE programs. We provide low-cost, RI-specific programming to more than 2,500 attorneys annually! Our on-demand catalog also contains over 240 programs covering all areas of law, available for viewing at your convenience. We welcome speaker volunteers and new topic ideas. Email cle@ribar.com for more info.

Visit our website at ribar.com to check out our CLE calendar!

PELLCORP INVESTIGATIVE GROUP, LLC

Your
One
Call

Private Investigations

Edward F. Pelletier III, CEO

(401) 965-9745

pellcorpinvestigativegroup.com

It Takes a Village



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

“These funds help us run the day-to-day business of the Foundation and also support our grant programs that primarily provide legal services to the poor.”

Successfully managing your Rhode Island Bar Foundation truly takes a village. I'd like to use my President's Message this month to thank the many people and institutions that have assisted so greatly in achieving success for your Bar Foundation.

The officers of the Bar Foundation are myself as President, Victoria Almeida as Vice President, Armando Batastini as Secretary, and Steven Boyajian as Treasurer. Our Treasurer Emeritus is James Jackson.

The Board of the Bar Foundation is made up of over 20 lawyers and judges. All of them have had distinguished legal careers and they oversee our programs and provide sage advice and counsel to the Foundation on a regular basis.

The Executive Director of the Bar Foundation is Kathleen Bridge, and the Foundation Program Director is Theresa Gallo.

The Foundation committee chairpersons are Steven Boyajian, who serves as chair of both the finance committee and the scholarship committee; Susan Leach DeBlasio, who serves as chair of the IOLTA grants committee; and Peter Lacouture, who serves as chair of the real estate committee. Lauren Jones serves as chair of our nominating committee.

We have four past Bar Foundation presidents who are all continuing to serve the Foundation on our Board of Directors. They are Michael St. Pierre, John Tarantino, Susan Leach DeBlasio, and Joseph Roszkowski.

All of our Bar Foundation Fellows and Life Fellows have made substantial financial contributions to the Foundation. These funds help us run the day-to-day business of the Foundation and also support our grant programs that primarily provide legal services to the poor.

We have a number of scholarship and fellowship programs that have been established by various donors, including the Thomas F. Black, Jr. Memorial scholarship program, the Papitto Opportunity Connection scholarship program, the Patrice A. Tarantino scholarship program, the Thomas Caldarone fellowship program, and the James Jackson fellowship program. These programs all provide much-needed scholarship and fellowship funding for Rhode Island law students. We are extremely grateful for the scholarship and

fellowship donors who have provided many thousands of dollars in funding.

We have a special relationship with the Washington Trust Company. We maintain accounts with the Washington Trust Company, and they also manage and invest our scholarship and fellowship funds. In addition, we owe a special thank you to Washington Trust because they are paying an interest rate of 2.73% on IOLTA accounts held by lawyers at Washington Trust. This amount is significantly more than other banks are paying on their IOLTA accounts and it allows us to generate additional funds for legal services to the poor.

Our partner grantees, who receive our annual IOLTA grants, include Rhode Island Legal Services, Dorcas International Institute of Rhode Island, Rhode Island Coalition Against Domestic Violence, Rhode Island Coalition for the Homeless, the Center for Mediation and Collaboration, the Rhode Island Legal Education Foundation, the Rhode Island Bar Association Legal Information and Referral Service for the Elderly, the Rhode Island Bar Association Pro Bono Project, Day One (which provides support and legal advocacy for victims of sexual assault), and the Rhode Island Center for Justice. We are extremely grateful to all of our grantee partners for the wonderful services they provide with the IOLTA grants we provide to them.

On a personal note, while I am giving thanks to those in our village who have made our Foundation a success, I'd like to give thanks to the doctors, nurses, and staff at Miriam Hospital who cared for me during my most recent hospitalization. As I'm sure you know, hospitals and their staff are stressed and overburdened right now, but you would not know it from the wonderful care I received. Without exception, every person who cared for me was warm, supportive, and very good at their job.

And finally, thanks to all of you who reached out and expressed care and concern for me. It was very much appreciated. ◇

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.



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.

Help Our Bar Foundation Help Others

RHODE ISLAND BAR FOUNDATION GIFT

PLEASE PRINT

My enclosed gift in the amount of \$ _____

Please accept this gift in my name

or

In Memory of _____

or

In Honor of _____

Your Name(s) _____

Address _____

City/State/Zip _____

Phone (in case of questions) _____

Email: _____

Please mail this form and your contribution to:

Rhode Island Bar Foundation

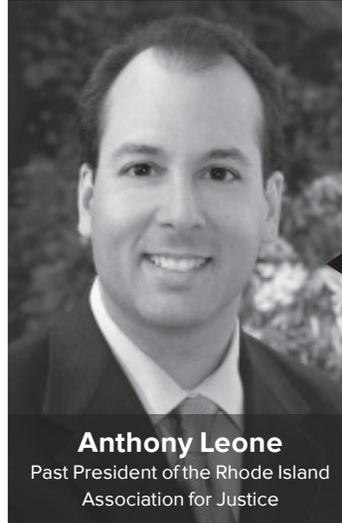
41 Sharpe Drive

Cranston, RI 02920

Questions? Please contact Theresa Gallo at 421-6541

or tgallo@ribar.com

Representing Residents Injured in Nursing Homes



Anthony Leone

Past President of the Rhode Island Association for Justice

- Abuse and neglect
- Pressure and bed sores
- Resident falls
- Bed rail strangulation
- Dehydration and malnutrition related injuries
- Medication errors



1345 Jefferson Boulevard, Warwick, Rhode Island 02886
Tel (401) 921-6684 info@leonelawllc.com

STAY CONNECTED!

FOLLOW US



Facebook: @RIBarAssociation

Twitter: @RIBarAssoc

Instagram: @RIBarAssociation

Linkedin: [linkedin.com/company/ri-bar-association](https://www.linkedin.com/company/ri-bar-association)

Fear of Going Viral: Restricting Public Employees' Troubling Off-Duty Facebook Posts



Julie A. Sacks, Esq.
Attorney at Law
Providence

“Whereas the first two parts of the *Pickering* analysis are questions of law for a court, the third inquiry, involving motivation, is typically a question of fact for the jury.”

Unlike private sector employees, public sector employees enjoy speech rights under the First Amendment that protect them from discharge or discipline based on the content of their speech when they speak privately as a citizen.¹

However, across the country, police officers, correctional officers, firefighters, and other public employees of paramilitary-like organizations who are subject to strict codes of conduct and expectations relating to discipline and esprit de corps, have faced discharge or discipline because of off-duty posts to their own Facebook accounts containing racist, xenophobic, and intolerant statements.² Such employees commonly bring claims against their employers under a theory of First Amendment retaliation, alleging that their employer retaliated against them for exercising their First Amendment rights to speak as any private citizen.³

Part I of this article provides an overview of the legal framework for analyzing First Amendment claims of retaliation by public employees. Part II discusses the First Amendment protection courts have afforded public employees' off-duty social media posts and includes an examination of a recent illustrative Ninth Circuit case that should provide guidance to public employers seeking to discipline employees for such speech.

I. General Substantive Law:

A. First Amendment Retaliation Claims

Under the seminal case *Pickering v. Bd. Of Education*, 391 U.S. 563, 568 (1968), when a public employee speaks off-duty, as a citizen and on a matter of public concern, her speech is entitled to First Amendment protection and may only be restricted if the government has an adequate justification based on its interest in promoting the efficiency of its operations. If the government restricts its employee's off-duty speech on a matter of public import because of *its content* rather than a real concern that the speech will result in *actual or potential disruption* to the efficiency of its operations, the employee has a viable claim that her employer retaliated against her for exercising her speech rights under the First Amendment.⁴

The First Circuit has developed a three-part inquiry to analyze First Amendment retaliation claims under *Pickering*:

First, a court must determine whether the employee spoke as a citizen on a matter of public concern. Second, the court must balance the interests of the employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. Third, the employee must show that the protected expression was a substantial or motivating factor in the adverse employment decision. If all three parts of the inquiry are resolved in favor of the plaintiff, the employer may still escape liability if it can show that it would have reached the same decision even absent the protected conduct.⁵

(1) Whether the employee spoke as a citizen on a matter of public concern.

The first step in the inquiry asks two questions: (1) whether the subject of the employee's speech was a matter of public concern, and (2) whether the employee spoke as a citizen rather than solely as an employee.⁶ If the employee cannot demonstrate both that she was a citizen and spoke on a matter of public concern, the inquiry stops; the speech is not protected under the First Amendment.⁷

• “public concern”

Speech addresses a matter of public concern when it “relates to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.”⁸ Speech that concerns a workplace grievance or other personal matter is not afforded constitutional protection.⁹ “Whether an employee's speech addresses a matter of public concern must be determined by the *content, form, and context* of a given statement, as revealed by the whole record.”¹⁰

Courts have found that posting to social networking sites, like writing a letter to a newspaper, is evidence of the employee's “intent to communicate to the public or to advance a political or

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

withum

ADVISORY TAX AUDIT

demand integrity

Withum's industry specialist Jack Cacchiotti, ASA, CPA/ABV, CVA, MST, Partner, is here to serve the Rhode Island legal community. Jack, alongside a newly expanded team, have deep experience in the areas of Forensics and Fraud, Business Valuations, Matrimonial Matters, Bankruptcy and Litigation Support Services.

Visit withum.com/legal to learn more about our Forensic and Valuation Services.



withum.com/legal

social point of view beyond the employment context.”¹¹

- “as a citizen”

An employee speaks as a citizen when her speech is not pursuant to her official duties.¹² The rationale for this rule is that “[e]mployers have heightened interests in controlling speech made by an employee in his or her professional capacity.”¹³ The “critical question ... is whether the speech at issue is itself ordinarily within the scope of an employee’s duties.”¹⁴ To answer this question, courts consider all of the surrounding circumstances of the speech.¹⁵

(2) **Balancing the interests of the public employee and the government.**

Under **Pickering**, if the employee spoke as a citizen on a matter of public concern, the next question is whether the government had “an adequate justification for treating the employee differently from any other member of the public based on the government’s needs as an employer.”¹⁶ To assess the parties’ competing interests, courts consider “the time, place, and manner of the employee’s speech” and “the employer’s motivation in making the adverse employment decision.”¹⁷ “The **Pickering** balancing test requires a hard look at the facts of the case, including the nature of the employment and the context in which the employee spoke.”¹⁸

A public employee’s off-duty speech is entitled to the **Pickering** balancing test even when it expresses shocking or controversial opinions,¹⁹ contains erroneous information,²⁰ exposes a government employer’s mismanagement or corruption,²¹ or contains racist, xenophobic, or intolerant language.²²

However, not all employee speech is afforded equal weight.²³ The employer’s burden will therefore vary depending on the nature of the employee’s speech.²⁴ “[A]n employee’s First Amendment interest is entitled to greater weight where he is acting as a whistleblower in exposing government corruption.”²⁵ However, an employee’s speech that is false or that unnecessarily discloses sensitive, confidential, or privileged information tips the balance in favor of the employer.²⁶ An employee’s speech that is overtly racist, xenophobic, or hostile toward a religious community is of little public import and afforded little weight against the government employer’s legitimate interest in a harmonious work environment or a positive relationship with the public.²⁷

When the employee’s speech contains a mixture of statements, some addressing matters of public concern and others mere grievances, courts look to the entirety of the speech—*its form and its content*. The more closely the entirety of the speech addresses matters of public concern, the closer it is to the core protections of the First Amendment, and the greater the burden on the employer to justify restricting the speech.²⁸

Factors relevant to **Pickering** balancing include whether the public employee’s speech:

- (1) impairs discipline by superiors or harmony among co-workers;
- (2) has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary;
- (3) impedes the performance of the speaker’s duties;
- (4) interferes with the operation of the enterprise;
- (5) conflicted with the responsibilities of the employee within the institution;
- (6) undermined the mission of the institution;
- (7) was communicated to the public or to coworkers in private;
- (8) abused the authority and public accountability that

the employee's role entailed.²⁹

An employer need not show an actual adverse effect on its operations in order to lawfully terminate or discipline an employee for her speech, but the government must be able to demonstrate that the adverse employment action is attributable to a real or potential threat to the employer's operations.³⁰

(3) Causation

The third part of an employee's First Amendment retaliation claim requires that she prove "that the protected expression was a substantial or motivating factor in the adverse employment decision."³¹ Whereas the first two parts of the Pickering analysis are questions of law for a court, the third inquiry, involving motivation, is typically a question of fact for the jury.³² An employer escapes liability if it can prove by a preponderance of the evidence that it would have reached the same decision to take an adverse action against the employee "even in the absence of the protected conduct."³³

II. Courts Have Held that Public Employees' Incendiary Off-Duty Social Media Posts Warrant at Least Minimal Protection Under the *Pickering* Balancing Treatment.

In cases involving a public employee's off-duty posts to social media, circuit courts of appeals have presumed that the employee spoke as a citizen on a matter of "public concern," regardless that the employee's speech contains remarks that could be interpreted as racist, xenophobic, or intolerant, but afforded the speech lower weight in the *Pickering* balancing analysis.³⁴ *Hernandez v. City of Phoenix*, 43 F.4th 966 (9th Cir. 2022) is an illustrative case.

In 2013, the City of Phoenix Police Department adopted a social media policy governing employees' use of social media.³⁵ After the department promulgated the policy, Phoenix Police Sergeant Juan Hernandez, while off-duty, made four incendiary posts to his personal Facebook profile that "expressed hostility toward, and sought to denigrate or mock, a major religious faith and its adherents":³⁶ (1) a meme depicting a series of mugshot-like photos of men above a caption reading, "the most common name for a convicted gang rapist in England is...Muhammed"; (2) a meme depicting a British cab driver telling a devout Arab Muslim to, "piss-off and wait for a camel!"; (3) a meme titled, "Recent Contributions to Science by Islam," depicting photos of four men, to whom quotations were attributed, each mocking contributions to science by Muslim scholars and scientists; and (4) an article published by the "Minority Report" Blog with a headline, "Military Pensions Cut, Muslim Mortgages Paid by U.S.!" beneath which appeared a subheading, "The Obama Administration cut military pensions but found 300 million to send to Muslims overseas to help pay for their mortgages."³⁷

The police department concluded that, cumulatively, Hernandez's posts violated a provision of its social media policy in that they "potentially reduced or contributed to the erosion of public trust, were inflammatory to certain groups, and/or created dissension in the community by promoting hate, violence, racism, bias, or beliefs inconsistent with the Phoenix Police Department's Purpose Statement and Guiding Values."³⁸

Facing discipline ranging from suspension to termination for his social media activity, Hernandez sued under 42 U.S.C. § 1983, alleging that his employer had retaliated against him for exercising his First Amendment rights to speak freely as a citizen.³⁹ Hernandez sought attorneys' fees, an injunction barring the department from imposing discipline against him under its



COIA & LEPORE, LTD.
Attorneys at Law

WORKERS' COMPENSATION RI & MA



John F. Cascione, Esquire

226 South Main Street
Providence, RI 02903
401.751.5522

information@coialepore.com

Attorney To Attorney Referrals

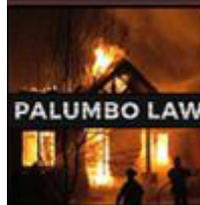
RICHARD S. HUMPHREY LAW OFFICES

Richard S. Humphrey – Christina Dzierzek

DUI / Refusal • DUI / Serious Bodily Injury
DUI / Death Resulting • Social Host Liability • Admiralty
Personal Injury • Construction • Municipal

401-624-6152 (OFFICE) 401-641-9187 (CELL)
richardhumphreylaw.com 3852 Main Road, Tiverton, RI 02878

Tell Your Insurance Company "NO"
401-PALUMBO



No FEE unless successful!
DENIED, DELAYED, UNDER-PAID

Fire	Water	Ice Dams
Back-ups	Collapse	Mold
Storm Damage	Theft	Vandalism

401-PALUMBO

propertydamageinsuranceclaimsattorneys.com
Offices in RI, MA & CT

REVERSE MORTGAGE LENDER



**GARRETT
DUFFY**

NMLS #1626638

401.330.7317

garrett.duffy@norcom-usa.com

**Learn how a Reverse Mortgage
can be a solution to your client's
problem.**

- Fund in-house healthcare
- Pay off existing mortgage
- Get caught up with taxes
- Facilitate a "silver divorce"
- Consolidate debt
- Pay off existing lien
- Pay bills while waiting for a personal injury settlement
- Keep up with inflation...

**All client conversations are
in-person, confidential, and free.**

Garrett Duffy | Loan Officer | NMLS ID # 1626638 | MA MLO 1626638.
Licensed in RI, MA & CT | This is not an offer to make a loan or to make a
loan on any particular terms. All loan applicants must qualify under
underwriting requirements and satisfy all contingencies of loan
approval. Rates and terms subject to change without notice. 133
Central Street, Warwick, RI 02886. Norcom Mortgage NMLS ID # 71655
(www.nmlsconsumeraccess.org) Massachusetts Mortgage Lender
License #MC 71655

social media policy, and an order enjoining the police department from enforcing any of the provisions of the social media policy that he contended was constitutionally invalid.⁴⁰

The district court granted the department's 12(b)(6) motion to dismiss Hernandez's First Amendment retaliation claim, determining that "none of his posts addressed a matter of public concern" and were therefore not entitled to **Pickering** balancing under **Pickering v. Bd. of Education**, 391 U.S. 563, 568 (1968).⁴¹ The district court had reasoned that where Hernandez's "memes" only "marginally related to matters of public concern," their "true content" was akin to a "personal grudge" or "private interest," that is, the speaker's own personal animus toward a large group of people.⁴²

The Ninth Circuit Court of Appeals reversed the district court's dismissal of Hernandez's First Amendment retaliation claim, finding that Hernandez's posts addressed matters of public concern and were therefore entitled to **Pickering** balancing.⁴³ Acknowledging that "what constitutes speech on a 'matter of public concern' remains somewhat hazy," the court explained that, under the Supreme Court's First Amendment jurisprudence, while "matters only of personal interest, such as speech addressing an employment dispute or complaints over internal office affairs" are not entitled to constitutional protection, "[m]ost speech falling outside that purely private realm will warrant at least some First Amendment protection and thus will qualify as speech on a matter of public concern for purposes of the **Pickering** balancing test."⁴⁴

However, while the Ninth Circuit remanded the case back to the district court to assess whether the police department has shown an adequate justification for disciplining Hernandez's protected speech,⁴⁵ it emphasized that "we do not mean to suggest that the department will face a particularly onerous burden to justify disciplining Hernandez for his posts, given the comparatively low value of his speech," which "touched on matters of public concern in only the most limited sense."⁴⁶ The court also noted the "considerable deference" afforded "a police department's determination that an officer's speech warrants discipline" and that courts have recognized that, "[s]peech by a police officer that suggests bias against racial or religious minorities can hinder that officer's ability to effectively perform his or her job duties and undermine the department's ability to effectively carry out its mission."⁴⁷

In cases factually similar to **Hernandez**, other circuit courts of appeals have likewise extended at least minimal First Amendment protection to a public employee's off-duty rants on social media, affording even profane and bigoted comments the **Pickering** balancing treatment.⁴⁸ In these decisions, the circuits have recognized that assessing the nature and value of an employee's off-duty speech is a "particularized inquiry" under the First Amendment, one requiring an employer to justify disciplining the employee's speech through a fully developed factual record, an evaluation not possible at the 12(b)(6) stage.⁴⁹

Recent district court cases within the First Circuit reflect reasoning that aligns with **Hernandez** and other circuit court decisions.⁵⁰ For example, in **Hussey v. City of Cambridge**, where a police officer received a four-day suspension for an incendiary post to his personal Facebook page that criticized a police reform bill to honor George Floyd and referred to George in "pejorative labels,"⁵¹ the court denied the employer's 12(b)(6) motion to dismiss the officer's First Amendment retaliation claim.⁵² The court opined that, although the officer's manner of

speech was “vulgar, insulting, and defiant,” he spoke on matters of unquestionable public interest, including the use of force by law enforcement, police reform, and racial justice.⁵³ While the employer predicted harm to its interests in “maintaining the public trust and a bias-free police department,” given the lack of a factual record at the 12(b)(6) stage, the court was not prepared to “resolve the close constitutional question” of whether the government’s interests in restricting Hussey’s speech outweighed Hussey’s interest in his speech under the **Pickering** balancing test.⁵⁴

Similarly, in **Hayes v. Massachusetts Bay Transportation Auth.**, where a 911 dispatcher was terminated for making a racially charged comment in response to a news segment he was watching on the office television, the court denied the employer’s motion for summary judgment on the employee’s First Amendment retaliation claim.⁵⁵ Although the dispatcher’s comment had caused a “small commotion in the office,” the court could not resolve the constitutional question required under the **Pickering** balancing test because there was a genuine issue of material fact as to whether the employer terminated the dispatcher “because of the *content* of his speech rather than any perceived disturbance to their operations.”⁵⁶

Final Thoughts:

Cases involving public employees’ off-duty use of social media typically require fact-specific analyses under the Pickering balancing test and continue to develop both First Amendment law and public sector labor and employment law. As one circuit court judge recently noted, the inherent subjectivity of the test affords courts tremendous discretion and provides employers and employees little predictability or certainty as to the outcome in a given case, but the doctrine remains current law.

ENDNOTES

1 *The Speech Clause of the First Amendment of the United States Constitution provides that “Congress shall make no law...abridging the freedom of speech, or of the press.”*

2 See, e.g., *Grutzmacher v. Howard County*, 851 F.3d 332 (4th Cir. 2017) (firefighter); *Hernandez v. City of Phoenix*, 43 F.4th 966 (9th Cir. 2022) (police officer); *Marquardt v. Carlton*, 1:18 CV 333, 2021 WL 4226240 (N.D. Ohio Aug. 17, 2021) (EMS captain), *aff’d*, 21-3832, 2023 WL 395027 (6th Cir. Jan. 25, 2023); *Sabatini v. Las Vegas Metro. Police Dept.*, 369 F. Supp. 3d 1066 (D. Nev. 2019) (correctional officer); *Vallecorsa v. Allegheny County*, 2:19-CV-1495-NR, 2022 WL 16950446 (W.D. Pa. Nov. 15, 2022) (911 dispatcher). Notably, after the Plain View Project (“PVP”), a database of public Facebook posts and comments made by current and former police officers from across the county, published an article on Buzzfeed, an internet news outlet, in June 2019, hundreds of police officers in Philadelphia and in cities across the country faced discipline or discharge for posting content on Facebook that appeared to endorse violence, racism, and bigotry. See *Hernandez v. City of Phoenix*, 43 F.4th 966, 973 (9th Cir. 2022); *Melvin v. City of Philadelphia*, CV 21-3209, 2022 WL 3018187, at *1-2 (E.D. Pa. July 29, 2022); *Fenico v. City of Philadelphia*, 582 F. Supp. 3d 229 (E.D. Pa. 2022); see also www.plainviewproject.org/ (last visited Jan. 22, 2023).

3 Employees who bring First Amendment retaliation claims commonly do so in conjunction with claims that their employers’ social media policies are facially invalid under the First Amendment because they are vague or overbroad. See, e.g., cases cited in *supra* note 2.

4 See, e.g., *Liverman v. City of Petersburg*, 844 F.3d 400, 411 (4th Cir. 2016); *Goza v. Memphis Light, Gas and Water Div.*, 398 F. Supp. 3d 303, 325 (W.D. Tenn. 2019).

5 *Decotis v. Whittemore*, 635 F.3d 22, 29-30 (1st Cir. 2011) (citations and quotation marks omitted).

6 *Curran v. Cousins*, 509 F.3d 36, 44-45 (1st Cir. 2007).

7 See *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006); see, e.g., *Foley v. Town of Randolph*, 598 F.3d 1, 5 (1st Cir. 2010).

8 *Lane v. Franks*, 573 U.S. 228, 241 (2014); see *Snyder v. Phelps*, 562 U.S.

MIGNANELLI & ASSOCIATES, LTD.

Attorneys At Law



Anthony R. Mignanelli
Attorney At Law

Wills & Trusts
Estate Tax Planning
Estate Settlements
Trusts for Disabled Persons
Personal Injury Settlement Trusts
All Probate Matters

Attorney to Attorney Consultations / Referrals

PROVIDENCE
10 Weybosset Street
Suite 400
Providence, RI 02903
T 401-455-3500
F 401-455-0648

WESTERLY
56 Wells Street
Westerly, RI 02891
T 401-315-2733
F 401-455-0648

NEWPORT
37 Mill Street
Newport, RI 02840
T 401-619-2217
F 401-455-0648

www.mignanelli.com

The R.I. Supreme Court Licenses all lawyers in the general practice of law. The court does not license or certify any lawyer as an expert or specialist in any field of practice.

CONDOMINIUM LAW

- Condo Collections – No Cost to the Association
- Condo Assoc. Representation
- Condo Document Drafting

PALUMBO LAW

535 Atwood Ave., Suite 4, Cranston, RI 02920
401-PALUMBO info@richardpalumbolaw.com
Offices in RI, MA & CT



YOUR CONNECTICUT CONNECTION



*Admitted in CT †Admitted in RI *Admitted in MA



107 State Street
New London, CT 06320
(860) 443-7014

1050 Main Street, Suite 8
East Greenwich, RI 02818
(401) 385-3877

PRACTICE AREAS

Personal Injury	Real Estate	Landlord & Tenant
Insurance Litigation	Wills & Probate	DUI
Commercial Litigation	Family Law	Collections

www.MessierMassad.com

MARK A. PFEIFFER

Alternative Dispute Resolution Services
www.mapfeiffer.com

Bringing over four decades of experience as a Superior Court judge, financial services industry regulator, senior banking officer, private attorney, arbitrator, mediator, receiver, and court appointed special master to facilitate resolution of legal disputes.



ARBITRATION MEDIATION PRIVATE TRIAL

(401) 253-3430 / adr@mapfeiffer.com
86 State St., Bristol, RI 02809

IMMIGRATION LAW

JAMES A. BRIDEN

Blais Cunningham & Crowe Chester, LLP

150 Main Street, Pawtucket, RI 02860

401-723-1122

443, 452 (2011) (“The First Amendment reflects ‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. That is because speech concerning public affairs is more than self-expression; it is the essence of self-government.’”) (internal citations and quotation marks omitted).

9 *Connick v. Myers*, 461 U.S. 138, 147 (1983); see, e.g., *Gilbert v. City of Chicopee*, 915 F.3d 74, 84 (1st Cir. 2019).

10 *Connick*, 461 U.S. at 147-48/.

11 See *Liverman v. City of Petersburg*, 844 F.3d 400, 409-10 (4th Cir. 2016).

12 See *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

13 *Id.* at 422.

14 See *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2424 (June 27, 2022) (quoting *Lane v. Franks*, 573 U.S. 228, 240 (2014)).

15 See, e.g., *Foley v. Town of Randolph*, 598 F.3d 1, 6-7 (1st Cir. 2010). The First Circuit has identified a number of “nonexclusive factors” to determine whether the public employee spoke, “as a citizen.” See *Bruce v. Worcester Regl. Transit Auth.*, 34 F.4th 129, 136-37 (1st Cir. 2022).

16 See *Lane*, 573 U.S. at 242 (quoting *Garcetti*, 547 U.S. at 418) (internal quotation marks omitted).

17 *Decotiis*, 635 F.3d at 35.

18 *Id.*

19 See *Rankin v. McPherson*, 483 U.S. 378, 388 (1987).

20 See *Pickering*, 391 U.S. at 572

21 See, e.g., *Liverman*, 844 F.3d at 410; *O’Laughlin v. Palm Beach County*, 30 F.4th 1045, 1051-52 (11th Cir. 2022).

22 See, e.g., *Hernandez v. City of Phoenix*, 43 F.4th 966, 978-79 (9th Cir. 2022).

23 See *Moser v. Las Vegas Metro. Police Dept.*, 984 F.3d 900, 905 (9th Cir. 2021) (“courts...have effectively established a sliding scale for how much weight to give to a statement of ‘public concern’ when balancing the employee’s and the government’s competing interests.”).

24 See *Connick*, 461 U.S. at 150 (“the state’s burden in justifying a particular discharge varies depending upon the nature of the employee’s expression”).

25 *Guilloy Perez v. Pierluisi*, 339 F.3d 43, 53 (1st Cir. 2003).

26 See *Lane*, 573 U.S. at 242; see, e.g., *Antonellis v. Dept. of Elder Affairs*, 152 N.E.3d 798, 809 (Mass. App. 2020).

27 See, e.g., *Locurto v. Giuliani*, 447 F.3d 159, 179 (2d Cir. 2006); *Festa v. Westchester Med. Ctr. Health Network*, 380 F. Supp. 3d 308, 321 (S.D.N.Y. 2019); *Pereira v. Commr. of Soc. Services*, 733 N.E.2d 112 (Mass. 2000).

28 See *Lane*, 573 U.S. at 242.

29 See *Rankin*, 483 U.S. at 388; *City of San Diego, Cal. v. Roe*, 543 U.S. 77, 81 (2004); *Grutzmacher v. Howard County*, 851 F.3d 332, 345 (4th Cir. 2017); *Lalowski v. City of Des Plaines*, 789 F.3d 784, 791 (7th Cir. 2015).

30 See *Connick*, 461 U.S. at 152; *Waters v. Churchill*, 511 U.S. 661, 673 (1994).

31 *Decotiis*, 635 F.3d at 30

32 See *Guilloy Perez v. Pierluisi*, 339 F.3d 43, 56 (1st Cir. 2003)..

33 See *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285-86 (1977); *Salmon v. Lang*, 21-1104, 2022 WL 17729623, at *5 (1st Cir. Dec. 16, 2022).

34 See, e.g., *Grutzmacher v. Howard County*, 851 F.3d 332 (4th Cir. 2017) (firefighter’s Facebook posts expressed his views on gun control but also advocated violence to promote his agenda and contained racist overtones); *Marquardt v. Carlton*, 971 F.3d 546, 553 (6th Cir. 2020) (EMS captain’s Facebook posts concerned widely publicized fatal shooting of 12-year-old Tamir Rice by Cleveland police officers but also expressed “distasteful” view that Rice deserved to be shot and his wish that he could have killed Rice).

35 *Hernandez v. City of Phoenix*, 43 F.4th 966, 973 (9th Cir. 2022).

36 *Id.* at 973, 978.

37 *Id.* at 973-74. Hernandez’s posts came to the attention of the police department in 2019 after the Plain View Project. See *supra* note 2.

38 *Id.* at 974.

39 Hernandez also claimed that provisions of his employer’s social media policy were facially invalid under doctrines of overbreadth and vagueness *Id.* at 975.

40 *Id.* The district court also dismissed Hernandez’s overbreadth challenge to his employer’s social media policy, finding that the “policy prohibited only those categories of speech that could reasonably be expected to disrupt the Department’s mission and operations—ends that the Supreme Court has held were constitutionally permissible.” See *Hernandez v. City of Phoenix*, 432 F. Supp. 3d 1049, 1061 (D. Ariz. 2020).

41 *Hernandez v. City of Phoenix*, 432 F. Supp. 3d 1049, 1061 (D. Ariz. 2020).

42 *Id.*

43 *Hernandez v. City of Phoenix*, 43 F.4th 966, 977 (9th Cir. 2022). *The Ninth Circuit noted that the only type of off-duty, non-work-related speech that the United States Supreme Court has singled out as not entitled to protection under the Pickering balancing analysis is “pornographic material featuring police officers.” See id. n. 2 (citing City of San Diego v. Roe, 543 U.S. 77, 84 (2004) (per curiam)).*

44 *Hernandez*, 43 F.4th at 977.

45 *See id.* at 979.

46 *Id.* (citing *Connick*, 461 U.S. at 154) (internal quotation marks omitted).

47 *Id.*

48 *See cases cited in supra note 35.*

49 *E.g., Grutzmacher*, 851 F.3d at 348.

50 *See Hussey v. City of Cambridge*, 21-CV-11868-AK, 2022 WL 6820717 (D. Mass. Oct. 11, 2022); *Hayes v. Massachusetts Bay Transportation Auth.*, 498 F. Supp. 3d 224, 228 (D. Mass. 2020).

51 2022 WL 6820717, at *1, 4.

52 *Id.* at *6.

53 *Id.* at *4.

54 *Id.*

55 498 F. Supp. 3d at 228-29.

56 *See id.* at *233 (emphasis added). ◇



RIBA President Mark B. Morse, Esq. (left) and RIBA President-Elect Nicole J. Benjamin, Esq. (right) recently attended the 2023 National Conference of Bar Presidents in New Orleans.

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

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

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

Lawyers in the Classroom

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

Speakers Bureau

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

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

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

Combine Profit & Public Service in 2023 with LRS

The Bar Association’s Lawyer Referral Service (LRS) offers you a major opportunity to obtain new clients while you provide a public service. For only \$8 a month, we can help market your practice and increase your client base. New members may join now for the special price of **only \$50 until September 2023**, at which time you can choose to renew for the annual membership fee of \$100.

Last year alone, 6,000 referrals were made through the full-fee LRS program with additional referrals through the optional reduced-fee and referral service for the elderly. Referrals are made in almost all areas of civil and criminal law. **Please note, we have added Limited Scope panels.**

Joining is an easy process! Applications are available for completion on the Bar Association website at ribar.com. You may also contact the LRS directly at 401-421-7799 or email cpoland@ribar.com or eking@ribar.com with any questions or to receive an application. We look forward to having you as an LRS member.

**Join today and kick start the New Year with new clients!
We are looking forward to sending you referrals!**

EXPERIENCED, THOROUGHLY PREPARED & SUCCESSFUL TRIAL ATTORNEY



Since 1984, I have been representing people who have been physically and emotionally harmed due to the criminal acts or negligence of others. I have obtained numerous million dollar plus trial verdicts and many more settlements for victims of birth injury, cerebral palsy, medical malpractice, wrongful death, trucking and construction accidents. Counting criminal and civil cases, I have been lead counsel in over 100 jury trial verdicts.

My 12 years of working in 3 different prosecutors' offices (Manhattan 1982-84; Miami 1984-88, R.I.A.G. 1988-94) has led to my enduring commitment to seek justice.

I welcome your referrals. My case load is exceptionally small.

I do and will continue to personally handle every aspect of your client's medical malpractice or serious personal injury case from beginning to end.

THE LAW OFFICE OF DAVID MOROWITZ, LTD.

Board Certified in Civil Trial Advocacy by the National Board of Trial Advocacy*

morowitzlaw.com

155 South Main St., Suite 304, Providence, RI 02903

(401) 274-5556 (401) 273-8543 fax

I am never too busy to promptly return all phone calls from clients and attorneys.

**The Rhode Island Supreme Court licenses all lawyers in the general practice of law.
The Court does not license or certify any lawyer as an expert or specialist in any particular field of practice.*

Through a request sent to our Honorary Members of the Rhode Island Bar Association, we are able to present to our readers the remembrances of our most august Bar members. These colleagues, enjoying 50 years or more as a Bar member, share some of their noteworthy accomplishments that enhanced the practice of law and improved the system of justice in Rhode Island.



Peter D'Amico, Esq.

A Funny Thing Happened on My Way to Law School....

It was a bright, sunny September day as I exited my first week of law school classes, excited and nervous about the law books I had just purchased, and eager to begin the long road through law school. I rode home filled with anxious anticipation—for the first time, I could see a light at the end of the tunnel leading from my poor west end neighborhood to a new and better life—to a profession in which I could make a difference in the world. When I walked into my mom's kitchen, the look on her face spelled some grave situation. She couldn't speak. On the table, there was the letter I would hate forever. I felt my life end as I read it; the tunnel light was extinguished. With the war raging in Vietnam, the draft notice I held in my hand was in my mind, my death certificate yet undated.

After a year or so of training camps, I found myself in that war—an army infantry recon platoon in a world so far from the world I knew and understood—now in a world so dangerous and strange, I could hardly understand the whys or reasons that got me here. My entire worldly possessions were crammed into the pack on my back—life reduced to merely living another day. Those jungle walls imprisoned me in a world where there were no real laws, no order—the only real law was governed by one's survival ability and adhering to one's own morals and ethics.

My life was devoid of anything that could have prepared me for the horrors of this conflict. I was so far away from the classrooms I longed for and from the sanity and order of the land I knew as home. I longed for those boring classrooms studying property, torts, or whatever—those classes that then seemed so trivial, but now seem all important and compelling. Here I was a prisoner in a prison with no order in a land that knows no sense of order—only the fear that encompassed each minute. Each night was endless; I stared into the darkness, never knowing what danger lay beyond my field of vision. Each day was a battle to make it through to the next. My home each night was a patch of jungle floor where my tired and exhausted body fell—worse than any night of cramming for exams back in school. Sleep became secondary to survival. I vowed my sense of self would not be lost forever by the happenings that was engulfing me. I was me, despite the suit I

wore—quite different from the suits I should be wearing back home—standing in some courtroom arguing for some noble cause and bringing order to the world. Instead, on some far-off hill in the middle of somewhere, I wrote:

the whole earth shook suddenly
the ground was ruptured
flinging its insides through the sky the smoke rose high
above us ...

Those days ran together into months and months of the same thing each day. My sanity maintained by a diary I kept, recording not events but feelings that engrossed me, expressed in poetic verse which kept my sanity and projected me back to the world I called home, and not the world I was living. I wondered what got us here and where the truth lies among all the sides of the issues that started this. Those days I cannot reduce to words one could understand, but now I would only describe as hellish. How I had longed to be back in Boston, studying, attending classes, and living life in a more civilized world. I remember one day deep in the jungle, a helicopter dropped off supplies and a letter to me, a letter re-admitting me to the next September law school class—my only problem was surviving the next 60 days—but once again, a small glimmer of light appeared in that still very, very long dark tunnel.

I returned home, and days later, on one bright and sunny September day outside the law school, I stood watching a protest against the war I left behind—and for years, I never spoke of that year before starting law school for the second time.

I spent years thereafter seeking redemption for wrongs perceived by others—for wrongs that never happened—and living with the shame dumped upon us who made it back by those who sent us there. But during those years, I somehow finished law school and have since lived life putting this past interlude of war in a box locked deep within the cortex of my brain.

Decades later, I looked back—none of it was really funny. More tragic were those good years invested that were indeed years wasted. Experiences change people. I know I changed. I have a greater appreciation of the law and the order and sanity it brings to our society. Without laws, we would live in a world that could only be described as hellish. So, a funny thing happened to me on my way to law school. I learned without attending law school, but from living, the true importance of law.

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, the US Armed Forces Legal Services Project, and legal clinics during December 2022 and January 2023.

DECEMBER 2022

Volunteer Lawyer Program

Robert J. Ameen, Esq., *Law Offices of Robert J. Ameen, Esq.*
Neville J. Bedford, Esq., *Providence*
Robert E. Bollengier, Esq., *Warwick*
Michael A. Castner, Esq., *Jamestown*
Daniel E. Chaika, Esq., *Chaika & Chaika*
James P. Creighton, Esq., *Johnston*
Charles Greenwood, Esq., *Providence*
Andrew Kanter, Esq., *Kanter Law Office, LLC*
Phillip C. Koutsogiane, Esq., *Law Offices of Phillip Koutsogiane*
Janne Reisch, Esq., *Janne Reisch, Attorney at Law*
Timothy J. Robenhymer, Esq., *Warwick*
Ellen M. Saideman, Esq., *Barrington*
John S. Simonian, Esq., *Pawtucket*

Elderly Pro Bono Program

Joanne C. D'Ambra, Esq., *Cranston*
Michael J. Farley, Esq., *Rappoport, DeGiovanni & Caslowitz, Inc.*
Sherry A. Goldin, Esq., *Goldin & Associates, Inc.*
Mark B. Laroche, Esq., *Providence*
Doris A. Lavalley, Esq., *Lavalley Law Associates*
Erica S. Pistorino, Esq., *Howell Legal, Inc.*
Thomas P. Quinn, Esq., *McLaughlinQuinn LLC*
Joseph D. Tudino, Esq., *Dominic Tudino, Esq. Inc.*
Ronald R. Warr Jr., Esq., *Warr & Warr, PC*

US Armed Forces Legal Services Project

Priscilla Facha DiMaio, Esq., *Johnston*
Peter J. Rotelli, Esq., *East Providence*

JANUARY 2023

Volunteer Lawyer Program

David N. Bazar, Esq., *Bazar & Associates, P.C.*
Robert J. Burke, Esq., *Central Falls*
Andrew M. Cagen, Esq., *Providence*
Michael A. Castner, Esq., *Jamestown*
Edward J. Gomes, Esq., *Law Office of Edward J. Gomes*
Joshua R. Karns, Esq., *Karns and Kerrison*
Phillip C. Koutsogiane, Esq., *Law Offices of Phillip Koutsogiane*
Robert H. Larder, Esq., *Woonsocket*
Laurie A. Meier, Esq., *Providence*
Adam G. Northup, Esq., *Law Office of Adam G. Northup*
John S. Petrone, Esq., *Law Office of John Petrone*
John S. Simonian, Esq., *Pawtucket*

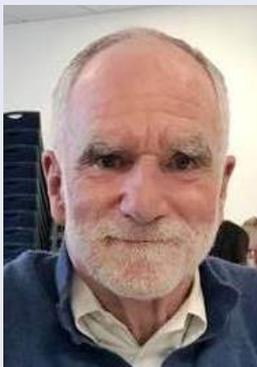
Elderly Pro Bono Program

Crystal Abreu, Esq., *Frank S. Lombardi Law Associates, P.C.*
Andrew L. Alberino, Esq., *Fay Law Associates, Inc.*
David N. Bazar, Esq., *Bazar & Associates, P.C.*
Joanne C. D'Ambra, Esq., *Cranston*
Christine J. Engustian, Esq., *Law Offices of Christine J. Engustian, Esq.*
Richard K. Foster, Esq., *Coventry*
Phillip C. Koutsogiane, Esq., *Law Offices of Phillip Koutsogiane*
Doris A. Lavalley, Esq., *Lavalley Law Associates*
Arthur D. Parise, Esq., *Warwick*
Peter J. Rotelli, Esq., *East Providence*
John S. Simonian, Esq., *Pawtucket*

Legal Clinics

Frank J. Manni, Esq., *Johnston*

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.



Arbitrator
■
Investigator
■
Mediator

Nicholas Trott Long, Esq.
401-351-5070
nicholas@ntlong.com
www.ntlong.com

Keep Your Directory Listing Up to Date!

The Bar's online Attorney Directory is available for the convenience of Bar members, clients, and potential clients, so be sure to keep your listing up-to-date! Attorney Directory contact information may include the Bar member's name, photograph, law office name, postal address, email address, telephone number, and facsimile number. Have your photo taken at the Bar Association or send in your own headshot to Erin Cute at ecute@ribar.com. Photographs must be provided in a jpg format of at least 300 dpi.

Medical Affidavit Procedure



Peter J. Comerford, Esq.
Coia & Lepore, Ltd.
Providence

“This procedure, if actively pursued, could alleviate what has been a long-standing concern of the trial bar regarding the admission of medical affidavits at trial.”

As many of you know, medical evidence is often submitted at trial in the form of affidavits filed pursuant to R.I. Gen. Laws § 9-19-27. I have had occasion in the past to reflect in these pages about the substance of that statute,¹ but now want to take a brief look at how these affidavits are handled procedurally in terms of submitting them, objecting to them, and establishing that the proper procedure was followed, as we continue to get used to the world of electronic filing. My interest in this area was piqued when I looked at a case file on the public portal where all the medical affidavits, including hundreds of pages of unredacted medical records, were openly available to anyone with internet access.² This is obviously wrong, and the existing rules (which may bear some tweaking in this regard) are meant to prevent it. An informal survey of active practitioners in this field indicated that the prudent approach is to hand-deliver the affidavits and records to the trial court clerk when the matter is reached for trial. The purpose of this article is to review the existing rules meant to govern the submission and admission of medical affidavits in order to make these rules more widely known and to see if they may be improved in any way.

The affidavit statute, in pertinent part, sets forth the procedure that *must be followed* in order to use affidavits in evidence:

[W]ritten notice of the intention to offer the bill or report as such evidence, together with a copy thereof, has been given to the opposing party or parties, or to his or her or their attorneys, by mailing the notice by certified mail, return receipt requested, not less than ten (10) days before the introduction of the bill or report into evidence, and that an affidavit of the notice and the return receipt is filed with the clerk of the court forthwith after the receipt has been returned.

Thus, the affidavits, with copies of the appended records, along with a notice of intent to offer them in evidence, still must be sent using the post office, i.e., “snail mail,” with a return receipt. Filing proof of such mailing, accompanied by an affidavit attesting thereto, is a condition precedent to the admission of the medical affidavit, and the failure to strictly comply is proper ground for

excluding the affidavit.³ I have had a trial judge indicate a willingness to uphold an objection to medical affidavits on the ground that they were hand-delivered rather than mailed (though she did tell objecting counsel that it would be a reversible error if she denied a motion to continue the trial to allow for the mailing).⁴

Note well that nothing in the statute requires that the affidavit and the records themselves be filed with the clerk (though that issue will come up later). The only thing required to be filed with the clerk at that point is the notice of intent and affidavit of notice. This is the necessary condition precedent to getting the affidavits to the point where the trial justice can consider their admissibility *vel non*. The timing is important because of the provision in the statute for objecting to such affidavits: “(f) Any party objecting to the admitting into evidence of the affidavit shall file an objection specifying the grounds thereof within ten (10) days of receipt of the affidavit, or said objections are waived.”

In the ordinary course, nothing about filing the affidavit of notice and proof of service would violate any rules or statutes about confidentiality or privacy. Those affidavits do not contain any medical information, but simply filing information. For ease of reference, I include the form I use:

I, JOHN J. LITIGATOR, of Providence, Rhode Island, on oath, depose and say:

1. That I am the attorney for the Plaintiff in the within action.
2. That on 14th day of December, 2012, I served a Notice of Intention to introduce as evidence the “Affidavit from ***University Medical Group for medical reports and bills” under Section 9-19-27 in accordance with the Rhode Island General Laws and attached hereto is a copy of the return receipts from the Defendant’s attorney.
3. A copy of the letter of notice and the return receipts of delivery are hereunto attached and incorporated herein.

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

Mark Your Calendars! Rhode Island Bar Association Annual Meeting

JUNE
1 & 2



The Rhode Island Bar Association Annual Meeting is scheduled for Thursday, June 1 and Friday, June 2, 2023. Judge Victoria Pratt will join us as our opening plenary speaker. Judge Pratt is a former Chief Judge in the Newark Municipal Court in Newark, New Jersey. Now, a Professor at Rutgers Law School, she teaches Problem Solving Justice and Restorative Justice. Judge Pratt will discuss attorney-client relationships and interactions with other attorneys and the court. Our closing plenary speakers are Vanessa Plotkin, an attorney with the Innocence Project, and Cornelius Dupree, an exoneree who was declared innocent of a 1980 conviction after serving 30 years of a 75-year prison sentence. Mr. Dupree will share his story, and Attorney Plotkin will discuss what the current trends are in the causes of wrongful convictions (such as forensics) and how wrongful convictions can be prevented in the future.

In addition to the always popular Civil Case Law, Criminal Case Law, Family Case Law, Estate Planning Trusts & Commercial Law Update programs, we have a great lineup of **40** fantastic workshops including:

- > **A Primer on Evidence in the Digital Age**
- > **LGBT+ Protections in the Workplace**
- > **Civil Motion Practice in the Superior Court Do's and Don'ts**
- > **Access Granted: A Discussion on the Access to Justice Gap**
- > **Civil and Criminal Approaches to Addressing Federal Program Fraud and The Critical Role of Whistleblowers**
- > **Remote Hearings**
- > **Inside View of Rhode Island Supreme Court**
- > **Succession Planning Best Practices**
- > **And more!**

This year, we are excited to announce members of the Rhode Island chapter of the American Board of Trial Advocates will present a mock trial during two of the workshop session blocks on Friday! Experienced local civil trial lawyers, both plaintiff and defense, will cover voir dire/empanelment, opening statements, fact witness, expert witness, and closing arguments, followed by a Q&A discussion.

Join us as we once again gather in person at the Rhode Island Convention Center to catch up with old friends, colleagues, and members of the judiciary. This is one meeting you don't want to miss! More information will be disseminated to members in the coming months.

But how do the records themselves get to the court? It is true that the Supreme Court Rules, Article X Rules Governing Electronic Filing, Rule 2 provides “(a) Official Court Record. Upon the implementation of the EFS in each court, all documents shall be filed electronically and shall be the official court record.” However, Rule 8⁵ of those same rules, regarding non-public filings, provides:

Parties may not submit filings containing information that is designated as non-public by federal or state law, court rule, court order or case law and/or which contain Personal Identifying Information as part of a public document. With the exception of in camera reviews when necessary, **the courts will not review each document to ensure compliance with this rule and are not responsible or liable for the inclusion of such information in an electronically filed document.**

(Emphasis added)

Medical records are confidential under long-standing provisions of federal and state law. The Health Insurance Portability and Accountability Act of 1996 (HIPAA)⁶ operates at the federal level to require the minimum possible dissemination of medical records. On the state level, there is the “Confidentiality of Health Care Information Act.”⁷ The statute sets forth the procedure for subpoenaing medical records and the protections to be afforded thereto.⁸ Violation of that statute can lead to an assessment of damages, including punitive damages, and attorneys’ fees.⁹ Thus, medical records are clearly among those non-public filings within the ambit of Rule 8.

If these records are not e-filed, then what? The gathering of these affidavits and the determination of their admissibility *vel non* is ultimately a question for the trial judge, the procedure for which is to be codified (or not) according to the preference of each justice. There are already procedures in place that allow for pretrial conferences that might address these issues, but such conferences are often conducted by a justice other than the one to whom the case is assigned for trial. For instance, there is currently in place Administrative Order No. 2011-07, the principal effect of which is to require that any motion to assign for trial in Providence County must contain a certification that discovery is substantially complete. Less well known is the provision contemplating a conference upon the granting of a motion to assign, viz.:

After the granting of a motion to assign, after hearing or by Rule of Court, or as further directed by the Court, a conference shall be scheduled before such Justice(s)/Magistrate(s) of this Court as shall be designated from time to time for this purpose by the Presiding Justice. The conference shall be conducted pursuant to Super. R. Civ. P. 16 and R.P. 2.4 and shall address the matters as set forth therein.

You will recall that Super. R. Civ. P. 16 allows the Superior Court, even acting *sua sponte*, to convene a conference before a trial. At the conference, the court and counsel are to consider simplification of the issues, potential amendments to the pleadings, the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof, limitation of the number of expert witnesses, along with anything else that will help dispose of the action. Rulings on the admissibility of medical affidavits would seem to fit comfortably within several of these categories.

The issues encompassed within R.P. 2.4 of the Superior Court Rules of Practice are those typically associated with a control

calendar. The focus is on efforts to settle the case, as well as the most recent demand and offer. These issues are not the exclusive realm of the trial judge, and many trial judges prefer not to be involved in such discussions if they are going to preside over the case.

It appears that such conferences have not, in the intervening eleven years, become widespread, though obviously the pandemic has upended any such expectation that might have existed. The current Courtroom 4 protocols, issued on October 12, 2021, make provision for pretrial conferences of this sort at both the control calendar and trial calendar levels. At the trial calendar level, the following provision is made:

B. Pre-trial Motions: For cases that are ready for trial, counsel may contact the Court by email to discuss assigning matters to a trial judge to address any pre-trial motions that may help streamline the case or potentially lead to an agreed upon resolution.

This procedure, if actively pursued, could alleviate what has been a long-standing concern of the trial bar regarding the admission of medical affidavits at trial. In the dim recesses of time, the statute had made no provision for the timing of objections to affidavits, and such objections could and often were advanced for the first time at the trial itself. In the rare instances where such objections were granted, the plaintiff's counsel would have a serious problem in trying to get the doctor to come in to testify live in a proceeding already underway. Conversely, because of the dire consequences for plaintiffs, trial judges were often reluctant to uphold even strong, valid objections.

To solve those problems, the statute was amended to include the provision noted above, requiring that objections be made within ten days "of receipt of the affidavit, or said objections are waived." This would, in theory, allow the affidavits to be fixed to solve the asserted problem(s). For instance, some defense lawyers have objected to the use of the term "medical certainty" in the affidavit of a chiropractor, but would not object to reasonable "chiropractic certainty." Those sorts of issues are readily resolved. More complicated issues, requiring court intervention, are much more difficult. In practice, judges other than the trial judge are typically reluctant to issue pretrial rulings on the admissibility of affidavits, prudently noting that these are the province of the trial judge, who has the benefit of setting such rulings in the context of the trial as a whole. It may be in the proper case that the use of the current protocols can bring about early access to a trial judge, to allow these issues to be ruled upon sufficiently in advance of trial to allow the necessary adjustments to the affidavit to be made. The issue of when and how to physically (or virtually) present the records themselves can be addressed at that time as well.

The safest practice is to avoid entering medical records into the public portal, even when marked as confidential, as there is the possibility of a HIPAA violation based upon the seemingly unavoidable vulnerability of anything online. There is nothing in the statute itself that requires, or even refers to, such filing. If there is a need in a particular instance to file them, the attorney *must* mark them as confidential, especially since, as noted above, the court will not independently review whether a given filing ought to have been labeled confidential.

There may well be grist for the work of several bar committees, including the Superior Court Bench Bar and Technology in the Practice and the Courts, both of which are aware of the

"Too Many Law Firm Partners Think, a hacker is not interested in me"

Eric M. Shorr,
Founder & President of Secure Future Tech Solutions

**This is just not true.
Hackers look for
low hanging fruit
like a law firm
with little
or no security.**

Our Team of Experts Offer...
Cyber Security
Managed Services
BackUp & Disaster Recovery
Email Encryption
Cloud Computing
Computer Repair



Call 401-537-1170 or email eshorr@securefuturetech.com

Mariam Alexanian Lavoie, Esq.

SOCIAL SECURITY DISABILITY

Attorney to Attorney
Consultations/Referrals



Partnering with clients for over 30 years.



300 Centerville Road
Summit West, Suite 300, Warwick, RI 02886
mariam@mlavoielaw.com | mlavoielaw.com
t: 401.825.7900 | f: 401.825.7920



RIBA President Mark B. Morse, Esq. and RIBA President-Elect Nicole J. Benjamin, Esq. recently attended the 2022 Bar Leadership Institute in Chicago. (L-R) RIBA President Mark B. Morse, 2022-23 ABA President Deborah Enix-Ross, 2021-22 Immediate Past ABA President Reginald M. Turner, and RIBA President-Elect Nicole J. Benjamin.

Proposed Title Standard 3.19 Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by John A. Comery, Esq., at their meeting on December 15, 2022, voted unanimously to submit the following Proposed Title Standard 3.19 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes no later than April 1, 2023, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail: 41 Sharpe Drive, Cranston, RI 02920, or email: kbridge@ribar.com.

SECTION III CONTINUED STANDARD 3.19

DESCRIPTION BY REFERENCE TO ASSESSOR'S PLAT AND LOT

A tax assessor's plat, and the lots shown thereon, are created by an assessor exclusively for his or her convenience in identifying a taxpayer's property in order to place a value on that property for tax purposes.

A tax assessor's plat is not part of a city or town's land evidence records, and since the numbering of the plat and the lots shown thereon are subject to change at the discretion of the tax assessor, a parcel of land should not be described for conveyancing purposes solely by use of the parcel's current assessor's plat and lot designation.

COMMENT: See *Raposa v. Guay*, 84 R.I. 436, 443, 125 A. 2d 113 (1956); *Sanfilippo v. Zoning Board of Middletown*, 96 R.I. 17, 20, 188 A.2d 464 (1963).

It is acceptable for a Collector's Deed resulting from a sale conducted by an entity holding a lien for unpaid taxes, water or sewer charges to describe the parcel sold at the sale and conveyed by that deed solely by reference to the parcel's assessor's plat and lot designation.

Proposed Title Standard 3.20 Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by John A. Comery, Esq., at their meeting on January 19, 2023, voted unanimously to submit the following Proposed Title Standard 3.20 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes no later than April 1, 2023, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail: 41 Sharpe Drive, Cranston, RI 02920, or email: kbridge@ribar.com.

SECTION III CONTINUED STANDARD 3.20

EFFECT OF DEED RECORDED WITHOUT A PROPERTY DESCRIPTION

The validity of a recorded deed which does not contain a description of the property intended to be conveyed is not for that reason impaired, and the title conveyed by that deed shall be considered as marketable as if an actual, effective property description had been made a part thereof, provided that: (a) there is recorded immediately subsequent to said deed a purchase money mortgage which does contain the intended description by metes and bounds or recorded plat and lot designation; (b) the grantor of such deed owned no other real property within the City or Town where said deed was recorded at the time of the conveyance; (c) ten (10) years have elapsed since the deed was recorded; and (d) there is no record evidence of a challenge to the validity of the deed.

COMMENT: This standard is intended to apply to deeds that are already on record. An attorney involved in a current transaction who has been asked to record a deed should always include therewith the intended description by metes and bounds or record plat and lot designation.

issue. Moreover, compliance with existing rules will eliminate, or at least minimize, these risks.

ENDNOTES

- 1 *Comerford, Peter J., Medical Affidavit Update, Nov./Dec. 12:25(61) ----- Medical Affidavits in Rhode Island, Feb. 93:13(41)*
- 2 *This was immediately brought to the clerk's attention and the records are now confidential.*
- 3 *Jameson v. Hawthorne, 635 A.2d 1167, 1173 (R.I. 1994)*
- 4 *There was no question regarding the fact that the affidavits were hand-delivered to defense counsel. He had in fact objected to the affidavits for substantive reasons in a timely fashion.*
- 5 *I am grateful to Lauren E. Jones, Esq. for educating me about these provisions.*
- 6 45 C.F.R. § 160.101-.104 (2003)
- 7 R.I. Gen. Laws § 5-37.3-1, et seq.
- 8 Section 5-37.3-6.1.
- 9 Section 5-37.3-9. ◇

Government Lawyers Committee Sponsors Cannabis Law Update CLE

The Rhode Island Bar Association's Government Lawyers Committee is sponsoring a free-to-Bar-members, one-credit, virtual Committee CLE seminar on **Thursday, April 6, 2023, from 12:30 – 1:30 pm**. Attorneys Sara K. Tindall-Woodman, Deputy Chief of Legal Services at the Department of Business Regulation, and Hannah R. Pfeiffer, legal counsel at the Department of Business Regulation Office of Cannabis Regulation, will present **Cannabis Law Update**. The speakers will offer an overview of the medical and adult-use cannabis statutes and any key regulatory changes. With the passing of the Rhode Island Cannabis Act in May 2022 and the start of adult-use cannabis sales in Rhode Island in December 2022, this seminar aims to provide a helpful primer on the status of cannabis law and highlight important developments, including the maintenance of the Medical Marijuana Program ("MMP") following the introduction of a regulated adult-use cannabis market and the issuance of new regulatory guidance from the Office of Cannabis Regulation.

To register, please contact Membership Services Coordinator NaKeisha Little by email at nlittle@ribar.com or phone at 401-421-5740.

Please note, per the RI MCLE Commission, the Rhode Island Bar Association can only report the attendance of attorneys completing a minimum of 90% of this CLE program.



Enright Law advises and represents clients facing employee rights issues including

- Discrimination
- Sexual Harassment
- Wage and Hour
- Retaliatory Termination
- Whistleblower Protection
- Family/Medical Leave
- Unemployment Appeals

ENFORCING EMPLOYEES' RIGHTS



696 Reservoir Avenue, Cranston, RI 02910
tom@enrightlawoffice.com
employmentlawri.com
(401) 526-2620



COIA & LEPORE, LTD.
226 South Main Street
Providence, RI 02903
(401) 751-5522

Mediation



**FAMILY DISPUTES
DIVORCE AND SEPARATION
DOMESTIC MATTERS**

Gain a new perspective on divorce and family disputes. Mediation is a cost and time efficient way to resolve domestic relations matters. A fulfilling advantage to the personal resolution of your dispute.

*Dadriana A. Lepore, Esq.
LL.M., Alternative Dispute Resolution
Benjamin Cardozo School of Law
DLEPORE@COLALEPORE.COM*

CLE Publications Order Form

NAME _____

FIRM or AGENCY _____

MAILING ADDRESS (Cannot be a P.O. Box) _____

CITY & STATE _____

ZIP _____ PHONE _____

EMAIL ADDRESS _____

BAR ID # _____

Check enclosed (made payable to RIBA/CLE)
Please do not staple checks.

MasterCard VISA AMEX Discover

Exp. Date _____ Security Code _____

Card No. _____

Signature _____

Mail entire page to: CLE Publications
 Rhode Island Bar Association
 41 Sharpe Drive
 Cranston, RI 02920

OFFICE USE ONLY

Check No. _____

Date Rec'd _____

Amount _____

Date Sent _____

Title	Book #	Price	Choose		Qty.	Total
			Book	USB		
Business						
Expeditious Removal of Mechanics' Liens	18-16	\$30				
Commercial Law 2019: Update	CL-19	\$40				
Family						
Divorce Law for Estate Planners: Estate Planning for Divorce Lawyers	18-17	\$35				
QDRO Practice in RI from A-Z	09-13	\$40				
Law Practice Management						
The State Law Library	19-06	\$35				
Let's Talk Communication!	18-12	\$35				
Closing Your Practice	18-07	\$25				
Preventing & Avoiding Wiring Funds to a Hacker	18-02	\$50				
Billing Clients	13-02	\$35				
Practical Skills						
NEW! Planning and Administering an Estate 2022	22-01	\$80				
Criminal Law Practice in RI	19-09	\$75				
Civil Law Practice in RI Superior Court	18-04	\$60				
Workers' Comp. Practice in RI	18-01	\$70				
Residential Real Estate Closings in RI	17-02	\$90				
Domestic Relations Practice	16-07	\$85				
Basic Commercial & Real Estate Loan Documentation	12-02	\$65				
Civil Practice in District Court	12-01	\$40				
Probate/Elder Law						
Trust Us... Modern Wills/Trusts	19-03	\$30				
The Trust Planning Playbook	18-11	\$25				
Portability	13-05	\$35				
Real Estate						
RI Title Standards Handbook	TS-20	\$60				
Landlord/Tenant Handbook	16-04	\$15				
RI Real Estate Liens: A Field Guide	14-02	\$25				
Trial Practice						
NEW! Recent Developments in the Law 2022	RD-22	\$70				
Depositions: Learn and Limit	19-07	\$30				
Sexual Harassment	19-05	\$30				
2019 DUI Law & Hardship Licenses	19-04	\$40				
Cross Examination Techniques	18-19	\$30				
Changes to CMS Enforcement	18-10	\$40				
Immigration 101	18-08	\$30				
Objections & The Evidence Maze	18-06	\$30				
Auto Accident Reconstruction	13-01	\$35				
Model Civil Jury Instructions	03-02	\$70				
RI Law of Workers' Compensation	WC-12	\$40				

Publication Total Shipping and Handling Cost

Up to \$45	\$11
\$45.01 - \$75	\$13
\$75.01 - \$100	\$15
\$100.01+	\$18

Please allow 2-3 weeks for delivery. All books are sent by FedEx Ground.

Books \$ _____

Shipping/Handling \$ _____

Sub-Total \$ _____

7% R.I. Sales Tax \$ _____

Total \$ _____

RI Bar Association Continuing Legal Education Seminars

Register online at the Bar's website ribar.com and click on CONTINUING LEGAL EDUCATION on the left-side menu or call 401-421-5740. All dates and times are subject to change.

March 2
Thursday
The Truth, The Whole Truth, and Nothing But the Truth
12:00 – 1:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

March 3
Friday
RI Tax – Updates & Reminders
RI Law Center, Cranston
12:00 – 2:00 p.m., 2.0 credits
Also available as a LIVE WEBINAR!

March 7
Tuesday
Ethical Jeopardy: A CLE Game Show
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

March 9
Thursday
Landscape: LegalTech Options & How to Select Between Them
12:30 – 1:30 p.m., 1.0 credit
LIVE WEBINAR ONLY

March 14
Tuesday
A Mindful Approach To Daily Life Series: Getting Unstuck
12:30 – 1:30 p.m., 1.0 ethics
LIVE WEBINAR ONLY

March 15
Wednesday
LA Law(less): Don't Be Like Mike Kuzak
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

March 23
Thursday
It's Not the Fruit, It's the Root: Getting to the Bottom of Ethical Ills
12:00 – 1:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

March 23
Thursday
2023 DUI Laws & Hardship Licenses
RI Law Center, Cranston
1:00 – 3:00 p.m., 2.0 credits
Also available as a LIVE WEBINAR!

March 30
Thursday
Medical Malpractice in Rhode Island
9:00 a.m. – 4:00 p.m., 6.0 credits
LIVE WEBINAR ONLY

March 31
Friday
Enough is Enough: Avoiding Vexatious Lawyering
12:00 – 1:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

April 11
Tuesday
A Mindful Approach to Daily Life: Setting a Daily Routine
12:30 – 1:30 p.m., 1.0 ethics
LIVE WEBINAR ONLY

April 12
Wednesday
Show Me The Ethics! The Ethical Way to Bill for Legal Services
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

April 13
Thursday
Advising Clients: Plan to Give More
12:00 – 1:00 p.m., 1.0 credit
LIVE WEBINAR ONLY

April 14
Friday
Landlord/Tenant Updates and Current Trends
RI Law Center, Cranston
12:30 – 1:30 p.m., 1.0 credit
Also available as a LIVE WEBINAR!

April 21
Friday
Preparing Your Case for Trial
RI Law Center, Cranston
12:00 – 2:30 p.m., 2.5 credits
Also available as a LIVE WEBINAR!

April 25
Tuesday
Stratagem: Practical Marketing Tips for Lawyers
1:00 – 2:00 p.m., 1.0 credit
LIVE WEBINAR ONLY

April 27
Thursday
Fail Better: Continuing Efforts to Eliminate Bias in the Legal Profession
12:00 – 1:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

April 28
Friday
Yakety Yak! Do Call Back! The Ethical Need for Prompt Client Communication
12:00 – 1:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY

*Title, times and dates subject to change.
For updated information go to ribar.com*

Continuing Legal Education Telephone: 401-421-5740

Seminars are always being added to the CLE schedule, so visit the [CLE calendar](#) for the most up-to-date information.

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

Reminder: Bar members may complete six credits through participation in video replay or on demand 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.

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 help to make CLE programming relevant and practical for our Bar members. We recognize the professionalism and dedication of all CLE speakers and thank them for their contributions.



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

Nicole J. Benjamin, Esq.
Adler Pollock & Sheehan P.C.

Michael A. DiLauro, Esq.
The Just Criminal Justice Group, LLC

Hon. Diane Finkle
US Bankruptcy Court Judge

Katherine N. Kishfy, Esq.
Kishfy Law, LLC

Lynda L. Laing, Esq.
Strauss, Factor, Laing & Lyons

Christopher M. Lefebvre, Esq.
Consumer & Family Law Center
of Claude F. Lefebvre

Patricia McLaughlin, Esq.

Michael B. Mellion, Esq.
Fidelity National Title Insurance Co.

Hon. Richard A. Merola,
Associate Justice, Rhode Island
Family Court

Bridget L. Mullaney, Esq.
Cameron & Mittleman LLP

Charles A. Pisaturo, Jr., Esq.
Chapter 7 Panel Trustee

Kerry I. Rafanelli, Esq.
Rafanelli & Rafanelli

YOUR CONNECTICUT CONNECTION



107 State Street
New London, CT 06320
(860) 443-7014

1050 Main Street, Suite 8
East Greenwich, RI 02818
(401) 385-3877

PRACTICE AREAS

Personal Injury	Real Estate	Landlord & Tenant
Insurance Litigation	Wills & Probate	DUI
Commercial Litigation	Family Law	Collections

www.MessierMassad.com

**IF YOU WANT TO
PRACTICE LAW,
WITHOUT WORRYING
ABOUT YOUR BUSINESS...**

YOU'RE IN LUCK.

As a Rhode Island Bar Association member benefit, Red Cave Consulting provides **FREE** business management consulting services for Rhode Island attorneys. Red Cave has consulted with 3000+ law firms in the past 10 years. Put our experience to work for you.



CALL: (617) 398-7181
EMAIL: JARED@REDCAVELEGAL.COM

Or visit the Bar website's Law Practice Management page to get started.



Sarah Karns Burman

Personal Injury Attorney
since 2004

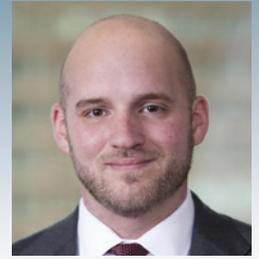
- Court Annexed Arbitrations
- Private Mediations
- Private Arbitrations

(401) 841-5300
sarah@karnslaw.com

Lunch with Legends: Trailblazers, Trendsetters, and Treasures of the Rhode Island Bar



William J. Delaney, Esq.
Cohn & Dussi LLC, Warwick



Paul L. Keenan, Esq.
Jones Kelleher LLP, Providence

On the third floor of Garrahy and the second floor of Kent, Murray Gereboff is a legend in the purest sense of the word. His demeanor reflects a very bright and educated man with a knowledge and zest for life. What you see is what you get with Murray; a skilled negotiator. He is also an advocate who is as respected among his brethren as well as members of the Judiciary. We are all lucky to know him and be in his presence. I know I am and have been. Here are some excerpts from our conversation with Murray:

How long have you been practicing Law?

I was admitted in 1973...it was a warm, sunny day...no, seriously, it was earlier than the enactment of the Residential Landlord-Tenant Law.

Are we done with COVID from a Court perspective, at least?

Yes, we are (Murray was a member of Chief Judge LaFazia's Eviction Calendar Taskforce from the beginning). Although tenants continue to request continuances because of COVID, we are done with the scheduling and other issues on that level...until the next time...and hopefully, there will never be a next time.

Why should a young lawyer get into the area of Landlord-Tenant Law?

Because we deal with real issues on both sides: the tenant requires a place to live, and the landlord is facing some dramatic economic times. A young lawyer can gain some very interesting negotiating skills to resolve purely personal and contentious issues, which skills will be lasting and can be used in many other areas of law. And, representing tenants are shall we say, interesting beyond the obvious residential needs.

Is it fair to say that Housing Advocates do not understand landlords and vice versa?

Absolutely. Until advocates understand that most landlords are making an investment in a triple-decker for estate planning purposes, it is impossible for any meaningful compromise/joint spirit of cooperation to exist or even take shape. We live in some rather financially drastic times and until both sides sit down and attempt to compromise on landlord-tenant issues, there will be no meaningful resolution to be had between them. It is simply a matter of communication; we need better communicators.



Murray Gereboff, Esq.

So where do we come in as lawyers? What is our role?

We need to be better communicators/proponents on behalf of our clients. Both sides need to understand the magnitude of the contract each of them is entering into. Breach always involves some sort of compromise, 'give and take.' And we are talking about lives here, on both sides, including the safety of children to have suitable housing for them to grow.

Have the non-profits and RWU done all they can do in this area?

No. They can seek (or demand) a place at the table and a voice for those who have none. Law students have tremendous energy, but they need to be focused. Just sitting on the third floor at Garrahy does not provide someone with the knowledge on how to conduct themselves. Non-profits need to communicate the breadth of the issues in this forum for their clients to appreciate. This is an evolving process.

So, would your mom be happy of all you have done (Murray's Mom was a clerk in the courts for her career)?

I think so; I have made things a little better for each side over the past 50 years. No regrets.

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

Fastcase Tip

Access Document and Search History

Follow the steps below to learn how to access your document and search history.

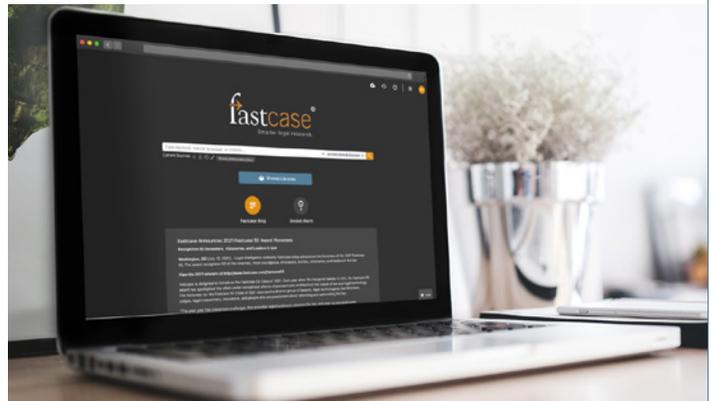
Step One: Click the History, Bookmarks, Alerts icon (looks like a clock surrounded by a circular line) in the furthest top right of the homepage or results page.

Step Two: The History, Bookmarks, Alerts pop-out opens.

Step Three: The document and search history are the two left tabs from the History, Bookmarks, Alerts pop-out. History does not expire and is organized with most recent history at the top and older history at the bottom.

Step Four: Click the hyperlinked document title to reopen the document. Click the hyperlinked search query to re-run the search.

A free member service to all Rhode Island Bar Association attorneys, Fastcase'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 Fastcase, connect to the Rhode Island Bar Association website at ribar.com. As always, feel free to contact customer support with any questions you may have. Support is available Monday – Friday from 8 am to 9 pm EST and can be reached by email at support@fastcase.com or by phone at 866.773.2782.



Establish Yourself As An Expert in An Area of Law

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

FLORIDA LEGAL ASSISTANCE



Marc J. Soss, Esquire

Estate Planning
Probate Administration
Probate Litigation
Elder Law
Corporate Law
Real Estate Closings

(941) 928-0310
mjs@fl-estateplanning.com
www.fl-estateplanning.com

Invitation to Exhibit

Rhode Island Bar Association Annual Meeting

June 1 & 2, 2023

Where can you get a two-day exhibitor space at an event attended by over 1,400 attorneys and judges? At the Rhode Island Bar Association Annual Meeting on **Thursday and Friday, June 1 and 2** at the Rhode Island Convention Center in Providence, that's where. As the Bar's largest event, the Meeting provides an opportunity for our members to learn about practice-related products and services, socialize with their colleagues, and fulfill their Continuing Legal Education (CLE) requirements. Since exhibit requests have traditionally exceeded the supply of available exhibit spaces, we encourage you to apply today for yours!

Exhibitor space is available in the comfortable and high-visibility pre-function area located immediately in front of and surrounding the entrances to all Annual Meeting seminar rooms. Serving as the site for all meeting, food, and beverage breaks, these are excellent locations for attracting attendees' attention. **This year, we are offering two levels of sponsorship!** The Sponsor level priced

at \$1,500 and the Exhibitor level priced at \$1,200. Each level includes an exhibit space consisting of a draped six-foot table and two chairs, and exciting benefits that you don't want to pass up!

Exhibit space is limited, and previous exhibitors receive location preference, but there are still some spaces available. Please note that sending in an application does not guarantee a space, as exhibit spaces are assigned based on availability and product and service mix. **Completed Exhibit Space Application Contracts are due no later than March 10, 2023.** Exhibit space assignment and confirmation occurs by March 31, 2023. Payment is due on or before confirmation.

To receive 2023 Annual Meeting Exhibitor Application Forms and to see the exciting benefits, which promise ample visibility to our program attendees, fostering real connections with future clients, please contact the Bar's Director of Communications, Erin Cute, at ecute@ribar.com.



*A local connection for your
Florida Real Estate needs*

Attorney Owned and Operated Since 2004



Anthony M. Gallone, Jr., Esq.



Timothy H. Olenn, Esq.

Ph: 561-912-0922

olenn@AlliantFL.com

1 Lincoln Place, 1900 Glades Rd, Suite #245 Boca Raton, FL 33431

THE LAW OFFICES OF HOWE & GARSIDE, LTD.

(401) 841-5700

Estate Planning/Elder Lawyer &/or Family Lawyer

Howe & Garside, Ltd is seeking to add a motivated associate attorney to our firm with strong interest and experience in the following areas of law:

Estate Planning

Probate (including Decedent's Estates and Guardianship)

Elder Law and Medicaid Planning

Family & Divorce Law

This is a full-time opportunity.

Primary office

Branch office

Remote

Newport

Lincoln

Negotiable

Experience: Two to four years+ of attorney experience in the listed fields of law. Please provide any prior work experience relevant to the job responsibilities.

Education: Provide your law school graduation date, bar admission date, and any other advance degree or certificates.

Contact: JHowe@Counsel1st.com

Business Valuation Services

Thoughtful & Credible Assessments of Value



BVS

BARRETT VALUATION SERVICES, INC.

The Business Valuation Advisors

BUSINESS VALUATIONS FOR

Estate and Gift Planning

Federal Estate Tax Reporting

Marital Dissolution

Shareholder Disputes

John E. Barrett, Jr., CPA, ABV, CBA, CVA

989 Reservoir Avenue, Cranston, RI 02910

Tel: (401) 942-3900

Email: jbarrettval@hotmail.com

Visit our website resource page at
www.barrettvaluation.com

MN MARASCO & NESSELBUSH LLP
LAW OFFICES

*For 20 Years Our Team has Provided
Trusted Legal Care for Clients Suffering
Life-altering Injuries*



OUR TRUSTED TEAM OF ATTORNEYS:

Pictured left to right

Noah Zimmerman • Jane Duket • Anthony Buglio • Philip Weinstein *Of Counsel*
Mark Grimm • Joseph Marasco *Partner* • Donna Nesselbush *Partner*
Thomas Moran • Timothy Lynch • Ryan Kelley
Nicklyn Dolphin • Bart McNally *Of Counsel*

PROVIDENCE | WAKEFIELD | WARWICK | WOONSOCKET

685 Westminster Street, Providence, RI 02903

*The Rhode Island Supreme Court licenses all lawyers in the general practice of law.
The court does not license or certify any lawyer as an expert or specialist in any field of practice.*

(401) 274-7400 | M-N-LAW.COM

Bar Association Mentor Programs

Our Bar Association is proud to offer mentorship opportunities to our members, promoting professional development and collegiality, and assistance and guidance in the practice of law. Experienced practitioners can share their wealth of knowledge and experience with mentees, and mentees receive a helping hand as they begin, or revitalize, their legal careers. Over the years, the Bar Association has matched numerous new members with seasoned attorneys, and we would like to refresh our directory.

For traditional mentoring, our program matches new lawyers, one-on-one with experienced mentors, in order to assist with law practice management, effective client representation, and career development. If you would like to volunteer and serve as a mentor, please visit ribar.com, select the **MEMBERS ONLY** area, and complete the **Mentor Application** form and return it to the listed contact.

As an alternative, the Bar Association also offers the Online Attorney Information Resource Center (OAR), available to Bar members through the **MEMBERS ONLY** section of the Bar's website, to help members receive timely and direct volunteer assistance with practice-related questions.

If you have any questions about either form of mentoring, or if you would like to be paired with a mentor through our traditional program, please contact Communications Director Erin Cute by email: ecute@ribar.com, or telephone: 401-421-5740.

Looking to Post or Search for a Job in the Legal Field?

The Rhode Island Bar Association's Career Center is operated by YourMembership.com. At no charge, Bar members may: search and quickly apply for relevant jobs; set up personalized Job Alerts for immediate notification any time a job is posted matching your skills and/or interests; create an anonymous job seeker profile or upload your anonymous resume allowing employers to find you; and access job-searching tools and tips. For a fee, employers may place job openings; search our resume database of qualified candidates; manage jobs and applicant activity right on our site; limit applicants to those who meet your requirements, and fill openings more quickly with talented legal professionals. For more information, visit the Bar's website at ribar.com and click Career Center under the list of Quick Links.

Committee Corner

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



Annual Meeting Planning Committee

Leslie Lloyd Mullings Ocean, Co-Chair
Kathleen Wyllie, Co-Chair

The Annual Meeting Planning Committee has approved a total of 40 well-rounded programs for this year's Annual Meeting on June 1st and 2nd.

In addition to securing Judge Victoria Pratt as this year's opening plenary speaker, we have two representatives from the Innocence Project for the closing plenary speakers. Judge Pratt is a nationally recognized expert in procedural justice and alternative sentencing and a committed advocate for reforming the criminal justice system. She will talk to attendees about changing the dynamics of communication with clients. The Innocence Project

works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. Joining us will be their first staff attorney, Vanessa Plotkin, who will talk about forensics and cognitive biases and provide an overview of what their organization does and trends they are seeing, and Cornelius Dupree, an exoneree declared innocent of a 1980 conviction after serving 30 years of a 75-year prison sentence, who was convicted based on misidentification.

We are excited to announce that amongst the 40 programs is a two-part mock trial presented by the American Board of Trial Advocates. The presentation will include opening statements, direct and cross-examination of lay and expert witnesses, closing arguments, and mock jury deliberations by a group of live jurors. We will also have Laurie Besden, Executive Director of Lawyers Concerned for Lawyers of Pennsylvania, join us for a workshop on attorney wellbeing. Laurie will tell her personal story about recovering from substance use and her experience in jail resulting from substance abuse. George Martin, CEO of CorpCare, RIBA's lawyer assistance program, will join Laurie to remind members of their member benefit connecting them with free and confidential assessments, counseling, and referrals.

For a full list of workshops that will be available at the Annual Meeting, please keep an eye on your email and the Bar website for the Annual Meeting brochure.



Business Organizations Committee

Marcus Howell, Co-Chair
Elizabeth Manchester, Co-Chair

The Business Organizations Committee holds monthly meetings via Zoom on the second Tuesday of the month at 1 pm. We work to solicit Annual Meeting proposals, CLE topics, and articles for the *Bar Journal*. The Committee works closely with the Secretary of State's Office to provide practical and technical feedback on business processes implemented in the state. In the upcoming months, we will be working with the Secretary of State's Office to provide a training to members of the Bar. We discuss the impact of proposed pieces of legislation, practice area concerns and pointers, and inspire collegiality among committee members. We welcome new committee members to join at any point during the year, and look forward to hearing from you.



Continuing Legal Education Committee

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

The Continuing Legal Education Committee assists in the planning and administration of the Association's annual program of continuing legal education for members of the Bar. Due to the earlier than usual Annual Meeting, our regular CLE season will finish by the end of April. To round out the end of the season, we have programs on RI tax updates, mindfulness, DUI laws and hardship licenses, medical malpractice, landlord/tenant updates and trends, law practice management, and ethics.



Please visit page 25 for a complete list of March and April programming available for registration now. All currently available programs can be found on the Rhode Island Bar Association website under the CLE calendar at ribar.com/calendar.

In addition to our live programs, we have an extensive on-demand catalog that provides CLE seminars on a wide range of topics from both local and out-of-state speakers. Our on-demand catalog is being updated regularly. If you missed a live RIBA program, the catalog is where you can find a recording. As a reminder, Rhode Island attorneys may earn a maximum of six (6) credits through video replay (on-demand) seminars each year. There is no limit on live webcast credit accrual.

A CLE survey was sent to members in December. As a result, the CLE Committee is seeking speakers on topics that relate to estates, trusts, and probate law; litigation and trial preparation; employment law; personal injury; real estate; and more. If you are interested in speaking on any topic that you believe would be relevant to members or have ideas for

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

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

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

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

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

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

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

Please contact us for strictly confidential, free, peer and professional assistance with any personal challenges.

Brian Adae, Esq.	(401) 831-3150
Donna Maria Arciero, Esq.	(561) 441-1679
James G. Atchison, Esq.	(401) 453-1200
Neville J. Bedford, Esq.	(401) 348-6723
Nicole J. Benjamin, Esq.	(401) 274-7200
Susan Leach DeBlasio, Esq.	(401) 274-7200
Sonja L. Deyoe, Esq.	(401) 864-5877
Kathleen G. Di Muro, Esq.	(401) 944-3110
Mary Cavanagh Dunn, Esq.	(401) 831-8900

Christy B. Durant, Esq.	(401) 272-5300
Cassandra L. Feeney, Esq.	(401) 455-3800
Brian D. Fogarty, Esq.	(401) 821-9945
Merrill J. Friedemann, Esq.	(401) 270-0070
John K. Fulweiler Jr., Esq.	(401) 667-0977
Jenna Giguere, Esq.	(401) 276-5521
Daniel Jon Holmänder, Esq.	(401) 274-7200
Adrianna Hughes, Esq.	(401) 490-3954
Nicholas Trott Long, Esq. (Chairperson)	(401) 351-5070

Patricia A. McLaughlin, Esq.	(401) 996-6618
Henry S. Monti, Esq.	(401) 467-2300
Mark B. Morse, Esq.	(401) 831-0555
Sarah F. O'Toole, Esq.	(401) 385-3877
Kristin Barkett Pettey, Esq.	(401) 278-2291
Erica S. Pistorino, Esq.	(401) 324-9786
Christopher J. Yagoobian, Esq.	(401) 274-7200
Professionals at CorpCare	(866) 482-8378

Lawyers Helping Lawyers Committee Members Protect Your Privacy

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

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

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

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

SOLACE Helping Bar Members in Times of Need

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

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

topics, please reach out to Madeline Benner, CLE Director by email at mbenner@ribar.com.



Government Lawyers Committee

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

The fourth meeting of the Government Lawyers Committee (GLC) was held on Thursday, February 2, 2023, from 12:30 pm-1:30 pm, using the Zoom format. Our guest speaker was Danni Pascuma.

Ms. Pascuma, earned her Bachelor of Arts Degree in Art History at URI, her Master's Degree in Arts Administration from NYU, and her Doctorate Degree in Leadership and Learning in Organizations from Vanderbilt University, addressed the group on the Enneagram Personality Test, which everyone had an opportunity to complete in advance of the meeting.

The meeting included a breakout session during which the attendees discussed their results with one another. The GLC thanked Ms. Pascuma for sharing her expertise about an interesting and fun topic that allowed the participants to get to know themselves a bit better and offered information that is sure to be useful going forward when navigating our personal and professional relationships. Following the presentation, the GLC members who attended the meeting were sent access to additional Enneagram resources and other personality-type testing methods.

Additional meetings of the GLC are scheduled for March 2, 2023, and April 6, 2023. The March meeting will feature guest speakers Lauren Hill and John Bogue from the Rhode Island Commission for Human Rights. Attorneys attending the GLC meeting in April will have the opportunity to obtain (1) CLE credit for their participation in a seminar entitled "Cannabis Law Update," to be presented by Attorneys Sara K. Tindall-Woodman and Hannah R. Pfeiffer from the Department of Business Regulation. This seminar will offer an overview of the cannabis statutes and any key regulatory changes.

A social event is expected to take place in May of 2023, the date and details of which have yet to be determined. The GLC is pleased to welcome new members throughout the year.



Labor Law & Employment Committee

Matthew H. Parker, Chair

The Labor Law & Employment Committee is comprised of practitioners on both sides of the aisle (employer side and employee side), and we have used our time well this year to educate each other on developments that are relevant to our clients.

So far, we have had three meetings (one hybrid and two via Zoom), and we are looking forward to our next meeting (hybrid) on April 21, 2023.

On September 30, 2022, we held a roundtable discussion regarding the new Pay Equity Act, relevant provisions of the RI Cannabis Act, and updates to the Minimum Wage, Temporary Caregiver Insurance, and Sunday/Holiday Pay statutes.

On December 9, 2022, we were joined by Attorneys Richard Sinapi and Chloe Davis, who shared with us their recent experience securing a \$2 million verdict in federal court on behalf of a group of cable install-

ers who were misclassified as independent contractors and deprived of minimum wages, minimum shift pay, and overtime pay.

On February 10, 2023, we met to discuss the Federal Trade Commission's proposed rule to ban non-compete agreements, and we shared issues that have come up with clients since the new RI Pay Equity Law took effect on January 1, 2023.

We welcome anyone interested in labor and employment issues to join us at our next meeting. We have a collegial group of members who enjoy talking shop and have plenty of wisdom and experience to share, particularly with attorneys who are new to the RI Bar or these subject areas.



New Lawyers Committee

Alyse Antone-Smyth, Co-Chair
Meredith Howlett, Co-Chair

The New Lawyers Committee kicked off the new year by welcoming RI Family Court Associate Justice Jeanine P. McConaghy to their January meeting. Judge McConaghy joined the committee for a Q&A session and shared her top tips and best practices for new attorneys. She reminded committee members to always be prepared, watch their body language in court, use respectful language even if they disagree, and don't be afraid to concede that you don't know an answer. Most judges understand and expect that newer attorneys are still in the learning process. Judge McConaghy

shared her insight on what judges expect from new attorneys and reminded members of the importance of professionalism and civility.

The Committee is currently planning a joint meeting with the Bar's Public Services Involvement Committee in March. The goal of the meeting is to brainstorm new ways to promote the Bar's public services programs to newer attorneys, including the pro bono program opportunities.

The chairs are working on securing more guest speakers for future meetings, and the committee hopes to plan a CLE seminar in the near future. New attorneys are encouraged to join the committee any time during the year!



Help Us Grow Our List Serve!

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 over 700 Rhode Island lawyers. If you have a question about matters relating to your practice of law, you can post the question on the List Serve, and it will be emailed to all list serve members. Any attorney who wishes to provide advice or guidance can, and hopefully will, quickly respond. Help us grow our online community by joining TODAY! Visit ribar.com and the Members Only section, and click [List Serve](#) for instructions to join.

WORKERS' COMPENSATION

REVENS, REVENS, ST. PIERRE & WYLLIE, P.C.

946 Centerville Road, Warwick, RI 02886

telephone: (401) 822-2900

facsimile: (401) 826-3245



Michael A. St. Pierre

mikesp@rrswlaw.com



David M. Revens

drevens@rrswlaw.com

Attorney to Attorney Consultations/Referrals

Rhode Island Bar Foundation Seeks Law School Scholarship Applicants

For its Thomas F. Black, Jr. Memorial Scholarship program, the Bar Foundation intends to award two scholarships of \$25,000 each to Rhode Island residents who enroll as first-year students in an American Bar Association accredited law school for the academic year beginning September 2023. The scholarship is for the first year of law school only and non-renewable. Each scholarship award is made on the basis of demonstrated financial need, superior academic performance, community and public service, and demonstrated contacts with and commitment to the State of Rhode Island. The Scholarship Committee seeks applications from candidates without regard to race, color, religion, country of ancestral origin, handicap, age, sex, or sexual orientation. Since 1984, this fund has awarded 70 scholarships to promising law students from Rhode Island. The scholarship program receives substantial funding from the Horace A. Kimball and S. Ella Kimball Foundation, and The Champlin Foundation in honor of the late Thomas F. Black, Jr. who was known for his impressive ability as a lawyer and banker, his deeply rooted legal scholarship, and his notable participation in civic and charitable causes.

Two additional scholarships from the Papitto Opportunity Connection Foundation in the amount of \$25,000 each will be awarded to candidates who self-identify as Black, Indigenous, or People of Color (BIPOC). Founded in December 2020, the Papitto Opportunity Connection was formed by Barbara Papitto as a continuation of the long-time commitment she and her late-husband Ralph have made to creating educational opportunities and supporting the BIPOC community in Rhode Island.

The Rhode Island Bar Foundation Scholarship application deadline is March 24, 2023. For application forms, telephone: (401) 421-6541 or email: tgallo@ribar.com. Information and application forms are also available on the Rhode Island Bar Association website: ribar.com in the Rhode Island Bar Foundation section.

RI Zoning Handbook, 3rd Ed.



The essential guide to state and federal zoning law.

Stay current with annual cumulative supplements by Dianne L. Izzo, Esq.

Roland F. Chase, Esq.
© 2016 Lawyers Weekly, Inc.

Purchase from Lawyers Weekly Books:
<http://books.lawyersweekly.com>
or call Bill Cardinal, 617-218-8194

Slip & Fall - Henry Monti



20 Slip & Fall Jury Trials
Over 1,000 Slip & Fall Arbitrations
CLE Slip & Fall Lecturer

Gemma Law Associates, Inc.

401-467-2300
henry@gemmalaw.com

Proposed Practice Standard 8.2 Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by **John A. Comery, Esq.**, at their meeting on December 15, 2022, voted unanimously to submit the following Proposed Practice Standard 8.2 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes no later than April 1, 2023, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail: 41 Sharpe Drive, Cranston, RI 02920, or email: kbridge@ribar.com.

SECTION 8: DEEDS PRACTICE STANDARD 8.2 CORRECTING A CONVEYANCE THAT USES AN ASSESSOR'S PLAT AND LOT REFERENCE AS THE LEGAL DESCRIPTION

A grantor whose deed uses a reference to an assessor's plat and lot as the legal description, or that grantor's heirs, devisees or legal representatives, should deliver a corrective and confirmatory deed to the grantee using the correct legal description set forth in that grantor's vesting deed. Alternatively, if that grantee no longer holds title to the parcel, the grantor, or his or her heirs, devisees or legal representatives, may record a deed using the correct legal description to the current record owner conveying all right, title, and interest in the parcel.

If that is not possible, one the following four methods may be used to cure the defective description.

1. If the parcel consists of a lot on a recorded plat, and the depiction of that lot on the recorded plat substantially corresponds to the depiction of the lot on the assessor's plat in use on the date of the defective deed, obtain and record an affidavit from the tax assessor stating that he or she has attached a copy of the portion of the assessor's plat map showing the lot as it existed on the date of the deed, and that it is a true and genuine copy of the assessor's plat in effect on the date of recording of that deed.

2. If the deed includes a reference to the book and page of the deed vesting title in the grantor, and the metes and bounds description in that vesting deed substantially corresponds to the depiction of the lot on the assessor's plat in use on the date of the defective deed, obtain and record an affidavit from the tax assessor stating that he or she has attached a copy of the portion of the assessor's plat map showing the lot as it existed on the date of the deed, and that it is a true and genuine copy of the assessor's plat in effect on the date of recording of that deed.
3. If, in addition to the assessor's plat and lot reference, the deed states that it is the intention of the grantor to convey all of the grantor's land located in the city or town to the grantee, the description in the deed will not be deemed defective because of the inclusion of the assessor's plat and lot reference.
4. If (a) the grantor's vesting deed used the correct legal description, (b) the grantor owned no other land in the city or town on the date of execution of the deed, and (c) more than ten years have passed since the defective deed was recorded, the defective description (containing Assessor's Plat and Lot only) in the deed will be deemed to be cured upon the recording of an affidavit from an attorney licensed to practice in the State of Rhode Island stating that a search meeting the requirements of Title Standard No. 2.1 was conducted, and that the only parcel of land to which grantor held title on the date of the defective deed was the same land described in the grantor's vesting deed.

Comment: See Title Standard No. 3.19 for an explanation of why the use of an assessor's plat and lot designation to describe a parcel of real estate constitutes a defective legal description.

In addition to the methods set forth above, other methods, including the entry of a judgment in Superior Court quieting the title, may be employed to cure the defective description.

Proposed Title Standard 8.8 Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by **John A. Comery, Esq.**, at their meeting on December 15, 2022, voted unanimously to submit the following Proposed Title Standard 8.8 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes no later than April 1, 2023, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail: 41 Sharpe Drive, Cranston, RI 02920, or email: kbridge@ribar.com.

SECTION VIII CONTINUED TITLE STANDARD NO. 8.8 AFFIDAVIT REGARDING DEATH

A title derived from surviving joint owner(s), or from remainder persons after the death of life tenant(s) is not defective by reason of any uncertainty as to the death of the deceased joint owner or life tenant if evidence of the death is established by:

- (a) a death certificate recorded within the Land Evidence or Probate

Records of the City/Town where the property is located;

- (b) an inheritance tax lien discharge recorded within the Land Evidence of the City/Town where the property is located; or

- (c) an Affidavit executed under oath by one duly licensed to practice law within the State of Rhode Island confirming that said Affiant has personally inspected the original or a certified copy of the death certificate of said deceased joint owner(s) or life tenant(s) and setting forth the date of death set forth therein. Said Affidavit shall be recorded in the Land Evidence Records of the City/Town where the property is located.

COMMENT: See Title Standard No. 8.5 which provides that recitals related to death, birth, age, intestacy, family history, heirship, relationship, name change, merger, conversion, consolidation or other succession of an entity, or the happening of any condition or event which may terminate an estate or interest may be taken as true if contained within an instrument which has been a matter of record for twenty (20) years in the office of land records of any municipality in this state.

Rhode Island Municipal Court Listing

The Rhode Island Bar Association recently created a Municipal Court Listing, similar to our popular Probate Court Listing. Bar staff will regularly update the listing to ensure posted information is correct. The Municipal Court Listing and the Probate Court Listing are available on the Bar's website at ribar.com by clicking on **FOR ATTORNEYS** on the home page menu and then clicking on **MUNICIPAL COURT INFORMATION** or **PROBATE COURT INFORMATION** on the dropdown menu. Both Listings are 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**.

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.



Injured at Work?

Accepting referrals for matters of

Workers' Compensation

Call Stephen J. Dennis Today!

1-888-634-1543

or 1-401-453-1355

Law Offices Of Michael W. Favicchio

Favilaw.com

- Assisting Clients in Florida
- Real Estate Buying & Selling
- Estate Planning & Probate

8685 Potter Park Dr.
Sarasota, FL 34238
(941) 479-0529
Mike@favilaw.com

107 Warwick Ave.
Cranston, RI 02905
(401) 739-4500
Mike@favilaw.com

OFFICE FOR RENT

WITHIN THE LAW FIRM OF

BLAIS CUNNINGHAM & CROWE CHESTER, LLP

EST 1926

150 MAIN STREET, PAWTUCKET

\$675.00/ MONTH

CALL JAMES BRIDEN 401-723-1122

In Memoriam

Gov. Lincoln C. Almond

Lincoln C. Almond, 86, of Kingston, RI, and South Wellfleet, MA, died on January 2, 2023. He was the husband of Marilyn (Johnson). He was the son of the late Thomas Clifton and Elsie Carter Almond. Lincoln was born in Pawtucket and raised in Central Falls. A graduate of Central Falls High School, he attended the University of Rhode Island and Boston University School of Law. He was inducted into both the Central Falls City Hall of Fame and the Central Falls High Athletic Hall of Fame. He also served in the U.S. Naval Reserve Submarine Service. Starting at age 26, he served with distinction as Lincoln's Town Administrator from 1963 to 1969. He was subsequently appointed as the U.S. Attorney for Rhode Island in 1969 and ultimately became one of the longest-tenured U.S. Attorneys in the Nation's history. He served for over 20 years, from 1969-1978 and 1981-1993. In 1994, he was elected as Rhode Island's 72nd Governor and served two terms from 1995-2003. In addition to his wife, he is survived by his son Lincoln Douglas Almond (Lynn) of Narragansett, RI, and his daughter Amy Elizabeth Cabbage (Samuel) of Rockville, MD, and his five grandchildren. He was predeceased by his brother, Thomas C. Almond, Jr.

Hon. Raymond P. Cooney, Esq.

The Honorable Raymond P. Cooney, 71, died on February 1, 2023. Ray was a lifelong resident of the city of Central Falls. He was a graduate of Holy Trinity School, Central Falls High School, Rhode Island College, the University of Tulsa College of Law, and, in his youth, the Rhode Island Conservatory of Music. Ray served as the Municipal Court Judge for Central Falls for many years and as City Solicitor on two separate occasions. He also served as an officer on various social service boards, including the former Central Falls Community Center, Wilfrid Manor, and Blackstone Academy Charter School. Ray was a practicing attorney for many years. In addition to his work for the city, he worked at the State House and was involved with the RISDIC savings & loan litigation. Ray is survived by his son, Jonathan Cooney; daughter, Allana Cooney; partner, Madisson Melendez; sisters Barbara (Wilfred) Lariviere, Carol (Frank) Folan, and Marilyn Cooney; former stepdaughter, Dana Sorrentino; and many grandchildren, nieces, nephews, and cousins. He was predeceased by his son, Aaron; parents, Mary and Stephen E. Cooney; brothers Daniel (Teri) and Dennis (Carol) Cooney; and former wife Margaret (Leamy) Cooney.

Hon. Anthony J. Manieri

Anthony Joseph "AJ" Manieri, 56, of North Attleboro, died on Sunday, December 11, 2022. He was the husband of Tricia Meehan. AJ graduated from Moses Brown School in Providence in 1984. He received his undergraduate degree from Providence College in 1988 and his Juris Doctor of Law, Cum Laude, from Suffolk University in 1991. After graduating from Suffolk Law, AJ clerked for the Supreme Judicial Court of Massachusetts before engaging in private practice for over 20 years, focusing in the area of criminal defense. At the time of his passing, AJ worked as the Assistant Clerk-Magistrate for the Bristol Superior Court. He was a member of the Rhode Island and Massachusetts Bar Associations and the Federal Bar. Besides his wife, he is survived by his father, Anthony V. Manieri of Bradenton, FL, and his nephew. He was predeceased by his mother, Frances (DeCataldo) Manieri, and sister, Tonya Manieri.

Kathryn E. McCabe, Esq.

Kathryn E. McCabe, 42, died on Friday, January 20, 2023. She was the wife of Michael R. Tomasso. Born in Providence, she was the daughter of Frank J. McCabe of Seekonk and the late Mary Lynn (Stetson) McCabe. She was also the stepdaughter of Christine A. McCabe of Seekonk. Katie graduated from Bishop Feehan High School, Class of 1998. She graduated

from Roger Williams University in 2002 with a Bachelor of Science degree, and in 2005 she graduated from Roger Williams School of Law with a Juris Doctorate. She was employed as a real estate lawyer for Equity National Title, Providence, for more than 15 years. In addition to her husband and father, Katie is survived by her brother, Jeffrey C. McCabe of Cumberland; her stepbrothers, Eric Menard and his wife Jen of West Bridgewater, MA, and Jason Menard and his fiancée Erica Brett of Coventry; her four stepchildren, Alexandra, Celina, Christian, and Madison; her mother-in-law, Lori Gorman of Rehoboth, MA; and many nieces and nephews.

Maria J. Mulroy, Esq.

Maria Joanne Mulroy, of Narragansett, died on Tuesday, October 25th. Maria was the daughter of Lynda Coogan (John) of Gravesend, Kent, England, and Peter Mulroy of Clonmel, County Tipperary, Ireland. Maria was born on February 22, 1964, in Dartford, Kent, England; she was raised in Clonmel, County Tipperary, Ireland. She became an American citizen in 2017. Maria earned her undergraduate degree from the University of Rhode Island and her law degree from Roger Williams University School of Law. Her law practice included criminal defense, immigration, and family law. Most recently, Maria was an attorney for the Senate Republican Caucus at the Connecticut State Legislature in Hartford, CT, and served as an attorney for the Connecticut Department of Labor. Maria is survived by her children, Tyler Denniston (Alexandra), Sheenagh Westervelt (David), Conner Marley (Maisie), and Evan Marley; her siblings, Colleen Mulroy, Dean Mulroy, Tara Mulroy (Fran O'Brien), and Sheenagh Mulroy (John Considine); and many grandchildren, nieces, and nephews.

W. Kenneth O'Donnell, Esq.

W. Kenneth O'Donnell, 76, died on Thursday, January 5, 2023. He was the husband of Jan L. (Olivo) O'Donnell and the son of the late Thomas and Margaret (Leitch) O'Donnell. Ken received a bachelor's degree in accounting from Boston College and his Juris Doctorate from Suffolk University Law School. He started his career at Price Waterhouse as an auditor before working for Attorney General Julius Michaelson as a Special Assistant Attorney General. He was a member of the Coffee, McGovern, Noel, Novogroski and Neal, Law Office for 5 years until 1983, when he started D'Agostino and O'Donnell with his law partner Edward "Woody" D'Agostino. He was a member of the Rhode Island Bar Association, Phi Alpha Delta Law Fraternity, and the Rotary Club of Providence. Ken also received many professional awards throughout his career, including the RI Bar Association's Pro Bono Publico Award. In addition to his wife, Ken is survived by his children, Joseph R. Lupino, Lt. Cranston FD (ret.) (Kimberlee), Thomas H. O'Donnell, Esq. (Andrea), and Kerri L. Smith (Andy), and multiple grandchildren.

Dennis J. Tente, Esq.

Dennis Joseph Tente, 75, died on Sunday, January 29, 2023. Dennis was born in 1947 in Pawtucket to Palmeda and Antonio Tente. He was the husband of Jo-Ann Dolan. Dennis attended St. Raphael Academy and earned a full ROTC scholarship to the University of Nebraska, where he graduated with a degree in Business in 1970. After graduation, he deployed with the Navy, and reached the rank of Captain before retiring. After the Navy, Dennis returned to the University of Nebraska to attend Law School. After law school, he returned to Rhode Island to practice law. Dennis started his own law practice in 1980, with his longtime partner, John Colletti, joining a year later. In addition to his wife, Dennis is survived by his children, Jillian and Matthew; his sister, Irene; and two grandchildren.

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 ecute@ribar.com with "Caption Contest for March/April" in the subject line.

Deadline for entry: Contest entries must be submitted by April 1st, 2023.

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 January/February



"It's just a standard liability waiver,
you have nothing to worry about."

MICHAEL J. MULLANE, ESQ.

Advertiser Index

Alliant Title and Escrow – Florida	29
Arbitrator – Nicholas Trott Long	18
Barrett Valuation Services, Inc.	30
Briden, James – Immigration Law	14
Briden, James – Office for Rent	36
Burman, Sarah Karns – Statutory Arbitrations/Mediations	26
Coia & Lepore, Ltd. – John Cascione	11
Coia & Lepore, Ltd. – Mediation	23
Connecticut Lawyers- Messier, Massad, Burdick & Flynn, LLC.	14,26
Dennis, Stephen – Workers' Compensation	36
Enright Law LLC	23
Humphrey, Richard – Law Offices	11
Lavoie Law LLC	21
Law Offices of Howe & Garside – Seeking Associate Attorney	29
Law Offices of Michael W. Favichio	36
LawPay	Back Cover
Leone Law, LLC – Anthony R. Leone II	8
Marasco & Nesselbush – Personal Injury Law Firm	30
Mignanelli & Associates, LTD. – Estate Litigation	13
Morowitz, David – Law Firm	16
Norcom Mortgage	12
Palumbo, Richard – Condominium Law	13
Palumbo, Richard – Property Damage & Insurance	11
PellCorp Investigative Group, LLC	6
Pfiefer, Mark – Alternate Dispute Resolution	14
Red Cave Legal Consulting	26
Secure Future Tech Solutions	21
Slip & Fall – Henry S. Monti	34
Soss, Marc – Florida Estates/Probate/ Documents.	28
Withum – Forensic & Valuation Services	10
Workers' Compensation – Revens, Revens, & St. Pierre	34
Zoning Handbook, 3rd Edition – Roland Chase	34

Lawyers on the Move

Brian Hughes, Esq., is now an equity partner at **Brennan, Recupero, Cascione, Scungio, & McAllister**, 362 Broadway, Providence, RI 02909.
508-822-0178 x110 bhughes@brscsm.com brscsm.com

Lisa Kresge, Esq., is now an equity partner at **Brennan, Recupero, Cascione, Scungio, & McAllister**, 362 Broadway, Providence, RI 02909.
401-453-2300 x108 lkresge@brscsm.com brscsm.com

Meaghan E. Kelly, Esq., is now a partner at **Cameron & Mittleman**, 301 Promenade Street, Providence, RI 02908.
401-331-5700 mkelly@cm-law.com cm-law.com

Richard J. Petrucci, Jr., Esq., is now counsel at **Orson and Brusini Ltd.**, with offices at 211 Quaker Lane, Suite 201, West Warwick, RI 02893; 195 Broadway, Newport, RI 02840; and 336 Main Street, Wakefield, RI 02879.
401-223-2100 rpetrucci@orsonandbrusini.com orsonandbrusini.com

Philip R. Primeau, Esq., is now an attorney at **Roberts, Carroll, Feldstein & Peirce, Inc.**, 10 Weybosset Street, Suite 800, Providence, RI 02903-2808.
401-521-7000 pprimeau@rcfp.com rcfp.com

Carleigh B. Romano, Esq., is now an attorney at **Roberts, Carroll, Feldstein & Peirce, Inc.**, 10 Weybosset Street, Suite 800, Providence, RI 02903-2808.
401-521-7000 cromano@rcfp.com rcfp.com

“Connection is why we’re here. We are hardwired to connect with others, it’s what gives purpose and meaning to our lives, and without it there is suffering.”

- Brene Brown

Friendships are an essential part of our existence. They keep us grounded, supported, and simply put, make life more fun! Our friendships may fluctuate throughout different seasons of our lives, and that’s completely normal. It’s been said that if you have one close friend, you are lucky. During this Friendship Month, let’s celebrate the friendships we have and strengthen our understanding of what it means to be a good friend.

Research says quality friends make you physically healthier, happier, live longer, feel safe, and even improve your mental health. Friendships make you less likely to get sick and can be linked to financial success!

Tips to Maintaining Friendships

- 1. Keep in touch.** Whether by phone call, text message, email, or social media, try to initiate at least one point of contact with each of your friends on a consistent basis.
- 2. Be understanding.** If a friend doesn’t return your call or text right away, that may be a sign they’re overwhelmed. The timeliness of their response does not reflect the quality of your friendship.
- 3. Stay interested.** It’s easy to stay stuck in “the good old days.” Try to keep an enthusiastic curiosity about what’s happening in your friends lives now.

Ways to Make New Friends

Join a common interest group • Volunteer at a local nonprofit • Reach out to someone you’ve lost touch with



Your Lawyers Assistance Program is here to help you as you navigate life’s challenges. For confidential, caring, professional assistance 24/7, call

866.842.8378

CARING · SUPPORTIVE · CONFIDENTIAL

Lawyers Helping Lawyers

A Rhode Island Bar Association Member Benefit. For more information, visit our website at ribar.com, and the *Do You Need Confidential Help* Quick Link. Also, learn more about CorpCare, a Lawyer Assistance Program contracted by the Association to assist you at no charge.

LAWPAY[®]

AN AFFINIPAY SOLUTION



Member
Benefit
Provider

“I love LawPay! I’m not sure why I waited so long to get it set up.

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.



22% increase in cash flow with online payments



Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA



62% of bills sent online are paid in 24 hours



PAYMENT
RECEIVED



YOUR FIRM LOGO HERE

Trust Payment
IOLTA Deposit

New Case Reference

**** * 9995 ***

TOTAL: \$1,500.00

VISA



POWERED BY
LAWPAY

eCheck

DISCOVER

PAY ATTORNEY

Get started at
lawpay.com/riba
866-730-4140

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Synovus Bank, Columbus, GA., and Fifth Third Bank, N.A., Cincinnati, OH.