

Rhode Island Bar Journal

Rhode Island Bar Association Volume 68. Number 6. May/June 2020



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Last President's Message



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

Each and every person has worked through this difficult time to ensure that we are able to continue to provide services to our members, so we, as professionals, can provide help and support to our clients.

This is my last Presidential Message – I hope. If you have read any of my previous messages, you know that I like to tell stories. I try to find the good, and humor, in everything. Perhaps, many years from now, I will find the humor in my term as president of the Bar Association. For now, I want to report the good.

We have an amazing staff at the Rhode Island Bar Association. Each and every person has worked through this difficult time to ensure that we are able to continue to provide services to our members, so we, as professionals, can provide help and support to our clients. Helen McDonald has been steady, dedicated and supportive. She has been incredible in the most challenging of circumstances. She has kept the entire staff at the Bar Association focused on meeting the needs of our members. I would have been indebted to her for helping me serve as Bar president under normal circumstances, but, faced with this pandemic, I am grateful that I had Helen as a partner.

We have been able to keep all of the information flowing to our membership due to the remarkable work of our staff. Each and every one of them has been a shining star during this crisis. Thank you.

I also want to thank the officers, Executive Committee and House of Delegates for your time, talent and dedication. It has been my honor working with all of you.

When Carolyn Barone passed the gavel to me, we were dealing with a few dying bed bugs. Who would have thought at that time that we would be looking at the good old days of only having to deal with an infestation of nasty little bed bugs? Carolyn shared with me that when she became President of the Bar Association, Michael McElroy gave her his cell phone number and told her to call, any time of day or night, if she had any questions about the Bar Association. She paid that forward to me by telling me to call any time, day or night, if I had any questions. Then she gave me Mike's cell number. As Richard D'Addario moves up, of course I want to pay it forward. So Richard, call me, and I will give you Helen's number and our Zoom account information.

As the end of Linda Rekas Sloan's term as Bar president neared, she had a countdown clock on her phone. I now know why, but I am afraid of the implications of a countdown clock. In all honesty, it has been a privilege to serve as president and I want to thank you for the opportunity. I tried to always do what was best for our membership so that we can continue to be on the front lines for our clients. ♦



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Rhode Island Bar Journal

Editorial Statement

The *Rhode Island Bar Journal* is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a paid, subscription magazine published bi-monthly, six times annually and sent to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,000 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements and facts in signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in editorials are not the official view of the Rhode Island Bar Association. Letters to the Editors are welcome.

Article Selection Criteria

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

Direct inquiries and send articles and author's photographs for publication consideration to:
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Applications and more detailed program information and qualifications may be found on our website ribar.com in the Members Only section. You may also request information by contacting Public Services Director Susan Fontaine at 401-421-7799 or email sfontaine@ribar.com.

Now, More Than Ever



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

At the Bar Foundation, we will need to redouble our efforts to make sure that, working with our grantee agencies, we can continue to assist in providing access to legal services for the poor in the various legal areas served by the programs run by our grantees.

Because of the pre-publication lead time required for the *Bar Journal*, I'm sitting here in my home office on March 24 writing this Bar Foundation President's Message, which will not be published for a couple of months.

As I write, we are all in the throes of the deepening COVID-19 crisis. Most of us, pursuant to the Governor's Orders, are trying to figure out an efficient way to work from home and properly service our clients. The stock market has fallen quickly and dramatically, affecting our personal investments, as well as the investments held by the Rhode Island Bar Foundation for our charitable giving programs.

This is, of course, not the first time that our Bar Foundation has dealt with a significant downturn in the economy and the stock market.

Some bar foundations throughout the country have, unfortunately, closed their doors during times of financial crisis. However, your Bar Foundation, through prudent investment and management of its assets, in good times and bad, has continued to move forward.

I am sure that when you read this message a couple of months from now, things will be different from the bleak outlook of March

24, 2020. Hopefully, things will have improved and the virus will be on the wane, but we cannot be certain of that right now.

However, there are some things that are certain. Now, more than ever, the poor will need access to legal assistance. Many of the working poor have lost their jobs because of the COVID-19 crisis. At the Bar Foundation, we will need to redouble our efforts to make sure that, working with our grantee agencies, we can continue to assist in providing access to legal services for the poor in the various legal areas served by the programs run by our grantees.

In order to do that, we will need a lot of extra help from members of the bar, and especially from volunteer attorneys and the Bar Foundation fellows. As I mentioned in my last President's Message, if you are in a position to become a Bar Foundation fellow, please consider doing so by

contacting any existing fellow. And if you are in a position to assist as a volunteer attorney, there has never been a better time to step up and help. Just call or email the Bar Association.

I have also been highlighting in these messages examples of the good works done by our grantee partners. This month I would like to highlight the work done by the Bar Association pro bono programs. These programs are funded, in part, by Rhode Island Bar Foundation grants.

In one case, an elderly couple was working on a loan modification when their bank notified them that they were going to start foreclosure. A tenant of the couple had not paid rent for several months and this was causing financial difficulty to the elderly couple. To make matters worse, during this difficult time, the husband died. The widow turned to the pro bono program at the Bar Association for legal assistance. A volunteer attorney stopped the foreclosure by filing bankruptcy for the client, secured the loan modification, and evicted the delinquent tenant. The widow kept her home and is now receiving the rental income she needs to continue to stay in her home.

We all owe an enormous debt of gratitude to all of our volunteer attorneys for the good work they do on a daily basis.

As we work together to deal with the impacts of the COVID-19 crisis, and we struggle with the personal and financial challenges this is presenting to all of us, we need to remember that the burden of a crisis like this always falls more heavily on the shoulders of the poor, who can least afford it. So our help is needed—now, more than ever. ◇

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UPMIFA – Still Prudent After All These Years?



Peter J. Miniati, JD, CFP®
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The Rhode Island Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island and to ensure that nonprofits comply with donor intent.

Rhode Island is home to over 3,400 public charities, and the missions of many of these organizations are supported by annual distributions from an endowment fund.¹ R.I. Gen. Laws § 18-12 is the Rhode Island Uniform Prudent Management of Institutional Funds Act (“UPMIFA” or the “Act”), and it characterizes endowment funds as funds having a charitable purpose which are not wholly expendable by the charitable institution on a current basis.² Since its passage in 2009, UPMIFA has prescribed the standard of conduct and rules of construction for investing, managing, accumulating and spending such funds. The Act imposes the fiduciary duties of loyalty, care, and obedience on charities and their governing boards. Given the increased focus on public institution transparency and the variability of investment returns before and since UPMIFA’s passage, an update and review of recommended practices may be worthwhile in the current investment environment.

Background

Every state but Pennsylvania adopted a version of the Uniform Law Commissioners’ Uniform Prudent Management of Institutional Funds Act³ (the “Model Act”) between 2007 (by thirteen states, including Connecticut) and 2012 (by Mississippi).⁴ Rhode Island and Massachusetts adopted versions of UPMIFA in 2009 and the timing is noteworthy – it included a period in which major financial markets lost more than 30% of their value. The year and the decade were featured on *Time Magazine’s* 2009 year-end cover titled “The Decade from Hell: 9/11. Earthquakes. Epidemics. Two stock-market meltdowns.”⁵

During that period, The National Association of College and University Business Officers (NACUBO) reported that the values of endowments at Harvard University and Yale University each declined by 30% in just one year—from June 30, 2008 to June 30, 2009.⁶ Harvard’s endowment fell from \$36.5 billion to \$25.6 billion between those dates, and, at June 30, 2018, its market value equaled \$38.3 billion, up only 4.9% from its fiscal year-end balance eleven years prior.⁷

As the largest university endowment, Harvard’s

practices are newsworthy, and its twin investment goals are identical to those of Rhode Island nonprofits: “the need to fund the operating budget with a stable and predictable distribution, and the obligation to maintain the long-term value of endowment assets after accounting for inflation.”⁸ As the oldest endowment, Harvard has wrestled with such issues for over 400 years, and, presumably, its operating budget was cut when “the bottom fell out of the stock market: a cow worth 20 pounds in the spring of 1640 fetched but 8 pounds in December and 4 pounds in June of 1641.”⁹

Current Law

UPMIFA guides Rhode Island charities in balancing endowment goals of supporting current programs and preserving endowment values. At R.I. Gen. Laws § 18-12.1-3 (e), UPMIFA reads “Except as otherwise provided by a gift instrument, the following rules apply: (1) In managing and investing an institutional fund, the following factors, if relevant, must be considered: (i) General economic conditions; (ii) The possible effect of inflation or deflation; (iii) The expected tax consequences, if any, of investment decisions or strategies; (iv) The role that each investment or course of action plays within the overall investment portfolio of the fund; (v) The expected total return from income and the appreciation of investments; (vi) Other resources of the institution; (vii) The needs of the institution and the fund to make distributions and to preserve capital; and (viii) An asset’s special relationship or special value, if any, to the charitable purposes of the institution.”

Prior Law

Rhode Island UPMIFA added the “P” for “Prudence,” to “UMIFA” (the Uniform Management of Institutional Funds Act), the law it replaced. From 1972 to 2009, UMIFA’s standards permitted an endowment to spend the amount of appreciation above the Historic Dollar Value (“HDV”), but could make no expenditures when values were “underwater,” or below HDV, which UMIFA defined as the value of the gift at the time of donation. Rhode Island’s UMIFA further required nonprofits to maintain permanent endowments at the donated value **adjusted for inflation**.¹⁰

UPMIFA eliminated the HDV (also known as “historic gift value”) “floor” in favor of guidance on “prudent” behavior. A charity may now spend from an endowment even if the market value is less than the donor’s original gift – as long as the governing board determines the action to be prudent per the factors enumerated in UPMIFA, or if such spending is authorized by the donor in the gift instrument.¹¹

Before UMIFA and then UPMIFA, state law favored a presumption that assets donated to a charity should hold their value in perpetuity, and spending and investment decisions were made accordingly. Through the 1960s, the traditional approach was to preserve endowments by spending only “income” from investments. “Income” was understood to mean dividends, interest and rents but did not include the appreciation of asset

values. So, endowments of that era were considered prudent if they *excluded* investments in growth assets, which is the opposite of current law and best-practices.¹² The historical practice of spending “income” and preserving principal was changed to adopt investment principles espoused by Nobel Prize winning economist Harry Markowitz and other leading academics of that time.¹³ Markowitz’s Modern Portfolio Theory (“MPT”) emphasized risk management of the portfolio as a whole, correlation among securities, and diversification.

MPT considers that a rational investor would choose to maximize return and minimize risk. In contrast, an “income-only” pre-UMIFA investor is forced to accept lower levels of expected return at the same risk level, which is an “inefficient portfolio” – a fundamental error under MPT. Such a portfolio would need to spend income toward a larger percentage of income-producing investments while the purchasing power of the income shrinks due to inflation. “Income-only” investing could also lead investors to buy bonds with longer duration (which are subject to greater declines at times of rising interest rates) or those with lower credit quality (and higher default risk), which increases risk to an endowment and lowers expected returns.

Diversification

Markowitz’s theory holds that an efficient portfolio is one where diversification can lower the portfolio’s risk for a given return expectation (alternatively, no additional expected return can be gained without increasing the risk of the portfolio). Diversification simply seeks to avoid the proverbial result from “putting all of your eggs in one basket.” It is the process of allocating capital in such a way to reduce the exposure to any one particular asset or risk by investing in a variety of assets. If various asset prices are not perfectly correlated (i.e., they do not change in perfect synchrony), a diversified portfolio will have less variance (risk) than the weighted average of its constituent assets, and theoretically less volatility than the least volatile of its individual investments. As a risk management concept, this dates to biblical times, for Ecclesiastes advises one to “divide your investments among many places for you do not know what risks might lie ahead.”¹⁴ UPMIFA provides that “an institution shall diversify the investments of an institutional fund”¹⁵ and elsewhere it incorporates other MPT concepts, including “total return,” in the language of the Act.

Total Return

To produce both an ever-increasing income stream and an increase in principal value, a portfolio must have sufficient growth and a mechanism to harvest that growth.¹⁶ UPMIFA § 18-12.1-3 (e) (v) requires nonprofit boards to consider “total return from income *and* (italics added) the appreciation of investments,” and it serves to provide a means by which an endowment may appropriate portfolio growth. Growth, or appreciation in asset values, comes primarily from risk assets including stocks. These investments are more volatile in the short term but have produced greater returns over long time horizons and full market cycles. Managers of institutional funds seek to optimize their asset allocation, which is the percentages of the portfolio devoted to income-producing and growth assets.

Asset allocation should drive spending, rather than the reverse. The old “income-only” endowment approach often led to reduced spending in real terms—the opposite effect from that



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intended. Since Markowitz's rational investor (and UPMIFA-governed boards) would choose to maximize return and minimize risk, they seek an optimal portfolio with an appropriate asset allocation and expected risk-and-return characteristics.

Spending Policies

At § 18-12.1-4, UPMIFA provides rules by which an institution determines how much of an endowment fund may be appropriated for expenditure or accumulated for endowment, and how donor intent may designate a gift and state limitations on a donation.

Again referencing Harvard's approach to illustrate a practice common to nonprofits: its University endowment targets an annual payout rate of 5.0 to 5.5 percent of market value. Such a percentage of the market value is distributed from the investment fund to the University's budget each year.¹⁷ Harvard's actual payout rate has fluctuated over the past 10 years, from a low of 4.2 percent in fiscal year 2006 to a high of 6.1 percent in fiscal year 2010. "This variation exists because the dollar amount of the distribution for the next fiscal year is determined well in advance of the start of the fiscal year and prior to knowing the market value at the end of it. This practice is followed to allow the organization adequate time for financial planning."¹⁸

In determining a payout rate, a Rhode Island institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.¹⁹ The Act creates a rebuttable presumption of **imprudence** where the appropriation for expenditure in any year of an amount greater than seven (7%) percent of the fair market value of an endowment fund.²⁰ The presumption does **not** connote a safe harbor for spending less than 7%. The Act permits a donor's intent to override the general spending policy of an endowment. A gift instrument could specify, e.g., "The donor has specified an annual spending rate of 4% which is to be followed even if it should result in some use of principal."

Payout Formulas and Smoothing

Like governing boards of Rhode Island charities, Harvard's board approves the final distribution amount, and it uses a payout formula to calculate the annual amount to be distributed. Its formula determines investment returns for a longer period as per its policies, then calculates an average and distributes the average percentage amount annually to support its educational mission. Adjustments in spending rates are made by its Board in succeeding years, as it minds the long-term payout goals of balancing budgetary stability with the preservation of the endowment's purchasing power.

Nonprofits employ various practices to meet their dual endowment goals. The Yale University endowment has adopted a smoothing rule that provides protection from instability in the financial markets, and that "does not hoard the income from strong financial years at the expense of current programs and people."²¹ It applies a targeted spending rate (5.25%) to the endowment's year-end value from two years prior. Yale then takes 20% of that amount and adds it to 80% of the total amount spent in the most recent fiscal year to determine spending for the coming year.²² For one Rhode Island institution, spending ranges were between 5.0 and 6.53 percent of the trailing sixteen quarter average endowment value. The spending policy is used

to develop the organization's operating budget for the year, and its Board concluded the annual rates to be prudent under the seven factors enumerated by UPMIFA.²³

RI UPMIFA § 18-12.1-4 (d) provides that the calculation of a spending rate shall be on the basis of market values determined at least quarterly and averaged over a period of not less than three (3) years immediately preceding the year in which the appropriation for expenditure is made. Using a longer term would, for example, mean that the effects of recent market declines or increases will impact spending for a longer period.²⁴

Risk and Reward and Asset Allocation, the Endowment Model

As the second-largest university endowment, the strong performance of Yale University's endowment is closely followed by

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the investment community. David Swensen, the chief investment officer of Yale's endowment since 1985, has been called "Yale's Warren Buffett" for his success in managing its funds, and "the \$8 billion-dollar man" for the amount by which his team's management has grown Yale's endowment value.²⁵ Swensen and his colleagues are credited with applying Modern Portfolio Theory and successful asset allocation strategies to develop what's become known as the "Endowment Model" or the "Yale Model."²⁶ Swensen's approach features meaningful allocation to alternative investments including private equity, and smaller allocation to US stocks and bonds. The Yale Model has been replicated by other large endowments and some large hedge funds.

A criticism of the Yale approach is that the model is less effective for smaller funds due largely to the higher costs of

certain underlying investments and the illiquidity of alternative strategies. Its results have been impressive, though, as Yale's endowment returned an average of 11.8% over the twenty years ending June 30, 2018, versus the estimated 6.8% average returns of college and university endowments for the period since 1998.²⁷

Performance for Yale's endowment and other large endowments has been enhanced by higher allocation to asset classes that are less suitable for smaller endowments. "Alternative strategies" include private equity, hedge funds, derivatives, venture capital, distressed debt, private equity real estate and energy and natural resources, as categorized by NACUBO. The 2018 NACUBO study shows a striking difference between the asset allocations of billion-dollar endowments and those of more modest endowments²⁸:

Size of Endowment	US Equities	Fixed Income	Non-US Equities	Alternative Strategies	Cash/ Short-term securities
Over \$1 billion	13%	7%	19%	58%	3%
Under \$25 million	45%	24%	15%	11%	5%

Risk and Reward, Short Term Volatility and Long-Term Return Expectations

Some endowment formulas result in an annual payout rate that is lower following years of relatively high investment returns and higher following years of lower investment returns. So how have endowments fared? NACUBO reported that US educational endowments reported an average 8.2% investment return for the year ended June 30, 2018, down from a 12.2% average return in the prior fiscal year. The decline in this recent year-over-year performance was largely driven by a decline in the US and international equity markets.²⁹ NACUBO further noted that while mission-critical 10-year returns rose to 5.8% they were still below the 7.2% average return institutions report targeting as a long-term return objective.

Yale's endowment achieved investment returns of 5.9%, 12.3%, 11.3% for fiscal years 2019, 2018, and 2017, respectively. Yale's planning estimates assume 8.25% annual investment returns.³⁰ This is a full percentage point higher than the average long-term assumptions of NACUBO-reporting institutions, and is warranted, perhaps, by Yale's long record of outperforming other university endowments. Even with its impressive long term investment record, Yale University's President Peter Salovey reported in his January 3, 2019 Budget Update to his colleagues that "Yale is in good shape to weather a short downturn in the market, but a decade of lower endowment returns—e.g., 4 percent per year, which is not unrealistic—would put tremendous strain on the university."³¹

Fiduciary Duties and Prudent Practices

Governing boards must comply with the duties of loyalty, care and obedience and serve to a prudent person standard.³² An endowment may delegate its investment management function, provided costs are appropriate and reasonable, and appropriate oversight is provided.³³ The fiduciary duties required by UPMIFA of governing boards generally means that its directors: participate in the activities of governance and provide operational and policy oversight, remain loyal to the mission of the institution



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and place the interests of the charity above his or her personal interests, avoid conflicts of interest, and ensure confidentiality with respect to organizational activities.³⁴

New York's version of UPMIFA ("NYPMIFA") requires each institution to create written investment and spending policies to ensure the organization operates in accordance with its standards of prudent financial management.³⁵ The spending policy in Rhode Island's version requires an institution to consider its investment policy in determining how funds are expended or accumulated, but has no explicit requirement that it be written or reviewed. If a local endowment's investment policy statement was written before 2009, it should be reviewed for UPMIFA compliance. Regular reviews of policies and documentation of changes to policies are prudent practices.

No Safe Harbor

As noted in the spending policy review (above), RI UPMIFA creates a rebuttable presumption of imprudence for a charity that spends an amount greater than seven (7%) percent of an endowment's value in any year, calculated in accordance with the smoothing rules highlighted above. At § 18-12.1-4 (d) (2), RI UPMIFA states it does NOT create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

The drafters of the Model Act note that in a period of low inflation, a spending rate of seven percent is too high for most funds, but in a period of high inflation, seven percent might be too low. So, institutions are tested on their prudent decisions based on the seven factors enumerated in the spending rules, the circumstances of the particular charity, and the donor's intent.³⁶

An example of one charity's circumstance illustrates why spending above seven percent in any one year will not necessarily be imprudent. For some endowments, fluctuating spending rates may be appropriate. Although the Act does not apply the percentage for the presumption on a rolling basis (e.g., 21 percent over three years), an endowment could prudently spend nothing in some years and more than seven percent in other years. A charity planning a building project might spend nothing from an endowment for three years and then in the fourth year spend 20 percent of the value of the fund for construction costs. The decision to accumulate in years one through three and then to spend 20 percent in the fourth year might be prudent for the charity, depending on the other factors. The charity should maintain adequate records for all periods and document the decision-making process each year to meet the burden of production associated with the presumption.³⁷

States also use other presumptions. Ohio presumes spending of not more than 5 percent to be prudent, and Wyoming presumes that spending in that amount is imprudent. Texas law presumes that spending of more than 5 percent for endowments under \$1 million is imprudent and spending of 7 percent for endowments over \$1 million is imprudent.³⁸

Enforcement and Compliance

UPMIFA clarifies that the doctrines of *cy pres* and deviation apply to nonprofit institutions.³⁹ The Rhode Island Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island and to ensure that nonprofits comply with donor intent.

Some states included detailed provisions not adopted by the Rhode Island version of UPMIFA. For instance, the New York statute included a "check the box" provisions by which a donor may instruct a donee organization to either "spend as much of my gift as may be prudent" or "not spend below the original dollar value of my gift."⁴⁰ The Charities Bureau of the New York State Attorney General's office regulates "NYPMIFA" and has provided guidance on these issues for New York institutions.⁴¹

Also, some other states require organizations with smaller endowments to notify the attorney general prior to making an expenditure of an amount that would cause the value of its endowment to fall below the aggregate historic dollar value of its fund, and still others require the reporting of the historic dollar value of its institutional funds.⁴²

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Potential Statutory Updates

Rhode Island's UPMIFA statute provides clear guidance to our charitable boards and committees and its adopted language fits the history and practices of our state's nonprofits. Endowments have been established and operated in our state by religious, educational, and social service organizations for centuries. Charitable gifts have been made by generations of local families and have been recorded and prudently managed over the years under the common law and the governing statutes as they have evolved.

The Act eliminated UMIFA's "historical dollar value" record-keeping requirements. This served to lighten one administrative burden on Rhode Island nonprofits while furthering the purposes of the Act. In contrast, Maine and New Hampshire institutions are required to preserve and update "historical gift value" data and still meet their state's other UPMIFA tests of prudence.

Rhode Island could, though, look to other states that have added statutory language to provide further guidance for nonprofits. For instance, Rhode Island could require that institutions adopt a written investment policy in accordance with the standards of UPMIFA.⁴³ A documented policy might include an explicit statement requiring diversification and could include language with respect to permitted and prohibited investments which consider the unique mission of an organization (e.g., an institution whose mission is to preserve historical real estate could prohibit investment in a real estate firm with a business practice of tearing down such properties). A well-drafted policy might identify a board's view of the tradeoff between risk and reward and its related issues of long-term investment return expectations, short-term market volatility, and (avoiding) "market-timing." A required written policy could also cover such matters as identifying responsibility for proxy voting, specifying the scope of delegated investment management functions; and standards for the accountability of investment managers, consultants, and custodians.

A charity's governing board or committee could be required to review such a policy at regular intervals and whenever a change in the institution's financial condition or other circumstances warranted such a review.

Conclusion

Organizations should educate staff and board about UPMIFA standards for prudence in managing endowments.⁴⁴ They should consult legal counsel as needed and review changes in spending policies and calculations with auditors before the start of an audit and should note that auditing standards have been aligned with UPMIFA's reporting guidelines on several issues. Notably, FSB Staff Position 117-1 provides guidance for reporting donor and Board restrictions; FASB 124 requires that distributions from (and losses suffered by) the endowment be taken from the endowment portion of the temporarily restricted asset class first (until it goes to zero), and then from unrestricted funds; and FASB ASU 2016-14 requires enhanced disclosures for the calculation of a charity's underwater funds and its spending policy for such funds.⁴⁵

Nonprofits that are diligent in reviewing UPMIFA standards and are disciplined in establishing, following, and documenting their practices would surely be considered prudent under UPMIFA, regardless of the uncertainties of investment markets at any point in time.

This article was written in December 2019. Peter Miniati, JD, CFP® is an Advisor at F. L. Putnam, an investment and wealth planning firm serving 101 endowments and foundations and 720 private client families from offices in Providence, RI, Wellesley, MA, Portland, ME, and Wolfeboro, NH.

ENDNOTES

- 1 *TaxExemptWorld.Com* (5,996 501(c)(3) Charities in Rhode Island at 6/8/2019; *Independentsector.org* (6,617 Rhode Island Nonprofits at 12/31/2016 and 3,434 501(c)(3) organizations).
- 2 R.I. GEN. LAWS §18-12.1-2.
- 3 *Uniform Prudent Management of Institutional Funds Act* drafted by the National Conference of Commissioners on Uniform State Laws and by it approved and recommended for enactment in all the states at its annual conference meeting, July 7-14, 2006, with prefatory note and comments. The "Model Act" adopted language of trust law and the prudent investor rule of the Uniform Prudent Investor Act.
- 4 UPMIFA and UMIFA Enactment, November 6, 2009, Arnold & Porter LLP.
- 5 Time Magazine, December 9, 2009, Cover.
- 6 *The National Association of College and University Business – Commonfund (NCSE) 2009 Endowment Market Values*, 2010, page 1. This article uses commonly-referenced university endowment data to illustrate concepts common to charitable entities subject to UPMIFA. The National Association of College and University Business Officers (NACUBO) in partnership with TIAA in 2018 (*NACUBO-TIAA Study of Endowments – NTSE*) (and in prior years *Commonfund – NCSE*) publish an annual survey of university endowments and related foundations. Over eight hundred institutions participated in the 2018 NTSE study and provided data on their endowment market values, rates of investment return and portfolio asset allocations. The percentage change is not the rate of return for the institution's investments. Rather, it reflects the net impact of: withdrawals to fund institutional operations and capital expenses; the payment of endowment management and investment fees; additions from donor gifts and other contributions; and investment gains or losses.
- 7 *Ibid.*
- 8 <https://www.harvard.edu/about-harvard/harvard-glanceendowment>, November 7, 2019.
- 9 "Early Harvard Journal" <https://ofsp.finance.harvard.edu/blog/financial-resilience-harvard>, October 2019.
- 10 UMIFA § 18-12 (Repealed by P.L. 2009, ch. 61, § 1; P.L. 2009, ch. 63, § 1, effective June 30, 2009). *And see*, Mass. Gen. L. ch. 180A, § 2 (2004). Massachusetts adopted the presumption of imprudence concept in 1975 in the language of its UMIFA statute.
- 11 Willis, Laura and Kavey, Patrick, "Talking to Your Board About UPMIFA" *Accounting Management Solutions, Inc.*, September 21, 2010, Page 5.
- 12 *See generally*, Cary, William L., Bright, Craig B., *The Law and Love of Endowment Funds*, (New York: The Ford Foundation, 1969) and, Galle, Brian, *Corporate Compliance Without Enforcement?: Private Foundations and the Uniform Prudent Management of Institutional Funds Act*, *Georgetown University Law Center*, April 27, 2016.
- 11 UMIFA § 18-12.1-3 (e) 4 (Which continues "unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.") Also, The Rhode Island Uniform Prudent Investor Act R.I. GEN. LAWS §18-15-3 applies to trustees and has similar requirements for diversifying investments.
- 12 Schneider, William S., DiMeo, Robert A., Benoit, Michael S., *The Practical Guide to Managing Nonprofit Assets*, John Wiley & Sons, Inc. 2005, page 24.
- 13 Markowitz, H.M. (March 1952) "Portfolio Selection" *The Journal of Finance* 7(1): 77-91.
- 14 *Ecclesiastes* 11:2-4 *New Living Translation*.
- 15 UPMIFA § 18-12.1-3(4), which, importantly, continues with ... "unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification."
- 16 Schneider et al, page 24.
- 17 <https://www.harvard.edu/about-harvard/harvard-glance/endowment>.
- 18 *Harvard University Financial Report Fiscal Year 2019*, <https://finance.harvard.edu/annual-report>.
- 19 UPMIFA § 18-12.1-4.
- 20 UPMIFA § 18-12.1-4 (d).
- 21 <https://provost.yale.edu/budget/faq>.
- 22 *Ibid.*
- 23 *Rhode Island Foundation 2018 Annual Report*, page 26.
- 24 Willis & Kavey, "Talking to Your Board About UPMIFA," Page 5.

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2019 Kent County Bar Association Award Winners Honored

At the Kent County Bar Association's year-end gathering for the year 2019, the following awards were announced: Court Employee of the Year, Kristine Joyce; Lawyer of the Year Award, Stacy Ferrara, Esq.; and John D. Lynch Lawyer Lifetime Achievement Award, Gregory S. Inman, Esq.



l-r: Timothy Morgan, Esq., KCBA Board member; Gregory S. Inman, Esq., John D. Lynch Lawyer Lifetime Achievement winner; Krista Schmitz, Esq., KCBA Board member; John Lynch, Jr., Esq., KCBA Board member; Kristine Joyce, Court Employee of the Year winner; Kathleen Wyllie, Esq., KCBA Board member; Judy Assad, Esq., KCBA Board member.

- 25 <https://www.cnn.com/2018/10/05/yale-investment-chief-david-swensen-jumps-into-crypto-with-bets-on-two-silicon-valley-funds.html>.
- 26 Swensen, David F., *Pioneering Portfolio Management: An Unconventional Approach to Institutional Investment*, Simon & Schuster, 2000.
- 27 <https://news.yale.edu/2018/10/01/investment-return-123-brings-yale-endowment-value-294-billion>, Yale University 2019.
- 28 NTSE, 2018.
- 29 *Ibid.*
- 30 <https://provost.yale.edu/budget/faq>.
- 31 <https://president.yale.edu/speeches-writings/statements/budget-update-2018-19>.
- 32 UPMIFA § 18-12.1-4(a).
- 33 UPMIFA § 18-12.1-5.
- 34 Miree, Kathryn W. "2011 Nonprofit Leader and Family Foundation Summit, Dos, Don'ts, and Dangerous Ideas: Managing Liability Issues for Board," Kathryn W. Miree and Associates, Inc. and Wells Fargo, 2011.
- 35 New York UPMIFA N-PCL § 552(f), New York UPMIFA N-PCL § 553 (e)(1).
- 36 *Comments to Model Act*, page 27.
- 37 *Ibid*, page 28.
- 38 Ohio Tit. XVII, §1715.51, Wyoming § 17-7-301, Texas § 163.001.
- 39 *Comments to Model Act*, page 34.
- 40 "A Practical Guide to the New York Prudent Management of Institutional Funds Act," Office of the New York State Attorney General, March 2011; re: "Check the Box."
- 41 Attorney General Guidance on the New York Prudent Management of Institutional Funds Act, Simpson, Thacher & Bartlett LLP Memorandum, March 17, 2011.
- 42 New Hampshire RSA 292-B:4 and Maine UPMIFA Chapter 99, § 5104.
- 43 R.I. GEN. LAWS § 18-12.1-4. The Act does require the institution to "consider... its investment policy" as one of seven factors to consider in meeting its "prudent person" standard of care, but is otherwise silent on documentation of investment policies or their review.
- 44 Willis & Kavey, "Talking to Your Board About UPMIFA," Page 5.
- 45 The Law of Endowments – The Uniform Prudent Management of Institutional Funds Act (UPMIFA), Adler & Colvin, December 2017. ◇

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The Unauthorized Practice of Law in Rhode Island



Christopher S. Gontarz, Esq.
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“...is it time for the reexamination of the unauthorized practice of law in light of the ability of lawyers to work from Rhode Island exclusively on out-of-state legal matters where they are licensed to practice law?”

With the proliferation of and wide availability of technology with wireless internet access, attorneys can practice law anywhere they can connect to the internet. Rhode Island rules focus on the place that the legal work is performed, rather than the nature of the work performed. The “Court recognizes full well that the practice of law under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court.”¹ It is the unauthorized practice of law when an attorney without a Rhode Island license, whose office is in Rhode Island and whose practice is exclusive to representing clients in the state they are licensed in, engages in any legal work related to that practice in RI. Regardless of disclaimers made on business documents, they are in violation of

the Unauthorized Practice of Law rule and the statute in Rhode Island, and probably in violation of rules of professional conduct in the state they are admitted.

The Rhode Island Supreme Court has “the ultimate and exclusive authority to determine what does and does not constitute the practice of law within the state and to regulate those people qualified to engage in the practice of law.”² The Court has articulated that the practice of law includes “the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs, and great capacity for adaptation to difficult and complex situations.”³

The practice of law in Rhode Island is defined in R.I. Gen. Laws § 11-27-12 and the Supreme Court Rules of Professional Conduct, Article V, Rule 5.5, *Unauthorized practice of law; Multi-jurisdictional practice of law*. “The main purpose of reserving the practice of law to lawyers duly licensed by the Court is to ‘ensure that the public welfare will be served and promoted’ and prevent ‘irreparable injury to the people by the unwarranted intrusion of unauthorized and unskilled persons in the practice of law.’”⁴ This begs the question though, what interest does Rhode Island have in preventing someone from using a Rhode

Island office in their legal practice that only affects another state?

The American Law Institute addressed the unauthorized practice of law in the *Restatement of Law, The Law Governing Lawyers*, Vol. 1, § 3, “a lawyer currently admitted to practice in a jurisdiction may provide legal services to a client:

(1) At any place within the admitting jurisdiction;

(2) Before a tribunal or administrative agency of another jurisdiction or the federal government in compliance with requirements for temporary or regular admission to practice before that tribunal or agency; and

(3) At a place within the jurisdiction in which the lawyer is not admitted to the extent that the lawyer’s activities arise out of or are otherwise reasonably related to the lawyers practice under (1) or (2).”

The comments to § 3 note, “it would be impermissible for a lawyer to set up an office for the general practice of litigation law in a jurisdiction in which the lawyer is not admitted.”

R.I. Gen. Laws § 11-27-2 defines the practice of law as follows: “Practice law as used in this chapter means the doing of any act for another person usually done by attorneys at law in the course of their profession, and, without limiting the generality of the definitions of this section, includes the following:

(1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;

(2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought;

(3) The undertaking or acting as a representa-

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tive or on behalf of another person to commence, settle, compromise, adjust, or dispose of any civil or criminal or cause of action;

- (4) The preparation or drafting for another person of a will, codicil, corporation, organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by attorneys at law.

R.I. Gen. Laws § 11-27-5 restricts the practice of law to members of the bar in Rhode Island. Violation of this statute is a misdemeanor for the first offense and a felony for subsequent offenses.

Article V, Rule 5.5 of the Rules of Professional Conduct defines the unauthorized practice of law for out of state lawyers. This explicitly states what out of state lawyers can do and cannot do in Rhode Island. It reads:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or
 - (4) are not within paragraphs (c)(2) and (c)(3) and arise out of or are reasonably related to the lawyer's practice in any jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted to another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
- (1) Are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission; or
 - (2) Are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Article 11, Rule 9 of the Supreme Court Rules authorizes attorneys who are employed by corporations with offices in

Rhode Island, that are members in good standing of an out of state bar, to practice law in Rhode Island as long as they file a petition for registration as in-house counsel with the Supreme Court. Once registered, in-house counsel may only practice on behalf of the corporation and its directors, officers, and employees. In-house counsel may not appear in the Rhode Island courts or before any agency or municipal proceeding in which the attorney has reason to believe the proceeding will be contested, unless the attorney is admitted *pro hac vice* or by a provisional order of the Supreme Court.

The Unauthorized Practice of Law Committee is authorized to investigate complaints pursuant to R. I. Gen. Laws § 11-27 of the General Laws. After the conclusion of its investigation, the Committee issues a written report, which along with the record of the investigation is forwarded to the Supreme Court. The Committee may recommend to the Court any of the following resolutions:

- 1) An order for restitution and/or community service.
- 2) Dismissal of the complaint.
- 3) The Committee may file a civil proceeding in the Superior Court to enjoin the conduct.
- 4) The Committee may recommend the matter to the Attorney General for civil or criminal proceedings.
- 5) Any other disposition which is in the public's best interest.

Recommendations by the Committee which are approved by the Supreme Court are final barring any further action by the UPL Committee or the Attorney General.

The constitutionality of the unauthorized practice of law was recently addressed by the Ohio Supreme Court in *Jones*.⁵ The majority decision of the Court address the *temporary* exception under Rule 5.5 (c). The Court noted that "a lawyer who resides in Ohio and who practices only the law of an out-of-state jurisdiction from an office in Ohio and appears only before tribunals in a foreign jurisdiction pending an application for admission...to the Ohio Bar is providing services on a temporary basis."⁶

Three Justices filed a concurring opinion noting that the Ohio and United States Constitutions protect one's right to pursue a chosen profession free from arbitrary and unreasonable governmental restraints. The issue they raised is whether there is any legitimate governmental interest in regulating an attorney in Ohio Courts or provide Ohio legal services.

While the unauthorized practice of law rules are prosecuted in Rhode Island through the Unauthorized Practice of Law Committee and by referrals from the Character and Fitness Committee of the Supreme Court, is it time for the reexamination of the unauthorized practice of law in light of the ability of lawyers to work from Rhode Island exclusively on out-of-state legal matters where they are licensed to practice law? Or lawyers working from their homes in Rhode Island that access their files and work remotely on their practice in another state? With the lure of the enticing Rhode Island beaches, does an out-of-state licensed lawyer who maintains a vacation home in the Ocean State, where the lawyer works remotely on their out-of-state cases exclusively, have a continuous, systematic presence for the practice of law in Rhode Island?

When the rules were adopted, Rhode Island lawyers practiced law within the confines of the state, and there were no mobile phones, computers, or internet. The practice of law is changing, and the rules concerning the unauthorized practice of law need

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to be updated.

New Hampshire has recently amended their *Unauthorized Practice of Law* Court Rules, and has adopted the following Rule 5.5(d)(3) "A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that relate solely to the law of a jurisdiction in which the lawyer is admitted."

ENDNOTES

¹ *In re Ferrey*, 774 A.2d 62,64 (2001).

² *In re Town of Little Compton*, 37 A.3d 85, 88 (2012); *Unauthorized Practice of Law Committee v. State Department of Workers' Compensation*, 543 A.2d 662, 664 (1988); *Berberian v. New England Telephone and Telegraph Co.*, 330 A.2d 813 (1975).

³ *Rhode Island Bar Association v. Auto. Serv. Ass'n*, 179 A. 139 (1935).

⁴ *Id.* 179 A. at 143.

⁵ *In re Jones*, 123 N. E. 3d 877 (2018).

⁶ *Id.* at 882. ◊

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

Rhode Island Women Lawyers: Past, Present, & Future

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



Barbara Margolis, Esq.

Upon graduating from the University of Rhode Island in 1977 with a Bachelor of Arts in English and a minor in psychology, Barbara Margolis, now retired Deputy Disciplinary Counsel, knew she wanted to make the world a better place. She initially thought she would pursue her goal by becoming a feminist therapist. Her mother guided her toward attending law school, encouraging Attorney Margolis to pursue something that would help her gain more “power” to represent and advocate for those who needed help.

Although originally from Utica, New York, she attended New England School of Law part-time while working full-time. As she worked her way through law school, she volunteered with Merrimack Valley Legal Services and represented victims of abuse seeking divorces. She also spent time working as a messenger at a law firm with ten attorneys, where the gender double-standard was alive and well. Although she and another law student (a male) were both hired at the same time, she was tasked as a messenger, while the male student was tasked with work befitting an individual pursuing a legal education. That discrimination did not dissuade or discourage Attorney Margolis as she never intended to pursue a “big law” career.

Upon graduation, she immediately sought out

non-profit work in Rhode Island. However, due to budget cuts implemented by President Regan, legal aid services throughout the country were significantly reduced and full-time legal aid positions were not available.

With no clients and no connections in Rhode Island (beyond her college education) she thought to herself, “What’s the worst that could happen?” and chose to hang her shingle as a solo practitioner in family law. She found an office space for rent from two male attorneys in Pawtucket, Rhode Island. As a condition for her renting that space, she was asked to promise not to “do abortions” (or, rather, litigate any issues relating to abortion). After settling in, she began reaching out to the community to offer her legal services. She contacted several nonprofit organizations to offer her services and determine what she could do to fulfill the need of the people in the State.

After a while, she discovered that she was spending most of her time practicing in South County, so she left her space in Pawtucket and opened a solo practice there. She was later joined by Lise Iwon and Margaret Laurence. They worked together for a while until Attorneys Iwon and Laurence split into their own firm—at which time Attorney Margolis picked up part-time work at the Legal Aid Society of Rhode Island. She eventually closed her private practice and worked full-time for the Legal Aid Society, ultimately becoming its chief legal counsel—a position that she held from 1989 to 1995.

As chief legal counsel, she worked tirelessly to ensure that her *team* worked tirelessly. She reflected that the work was rewarding but exhausting. During that time she was very involved in several legal organizations, including the Rhode Island Bar Association House of Delegates. She was also part of the efforts to combine the Coalition of Women Lawyers and the Women Lawyers Association, which later became the Rhode Island Women’s Bar Association. She was joined in these efforts by the Honorable Florence K. Murray, the first female Associate Justice of the Rhode Island Supreme Court. Justice Murray



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later nominated Attorney Margolis to the Rhode Island Supreme Court Ethics Advisory Panel. She recalls the female judges and justices in Rhode Island had their eyes out to support women, and Attorney Margolis encourages all women to continue in this tradition—“Women have to take care of each other.” For example, “Always write letters of support for one another.”

She also organized an informal group of gay lawyers to provide support for one another—the “630 Club” (named after the time they met)—and, in collaboration with other female attorneys living openly, started the LGBTQ committee of the Rhode Island Bar, which initially focused on educating the bar on issues important to the LGBTQ community.

It was her work with the Supreme Court Ethics Advisory Panel that first brought her to the judiciary’s attention in an ethics-related role. When the Honorable Mary Lisi left her role as Chief Disciplinary Counsel for the Supreme Court of Rhode Island to become a District Judge for the United States District Court for the District of Rhode Island, Attorney Margolis applied for, and became, Deputy Disciplinary Counsel for the Supreme Court of Rhode Island—a position in which she has served for more than twenty-five years.

In reflecting upon her career and her work as Deputy Disciplinary Counsel, she had plenty of advice on how to be a good legal practitioner. Fundamentally, do good work and always have the law on your side. “It’s not magic. Know the law, and people respect that. I was always clear and direct; when billing by the hour and advocating for clients, you don’t play games. To some practitioners, every ‘battle’ is personal and ‘winning is everything.’ But, doing your job well, being able to advocate on behalf of someone, and having the respect of your peers—that’s winning. There’s no need to throw firebombs or make personal attacks.” She later added, “One of our greatest faults as lawyers is that we do not like to be wrong or told what to do. Be aware of this and help others be aware of this.”

Attorney Margolis certainly encountered barri-

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ers throughout her career, including sexist behavior from other practitioners and court staff. She fought through those barriers and earned the respect of her peers by always coming to court prepared and unafraid to try a case. For those facing inequality or confronting barriers simply because they are perceived as different, she noted: “If your good work is not recognized, move on. There needs to be a partnership, and there needs to be equality. Be willing to leave.” For those who witness inequality, she urged: “It is all of our responsibility. If you see something, say something. We have to talk about it, and we have to address it. It is about standing up for yourself and helping others stand up for themselves.” She also advised, “Take a step back. Sometimes, a person may have no idea they hurt you or offended you. Tell them how they made you feel and ask how they felt. Give them an opportunity to learn and to rise above.”

As Deputy Disciplinary Counsel, some common issues she has had to address include instances of attorneys who do not return calls from opposing counsel or their own clients, or those who make exaggerated statements or adopt statements in pleadings without much, or any, research. Some may think they are serving their client with speed or competition, but that is not the case. Opposing counsel may go to court to strike the statements—or even seek sanctions. “It is a big bar, but people learn of your reputation, skills, and how easy you are to deal with by word of mouth. Try to respect all people, even though it may not always be easy, and say it with a smile.”

Another piece of advice: “Things go back around and around, and the energy you put out comes back. Walk in the world you want to be in. Instead of pounding your head against the wall for change you cannot make, focus your energy into the things you can control.”

She also noted the importance of participating in the legal community as a means to grow, develop, and find support. Contributing to a community of support was incredibly important and helpful to her. “Be an open person, network, and participate in the bar; it is an opportunity to meet on a social level and gain support. Be willing to talk about who you are and be authentic. That’s all you have.”

Attorney Margolis built her own community of strong women (about sixty!) who are not all lawyers and still connect on a monthly basis to provide support and advice. These women, as well as her wife Colleen, gave her the strength to overcome the difficulties faced by our profession and the confidence to take risks. She hopes that others can find the resources to do the same and that women will continue to mentor and raise women up.

“What we do is hard. People need to take care of themselves. Find a community, whatever it is—for some that may be a 5:00 a.m. spin class; take a break; recognize our career is hard; and try not to go it alone.” Attorney Margolis commented that she sees a lot of lawyers with self-imposed disabilities: “Case selection is very important. Don’t put yourself in a position you hate, and if you find yourself in that position, change. Lawyers are very good at hiding things and hiding from ourselves. There is a lot of ego involved in being a lawyer, so many do not ask for help. But being able to ask for advice is a strength.”

She reminds and encourages lawyers to reach out to the confidential Lawyers Helping Lawyers Committee of the RI Bar Association by visiting the Bar’s website at ribar.com and clicking the Do You Need Confidential Assistance quick link, as well as the Ethics Committee and the Office of Disciplinary Counsel. “We know what it is like out there. It is better to be proactive. Ask.”

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

Summary of 2019 Education Bills and Education Package that Passed General Assembly



William J. Connell, Esq. M.Ed.
Attorney at Law, North Smithfield,
North Smithfield School Committee
Member

Under this process, districts which can demonstrate that they are utilizing a different curriculum and are achieving high student achievement will be able to continue using that curriculum.

Education is always a significant topic of focus for the Rhode Island General Assembly. The 2019 legislative session saw a significant number of education-related initiatives pass regarding K-12 education. This article will highlight some of that legislation, specifically laws in regard to requiring high-quality curriculum across all of the state's school districts, providing increased focus and resources in regard to the teaching of students with dyslexia and related disorders, and providing greater management of the day-to-day and long-term management of public schools at the school level, also known as school-based management. This article will reference both the public laws that passed and the General Laws that were amended. Note that in many cases, two separate public laws were passed that make substantially the same amendments to the same General Law(s), one bill originating in the House of Representatives and one bill originating in the Senate. All the public laws and the statutes that were amended during the session can be accessed through the State of Rhode Island General Assembly's Legislative Information website, found at rilegislature.gov/pages/legislation.aspx. Unless otherwise indicated, these bills took effect upon passage and are currently state law; however, some of these laws have established future dates by which certain actions need to be taken.

CURRICULUM

Statewide academic standards and curriculum were the focus of both 2019 R.I. Pub. Law Ch. 89, entitled "An Act Relating to Education – Curriculum Alignment and Standards For All Students," and 2019 R.I. Pub. Law Ch. 150, entitled "An Act Relating to Education–Curriculum." These bills established four new sections of the General Laws, R.I. Gen. Laws §§ 16-22-30, 16-22-31, 16-22-32, and 16-22-33.

Section 16-22-30 is entitled "Statewide academic standards." This section provides that the Council on Elementary and Secondary Education (the "Council") will direct the Commissioner of Elementary and Secondary Education (the "Commissioner") to "develop statewide academic standards for the core subjects of mathematics, English language arts, science and technology, his-

tory and social studies, world languages, and the arts."¹ The law includes several points as to how the academic standards are to be developed. In addition, the law provides these standards are to be used to develop the Rhode Island comprehensive assessment system, also known as "RICAS," which will be the standardized statewide tests administered in mathematics, English language arts, and science and technology. The law provides that RICAS is to "be in place no fewer than ten (10) years" and shall help to draw comparisons between students in Rhode Island and those from other states and nations.² The act also provides that the Council shall develop a process to update and refine these standards, and that there shall be a review of the standards by the Council every four (4) years, beginning in 2025.³

Section 16-22-31 is entitled "Curriculum frameworks." This new section provides the Council will direct the Commissioner "to develop curriculum frameworks for mathematics, English language arts, science and technology, history and social studies, world languages, and the arts."⁴ These frameworks are to be developed by September 1, 2021. Similar to the requirements for standards set forth in § 16-22-30, this section includes language about the process to develop the curriculum frameworks and sets forth some of what the curriculum frameworks should accomplish.⁵ It also includes a four (4) year review cycle of the frameworks, to be conducted by the Council, beginning in 2025.⁶

Section 16-22-32 is entitled "High quality curriculum and materials." As the title suggests, this section focuses on a process for reviewing and identifying actual curriculum. To clarify, the term "curriculum" is frequently used in education, but sometimes there can be different interpretations of exactly what "curriculum" is. In a slide deck posted on the Rhode Island Department of Education's website, curriculum is defined as "a standards-based sequence of planned experiences where students practice & achieve proficiency in content and applied learning skills"; as "what is essential for teaching & learning so that every student has access to rigorous academic experiences"; and as "the necessary goals, methods, materials, and assessments to effectively support

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instruction and learning.”⁷ To put it another way, curriculum refers to what is actually taught in the classroom and the materials used to teach it.

The new law directs the Commissioner to identify at least five (5) high quality curriculum in mathematics, English language arts, and science and technology. This curriculum is to be aligned with the academic standards referred to in § 16-22-30 and the curriculum frameworks referred to in § 16-22-31,⁸ as well as the RICAS exams.⁹ Local education agencies,¹⁰ which include traditional public school districts and charter schools, must select from one of five (5) high quality curriculum choices which the Commissioner will identify. There are timeframes for the Commissioner to identify the high quality curricula, specifically no later than January 1, 2021 for mathematics and English language arts, and no later than January 1, 2024 for science and technology. The school districts must adopt one of these curricula for mathematics and English by June 30, 2023, and for science and technology no later than June 30, 2025.¹¹ The law includes a waiver process to be developed by the Commissioner. Under this process, districts that can demonstrate that they are utilizing a different curriculum and are achieving high student achievement will be able to continue using that curriculum. To obtain this waiver, a school district needs to demonstrate that at least seventy-five percent (75%) of their students are meeting expectations on state assessments with the curriculum they are using; however, the district must also be one where there is “no student subgroup identified for targeted assistance under Rhode Island’s accountability process.”¹² If both of those criteria are not met, the district must use one of the curricula recognized by the commissioner.

Section 16-22-33 of the General Laws is entitled “Curriculum implementation accountability.” This section directs the Department of Elementary and Secondary Education (the “Department”) to designate an LEA Assistance Partner from the Department to provide support to the districts and schools in accessing and implementing professional development in regard to curriculum (and presumably with an emphasis on the new curriculum). The LEA Assistance Partner is directed to tour the schools within their assigned LEA, to observe challenges teachers may be having in implementing the curricula, and to speak to teachers to help address those challenges.¹³

READING

Reading instruction, and ways to promote instruction for students with dyslexia, were the main subject of two acts, 2019 R.I. Pub. Law Ch. 112 and 155, both entitled “An Act Relating to Education—Rhode Island Certifications Standards Board.” These acts added a new section known as the “Right to Read Act,” as well as a new chapter regarding the education of children with dyslexia and related disorders.

Right to Read Act

A new section was added and codified as § 16-11.4-6, entitled “Right to Read Act.” Under this new section, newly licensed (to Rhode Island) teachers must “have proficient knowledge and skills to teach reading consistent with the best practices of scientific reading instruction and structured literacy instruction.”¹⁴ Public school districts and open-enrollment public charter schools are directed to provide professional development in scientific reading instruction and structured literacy and require



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teachers to demonstrate proficiency or awareness in these areas. There is a phase-in period for these requirements, but all of this must be accomplished by 2025. The act defines “scientific reading instruction” as “instruction that is instructional centered, empirically based, and further based on the study of the relationship between cognitive science and educational outcomes.” The term “structured literacy instruction” is defined as “an approach by which licensed personnel teach reading, which includes syllables, morphology, sound-symbol correspondence, semantics, and syntax, in an explicit, systematic, and diagnostic manner.”¹⁵

Education of Children with Dyslexia and Related Disorders

A new chapter has been added, Chapter 16-67.2, entitled “Education of Children with Dyslexia and Related Disorders.” This new chapter contains several new initiatives establishing a coordinated, statewide response to the needs of students with dyslexia and other reading disorders. Section 16-67.2-1 requires the Department to develop and make available resources to promote and support professional development for teachers in recognizing, intervening, and making accommodations for “dyslexia, dyscalculia, dysgraphia, and related disorders.”¹⁶ The Department is directed to develop a collaborative learning laboratory to further assist in recognizing and addressing dyslexia and other reading disorders. The new law charges the Department with fostering and developing working relationships and bringing together educators and practitioners in both the public and private sectors to provide support for students with dyslexia across the state.¹⁷ New requirements have been added to education candidates seeking licensure as an elementary education teacher or as a reading specialist, which cover areas of professional awareness, interventions, and accommodations, as well as instruction “in the use of specific dyslexia-and related disorder-targeted methods of teaching.”¹⁸ Finally, the new acts authorized the establishment of a joint study research commission to investigate the potential establishment of two schools, one to be located at the University of Rhode Island and one at Rhode Island College, which “would be dedicated to the instruction of dyslexic children” and also serve as a place to develop and improve new instruction in the areas of dyslexia and other learning disabilities.¹⁹

SCHOOL-BASED MANAGEMENT

A new approach to the overall management of schools was the subject of two bills that became R.I. Pub. Laws Chapters 224 and 259, both titled “An Act Relating to Education—Education Accountability Act.” These bills amended the roles of school committees, placing a greater emphasis on these boards as policymakers. Under these laws, school district superintendents, principals, and school improvement teams have increased duties and authority, and the roles of the Board of Education and the Department are also revised. It should be noted these laws had a delayed effective date and took effect on January 1, 2020.

Pursuant to an amendment of § 16-1-5, dealing with the duties of the Commissioner, the Commissioner’s duties are expanded to include a process to review, revise, and adopt statewide academic standards, curriculum frameworks, and identifying high-quality curriculum.²⁰ The Commissioner is also directed to annually prepare a plan to assist with professional development plans.²¹ These changes tie in to the directives contained in R.I.

Thanks to Our CLE Speakers

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



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

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Pub. Laws Chapters 89 and 150, referenced earlier. Section 16-2-9, dealing with the general powers of school committees, was amended by removing the power "To give advice and consent on the appointment by the superintendent of all department personnel."²² Now the superintendent appoints principals within the district. The new law also provides that superintendents will appoint administrators and other personnel not assigned to individual schools. In addition, superintendents appoint personnel at individual schools at the recommendation of the school principal. Previously, appointments of all school department personnel were done by the superintendent with the consent of the school committee; the new law provides that the appointments are made "in accordance with policies established by school district policies and collective bargaining agreements."²³

Local management of schools is giving prominence in several new sections added to Chapter 16-2. One new section, § 16-2-11.1, delineates the general powers of school principals. This section states principals are "educational administrators and managers of their schools," who "supervise the operation and management of their schools and school property," subject to supervision of the superintendent.²⁴ Powers given to principals include: recommending the hiring of teachers and other staff assigned to schools, as well as to recommend terminations, subject to a decision of the superintendent; to oversee and manage school equipment; to prepare a school budget; to facilitate the evaluation of personnel assigned to the school and to implement a performance review plan for the school and teachers. The school improvement team is to be involved in the hiring of staff and preparation of the budget. The statute uses the term "participatory decision making among all professional staff" to develop educational policy.²⁵ Finally, the act expressly provides a transition period to implement these changes, and the changes are to be implemented no later than August 1, 2021.²⁶

School improvement teams also have an expanded role in the education process. In addition to what is noted above, amended § 16-53.1-3 provides that school improvement teams are to meet regularly and assist with curriculum and the budget. Further, school improvement teams are charged with working with the principal to prepare an annual plan to improve student performance.²⁷

The acts also included a new chapter, 16-97.1, entitled the "Education Accountability Act." Both the Board of Education and the Department are given new duties regarding the schools, which put an increased emphasis on oversight and (especially) support roles. The chapter contains several methods and requirements to accomplish this. The Board is directed to implement an annual evaluation for both local education agencies (which have the same definition as in the curriculum bills) and individual public schools. All school districts are directed to prepare an annual action plan by September 1 of each year.²⁸ Every three years, each district shall file a comprehensive district improvement plan.²⁹ Further, in any school district where greater than twenty percent (20%) of the students fail to meet expectation or at least show proficiency or its equivalent on the Rhode Island comprehensive assessment system exam, that district must prepare and submit a RICAS success plan to the department. The department, in turn, is directed to review the plan and work with the district to promote student success.³⁰ Further duties of the department in terms of working with schools are set forth in § 16-97.1-2.

Other Changes

There were other education law changes to K-12 education in the state, including but not limited to: requiring instruction regarding the dangers of mixing opioids and alcohol;³¹ exempting grade 12 students enrolled in a dual enrollment program from taking courses at their high school in health and physical education;³² establishing a new fast-track principal certification program;³³ deleting certain requirements regarding being able to speak, read, and write the English language by age 16;³⁴ and providing for the establishment of threat assessment teams in school districts.³⁵

Conclusion

This article, at best, touches on some of the key changes in education law passed during the 2019 session of the General Assembly. The new laws contain many duties and requirements beyond what is set forth herein, and a practitioner is encouraged to review the statutes in depth. Electronic copies of the General Laws embedded with the new amendments, and copies of the Public Laws which passed, may be found on the General Assembly's website noted above.

**Any opinions expressed herein are solely those of the author.*

ENDNOTES

- 1 R.I. GEN. LAWS § 16-22-30(A).
- 2 R.I. GEN. LAWS § 16-22-30(B).
- 3 R.I. GEN. LAWS § 16-22-30(F).
- 4 R.I. GEN. LAWS § 16-22-31(A).
- 5 R.I. GEN. LAWS § 16-22-31(B).
- 6 R.I. GEN. LAWS § 16-22-31(E).
- 7 Curriculum Matters for Our Kids slide deck, found at <https://www.ride.ri.gov/InstructionAssessment/Curriculum.aspx>. Click on link for HQCM Slide Deck for LEAS. Accessed March 2, 2020.
- 8 R.I. GEN. LAWS § 16-22-32(A)(1)(I)-(II).
- 9 R.I. GEN. LAWS § 16-22-32(A)(1)(Iii).
- 10 More specifically in regard to the curriculum sections, local education agencies include public school districts, regional school districts, state-operated schools, regional collaborative schools, and charter schools.
- 11 R.I. GEN. LAWS § 16-22-32(A)(2)-(3).
- 12 R.I. GEN. LAWS § 16-22-32(A)(6).
- 13 R.I. GEN. LAWS § 16-22-33.
- 14 R.I. GEN. LAWS § 16-11.4-6(B).
- 15 R.I. GEN. LAWS § 16-11.4-6(M)(1) And (2).
- 16 R.I. GEN. LAWS § 16-67.2-1 (1) And (2); See also R.I. Gen. Laws § 16-67.2-3.
- 17 R.I. GEN. LAWS § 16-67.2-2(B).
- 18 R.I. GEN. LAWS § 16-67.2-4.
- 19 R.I. GEN. LAWS § 16-67.2-5.
- 20 R.I. GEN. LAWS § 16-1-5(16)-(18).
- 21 R.I. GEN. LAWS § 16-1-5(19).
- 22 Formerly R.I. GEN. LAWS § 16-2-9(13).
- 23 R.I. GEN. LAWS § 16-2-11(A)(6) And (7).
- 24 R.I. GEN. LAWS § 16-2-11.1 (A).
- 25 R.I. GEN. LAWS § 16-2-11.1(B).
- 26 R.I. GEN. LAWS § 16-2-11.1(D).
- 27 R.I. GEN. LAWS § 16-53.1-3(A)-(C).
- 28 R.I. GEN. LAWS § 16-97.1-1(I).
- 29 R.I. GEN. LAWS § 16-97.1-1(H).
- 30 R.I. GEN. LAWS § 16-97.1-1(L).
- 31 R.I. GEN. LAWS § 16-22-4(B).
- 32 R.I. GEN. LAWS § 16-100-3(D).
- 33 R.I. GEN. LAWS § 16-11-9.
- 34 Formerly R.I. GEN. LAWS §§ 16-29-7 And 16-29-9.
- 35 R.I. GEN. LAWS § 16-21-23.2. ◊



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Don't Mess with Texas

American Bar Association Delegate Report

Midyear Meeting 2020



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

The 2020 ABA Midyear Meeting of the House of Delegates took place in Austin, Texas on February 17, 2020. As I write this article about what was discussed and accomplished there, our state, country and the world are experiencing a medically advised lockdown and economic consequences resulting from COVID-19. There are special unprecedented challenges for us as lawyers in running our practices, the court system closures, and the communities we serve. Needless to say, no one could have predicted any of this in the House when we met in February.

Prominent among the meeting's many Resolutions passed were those dealing with much needed promotion of civic education, the 100th anniversary of the 19th Amendment granting women the right to vote, the necessity of creating an overhaul to our immigration laws and courts that administer them, Migrant Protection Protocols (MPP), attacks on prosecutors by politicians which undermine the rule of law, renewal of the MMIW (Missing and Murdered Indigenous Women Act), policies on police use of lethal force when making an arrest, a series of actions related to encounters and treatment of service animals in both civilian and military circumstances, the ethical dilemma faced by lawyers who advise clients on cannabis related issues while it remains a federal but not state crime, the Uniform Automated Operation of Vehicles Act, safe storage of firearm requirements, and human trafficking and domestic violence.

We were addressed by Texas Supreme Court Chief Justice Nathan Hecht who forcefully reminded us of the issues the Justices see as facing us all, namely, continued limits on access to the judicial system by persons of limited means, persons of color, and other marginalized communities, cyberattacks on our court management systems, and political attacks on judges which undermine the courts and the legal system. He did mention the continuing problem of treating opioid and other substance addicted populations and the challenges of making proper decisions and referrals related to individuals with mental health issues. He spoke of reinforcing the rule of law and the interference in our political and legal system by foreign governments.

The ABA President Judy Perry Martinez of Louisiana addressed us speaking to the need of pro bono and other legal programs and reinforced the ABA's commitment to the Legal Services Corporation, which experiences a need greater than ever to underserved populations. Her outstanding leadership has been evident throughout the year.

I also attended, as part of my duties as your representative, several important meetings held in conjunction with the House meeting: the National Conference of Bar Presidents, the National Caucus of State Bar Associations, the Nominating Committee meeting of State Delegates, and the New England Bar Association annual meeting, among others.

As the reader can see, the ABA has been a focal point for our Bar in dealing with the issues lawyers face every day in their practices. On the positive side, we are continuing to lead on many, if not most, of the issues that face our communities. The ABA is accessible, and due to a recently reduced dues structure, it can be a valuable asset to law practice. New lawyers are not charged for dues at all.

As I stated at the outset, we as lawyers are facing new and unprecedented challenges to our practices. More than ever, these times require us to reinforce the rule of law in our communities. We must adapt. I am able to elaborate on any ABA issues I have touched upon in this article, which admittedly covers a wide swath of the practice of law. I am truly honored and humbled to be able to represent you in the ABA and pledge to continue to represent you. ♦

Casemaker Tip: Search Operators in Casemaker4

While there are some things that have changed in Casemaker4, quite a few things have not. For example, you can use the same search operators in Casemaker4 that you used in previous versions of Casemaker. Let's review them!

AND searching – Example: Contract Binding

To perform the AND search, simply leave a space. Casemaker sees the space as the AND operator. Our example will give you documents that have the word contract as well as the word binding.

OR searching – Example: alimony OR support

Using OR as the operator will find documents that use either word in the query. In our example, this query will pull up documents mentioning either alimony or support anywhere in them.

NOT searching – Example: property NOT commercial

Using the NOT operator will tell the system to find the documents that mention the first term but do not mention the second. In our example, the query will pull up documents that refer to property but do not mention the term commercial

Phrase searching – Example: “right of way”

This search type tells the system to treat everything in the quotations as if it were one search term. In our example, this means it will only pull cases that mention right of way but not cases that mention the words right, of and way by themselves.

Thesaurus searching – Example: ~parole

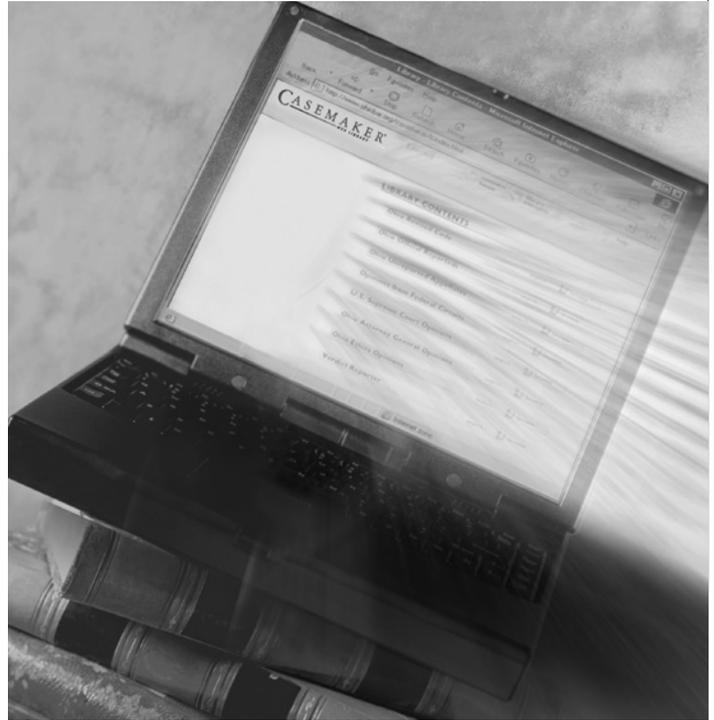
The thesaurus search not only locates your search term but also words with the same meaning. In our example query, the search will pull up documents that mention the word parole as well documents that mention any synonyms of the word parole.

Asterisk searching – Example: run*

This search will pull up documents that mention terms that begin with the letters prior to the asterisk. In our example, the query will find documents that mention not only run but also any words that start with run such as runner, runs, running and so on.

Proximity searching – Example: tax w/10 property

This search will pull up documents that mention your first term within the number of words you specify of the other term. In our example, this will bring us documents where tax is mentioned within ten words of the term property.



Grouping searching – Example: (alimony OR support) AND divorce

This would be the one case where you should use the word AND in Casemaker. Using the parentheses tells the system you want to group these queries. In this example, the system will return documents that mention alimony or support but also mention divorce.

When creating searches, if you run into trouble or need a few tips, we highly recommend contacting Casemaker's customer support department. They have a live chat feature which will allow you to instant message the customer support team during regular hours. You will find a link to livechat in the upper right of the Casemaker4 screen.

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An Interview with Michaela Bland, Esq.

by Nicole P. Dyszlewski, Esq., MLIS and Meghan L. Hopkins, Esq.

Focus on the Future is a new spotlight series where members of the *Rhode Island Bar Journal* Editorial Board interview attorneys who are newer to the Rhode Island Bar.

> **What is your current title and position?**

I am a Staff Attorney at the Rhode Island Center for Justice. I am also a Skadden Fellow, which is a project-based two-year fellowship in public interest law funded by the Skadden Fellowship Foundation. Through my Skadden Fellowship, I am working on a two-year public interest law project at the Rhode Island Center for Justice on education pipeline issues. I provide direct representation, community education, and legislative advocacy on issues relating to the school-to-prison pipeline. At the end of my fellowship, I hope to obtain a position as a federal court clerk.

> **What do you actually do all day?**

Every day I work on both big picture and small picture things related to defending students' right to an education free of discrimination. For example, most days I interact with or meet with members of community organizations like Alliance of Rhode Island Southeast Asians for Education (ARISE), the Providence Student Union (PSU), Youth in Action (YIA), the Rhode Island Urban Debate League (RIUDL) and Providence Youth Student Movement (PrYSM). I meet with these organizations to focus on on-going policy work. I also may work on an actual case where I am directly representing an aggrieved student or may attend meetings as a liaison. For example, I was a liaison for the state's Juvenile Justice Advisory Committee. Additionally, I cover emergency needs at the Center. Recently, I represented someone at trial in housing court.

> **What do you like the most about your position?**

I love working with the community organizations. The work is all about giving life to the voice and vision of students. It is beautiful to listen to the ideas of the youth but then be able to use strategies I learned in law school to amplify their voices. Conversely, the biggest challenge is the "adults know best" attitude that many have. There are some who feel that students shouldn't have power and it is hard work trying to shift the power dynamic.

> **What is your best advice to those in power based on your work in this fellowship?**

Listen more to the younger voices around you. They are our future.

> **What is your best advice to other public interest attorneys?**

Persist! You will be challenged, ignored, and shut down. Dance in the discomfort. You will find allies and be able to build the community. Change happens slowly but that is okay. Persist anyway.

> **Who is your biggest role model in or out of the law?**

I am empowered every day by the fact that I am living my ancestors' wildest dreams.



MICHAELA BLAND, ESQ.

> **What do you do to de-stress?**

I never want to get to the point where the facts of a case don't affect me. I don't ever want to lose the connection with the clients and with justice. I view everything through a humanitarian lens and want to continue that. I volunteer as a member of the board of directors of New Urban Arts (an organization that positively impacts high school students, predominately those of color, through art) and I also take a weekly dance class. It is my sacred space I use to recharge and fill up my cup. I also have a great group of supportive friends who help put my pieces back together when I am stressed out.

> **What is your favorite restaurant in Rhode Island?**
Plant City in Providence.

> **Name one thing that you could not live without and why?**
Generally, music. Specifically, Spotify. I am always on Spotify!

> **How have you chosen to decorate your office?**

My office is very nature-themed. I have photos from different seasons with rustic overtones. I like to retain my connection to the outside world even while at work. I also have different posters in my office that reflect the great pioneers of social justice. It is very important to me that my office space remain authentic to who I am as a person and the social causes I believe in.



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When contacting Coastline EAP, please identify yourself as a Rhode Island Bar Association member or family member. A Coastline EAP Consultant will

briefly discuss your concerns to determine if your situation needs immediate attention. If not, initial appointments are made within 24 to 48 hours at a location convenient to you. Or, visit our website at coastlineeap.com (company name login is "RIBAR"). Please contact Coastline EAP by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

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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 Helen McDonald at hmcdonald@ribar.com or 401.421.5740.

MOVIE REVIEW

Dark Waters



Jenna Giguere, Esq.
Deputy Chief of Legal Services
Department of Business
Regulation

It was speculated that the failures and delays by regulatory authorities to take action to address the fluorochemical exposure was related to that powerful influence of DuPont on the community and associated politics.

The overarching storyline of the film *Dark Waters* centers around the litigation efforts of real-life environmental attorney Mark Bilott. Bilott is portrayed as an understated attorney from a “no-name” college and law school who takes a risk to help a stranger. A coincidental personal connection leads this suited Cincinnati corporate environmental defense attorney to jump to the plaintiff’s side to represent a West Virginia farmer who appears in overalls speaking with a notable Appalachian dialect. Representing the farmer, Bilott takes on the chemical industry giant, DuPont.

In a nutshell, the chemicals at issue in the toxic tort case portrayed in *Dark Waters* are in a family of fluorochemicals used in the manufacturing of Teflon material. Yes, this is the same Teflon most commonly recognized for its household application as the nonstick lining of frying pans. Also dubbed “forever chemicals,” the durability of these long carbon chains is what makes the chemical so commercially viable. But that durability also equates with difficulty for the human body to break down.¹

The stark realities associated with the true story provide inspiration for some of the most dramatic scenes of *Dark Waters*. Chemicals were visibly foaming in the nearby waters. Factory workers exposed to the chemical reported regular flu-like symptoms coined “Teflon flu.” Exposure studies by the industry itself showed links to cancer and birth defects. The real impacts to the farmer, and later to the plaintiffs, lend themselves to heart-pounding action scenes and gory imagery. The depressing tone used to portray corporate greed at the expense of the humblest of humanity is reflected in the muted gray hue selected in the art of the filming.

Dark Waters employs the visual concept of a timeline to contextualize the multiplying hours Bilott dedicated to the case and the mounting frustration of the suffering plaintiffs as years come and went without results. The passage of time is also highlighted using scenes capturing moments of Bilott’s personal life, from feeding his first baby during a spaghetti dinner to three teen boys eating breakfast before leaving for Catholic school. The filmmaker’s decision to capture these personal scenes also relates how one’s life takes drastic turns against the background of the most ordinary moments. As Bilott makes the career-defining decision

to represent a farmer against an industry giant, “granite samples” happens to be the most ordinary household topic of discussion with his wife?²

For readers interested in the academic value of this film, some substantive legal topics appear in the movie as well. *Dark Waters* provides an illustration of “regulatory capture,” a concept that might be taught in law school classes covering administrative law. Specifically, the exposures occurred in towns where DuPont’s influence was visible in scenes showing DuPont-named little league fields and referencing DuPont’s role as the major employer in a small local economy. It was speculated that the failures and delays by regulatory authorities to take action to address the fluorochemical exposure was related to that powerful influence of DuPont on the community and associated politics. Another academic example, the term “medical monitoring” is theatrically written on a whiteboard in a board room meeting. Giving a soundbite of a lesson in toxic tort law, Bilott explains this type of claim to cover costs of future periodic medical examinations to detect disease that may be caused by exposure to toxins, available in limited jurisdictions.

The meaningful closing line of *Dark Waters* is Bilott announcing “still here” to a presiding judge, a simple phrase capturing the protagonist’s enduring character. For an audience of lawyers in particular, the film offers a resonating theme of the importance of using our law degrees to help shine the light of justice in the darkest of society’s scenes.

ENDNOTES

¹ For readers left worried about the Teflon pans in their home kitchens: I, myself, Googled this question while the movie’s scene of a panicked Bilott rummaging his kitchen cabinets was replaying in my head. From what I can tell, it seems that after 2013, Teflon pans no longer contained the fluorochemicals in question. Some experts suggest avoiding cooking in Teflon pans on very high heat and avoiding scratched or peeling Teflon surfaces.

² Like a footnote in a real-life story line featuring mostly male characters, I also noticed that the filmmakers make a deliberate effort to infuse short scenes featuring two female lawyer characters. Those characters’ reactions to comments about “lady lawyers” are portrayed in a way that provides a very brief (and incomplete) reference to the experiences of leaving the workforce to raise a family and hesitation to tell an employer about a pregnancy. ◇

In Memoriam

Orlando A. Andreoni, Esq.

Orlando "Andy" A. Andreoni, 79, passed away on Tuesday, February 11, 2020. He was the husband of Linda (Lacourse) Andreoni. Born in Providence, he was the son of the late Orlando J. and Marie (Guatieri) Andreoni. Besides his wife, he is survived by his children, Michael, Julie, and Jeffrey Andreoni and Brenden Gauch. He is also survived by his grandchildren Siobhan, Orlando, Stacy and Tyson; and a brother Rodney J. Andreoni.

Robert B. Berkelhammer, Esq.

Robert Bruce Berkelhammer, 70, of Providence died February 16, 2020. He was the husband of Miriam (Mitz) Berkelhammer. Bob was a native of Providence. He received a bachelor's degree from the University of Rochester and a law degree from Boston University. He practiced law in RI for 42 years, and was a partner at Chace, Rutenberg and Freedman. He was a past president of the former Jewish Family Services and the RI Jewish Historical Society, a member of Temple Beth-El and served on the boards of many local organizations. In addition to his wife of almost 45 years, he is survived by his children: Jessi Berkelhammer and her husband Abraham Flaxman of Seattle; Max Berkelhammer and his wife E. Toba Pearlman of Chicago; and Abby Berkelhammer and her husband Scott Raker of Providence, and many grandchildren. He is also survived by Larry Berkelhammer and his wife Irma Botvin, the Honorable Robert Krause and his wife Marjorie, and Marcia Finkelstein.

Salvatore Butera, Jr., Esq.

Salvatore "Sam" Butera, Jr., 91, of Lincoln, passed away on March 19, 2020. He was the husband of the late Arlene H. (Dolbey) Butera. Born in Johnston, he was the son of the late Salvatore and Gesualda (Rotondo) Butera. Sam practiced law in Providence, until retiring. He also was the owner of the former Crickets Restaurant in Smithfield for 35 years, before retiring two years ago. Sam is survived by three children, Linda Butera Noble of Lincoln, Steven Butera of Morris Plains, NJ, and Patricia Crispino of Lincoln, seven grandchildren, two great-grandchildren, and two sisters, Angelina aRusso and Ann Langford, both of Johnston.

James A. Farrell, Jr., Esq.

James A. Farrell, Jr., 81, of Wakefield, passed away Saturday, February 15, 2020. He was the husband of Gayle P. (DeForge) Farrell. Born and raised in Providence, he was the eldest son of the late James A. Farrell, Sr. and late Margaret "Rita" C. (O'Neil) Farrell Dwyer. Mr. Farrell spent his early years in Providence, attending Assumption School before graduating from La Salle Academy. Following high school, he earned a bachelor's degree from Providence College. Mr. Farrell was a Lieutenant in the U.S. Army, stationed in Germany, on a Hercules and Hawk Missile site. Upon his return, Mr. Farrell was employed by Crawford & Company for many years, while earning his law degree from the New England School of Law. He held his law practice in Warwick, then later in South Kingstown. In addition to his wife Gayle, Mr. Farrell is survived by: his children Kelly J. Farrell (late husband, Lawrence P. Cuomo) and Sean J. Farrell (wife, Jana L.) from his first wife, Claudette J. Farrell; step-sons Ralph P. Nash (wife, Barbara) and Andrew W. Nash (Charnella Rosenthal); James and Gayle's devoted friend, Anne Marie Charland; and siblings: Margaret "Peggy" A. Feeney (late husband, John J. Feeney, Eileen M. Green (husband, John M.), Valerie J. Dilorio (husband, Anthony "Tony" J.), and Joseph K. Farrell; and many grandchildren.

Norman G. Orodenker, Esq.

Norman G. Orodenker, 86, passed away Tuesday, February 18, 2020. He was the husband of Sylvia (Goldberg) Orodenker. Born in Providence, he was

the son of the late Samuel and Anna (Kagan) Orodenker. Mr. Orodenker was a graduate of Classical High School; received his bachelor's degree from Brown University and his J.D. from Columbia University in 1958. He was admitted to Rhode Island Bar in 1958. He was a senior partner at Tillinghast, Licht, Perkins, Smith, and Cohen; legal counsel at the Department of Employment Security, 1960-1962; chief legal counsel for all Rhode Island departments of state government, 1969-1972; chief legal counsel of the Registry of Motor Vehicles, 1972-1974; and chief legal counsel of the Rhode Island Department of Transportation, 1974-1982. He first became active in social action as a member of the Jewish Federation of Rhode Island Community Relations Council more than three decades ago. Mr. Orodenker was president of The Jewish Family Services as well as The Urban League of Rhode Island; board member of the Rhode Island Civil Rights Commission; chair of the U.S. Civil Rights Advisory Commission; chair of the Providence Police Advisory Committee; chair of the Task Force on State Unified Police Training Academy; chair of the Rhode Island Commission on Prejudice and Bias; co-chair of the Black Jewish Alliance; co-chair of the Latino Jewish Alliance; and co-chair of the Muslim Jewish Alliance.

In past years he served as co-chair of the Rhode Island Coalition Against Bigotry; co-chair on the Governor's Summit on Diversity in 1999; co-founder of the Rhode Island Coalition on Mental Health; chair of the Governor's Council of Mental Health; national co-chair of the Jewish Community Relations Advisory Committee, Committee on Inter-faith Relations; vice president and past Board of Directors member of the Jewish Federation of Rhode Island; national founding board member of Commercial Law Affiliates; chair of the Jewish Community Relations Council; and chair of the Cranston Diversity Advisory Committee. He was a Recipient of the NCCJ Humanitarian Award in 1999, Recipient of the Jewish Federation of Rhode Island Rensselaer Community Service Award in 2004, Recipient of the Urban League Humanitarian Award in 2004, and received the Martindale-Hubbell rating AV. He was the recipient of the 1st annual Norman G. Orodenker Peacemaker Award from the RI Commission of Prejudice and Bias at Roger Williams University. Besides his wife, he is survived by his children Daniel (Lynn Miura) of Hawaii, Judith (Mark DeBinder) of Smithfield, and Joshua (Kathleen DeBlasio) of East Greenwich; sisters Eunice Shatz (Katherine Gabel) and Marcia (Conor) Power; grandchildren Rachel, Ariel, Andrew, Aiden, Kalani, Mark Jr., and Daniel; and several nieces and nephews. He was the brother of the late Vivian Kolodny.

John M. Roney, Esq.

John Marshall Roney died on March 10, 2020. John was born on September 21, 1939, in Washington, D.C., the son of Joseph Roney and Elizabeth Marshall Chamblin. Growing up in Washington with his younger sisters, Ellen and Joanne, he graduated from St. John's Military Academy and attended Providence College. Upon graduation, he was hired as a reporter for *The Providence Journal*, and then went on to attend The Catholic University Law School. While in school, he worked as a policeman for the U.S. Capitol, and met and married his first wife, Irene Howe of Bristol, RI. They had two children, Christopher and Carley. After receiving his degree, he joined the Library of Congress' American Law Division before moving to D.C. Legal Services. John was recruited back to Providence in 1970 to join Rhode Island Legal Services (RILS) where he was instrumental in many precedent-setting civil rights cases. After four years at RILS and a brief stint in commercial litigation, John opened his own civil and criminal law practice on Wickenden Street in Providence with former RILS colleague, Robert Mann. In the 1980s, Lynette Labinger joined the firm and John and Lynette maintained their practice, Roney & Labinger, from 1983 to 2018, when John retired. Over the course of his career in private practice, John led numerous high-profile

cases in Federal Court. John was also dedicated in his efforts to help Fox Point families, small businesses, and independent professionals with their legal needs. In 1988, John married Barbara Kennedy Roney. John was elected as a State Senator for the Second District of Providence in 1994, serving as Vice-Chair of the Finance and Judiciary Committees and sponsoring numerous significant pieces of legislation, including a critical bill to protect gay rights and a revision of the Uniform Commercial Code. John stepped down as a Senator after eight years, but his service to the legislature continued for many years in his capacity as the Senate Parliamentarian. He was elected president of the Rhode Island Bar Association in 2003 and was honored with the Community Service Award in 1995 and the Public Service Programs Certificate of Appreciation in 2009 for his tireless work on behalf of local charitable and civic organizations such as Family Service of Rhode Island, Sophia Academy, and Leadership Rhode Island. In addition to his grandchildren and his wife of 32 years, John is survived by his children, Christopher Roney (Lisa), Carley Roney (David), and Kristina Hanson Lowell (Greg); his sisters Ellen Roney Hughes and Joanne Roney Hepworth (Bill); and his beloved Corgi, Teddy.

Hon. Edward P. Sowa, Jr.

RI Workers' Compensation Court Associate Judge Edward P. Sowa Jr., 76, passed away Thursday, February 13, 2020 in Port Charlotte, FL. He was the husband of Janet (Pratt) Sowa for 52 years. Ed was born in Pawtucket, a son of the late Edward P. Sowa Sr. and Isabelle (Goidz) Sowa. He was a graduate of St. Joseph's School and St. Raphael's Academy, and continued on to receive his bachelor's degree from the University of Rhode Island and his Juris Doctor degree from Boston University. Ed worked as a trial attorney at Gunning & LaFazia for 27 years where he was a partner. Following a nomination by then Rhode Island Governor Lincoln Almond, he served as an associate justice in the Rhode Island Judiciary for 15 years, retiring in 2016. Ed was an active member of his community and a probate court judge in Lincoln. He volunteered for the Rhode Island Mock Trial program and the program championship trophy was later named the Sowa Cup in his honor. Ed served as a Staff Sergeant in the Army Reserves 443rd Civil Affairs Company during the Vietnam War. Besides his wife, Ed is survived by his children, Kristen (Sowa) Chip and her husband Patrick, of Rockwell, TX, and Jeffrey Sowa and his wife, Jennifer of Tiverton, RI, and eight grandchildren. He is also survived by his three siblings, Phillip Sowa and his wife Lura Lee of Georgia, Randolph Sowa and his wife Mary Beth of Wickford, and Maryann Cohen and her husband Larry of Cranston.

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



Winning caption for
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ANONYMOUS

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

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

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

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

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Lawyers on the Move

Frank A. Lombardi, Esq. and **Mary-Joy A. Howes, Esq.** are pleased to announce the opening of a new law firm, **Lombardi Law Group, LLC**, at 14 Breakneck Hill Rd, Suite 203 in Lincoln, RI 02865.
401-726-1010 frank@llgri.com mj@llgri.com

Michael B. Messore IV, Esq. is now a partner at **Gunning & LaFazia, Inc.** and **Andrew W. Plocica, Esq.** and **Michael A. Milas, Esq.** are now associates at **Gunning & LaFazia, Inc.**, 33 College Hill Road, Suite 25B, Warwick, RI 02886.
401-521-6900 mmessore@gunninglafazia.com aplocica@gunninglafazia.com
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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.

8 Shelter in Place Activities

If social distancing has you stuck inside going stir crazy, here are several activities you can do to pass the time and keep boredom at bay.

Try a Virtual Class



While gathering in a classroom is not advisable right now, thanks to the power of the internet, classes of all kinds are still available. Learning something new and thinking critically are great ways to stave off cabin fever.

Virtual Museums



Famed museums like the National Museum of Natural History in Washington, DC are offering online experiences, allowing viewers to learn about the exhibits in the museums from the comfort of their homes.

Start an Indoor Garden



It might seem surprising but one of the most effective ways to practice self-care is to take care of something other than yourself. With that in mind, this might be the perfect opportunity to start an indoor herb garden.

Read a Book



Books prove to be an increasingly welcome respite from the at times dizzying and disheartening news cycle. Now all of those books you've been meaning to read can finally get the attention they deserve!



Start a Craft Project

Have you ever had the itch to pick up a new craft? Now is the time to try something new! Crocheting or knitting could be a place to start, or try scrapbooking and use this time to catalog your photos and get creative.



Watch a Broadway Show

For a limited time, Broadway musicals and shows are available to stream for free online. Now you can still experience the magic of theater from the comfort of your couch.



Stay Active

Staying at home for prolonged periods of time can pose a significant challenge for remaining physically active. To kick start your new at-home fitness routine, try out one of the countless at-home workout videos on YouTube, or download a new fitness app to your phone.



Virtual Happy Hour

Many people are turning to platforms like Zoom and Google Hangouts for virtual meetings, but you can also use them to spend time with your friends. Organize a group happy hour and sign on at the same time to make it feel like you're together even when you're not.

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 how to log in to *Coastline EAP*, a private non-profit consulting service contracted by the Association to assist you at no charge.

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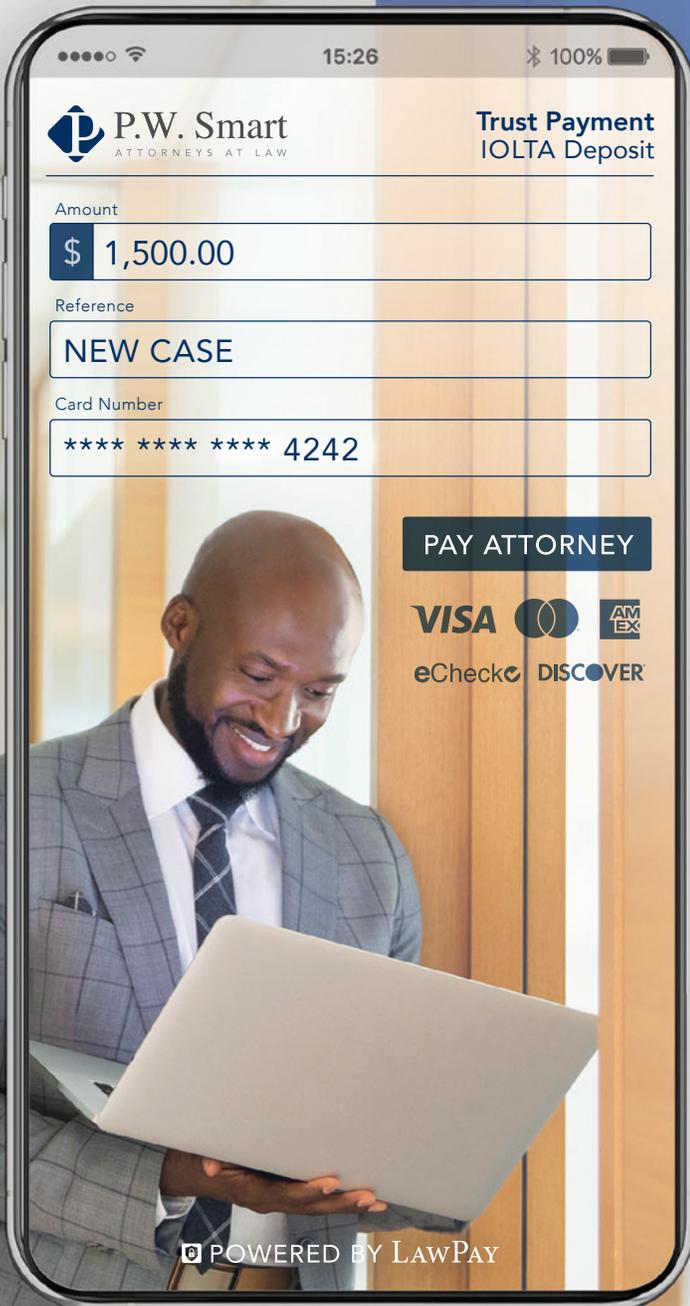
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An Interview with Michaela Bland, Esq.

by Nicole P. Dyszlewski, Esq., MLIS and Meghan L. Hopkins, Esq.

Focus on the Future is a new spotlight series where members of the *Rhode Island Bar Journal* Editorial Board interview attorneys who are newer to the Rhode Island Bar.

○ **What is your current title and position?**

I am a Staff Attorney at the Rhode Island Center for Justice. I am also a Skadden Fellow, which is a project-based two-year fellowship in public interest law funded by the Skadden Fellowship Foundation. Through my Skadden Fellowship, I am working on a two-year public interest law project at the Rhode Island Center for Justice on education pipeline issues. I provide direct representation, community education, and legislative advocacy on issues relating to the school-to-prison pipeline. At the end of my fellowship, I hope to obtain a position as a federal court clerk.

○ **What do you actually do all day?**

Every day I work on both big picture and small picture things related to defending students' right to an education free of discrimination. For example, most days I interact with or meet with members of community organizations like Alliance of Rhode Island Southeast Asians for Education (ARISE), the Providence Student Union (PSU), Youth in Action (YIA), the Rhode Island Urban Debate League (RIUDL) and Providence Youth Student Movement (PrYSM). I meet with these organizations to focus on on-going policy work. I also may work on an actual case where I am directly representing an aggrieved student or may attend meetings as a liaison. For example, I was a liaison for the state's Juvenile Justice Advisory Committee. Additionally, I cover emergency needs at the Center. Recently, I represented someone at trial in housing court.

○ **What do you like the most about your position?**

I love working with the community organizations. The work is all about giving life to the voice and vision of students. It is beautiful to listen to the ideas of the youth but then be able to use strategies I learned in law school to amplify their voices. Conversely, the biggest challenge is the "adults know best" attitude that many have. There are some who feel that students shouldn't have power and it is hard work trying to shift the power dynamic.

○ **What is your best advice to those in power based on your work in this fellowship?**

Listen more to the younger voices around you. They are our future.

○ **What is your best advice to other public interest attorneys?**

Persist! You will be challenged, ignored, and shut down. Dance in the discomfort. You will find allies and be able to build the community. Change happens slowly but that is okay. Persist anyway.

○ **Who is your biggest role model in or out of the law?**

I am empowered every day by the fact that I am living my ancestors' wildest dreams.



○ **What do you do to de-stress?**

I never want to get to the point where the facts of a case don't affect me. I don't ever want to lose the connection with the clients and with justice. I view everything through a humanitarian lens and want to continue that. I volunteer as a member of the board of directors of New Urban Arts (an organization that positively impacts high school students, predominately those of color, through art) and I also take a weekly dance class. It is my sacred space I use to recharge and fill up my cup. I also have a great group of supportive friends who help put my pieces back together when I am stressed out.

○ **What is your favorite restaurant in Rhode Island?**
Plant City in Providence.

○ **Name one thing that you could not live without and why?**
Generally, music. Specifically, Spotify. I am always on Spotify!

○ **How have you chosen to decorate your office?**

My office is very nature-themed. I have photos from different seasons with rustic overtones. I like to retain my connection to the outside world even while at work. I also have different posters in my office that reflect the great pioneers of social justice. It is very important to me that my office space remain authentic to who I am as a person and the social causes I believe in.



DYSZLEWSKI



HOPKINS

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MICHAELA BLAND, ESQ.

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What do you actually do all day?

Every day I work on both big picture and small picture things related to defending students' right to an education free of discrimination. For example, most days I interact with or meet with members of community organizations like Alliance of Rhode Island Southeast Asians for Education (ARISE), the Providence Student Union (PSU), Youth in Action (YIA), the Rhode Island Urban Debate League (RIUDL) and Providence Youth Student Movement (PrYSM). I meet with these organizations to focus on on-going policy work. I also may work on an actual case where I am directly representing an aggrieved student or may attend meetings as a liaison. For example, I was a liaison for the state's Juvenile Justice Advisory Committee. Additionally, I cover emergency needs at the Center. Recently, I represented someone at trial in housing court.

What do you like the most about your position?

I love working with the community organizations. The work is all about giving life to the voice and vision of students. It is beautiful to listen to the ideas of the youth but then be able to use strategies I learned in law school to amplify their voices. Conversely, the biggest challenge is the "adults know best" attitude that many have. There are some who feel that students shouldn't have power and it is hard work trying to shift the power dynamic.

What is your best advice to those in power based on your work in this fellowship?

Listen more to the younger voices around you. They are our future.

What is your best advice to other public interest attorneys?

Persist! You will be challenged, ignored, and shut down. Dance in the discomfort. You will find allies and be able to build the community. Change happens slowly but that is okay. Persist anyway.

Who is your biggest role model in or out of the law?

I am empowered every day by the fact that I am living my ancestors' wildest dreams.



What do you do to de-stress?

I never want to get to the point where the facts of a case don't affect me. I don't ever want to lose the connection with the clients and with justice. I view everything through a humanitarian lens and want to continue that. I volunteer as a member of the board of directors of New Urban Arts (an organization that positively impacts high school students, predominately those of color, through art) and I also take a weekly dance class. It is my sacred space I use to recharge and fill up my cup. I also have a great group of supportive friends who help put my pieces back together when I am stressed out.

What is your favorite restaurant in Rhode Island?

Plant City in Providence.

Name one thing that you could not live without and why?

Generally, music. Specifically, Spotify. I am always on Spotify!

How have you chosen to decorate your office?

My office is very nature-themed. I have photos from different seasons with rustic overtones. I like to retain my connection to the outside world even while at work. I also have different posters in my office that reflect the great pioneers of social justice. It is very important to me that my office space remain authentic to who I am as a person and the social causes I believe in.



DYSZLEWSKI



HOPKINS

An Interview with Michaela Bland, Esq.

by Nicole P. Dyszlewski, Esq., MLIS and Meghan L. Hopkins, Esq.

Focus on the Future is a new spotlight series where members of the *Rhode Island Bar Journal* Editorial Board interview attorneys who are newer to the Rhode Island Bar.

What is your current title and position?

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MICHAELA BLAND, ESQ.

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