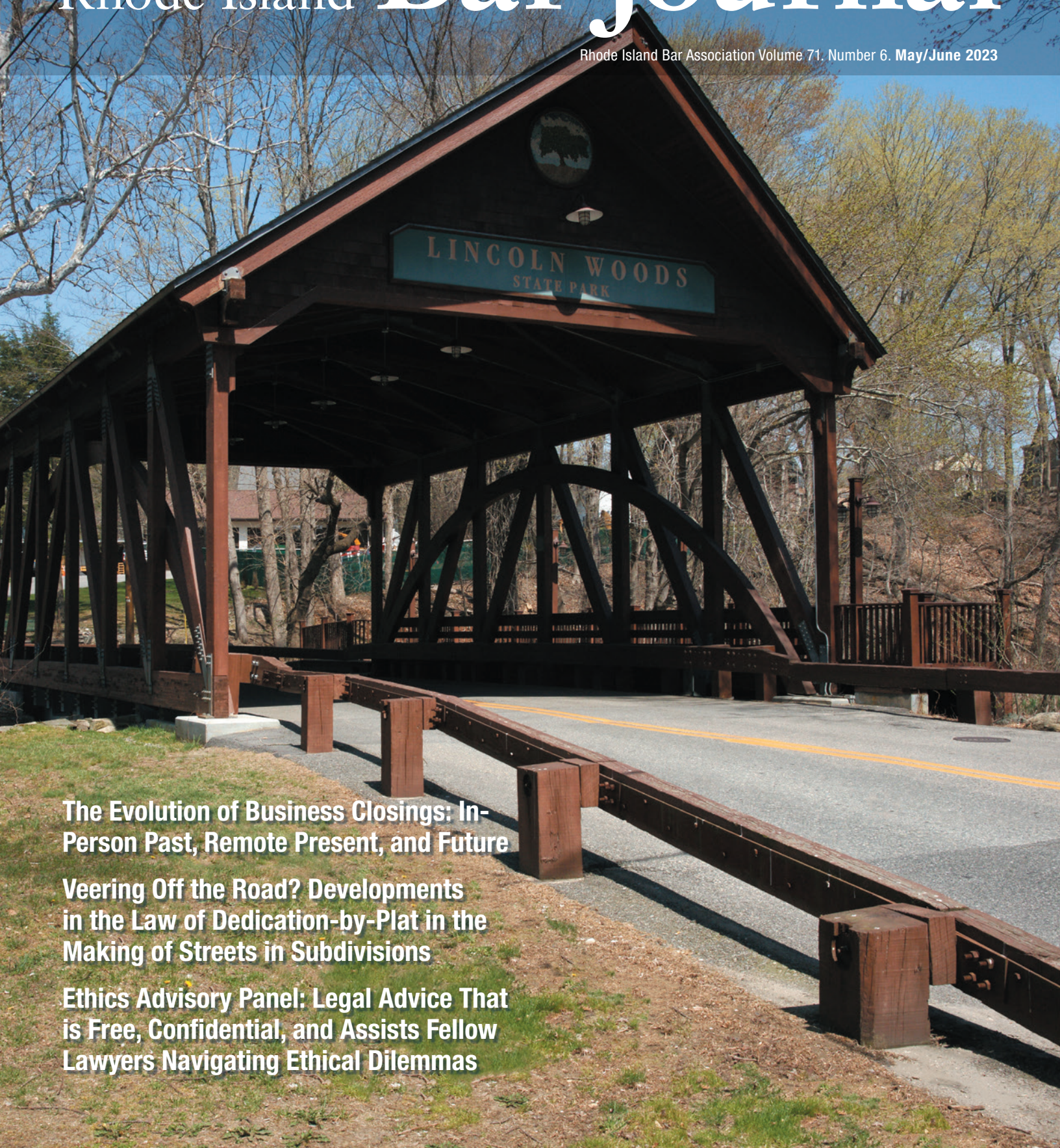


Rhode Island Bar Journal

Rhode Island Bar Association Volume 71, Number 6, May/June 2023



The Evolution of Business Closings: In-Person Past, Remote Present, and Future

Veering Off the Road? Developments in the Law of Dedication-by-Plat in the Making of Streets in Subdivisions

Ethics Advisory Panel: Legal Advice That is Free, Confidential, and Assists Fellow Lawyers Navigating Ethical Dilemmas

Articles

7 The Evolution of Business Closings: In-Person Past, Remote Present, and Future

Jeffrey B. Cianciolo, Esq. and Marcus Howell, Esq.

15 Veering Off the Road? Developments in the Law of Dedication-by-Plat in the Making of Streets in Subdivisions

Michael Rubin, Esq.

23 Rhode Island Women Lawyers: Past, Present, & Future

Angela Yingling, Esq. and Jennifer L. Sylvia, Esq.

27 Ethics Advisory Panel: Legal Advice that is Free, Confidential, and Assists Fellow Lawyers Navigating Ethical Dilemmas

Lise J. Gescheidt, Esq. and Christopher S. Gontarz, Esq.

35 Let the Good Times Roll at the Mid-Year Annual Meeting American Bar Association Delegate Report Mid-Year Meeting 2023

Robert D. Oster, Esq.

FEATURES

- | | |
|---|---|
| 3 Inclusiveness | 24 Visit the On-Demand Catalog to Earn Your Last Minute Credits! |
| 4 Establish Yourself As An Expert in An Area of Law | 25 Your Bar's 2023 Annual Meeting Highlights – Innocence Project – Friday, June 2nd, Plenary Session |
| 4 Build your Client Base and Serve Your Community with the Bar's Lawyer Referral Service! | 30 Practice Form 12 – Checklist for Rhode Island Foreclosures Open for Bar Member Review and Comment |
| 5 Our Foundation is Strong | 32 Keep Your Directory Listing Up to Date! |
| 8 IOLTA Honor Roll Bank | 34 Proposed Additions to Practice Form 15 – Rhode Island Acknowledgement Forms Open for Bar Member Review and Comment |
| 8 Stay Connected | 34 Fastcase Tip: Save a Search |
| 9 Don't Miss Out on a Great Lineup of Annual Meeting Workshops! | 36 Lawyers Helping Lawyers |
| 12 Honor Roll | 36 SOLACE |
| 12 Pro Bono Publico Resolution | 37 In Memoriam |
| 13 Your Bar's 2023 Annual Meeting Highlights – Why We Do What Matters – Thursday, June 1st, Plenary Session | 38 Cartoon |
| 16 Sign Up For Your 2023-2024 Bar Committee Membership Today! | 38 Lawyers on the Move |
| 17 Soliciting Bar Member Response to Proposed Traffic Tribunal Bench Bar Committee | 38 RIBA DEI Committee Call to Action! |
| 20 Thanks to Our CLE Speakers | 38 Advertiser Index |
| 22 CLE Publications Order Form | |

Front Cover Photograph by Brian McDonald

Lincoln Woods State Park Bridge Named for Abraham Lincoln and officially founded on what would have been the president's 100th birthday in 1909, Lincoln Woods State Park is the oldest park in the Rhode Island State Parks system. The covered bridge at the Breakneck Hill entrance was built and dedicated in the spring of 2005. Visitors can enjoy swimming at the freshwater beach, trout fishing, playing ball, hiking, jogging, horseback riding, and more.



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

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Inclusiveness



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

“We manage these tasks and the larger goals of the Association, not by making great strides or by fundamentally changing our Association, but in small increments.”

This is the final President’s Message I will write in service as your Bar President. It may also be the hardest one to write. I have searched the President’s Message pages in earlier issues of the *RI Bar Journal* in hopes it will help me find something profound to say. I discovered that each message is unique, yet they all share a common theme. A common theme, but each year with a twist, a subtle variance that makes the message a bit different from the others.

We have all strived for a Bar Association committed to inclusiveness. As a mandatory bar, we have members with varying viewpoints and diversity. As presidents and officers of the Bar Association, we have sought to involve our colleagues in the activities and programs of our Bar Association, regardless of our differences.

In my term, I sought inclusiveness in committee work and diversity in our programming and leadership. This is not a new theme; it is an aspiration that resonated with our immediate past president, Lynda Laing. Prior to that, Lynda’s predecessor, Richard D’Addario, had the same aspirations, as did his predecessor, and throughout.

With each of us, though, the theme of inclusiveness has manifested itself in different ways and in response to the unique challenges that faced us in our particular year. Richard and past president David Bazar, dealt with the challenges of the pandemic and the difficulties in bringing together a membership isolated by necessity and communicating remotely. Lynda and I faced the happier challenge of returning to the world of live gatherings and hybrid meetings and striving to find the right combination to keep our membership engaged. We also had the more somber task of re-evaluating the structure of our organization and, in concert with our judiciary, evaluating our system of justice so that it can be more inclusive of those who have been underrepresented and not fully served.

In the brief time we have as president, there is much to deal with—a statement that requires attention, policy considerations to bring to the House of Delegates, initiatives for the Executive Committee to review, attendance at a function, or any of the multitude of tasks that we face on a daily basis. We manage these tasks and the larger

goals of the Association, not by making great strides or by fundamentally changing our Association, but in small increments. We do so by fulfilling our daily responsibilities and by doing as much as we can so that the Bar Association gets just a bit further in accomplishing our goals. We hope to advance these goals enough so that our successor can continue, expand, and respond to the challenges faced during their term.

I can say, without hesitation, that in the 40 years in which I have been a member of this Association, each of our presidents has advanced the ball a bit further. Each has helped in making your Bar Association more inclusive and responsive to your needs and priorities.

There is another common theme expressed by each of our past presidents, and that is an expression of gratitude for allowing us to serve as your Bar President for this brief period in our history. It is but a brief time to serve, but there is much to be done in helping to guide the Association on a steady course.

We have not done this alone. First and foremost, we rely on the accomplished and dedicated staff of our Bar Association, led by Executive Director Kathleen (Katy) Bridge. The members of the House of Delegates and the Executive Committee get a close-up view of the hard work of Katy and her team, but even they cannot truly appreciate all that she and our staff do. It is not until you get to the presidency and work firsthand on a daily basis with Katy that one can truly appreciate the great work they do. We have a truly remarkable staff, and our Bar Association is well served by them.

Likewise, I can say the same for our Executive Committee. In my 12 years on the Executive Committee, I do not recall a single instance where a member called upon to serve has not performed his or her task diligently and without hesitation. The officers and Executive Committee members during my term were no different. They are dedi-

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cated and committed to making the Bar Association work for you.

We have a robust and active House of Delegates. This year, in response to our request for more participation, we received 13 new applicants to the House of Delegates. This is a record, and it shows that you care about the future of our Bar Association and are willing to put in the work necessary to keep it relevant and responsive to your needs.

On June 2, 2023, I will pass the gavel to Nicole Benjamin. I end my presidency knowing that Nicole will advance the goals of the Bar Association further and continue to make it more responsive to the needs and priorities of our membership. Our Association will remain in good hands and on a steady course with Nicole at its helm.

In closing, I wish to join our past presidents in expressing my gratitude to you for allowing me to serve as your president during the 2022–2023 term. It has been an honor and privilege to have had this opportunity, and a labor of love for each day of my term. ♦

Establish Yourself As An Expert in An Area of Law

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

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



Attorney Denise Acevedo Perez, a member of the Lawyer Referral Service, enthusiastically supports the program. *"The Lawyer Referral Service has many advantages—it allows small firms to grow their clientele AND provide income-based representation when needed. It also connects clients not only to lawyers who are competent in a specific area of law but also to newer practitioners desirous of obtaining more experience in a particular field of law. In short, everyone wins."*

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

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

Rhode Island Bar Journal

Editorial Statement

The *Rhode Island Bar Journal* is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a magazine published bi-monthly, six times annually, and digitally distributed to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,300 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements and facts in signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in articles, interviews, columns, and editorials are not the official view of the Rhode Island Bar Association. Letters to the Editor are welcome.

Article Selection Criteria

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

Direct inquiries and send articles and author photographs for publication consideration to:

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Our Foundation is Strong



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

“... 2023 could be the best year ever in the history of the Foundation in terms of IOLTA funds collected and distributed to non-profits.”

It has been an honor and a deep privilege to serve as the president of your Rhode Island Bar Foundation for the last four years. It was, of course, also an honor and a privilege to serve as your Bar Association president about 10 years ago. However, there is a major difference between the goals of the Bar Association and the goals of the Bar Foundation. When serving as the president of the Bar Association, I was primarily looking out for the best interests of the approximately 6,500 lawyers who are admitted to practice in Rhode Island. On the other hand, serving as the president of the Bar Foundation is often a joyful experience because we distribute the funds we receive from the Interest on Lawyers Trust Account (IOLTA) program to worthy non-profit organizations that primarily provide low-cost and/or no-cost legal services to the disadvantaged in Rhode Island. The Bar Foundation also administers law school scholarship programs and fellowship programs for deserving law students with strong connections to the state of Rhode Island.

Your Foundation's programs are strong

It is rewarding to ensure that the IOLTA funds entrusted to your Foundation by our Supreme Court are being put to good use by our non-profit grantees, who primarily provide legal services to the needy. It is also very humbling to review the many applications we receive for law school scholarships and to award scholarships to law students, who often go on to highly successful legal careers in Rhode Island. In addition, the fellowships that have been established through the Foundation for second-year law students are designated for law students looking to pursue a legal career in public service. For these fellowships, your Foundation works together with Roger Williams Law School to select the candidates. The law school and your Foundation match funds to make the Fellowship program work.

Your Foundation's programs are strong and getting stronger. When I became your president in 2019, the Foundation administered two \$25,000 scholarships for first-year law students who, among other things, need financial help, have demonstrated academic and personal success, and have been accepted to law school. Now the Foundation

administers two \$25,000 law school scholarships funded by the Champlin and Kimball Foundations and others in honor of Thomas F. Black, Jr.; two \$25,000 law school scholarships funded by the Papitto Opportunity Connection for deserving first-year law students who are Black, Indigenous, and people of color; and an additional \$25,000 law school scholarship established by past Foundation president John Tarantino in honor of his late wife, Patrice Tarantino. We have also been in discussions with other potential donors about additional possible law school scholarships.

In 2019, the Foundation administered two fellowships jointly with Roger Williams Law School. Funding for the Foundation's share was initially established by the late Superior Court Justice Thomas F. Caldarone, Jr., by way of an endowment he provided to our Foundation. At this time, we now have not only the Caldarone fellowships, but we also administer two new fellowships in honor of the Foundation's treasurer emeritus, James A. Jackson. These new fellowships were established by an endowment from the Papitto Opportunity Connection, and the annual funding is matched by the Roger Williams Law School.

Your Foundation's Fellow Participation is strong

There are approximately 333 fellows of your Bar Foundation. We have an aging bar, and as fellows die or retire, we need to replace them because of the important financial support they provide to the Foundation. Since 2019, we have added 40 new fellows to our ranks, and we have at the same time increased diversity among our fellows. Last year alone, we added 20 new fellows with diverse backgrounds. Of these 20 new fellows, 11 are women and 9 are men. In addition, 3 are people of color, 14 are in private practice, and 6 practice in-house, either in private businesses or in government. One of our new fellows is a Superior Court Justice. We are proud to have increased the racial, ethnic, and employment diversity of our

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Rhode Island Bar Foundation

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

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

Help Our Bar Foundation Help Others

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Questions? Please contact Theresa Gallo at 421-6541

or tgallo@ribar.com

fellows in recent years, and as I stated in a previous president's message, I firmly believe that our increasing diversity gives us strength.

Your Foundation's finances are strong

In the month of January 2023 alone, your Foundation collected over \$225,000 from your IOLTA accounts. To my knowledge, this is the first time in the history of the Bar Foundation that IOLTA revenue for a single month has ever exceeded \$200,000.

In 2018, total IOLTA collections for the entire year were approximately \$455,000. Those amounts have grown each year. In 2022, our annual collections grew to \$1,045,407. This means that we will soon be able to utilize these increasing monies to further assist our non-profit grantees in providing legal services to the disadvantaged. Moreover, if the \$225,000 we collected in the month of January 2023 continues throughout the year, then 2023 could be the best year ever in the history of the Foundation in terms of IOLTA funds collected and distributed to non-profits.

In 2019, we had operating funds of about \$168,000, approximately \$750,000 in our long-term reserve fund, approximately \$1.3 million in the Black Scholarship fund, and approximately \$50,000 in the Caldarone Fellowship fund.

In 2023, as I write this message, we have approximately \$1.1 million in operating funds, \$1.5 million in our long-term reserve fund, \$1.5 million in the Black scholarship fund, \$25,000 in the Tarantino scholarship fund, a \$50,000 commitment from the Papitto Opportunity Connection for scholarship funding, \$70,000 in the Caldarone fellowship fund, and \$50,000 in the Jackson fellowship fund.

It is important to note that since 2019, we have been able to increase our financial strength as shown above, while at the same time, we awarded 11 law school scholarships totaling \$275,000, and 10 law student fellowships totaling \$15,000. More importantly, since 2019, we have awarded approximately \$1.6 million in funding for our non-profit grant recipients, primarily to assist in providing legal services to the needy.

None of this would have been possible without the financial commitments made by all our Fellows. In recent years, I have called upon our Life Fellows, who have all completed their mandatory \$1,500 initial contributions, to also make increased annual sustaining contributions. Our Life Fellows have resoundingly answered my call. In 2019, the Life Fellows sustaining contributions totaled approximately \$24,400, whereas in the past year, our Life Fellows sustaining contributions increased to \$27,575, our largest to date. Thank you so much!

In addition, our partners at the Washington Trust Company have been invaluable in terms of investing and managing our various funds, and they have really stepped up to the plate in terms of the high rate of interest they pay on IOLTA accounts

Of course, our committee chairs, officers, and directors have provided invaluable time, advice, and counsel to make sure that we are constantly going in the right direction. Also, the wonderful staff at the Bar Foundation, including Program Director Theresa Gallo and Executive Director Katy Bridge, do the day-to-day hard work of operating the Foundation under the direction of the Board.

I would like to extend my sincere thanks to the entire team for sharing their time, talent, and treasure in support of your Bar Foundation. It has been a wonderful four years! ◇

The Evolution of Business Closings: In-Person Past, Remote Present, and Future



Jeffrey B. Cianciolo, Esq.
McLaughlinQuinn LLC
Providence



Marcus Howell, Esq.
McLaughlinQuinn LLC
Providence

“As technology became ubiquitous and interconnected, exchanging hand-marked hard copies through couriers or overnight delivery was no longer necessary or economical.”

The tastefully-appointed conference room overlooks a bustling downtown from twenty stories up through large panel windows. In the center of the room is a long, solid mahogany table covered in stacks of folders and papers, a smattering of half-empty plates and glasses, and pages of documents covered in handwritten markups in red pen. At least a dozen people surround the table; attorneys in their finest suits arguing over materiality and knowledge qualifiers, clients sitting off to the side chatting about their recent vacations, paralegals scurrying out to hand off pages to a grey-haired secretary to re-type a paragraph or change a word, and administrators ducking in and out of the room bringing coffee and taking late lunch orders.¹ A buzz of excitement permeates the room; this is the culmination of months of diligence, negotiations, and drafting. Occasionally, all conversations come to a stop with the exception of the senior lawyers who interject themselves into the negotiations to resolve a specific but important provision of the principal transaction agreement. Eventually, the forms of the final documents are agreed to and executed in quadruplicate, a bank check is slid across the table, and everyone engages in ceremonial but sincere handshakes, backslapping, and congratulations. Later that evening, over a steak dinner, the client offers thanks to the entire team for their dedication to the transaction, and the firm’s lead partner acknowledges the lawyers who were integral to getting the deal across the finish line.

For better or worse, the halcyon days described above are long gone and likely to never return. In less than thirty years, they have been replaced with a streamlined closing process that a cynic might say has all of the charm and excitement of filling out an online questionnaire, but a pragmatist would argue is considerably more efficient, cost-effective, and work-life balanced for everyone involved. Given the rapidity and all-encompassing nature of the evolution of the closing process, practitioners from different generations may have entirely disparate expectations for what the word “closing” even means. This article will examine how the process of closing a commercial transaction has evolved over time and will lay out some important protocols for today’s remote closings,

incorporating lessons learned from practical experience as well as the best practices from in-person closings of the recent past.

Back In the Day

Through the early nineties, commercial closings were generally coordinated in the same manner all over the country. The months leading up to the closing were full of late nights and weekends, with teams of associate lawyers and paralegals toiling over every aspect of a complex business transaction. Comments to documents were often hand-marked and exchanged via correspondence delivered by overnight delivery service. Attorneys often scrambled to complete agreement drafts in time to meet the nightly FedEx drop-off deadline. The closing itself was an event with a capital “E.” A closing could take a full day or even multiple days, depending on the nature of the deal and the parties involved. During this time, most of the lawyers’ other client work was on hold.²

Today’s Closing

Fast forward to today, and a “closing” is a wholly different and almost entirely remote affair. A 2017 study found that more than 70% of merger and acquisition deals close remotely.³ Although more recent data is not available, the authors’ own anecdotal experience and unscientific polling of M&A practitioners suggest that the percentage of remote closings has increased significantly, with almost all closings now being held remotely. In the course of an entire transaction, lawyers often never meet in person, and in many instances, lawyers may never even meet their clients in person. All relevant communication is exchanged via phone or email. Documents are drafted electronically, and are negotiated through redlines exchanged back and forth, with commentary in the document margins or a cover email message instead of face-to-face discussions. The forms of transaction documents are often finalized in days or even

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weeks before the closing. The tense arguments between senior lawyers over the closing table have been replaced with an email exchange or a quick phone call. The closing of a deal itself is often anticlimactic, with junior lawyers swapping signature pages via email. In the rare instance where parties need original signed documents, they are frequently exchanged post-closing.

How Did We Get Here

The transition from typewriters to computer technology allowed lawyers to rapidly draft, revise and share documents at a speed that was unimaginable decades ago. Law firms, realizing the vast potential for efficiency inherent in the technology, were among the earliest adopters of desktop computers and word-processing software. Although at first, those products were slow and expensive, in a very short span of time the capabilities of even the cheapest computers surpassed the drafting needs of lawyers. Software firms developed products specifically for document preparation, including functions to easily track changes between documents and add comments. Technology companies developed faster and faster ways to transfer digital

documents, first through the exchange of floppy disks, and eventually to cloud-based distribution. Agreements that used to take weeks to draft and months to negotiate became instantly searchable, editable, and shareable. As technology became ubiquitous and interconnected, exchanging hand-marked hard copies through couriers or overnight delivery was no longer necessary or economical.

It was a logical step from drafting and exchanging drafts electronically to exchanging execution copies electronically. However, no lawyer wanted to be the test case for the enforceability of such agreements. Congress alleviated much of the concern with the passage of the Uniform Electronic Transactions Act (UETA)⁴ in 1999 and the United States Electronic Signatures in Global and National Commerce (ESIGN) Act⁵ in 2000. Among other things, UETA and ESIGN provide that when a law requires either a writing or a signature, an electronic record or an electronic signature can satisfy that requirement, provided that the parties to the transaction consent to proceed electronically and have not withdrawn such consent prior to the closing.

UETA and ESIGN Act provided the statutory basis for the enforceability of electronically signed and delivered documents. As a result, more and more practitioners began utilizing remote technology in their closing practices. By the 2010s, remote closings were commonplace and almost universally accepted. The final nail in the coffin for the in-person closing arrived with the COVID-related government-imposed lockdowns and social distancing mandates, when remote closings were the only option available. Remote closings for commercial transactions are now the rule, and the in-person closing is the rare and notable exception to the commercial transaction practice.

Best Practices and Protocols

To properly effect remote closings, attorneys should adopt protocols to use for each remote closing. These protocols should be in place to avoid potential disputes regarding the underlying terms of the deal, or whether a party agreed to those terms. What follows are suggested protocols to use for remote closings, which are based in part on the MAC Digital Documentation Protocol developed by the American Bar Association, Mergers & Acquisitions Committee, Technology in M&A Subcommittee⁶ as well as the authors' own experiences. In addition to a set of governing principles for remote closings, the MAC Digital Documentation Protocol also includes sample language for agreements that are intended to be executed and delivered remotely, which may be tailored for specific transactions. Adherence to the following principles will help ensure that the signatories to

IOLTA Honor Roll Banks

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



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a transaction have duly executed and delivered the applicable digital documents.

1. Agree to the Process

To begin with, the lawyers should discuss with their clients the processes they intend to use to conduct the closing. Documents can be circulated electronically via email or by providing access to electronic versions via a shared work folder or data room. Signatures can be obtained via email, e-signature programs, or original, signed documents delivered via FedEx. Failure to agree ahead of time on the closing process can lead to client confusion and delay. Once the parties have agreed to a process for the remote closing, that process should be incorporated into the transaction documents or otherwise documented and agreed to by counsel.

2. Full Review of Final Documents

The next step is to make sure that complete, unmarked documents, including any exhibits to the documents, are made available to all signatories and their counsel for review before they are submitted for signature.⁷ Any last-minute changes to the documents should be properly documented and consented to in writing prior to execution. In the event that there are details in the agreements that cannot be confirmed prior to the actual date of closing, explicitly acknowledge those items and how the parties will agree to those items at the closing. For example, an interest rate may not be available until the closing date, but the parties should agree ahead of time on how they will confirm the interest rate when they are reviewing the final documents.

3. Agreement on Effective Date

The parties also should agree ahead of time on the effective date of the closing. Because remote closing documents are often signed on different days, sometimes even days ahead of the actual closing, parties often leave the date on documents blank, letting their lawyers fill in that detail later. However, if the documents are never dated and if the parties never agreed to a closing date, this can leave the effective date of the documents, and perhaps even the effectiveness of the documents, open to question in the event of a future dispute.

4. Written Confirmation of Review and Final Agreements

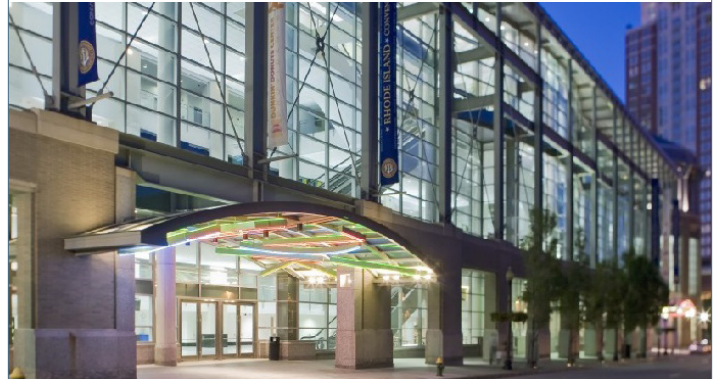
Prior to signing, each signatory should confirm, in writing, that they have conducted a full review of the documents and that those documents are in final form and reflect the parties' understanding of the proposed transaction.⁸ Upon receipt of this confirmation from every party to the transaction, the lawyers should circulate the applicable documents to their own clients for execution.

5. Circulation for Execution

Remote execution can be confusing for some clients, especially if they are accustomed to a sit-down, in-person closing. Ideally, clients may be asked about their remote signing preference, and provided multiple options if they are unsure how to proceed. For example, more tech-savvy clients might prefer to use e-signature services such as DocuSign or HelloSign, as they can execute documents using a tablet or a phone, while other clients might prefer receiving an email or hard copy packet containing their required signature pages, which they sign and return by scan, fax, or overnight delivery. Despite the remote nature of the closing, it may be beneficial—or even necessary—for the client to come into the office to sign the documents in person, especially where a client would benefit from a review of the transaction terms and conditions.⁹

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1 & 2



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is on Thursday, June 1 and Friday, June 2, 2023, and will once again be held in person at the Rhode Island Convention Center. Here are a few highlights of our 40 fantastic workshops:

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Learn about the law on non-competes in Rhode Island, updates on recent developments, tips for drafting agreements to ensure enforceability and compliance, as well as the effect on Rhode Island employers of any recent action by the Federal Trade Commission to limit the enforceability of non-competes across the United States.

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Notwithstanding the acceptance of electronic signatures, original, “wet ink” signed promissory notes, deeds, mortgages, and other instruments are still required in many jurisdictions. Whenever documents require original signatures, attorneys must make sure those documents are finalized and circulated in advance to make sure they will be delivered on or before the closing date.

6. Approval of Release

In order for an agreement to be enforceable against a party, it must be duly executed and delivered. Although “delivery” in a remote closing can be as simple as emailing executed signature pages to the other party’s counsel, diligent lawyers will utilize a more thoughtful approach. First, executed transaction documents should be circulated in escrow, subject to each party’s authorized release. The parties should then concurrently and affirmatively express their intent to deliver the executed document to the other party and release the documents from escrow. Typically, this is done via a closing call or in a group email where each party or their counsel communicates its intent to deliver the documents to the other.

7. Post-Closing Delivery

Once the documents have been executed and delivered, the closing has occurred, and the clients can begin to focus on conducting their business post-closing.¹⁰ Remote closings, however, often impose additional post-closing obligations on counsel. Instruments need to be recorded or certificates filed, and monies may need to be transferred or held in escrow. In addition, final documents need to be compiled and circulated to all of the parties, typically via electronic means. Agreeing ahead of time as to which party is responsible for these tasks, the means of circulation, and the acceptable timeline for their completion will eliminate confusion and delay in finalizing the transaction. Without a deadline, a “closed” deal may be set aside to address billable work and can linger for weeks without delivery of the final documents to the client. No attorney wants to receive a call from a client in the midst of a post-closing dispute asking where their executed documents are.

8. Remember the Client Relationship

Even though the closing has lost much of its personal touch, attorneys should not forget about the value of a business relationship with their clients. Attorneys should find the time after a closing to schedule a coffee or lunch with the client, or even an old-school closing dinner. These interactions are the hallmark of good counsel and can deepen business relationships despite the impersonal nature of today’s modern closings.

Where Do We Go From Here

In-person closings are likely a thing of the past. Certainly, remote closings are preferable in many ways, not only for the time and cost savings to the client and the law firm but also for the attorneys working on each transaction. Remote closings allow for a better work-life balance for everyone involved, they can empower younger attorneys, and they often reduce antagonist lawyering. However, remote closings will never have the same personal touch or engender the same camaraderie among lawyers and clients, lawyers within the same firm, and even lawyers on opposing sides of a transaction, as in-person closings. Relationships among lawyers and their clients can become mechanical and strained if remote closings are not paired with practices that attempt to replicate the more philosophical ben-

efits of in-person closings.

Until artificial intelligence replaces corporate lawyers entirely (an article for another day),¹¹ experienced business attorneys know that human interaction is what truly differentiates one attorney from the other, especially as the profession adopts fewer in-person processes such as remote closings.

ENDNOTES

¹ The description is either inspired by Jimmy Dyer's famous boardroom painting, "The Closing" or a memory of a 1995 closing at the offices of Edwards & Angell in Providence, Rhode Island.

² Old school lawyers could always remember closings from the past by reviewing their collection of acrylic "tombstone" mementos commemorating the transaction.

³ <https://www.dfinsolutions.com/insights/white-paper/navigating-modern-deal-process-closing>.

⁴ <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments>.

⁵ 15 USC Ch. 96, Sec. 7001 et al.

⁶ https://www.americanbar.org/groups/business_law/publications/blt/2022/02/the-mac-digital/.

⁷ Id.

⁸ Id.

⁹ The question an attorney does not want to be asked after negotiating a transaction agreement for 9 weeks: "So what am I signing?"

¹⁰ "Business" for a post-closing seller may be as simple as shopping for a second home in Florida.

¹¹ Type the title to this article into ChatGPT. <https://openai.com/blog/chatgpt>. Perhaps the authors could have saved time and simply pasted the response into this publication. ◇

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PRO BONO PUBLICO RESOLUTION

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

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

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

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

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Judge Victoria Pratt is recognized nationally and internationally for her commitment to reforming the criminal justice system. She’s been called a pioneer in procedural justice—a simple, proven approach to transforming our court system using the power of dignity and respect. While presiding over court, she used procedural justice and innovative problem-solving to provide alternative sentences to low-level offenders, including community service, counseling sessions, and her signature assignment of introspective essays. Her respectful approach has had a transformational impact on court participants, the community, and court practitioners.

Judge Pratt has been featured in media outlets such as The Guardian, Forbes, and PBS. Her highly viewed *TED Talk*, *How Judges Can Show Respect*, has been listed as one of the Top 15 Most Viral Motivational Talks on Facebook, with over 37 million views. Considered a global expert, she’s worked in Dubai, Ukraine, England, Scotland, Trinidad and Tobago, and Mexico. Her book, *The Power of Dignity: How Transforming Justice Can Heal Our Communities*, published through Seal Press/The Hachette Book Group, was released on May 10, 2022, to rave reviews. Judge Pratt has worked with corporations such as LinkedIn, Facebook, and Prudential, as well as other institutions and organizations. She has served as a Professor of Professional Practice at Rutgers School of Law and School of Criminal Justice in Newark, NJ. Currently, Judge Pratt is the Executive Director of Odyssey Impact, an organization that uses storytelling, film, and faith voices to catalyze action for social justice. She also champions criminal justice reform through her consulting firm, Pratt Lucien Consultants, LLC, by sharing her skills and approach with others. Currently, she consults with various jurisdictions, organizations, and companies through her company, Pratt Lucien Consultants, LLC, on procedural justice, transforming justice, DEI, and leadership.

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Veering Off the Road?

Developments in the Law of Dedication-by-Plat in the Making of Streets in Subdivisions



Michael Rubin, Esq.
Attorney at Law
Pawtucket

“After an offer is made by platting, recording, and selling, an additional step must transpire to complete the dedication: ...the public must use the delineated roads.”

In 2005, in *Newport Realty v. Lynch*,¹ our state supreme court reinvigorated the doctrine of express dedication-by-plat—a common-law method for the creation of public roads that gives rise to many of our neighborhood streets. The Justices repeated the black-letter law that “[the] sale of lots with reference to [a recorded multi-lot subdivision] plat is an incipient dedication that the roads [depicted thereon] are offered for public use, pending official action or public user [usage].”² But the decision extended beyond a mere recitation of the mechanics: the Court held that dedication-by-plat constitutes a “time-honored” technique³ “a recognized method,”⁴ “a bedrock principle,”⁵ and “settled jurisprudence.”⁶ This harkened back to endorsements found in older cases, many from a century beforehand.⁷

In a series of later cases, however, the Court rejected particular dedication-by-plat claims. These include *Ucci v. Coventry*⁸ and *Drescher v. Johannessen*,⁹ among others.^{10,11}

This article, by scrutiny of the particular facts and plats involved and differentiating between the doctrines of express and implied dedication, harmonizes these recent opinions with *Newport Realty* and its antecedents. Despite some broad *dicta* and some doctrinal imprecision in these decisions, common-law dedication-by-plat (also referred to as highway-by-plat) remains the main tool for legally recognizing roads that provide access to multiple numbered lots that are deeded-out from older recorded subdivision plats.

First, this article explores the theoretical underpinnings of dedication. *Second*, this article differentiates between (a) dedication-by-plat, a form of express dedication, and (b) the confusingly named and historically anomalous doctrine of implied dedication. *Third*, this article shows that the law likewise differentiates between the two. *Fourth*, this article discusses an illustrative case. *Fifth*, this article explores recent opinions seeming to merge the two types. Finally, this article concludes that any such merger is more apparent than real.

I. Dedication Creates Non-Deeded Rights in the Public as a Whole

It is oft repeated¹² that “a dedication is the setting apart of land for the public use.”¹³

Certain precepts apply to *all* common-law dedications (both express and implied). Most of these can be traced to the U.S. Supreme Court’s seminal 1832 decision in *Cincinnati v. White*.¹⁴

A. Common-law dedications do not involve a deed

Dedication is a “legal oddity.”¹⁵ The preeminent 19th century Rhode Island scholar, Joseph K. Angell, observed that dedication arose to “obviate [the] difficulty” represented by the facts that “a grant, to be valid, must be [to] some specific grantee”¹⁶ and that the public does not qualify. Therefore, *Cincinnati v. White* rested dedication on the idea of estoppel,¹⁷ thereby overcoming objections as to “the want of a grantee.”¹⁸

B. Common-law dedications give rise to an easement only

A corollary is that “Common law dedication... vests only an easement in the public.”¹⁹

C. Common-law dedications involve offer and acceptance

Cincinnati v. White used the terms “intention”²⁰ and “acceptance,”²¹ but the former quickly evolved into “offer.” For instance, the early Rhode Island case of *Clark v. Peckham* adopted the terminology “offer.”²² The *Restatement* confirms: “Dedication requires an offer by the owner of the land and an acceptance by the public.”²³

Acceptance can be by “official action or public user [usage].”²⁴ For sake of brevity, the focus here will be on public usage.

II. Two Contrasting Theories are Subsumed Under “Dedication”

Importantly, the authorities are unanimous that common-law dedications form two categories: express (*i.e.*, overt or intentional) and implied.²⁵

A. Developers Used Express Dedication To Provide Lot Buyers With Amenities Like Roads

The above-cited *Cincinnati v. White*²⁶ case planted dedication-by-plat on this continent.

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Dedication-by-plat then blossomed, allowing developers of large tracts to divide their holdings into accessible, marketable lots:

After [*Cincinnati v.*] *White*, the use of public dedication theory to protect public spaces spread rapidly. Initially, some older states on the eastern seaboard resisted the new doctrine. But even these states came to accept public dedication.... The resulting doctrine was a unique American hybrid....²⁷

Indeed, the mechanics of highway-by-plat were definitively prescribed in Rhode Island in the 1870s by *Clark v. Providence*²⁸ and in the 1880s by *Chapin v. Brown*.²⁹

Thus, while express dedication certainly can be employed in philanthropy, it is most commonly animated by self-interest. Rhode Island case law acknowledges this motive.³⁰

B. Towns Used Implied Dedication As The Only Doctrine Available To Save Old Roads

Another problem existed on both sides of the Atlantic. The issue was the legal basis for upholding ancient roadways. An influential New York case, shortly after *Cincinnati v. White*, referred to the problem,³¹ but rejected using a theory of public prescriptive easement as a solution:

[T]he only way that an individual can acquire a right in real estate is by grant, or by an adverse possession of twenty years under a claim of title, in which case the law prescribes a [lost] grant; and, as to the public, the only way in which they can at the common law acquire an easement in the lands of another is by dedication.³²

Thus, as documented in the *Restatement*³³ and elsewhere,³⁴ the doctrine of implied dedication arose to evade the resistance to directly employing prescription as a means of vindicating roadways of obscure origin.³⁵ The upshot is that implied dedication by public usage became public prescription by another name. Indeed, as shown below, some courts use the terms interchangeably.

III. There are Two Distinct Lines of Cases on "Dedication"

A. Courts Distinguish Between Express Dedication and Implied Dedication

The two theories of dedication were compared in the Rhode Island case of *Talbot v. Little Compton*.³⁶ First, the court explored express dedication. The Court noted that "there is considerable evidence" that it was "[the proprietors'] intention... that the town should succeed to all their rights...."³⁷ In the final analysis, however, the Court stopped short of such a finding.³⁸ Second, the Court then turned to implied dedication: "Nevertheless, the use by the town has been sufficient for an acquisition of title by adverse user. Such long and continued user raises a presumption of dedication."³⁹

A similar two-step approach appears in *Corrente v. Coventry*,⁴⁰ albeit with a different result. Where a lane had not been expressly "laid out," the only available theory of dedication was "long continued use," and the failure to meet the prescriptive period was fatal.⁴¹

With this distinction in place, a mass of Rhode Island dedication cases can be classified as addressing express⁴² or implied⁴³ claims.

Rhode Island is not alone. A Georgia case was careful to eschew reliance on the elements of prescription where an overt dedication was involved:

However, public uses of a [property] which are insufficient

to prove that the owner of the property intended to dedicate it to the public may be sufficient to constitute an... acceptance... where an express offer of dedication has been made.⁴⁴

Relying on a recorded multi-lot subdivision plat, the Georgia court found an express offer. Consequently, adverse use was *not* needed for acceptance.⁴⁵

Conversely, the same distinction led a particular Maryland case⁴⁶ to reject the public claim based on the facts before it. The court initially remarked that the surrounding area “had been dedicated to public use by recorded plats,” but that, in the *locus in quo*, “no such dedication” existed. Using the concepts of implied dedication and prescription interchangeably, the court reasoned that “[t]he distinction between dedication and prescription cannot be lost. Implying a dedication solely through long public use without regard to any intent to dedicate... is but a form of prescription, and as such, all of the requisites for prescriptive rights must be met.”⁴⁷

B. The Key Difference in Effect is The Level Of Public Use Needed For Acceptance

The upshot of the two distinct lines of authority is the difference in the quality and quantity of public use needed to achieve acceptance.

First, forming the class of express dedication, are those instances where the offer to dedicate (called an “incipient dedication”) is manifested by overt conduct.

A large sub-set is the mode of dedication-by-plat. After an offer is made by platting, recording, and selling, an additional step must transpire to complete the dedication: unless there are official municipal acts of acceptance, the public must use the delineated roads. Thus, public use merely needs to constitute an acceptance of an offer already made.

Second, forming the class of implied dedication, are instances where there is no offer independent of the usage; the public use is itself the sole manifestation of the “offer” which is really a legal fiction. Such use, if sufficiently persevering, might imply acquiescence, which, in turn, might imply (under that fiction) a dedicatory offer. In such cases, the fact of public use fulfills two functions: It serves to establish both the and offer the acceptance.

These last cases, which are essentially prescription cases, are represented by the following fact pattern: A defined route of long-enduring public use exists whose origins are shrouded in obscurity. The publicness results from a dedication-by-user.

In the first set of cases, a much lower level of public use is required in order to achieve acceptance than in the second.

IV. The Day Case Exemplifies Express Dedication

The first body of law, above—expresses dedication—culminated in *Day v. Edmondson*,⁴⁸ which is the most definitive Rhode Island precedent concerning the subject of public use following upon such an offer. *Day* held that a subdivision lot-owner, who abutted a roadway shown on the plat, was powerless to stop a member of the public from using the way. This applied even if the roadway had not yet been accepted:

... [E]ven though North avenue had not become an accepted public highway..., it was erroneous to hold that [the person] and other members of the public had no right whatever to use that avenue....

...

... [W]here, as here, the plat is recorded and shows the street

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and a lot abutting thereon is sold by special reference thereto
..., there is an offer of dedication.... [S]uch an offer of
dedication gives the public... rights to use it until the offer
is lawfully revoked, rejected, or abandoned.⁴⁹

Viewing the plat is instructive:

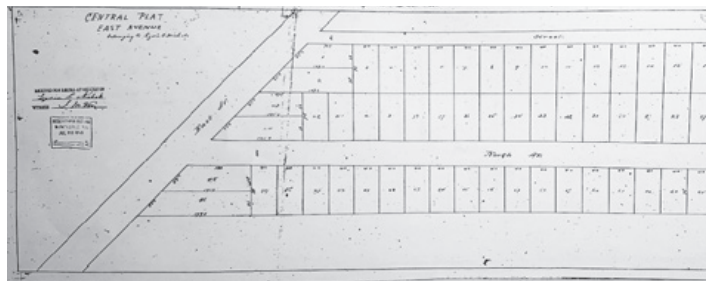


Fig. 1: The Plat in Day, found by archival research at the Supreme Court.

Without the depicted road, most numbered lots would be
“landlocked,” without access to East Avenue, the main thorough-
fare. (The plat in *Newport Realty* was similarly configured.)⁵⁰

V. Broadly Worded Recent Cases Seem to Conflate the Two Types

A. *Ucci* explicitly honored the Day precedent and implicitly
maintained *Day*’s holding on usage

Before turning to the text of *Ucci v. Coventry*,⁵¹ it is helpful
to see the plat:

An elaboration is provided by the Court:

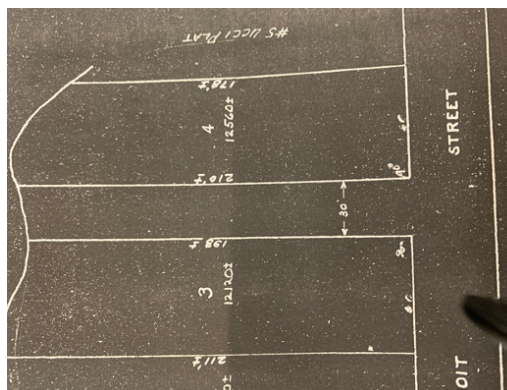


Fig. 2: Excerpt of
the plat in *Ucci*,
found by archival
research at the
RI Supreme
Court.

The small piece of property at issue... is a strip of land thirty-
feet wide... bordered on its southern side by... Lot 3..., on its
eastern side by Benoit Street, on its western side by a body of
water... and on its northern side by... Lot 4.⁵²

This plat, showing an undersized strip leading to a lake —
with each of the handful of lots fronting both the thoroughfare
(Benoit Street) and the lake — differs from the plat in *Day*.

The juxtaposition with the *Day* plat is fitting because *Ucci*
centered on that precedent:

This Court’s decision in *Day* is readily distinguishable from
the instant case. In the *Day* case, it was undisputed that
“[w]hen Lydia C. Nichols, the original owner, duly recorded
the central plat and conveyed lot 48 by specific reference to
that plat and to that lot as abutting on North avenue, which
appeared as a platted street thereon, she made an offer of
dedication.” *Id.* In light of those undisputed and very clear
facts, the Court in *Day* went on to say: “*In those circum-
stances* such offer or tender of dedication was irrevocable,

so far as the grantor alone was concerned * * *.” *Id.* (emphasis added).... [W]e do not believe that the instant case is in any way controlled by the “irrevocable” language in *Day*, which the Court in that case tied to the specific factual context before it.⁵³

Ucci’s holding — that the offer of dedication had lapsed during the 67-year interim between recordation and litigation⁵⁴ — must be (to use Ucci’s own language) tied to the specific factual context before it.

Arguably, where numbered lots are conveyed to purchasers by deeds that describe the lots as bounded by an adjoining named street, the offer remains irrevocable under *Day*. This is especially so where the lots are dependent for their value on the efficacy of the recorded plat.

B. *Drescher* addressed plats very different from that in *Day*, etc., in invoking an adverse use test

To paraphrase Ucci, language used by a court should be tied to the specific facts being considered. This is apt in considering *Drescher v. Johannessen*.⁵⁵

Drescher involved a merely isolated driveway, mostly serving two lots (in common ownership). There were three maps that did figure in *Drescher* (a tax plat and two maps effectuating the same minor subdivision), but none qualified as a multi-lot subdivision plat. None were used for deeding out. Two of the maps did subdivide land, but they were repetitive and merely made one lot into two (which remained in the hands of a common owner). The lot owned by the claimant (*Drescher*) did not emerge from the subdivision and, in any event, had alternative access. In other words, the lot supposedly served by the road was not part of the subdivision. Moreover, that subdivision of the lots did not create the roadway at issue, which was preexisting. Further, the tax plat identified the road as “private.”

The tax plat and one of the minor subdivision plats are here:

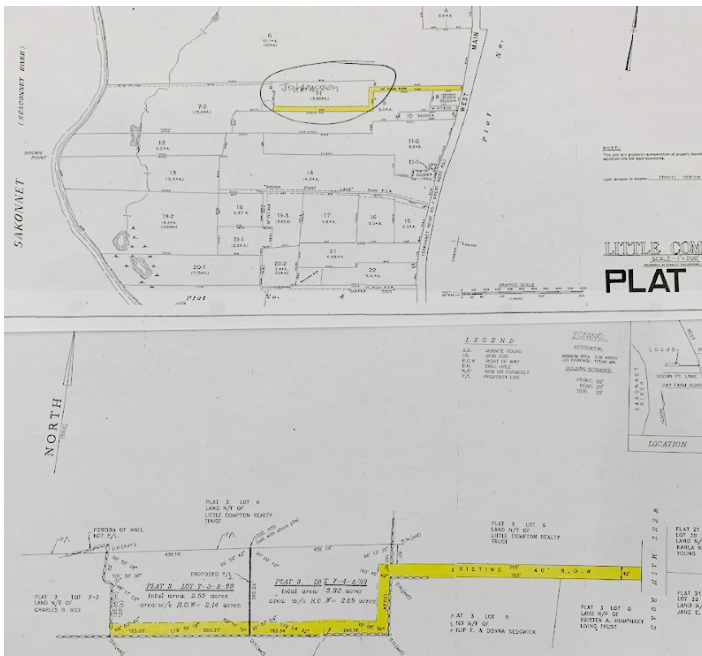


Fig. 3: Excerpts of two maps in *Drescher*, found by archival research at the Supreme Court.

The Court analyzed the matter under the dedication-of-plat line of cases.⁵⁶ After finding no offer of dedication, *Drescher*

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

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went on to find a lack of acceptance as an alternative ground and, in doing so, quoted a case not involving a plat at all:

See *Eddy v. Clarke*, 38 R.I. 371, 379, 95 A. 851, 854 (1915) (“[T]o create a public way by use the proof must show that the use has been general, uninterrupted, continuous[,] and adverse so as to warrant the inference that it had been laid out, appropriated, or dedicated by the proprietors of the adjoining land to the public.”)⁵⁷

Drescher merely found that a lonely country lane, which incidentally provided alternative access to a lot that was not part of a subdivision, was not public. In your author's view, *Drescher* really should be understood as an implied dedication case. *Drescher* is a case over a driveway that just happened, incidentally, to appear on a minor subdivision map (a map that bears no resemblance to traditional land development plans like that found in *Day*).

In your author's view, the *Drescher* case, not involving a conventional multi-lot subdivision development plat, would be a poor vehicle to make innovations in the law of dedication-by-plat even if it attempted to do so. It did not, and could not, overturn nearly two centuries of jurisprudence by requiring prescriptive acceptance of roads depicted on recorded operative subdivision plats—a ruling that would partly render such plats superfluous.

VI. CONCLUSION

Courts can promote clarity by remaining faithful to the narrow facts at hand in framing their opinions. Publication of the plats with the decisions would help.

Once the particular facts and plats are taken into account, the sharp distinction between dedication-by-plat and implied dedication endures.

ENDNOTES

¹ 878 A.2d 1021 (R.I. 2005).

² *Id.* at 1037.

³ *Id.* at 1033.

⁴ *Id.* at 1035.

⁵ *Id.*

⁶ *Id.* at 1042.

⁷ See *Marwell Constr. Co. v. Providence*, 61 R.I. 314, 320-21, 200 A. 976, 979 (1938) (“ordinary and recognized method[]”); *Brown v. Curran*, 83 A. 515 (R.I. 1912) (“well settled”); *Anthony v. Providence*, 18 R.I. 699, 701, 28 A. 766, 766 (R.I. 1894) (“common,” “often necessary”); *Thaxter v. Turner*, 17 R.I. 799, 800, 24 A. 829, 829 (1892) (“well settled”); *Clark v. Providence*, 10 R.I. 437, 440 (1873) (“mode in which additions ... are generally made”).

⁸ 186 A.3d 1068 (R.I. 2018).

⁹ 45 A.3d 1218 (R.I. 2012).

¹⁰ *Davis v. Exeter*, — A.3d —, 21-81-App (R.I. Dec. 1, 2022); *Kilmartin v. Barbuto*, 158 A.3d 735 (R.I. 2017); *Barrington v. Williams*, 972 A.2d 603, 611 (R.I. 2009). See also *Donnelly v. Cowsill*, 716 A.2d 742 (R.I. 1998) (pre-dating *Newport Realty*).

¹¹ But see *Shelter Harbor Conserv. Soc. v. Rogers*, 21 A.3d 337 (R.I. 2011) (following *Newport Realty*); *Bitting v. Gray*, 897 A.2d 25 (R.I. 2006) (following *Newport Realty*).

¹² E.g., *Gore v. Blanchard*, 96 Vt. 234, 118 A. 888, 890 (1922) (quoting *ELLIOT*, *infra*).

¹³ 1 BYRON K. ELLIOT & WILLIAM F. ELLIOT, *THE LAW OF ROADS AND STREETS* § 122 (4th ed. 1926).

¹⁴ 31 U.S. (6 Pet.) 431 (1832).

¹⁵ 11A EUGENE MCQUILLIN, *MUNICIPAL CORPORATIONS* (3d ed.) § 33:2

¹⁶ JOSEPH K. ANGELL & THOMAS DUFFEE, *A TREATISE ON THE LAW OF HIGHWAYS* § 135 (1857).

¹⁷ 31 U.S. (6 Pet.) 431, 438 (1832).

¹⁸ *Id.* at 435.

- 19 PUBLIC OWNERSHIP OF LAND THROUGH DEDICATION, 75 HARV. L. REV. 1406, 1408 (1962).
- 20 31 U.S. (6 Pet.) 431, 435 (1832).
- 21 *Id.* at 439.
- 22 9 R.I. 455, 470 (1870).
- 23 RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 2.18, comment e (2000).
- 24 *Newport Realty*, 878 A.2d at 1037 (emphasis added).
- 25 *Druke v. Town of Newfane*, 137 Vt. 571, 574, 409 A.2d 994, 995 (1979) (“Dedication is the setting apart of land for the public use, which may arise either expressly or by implication of law”); 4 HERBERT THORNDIKE TIFFANY, REAL PROPERTY § 1101 (3d. ed. 1939, updated 2022) (“a dedication may be express or implied”); McQUILLIN, *supra* n. 15, at § 33:3 (“dedications may be classified as either (a) express or (b) implied”); RESTATEMENT *supra* n. 23 (“Dedication may be express or implied”). (Emphasis added to all quotations).
- 26 31 U.S. 431 (1832).
- 27 *Joseph D. Kearney and Thomas W. Merrill, PRIVATE RIGHTS IN PUBLIC LANDS: THE CHICAGO LAKEFRONT, MONTGOMERY WARD, AND THE PUBLIC DEDICATION DOCTRINE*, 105 NW. U. L. REV. 1417 (2011).
- 28 10 R.I. 437 (1873).
- 29 15 R.I. 579, 10 A. 639 (1887).
- 30 *Knowles v. Knowles*, 25 R.I. 325, 329, 55 A. 755, 756 (1903).
- 31 *Post v. Pearsall*, 22 Wend. 425, 433 (N.Y. 1839).
- 32 *Id.* at 444.
- 33 RESTATEMENT, *supra* n. 23, § 2.18, comment f (2000).
- 34 *Virgil Childress, DOES PUBLIC USER GIVE RISE TO A PRESCRIPTIVE EASEMENT OR IS IT MERELY EVIDENCE OF DEDICATION?*, 6 TEX. L. REV. 365, 367-68.
- 35 *Id.* at 368-69.
- 36 160 A. 466 (R.I. 1932).
- 37 *Id.* at 469.
- 38 *Id.*
- 39 *Id.*
- 40 112 R.I. 102, 103, 308 A.2d 350 (1973).
- 41 *Id.* at 103.
- 42 Apart from cases mentioned elsewhere herein, successful assertions of are found in: *Thaxter v. Turner*, 17 R.I. 799, 24 A. 829 (1892); *Anthony v. Providence*, 18 R.I. 699, 28 A. 766 (1894); *Marwell Constr. Co. v. Providence*, 61 R.I. 314, 200 A. 976 (1938); *Nardone & Co. v. Bianchi*, 524 A.2d 1114 (R.I. 1987); *Catalano v. Woodward*, 617 A.2d 1363 (R.I. 1992) (incidental holding); *Mill Realty v. Coventry Zoning Board*, 721 A. 2d 887 (R.I. 1998); *M & B Realty v. Duval*, 767 A.2d 60 (R.I. 2001); *Shelter Harbor Conserv. Soc. v. Rogers*, 21 A.3d 337 (R.I. 2011); *Bitting v. Gray*, 897 A.2d 25 (R.I. 2006).
- However, claims failed in other cases. Apart from those mentioned elsewhere herein, these are, e.g., *Swanson v. Gillan*, 54 R.I. 382, 173 A. 122 (1934); *Patalano v. Duarte*, 68 R.I. 138, 26 A.2d 629 (1942); *Vallone v. Cranston*, 97 R.I. 248, 197 A.2d 310 (1964); *Volpe v. Marina Parks, Inc.*, 101 R.I. 80, 220 A.2d 525 (1966); *Robidoux v. Pelletier*, 120 R.I. 425, 391 A.2d 1150 (1978).
- 43 See, e.g., *Senn v. MacDougall*, 639 A.2d 494 (R.I. 1994); *De Costanzo v. Governor Dyer Co-Operative Market*, 81 R.I. 438, 104 A.2d 238 (1954); *Daniels v. Blake*, 81 R.I. 103, 99 A.2d 7 (1953); *Pettine v. Tuplin*, 71 R.I. 374, 377, 46 A.2d 42, 44 (1946).
- 44 *Smith v. State*, 248 Ga. 154, 161, 282 S.E.2d 76, 84 (1981).
- 45 *Id.*
- 46 *Department of Natural Resources v. Ocean City*, 332 A.2d 630 (Md. 1975).
- 47 *Id.* at 634-35.
- 48 68 R.I. 382, 27 A.2d 904 (1942).
- 49 *Id.* at 390-94, 27 A.2d at 908-10 (citations omitted).
- 50 878 A.2d at 1046, Ex. 1.
- 51 186 A.3d 1068 (R.I. 2018).
- 52 *Id.* at 1069-70.
- 53 *Id.* at 1073.
- 54 *Id.* at 1074.
- 55 45 A.3d 1218 (R.I. 2012).
- 56 *Id.* at 1230-31.
- 57 *Id.* at 1231. ◊

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Rhode Island Women Lawyers: Past, Present, & Future

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



Elizabeth McDonough Noonan, Esq.

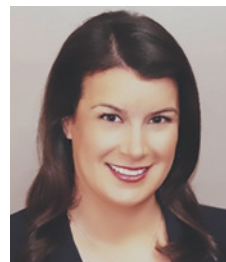
When we sat down to interview Attorney Elizabeth McDonough Noonan, we did not know the fun facts and lessons we would learn from such an outstanding female role model. One of the first things that Attorney Noonan mentioned, aside from insisting we call her Beth in this article, was that the current board of the Rhode Island Women's Bar Association had been operating under a bit of a misunderstanding. Although the group did not incorporate until 1998—and is thus celebrating its official silver jubilee this year—its origins could be traced back even earlier. During the late eighties, she explained, as female attorneys turned to each other for mentoring, support, and socialization in a male-dominated field, an informal association began to form. Attorney Noonan, who had graduated from the University of California Hastings Law School (now UC Law SF) in 1989—along with a fellow trailblazer who would just happen to become the first female vice president of the United States—soon became a vital part of this group, serving as one of its first presidents. As the gender makeup of the Bar began to shift during the ensuing decade, these women recognized the importance of placing themselves at the “front and center” of the legal community and supporting each other in making that happen.

That would be, of course, no easy task. Yet she was used to being the only woman in the

room, as she had begun her career at a high-tech company in Silicon Valley after graduating from the University of California at Berkeley in 1984. This was a time of tremendous opportunity and change in the Valley—it was the same year that Steve Jobs introduced the first Macintosh computer, after all—but gender diversity, and significantly, equality, was practically nonexistent. Despite this uneven playing field, Beth found her footing and, after a couple of years, turned her attention to a long-held goal: law school. After graduating from Hastings, Beth and her husband, William Noonan (now a magistrate at the Rhode Island Traffic Tribunal), moved across the country to his home state of Rhode Island. Beth clerked for one term with the Rhode Island Superior Court, then practiced plaintiff-side litigation before joining Adler Pollock & Sheehan P.C. In 1998, when she became a partner, she was the third female partner. Today, she remains a current firm shareholder along with six other female partners and has developed a practice both robust and varied, centered on land use, zoning, administrative, municipal, and litigation practice.

As a new lawyer, Beth wanted to be in the courtroom as much as possible. Accordingly, she jumped at the chance to be staffed on “every trial that walked in the door.” While many litigation attorneys must wait years before actually representing clients at trial, Beth was able to gain valuable experience before juries quite early in her career. One of her major land use trials resulted in her first case before the Rhode Island Supreme Court only a few years after joining the firm, when she was co-counsel with Michael Kelly, a partner at AP&S, in **L.A. Ray Realty v. Town Council**, 698 A.2d 202, 211 (R.I. 1997), where the Court found that, due to the “egregious conduct” of certain government officials, the Town of Cumberland had violated the substantive and procedural due process rights of their landowner clients. This extremely rare holding brought the case outside the purview of the Governmental Tort Liability Act and allowed the landowners to recover the full amount of their damages and attorney fees pursuant to U.S.C. Sections 1983 and 1988. *Id.* at 213.

Of course, litigation battles are not limited to



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the august halls of the state's courthouses; indeed, much of her career has been spent battling for her clients' rights before various boards and other administrative bodies. By its very nature, land use law requires an attorney to become familiar with the rules and regulations of a veritable alphabet soup of government agencies—such as the Department of Environmental Management, the Coastal Resources Management Council, the Energy Facility Siting Board, the Environmental Protection Agency, and the Army Corps of Engineers, to name just a few—and appear before those boards during administrative hearings. In recent years, there has been an increased interest in “adaptive reuse” development in history-rich Rhode Island, where older mill buildings—often vacant and in disrepair—are transformed into vibrant new housing and mixed-use properties. Such work, however, requires the guidance of experienced legal counsel, as the permitting and zoning processes, which are never simple to begin with, become even more complex when environmental issues, including contamination, coastal, and wetlands, are present. Thus, Beth spends quite a bit of her time preparing for and presenting at these administrative meetings. As she put it, “the hearings are everything,” and they often require the presentation of complex and technical expert testimony from engineers, architects, planners, and wetland and coastal biologists, to name a few. It is the lawyer's job, she explained, to break down this information into relevant, manageable pieces and submit it to the board in a compelling narrative.

Decades of involvement in the legal field have given Beth the perspective to see how things have—and haven't—changed for female attorneys over the years and the experience to help mentor newer attorneys as they figure out their place in the legal landscape. She pointed out that female lawyers have tended to have to do more for the same thing compared to their male colleagues, and there is often “no room for error” for female attorneys. “Your reputation is everything,” she reminds them, especially in a small state like Rhode Island. In California, where she grew up, the Bar is much larger, and it is possible that an attorney could never encounter the same op-

Visit the On-Demand Catalog to Earn Your Last Minute Credits!

With the Annual Meeting right around the corner on June 1st and 2nd, there are no programs scheduled for the month of May. Still need to earn your credits before the reporting deadline in June? Visit the **On-Demand Catalog** to access over 200 programs that cover a wide variety of law related topics. Please note, per RI MCLE Commission rules, RI attorneys may earn a maximum of six credits through video replay (on-demand) seminars each year. There is no limit on live webcast credit accrual.

If you would like to submit an idea for an upcoming seminar or if you would like to participate as an instructor for a future CLE program, please contact CLE Directo Madeline Benner at mbenner@ribar.com or by phone at 401-421-5740 with any questions. The CLE office welcomes and encourages presenters of diverse backgrounds in regard to race, color, religion, country of ancestral origin, handicap, age, sex, or sexual orientation.

ponent or judge while litigating. That is not so here in the Ocean State, and thus, she cautions, it is even more important that a young lawyer develop a reputation as a diligent, knowledgeable, and trustworthy litigant. Similarly, she believes more experienced female lawyers should be continually reaching down and helping new female lawyers, which she has done throughout her career.

While acknowledging that women are no longer the minority of students at law schools, she pointed out that there are still some legal spaces that remain predominantly male. For example, nationwide, the disparity between male and female equity partners has not changed much since her own school days. The recent appointment of more women to judgeships has been encouraging, and she is particularly enthusiastic about the fact that the Rhode Island Supreme Court is now composed of a majority of female justices for the first time in its history. Although she has had generally positive experiences before the many male Rhode Island judges, the importance of continued diverse representation on the bench cannot be ignored.

Indeed, one cannot take such representation for granted, she reminds us, and it is why interest groups such as the Rhode Island Women's Bar Association are so important, and it is why she was part of the band of attorneys who reinvigorated and formalized the organization in the late 1990s. She has always been a proponent of women's rights and an advocate for other female lawyers— it is this sense of leadership and civic duty that led her to serve as a representative for both Bill and Hillary Clinton at the Democratic National Conventions in 1996 and 2008, respectively. In her words, the founding of the RIWBA helped female attorneys “step out of their individual practice silos” and help grow their personal and professional networks. It was so important for this band of female lawyers to connect with others experiencing the same struggles in a male-dominated field and lean on each other as they fought to be recognized as intelligent and competent as their male counterparts. As the organization took shape, institutional traditions—such as the Annual Meeting and the presentation of the Ada Sawyer Award (given annually to a female attorney who exemplifies the mission of the organization, which is the promotion and enhancement of the status of women in the legal profession)—were soon born. Beth recalled that many of the pioneering female judges, such as Supreme Court Justice Maureen McKenna Goldberg and Superior Court Presiding Justice Alice Gibney (whom Beth clerked for in the Superior Court), were and continue to be superb role models; they also expressed support from the earliest stages of the organization and provided mentorship to the younger attorneys. While it is important to celebrate the many advances that women attorneys have made over the years, Beth warned that it is also essential to remain vigilant and be careful not to grow complacent about gains that have been hard won. There are still areas of the law where female equality is lacking, and she is proud of the female lawyers fighting the current battles. After all, as she points out, the opportunities we have today are built on the hard work, perseverance, and sacrifices of those who came before us. ◇



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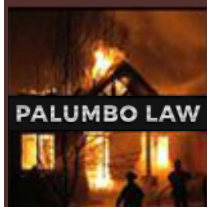
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Your Bar's 2023 Annual Meeting Highlights

Innocence Project Friday, June 2nd, Plenary Session

Currently, the U.S. has the largest prison population in the world and the highest per-capita incarceration rate. In 2018, 698 people were incarcerated per 100,000 people. The Innocence Project represents clients seeking post-conviction DNA testing to prove their innocence. The organization also consults on a number of cases on appeal and provides information and background on DNA testing litigation. To date, 367 people have been exonerated by DNA testing, including 21 who served time on death row.

Attorney Potkin will discuss the Innocence Project's groundbreaking use of DNA technology to free innocent people. This technology has provided irrefutable proof that wrongful convictions are not isolated or rare events but instead arise from

systemic defects. The Innocence Project's mission is to free the staggering numbers of innocent people who remain incarcerated and to bring substantive reform to the system responsible for their unjust imprisonment. Attorney Potkin will be joined by Cornelius Dupree, an exoneree declared innocent of a 1980 conviction after serving 30 years of a 75-year prison sentence, who was convicted based on misidentification.

Vanessa Potkin is the Director of Special Litigation at The Innocence Project. She joined the Project in



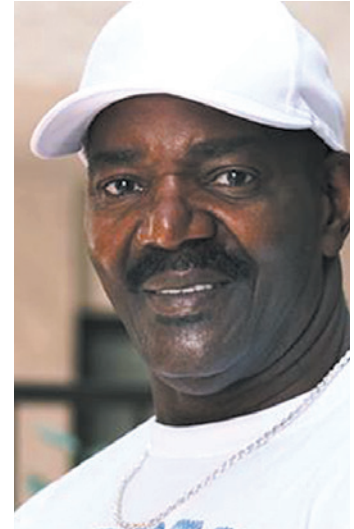
Vanessa Potkin, Esq.

2000 as its first staff attorney and has helped pioneer the model of post-conviction DNA litigation used nationwide to exonerate wrongfully convicted persons. Vanessa has represented and exonerated over 30 innocent individuals, from Louisiana to Nevada, who collectively served over 500 years of wrongful imprisonment, five of whom were originally prosecuted for capital murder. Vanessa maintains a post-conviction docket, crafting litigation strategy, writing motions, and litigating in trial and appellate courts nationwide to secure postconviction DNA testing and to obtain relief-based DNA test results, and other exculpatory evidence in cases involving, false confessions, erroneous eyewitness identification, informant testimony, faulty forensics, prosecutorial misconduct, and ineffective assistance of counsel.

She works with a wide range of forensic experts. She also trains and mentors other attorneys at the Innocence Project. Vanessa is a nationally recognized expert on wrongful convictions and the use of DNA to establish innocence; she is regularly consulted by attorneys, judicial and legislative committees, and media outlets. She was a member of an eight-person multidisciplinary technical working group that collaborated on a report for criminal defense attorneys published in 2012 by the National Institute of Justice to increase understanding of the science of DNA and its application in the courtroom ("DNA for the Defense Bar"). Vanessa is an adjunct professor of law at Cardozo School of Law and has co-taught the Innocence Project Legal Clinic since 2000.

On November 23, 1979, a woman was raped and robbed in Texas. Cornelius Dupree was arrested the following month because he resembled a suspect from a different sexual assault and robbery case. Dupree did not match the description of the person who committed the November robbery. Nonetheless, Dupree was picked out of a police lineup, which led to his wrongful conviction and 75-year prison sentence. After spending 30 years of his life locked up for a crime he did not commit, Cornelius Dupree

was released on parole on July 22, 2010. Less than two weeks after his release, initial DNA testing indicated that Dupree was innocent of the crime. Later tests confirmed these results, leading to the trial judge declaring him innocent on January 4, 2011. Post release, Dupree became a member of the Innocence Project's Exoneree Advisory Council, where he works with both the Innocence Project staff and other exonerees to fight for criminal justice reform.



Cornelius Dupree

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

Please see your 2023 Rhode Island Bar Association Annual Meeting Brochure for more information about the Meeting's 40 CLE-credited seminars, social events, and other interesting and informative activities. Visit the Bar's website, ribar.com, to register today! Please note, to save \$25, you must register before May 19, 2023.

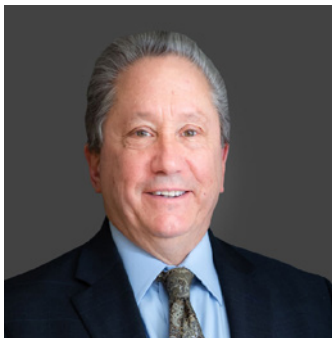
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Ethics Advisory Panel: Legal Advice that is Free, Confidential, and Assists Fellow Lawyers Navigating Ethical Dilemmas



Lise J. Gescheidt, Esq.
Chair, Ethics Advisory Panel



Christopher S. Gontarz, Esq.
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“It serves as a vehicle to guide other attorneys with similar questions and raises awareness of potential ethical pitfalls many of us unwittingly encounter in the practice of law.”

The Ethics Advisory Panel (EAP) was established by the Rhode Island Supreme Court in 1986 to provide members of the Rhode Island Bar with confidential advice on prospective behavior based on the Rules of Professional Conduct. Although attorneys seeking such advice are not required to abide by the panel’s opinions, those who do are fully protected from any subsequent charge of impropriety. Its purpose is to issue advisory opinions to Rhode Island lawyers facing ethical dilemmas and to encourage compliance with the Rules of Professional Conduct. It is not a judicial body; it does not take testimony or resolve factual disputes. It makes no findings of fact. It takes a phone call, a letter, or an email to the EAP. The identity of the inquiring lawyer is confidential. The inquiring attorney can ask for informal advice or an opinion that, if followed, provides a “safe harbor” from any subsequent accusations of improper conduct. It serves as a vehicle to guide other attorneys with similar questions and raises awareness of potential ethical pitfalls many of us unwittingly encounter in the practice of law.

So, who are the members of the EAP?

Lise Gescheidt is the Chair. She was an assistant public defender and a private criminal defense attorney for 44 years. She is the chair of the Tiverton Zoning Board of Review and a former president of the Rhode Island Association of Criminal Defense Lawyers. She has been a member of the EAP for over two decades, and a member of the Bar since 1977.

Anthony DeMarco is a founding partner of Reynolds, DeMarco & Boland, Ltd. He was admitted to the Rhode Island Bar in 1968 and is licensed to practice before the United States District Court for the District of Rhode

Island, the First Circuit Court of Appeals, and the United States Supreme Court. He has been a member of the panel for decades as well.

Christopher Gontarz is a long-time member of the EAP whose area of practice includes criminal law, ethics, and professional misconduct. He is the Treasurer of the Rhode Island Bar Association.

Mark Mandell is a trial lawyer who has been in practice for 48 years and is triple board certified nationally as a trial lawyer.

Richard Boren has been practicing law for 52 years. His practice consists of civil litigation in the areas of personal injury, commercial, and family law. He is also the chairman of the Jamestown Board of Review.

Meredith Benoit is legal counsel for the EAP. She also serves as Deputy General Counsel for the Supreme Court. Prior to her present employment, she practiced as a litigation attorney and clerked for the United States Court of Appeals for the First Circuit.

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You have been doing real estate closings utilizing a title company for the title insurance, and they want to audit your files to ascertain compli-



(Back row L-R) Richard Boren, Esq., Chris S. Gontarz, Esq., and Meredith Benoit, Esq.
(Front row L-R) Anthony DeMarco, Esq., Lise J. Gescheidt, Esq., Mark Mandell, Esq.

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ance with their required procedures. They want to see your client files as well as your IOLTA accounts of those clients for whom you applied for and received title insurance.¹ Is it permissible to show them your client files and IOLTA account?

You have settled a personal injury case with an insurance carrier. As part of the settlement agreement, the insurance company wants you and your client to execute a hold harmless agreement that requires both parties to hold harmless, indemnify and defend the insurance company from any and all liens, known and unknown, which arise from the accident.² Is it permissible for you and your client to execute the agreement?

You have been approached by an out-of-state law firm that wants to provide legal services to their Rhode Island clients. They offer you an “of counsel” position with the firm, and you would be the only attorney in the Rhode Island office. None of the associates or partners of the firm are licensed to practice in Rhode Island.³ Is it permissible for you to take this position?

All of these questions have been addressed by the EAP and are available on the Rhode Island Supreme Court website, courts.ri.gov. The EAP has been issuing opinions since 1997. A complete list of all the topics addressed by the Panel is also available on the website.

The jurisdiction of the EAP is limited to requests of any member of the Rhode Island Bar in good standing concerning their prospective conduct as an attorney. The Panel may decline to render an advisory opinion for a host of reasons, including:

- a. The request seeks an opinion about the conduct of a lawyer who is not the inquirer;
- b. Hypothetical situations;
- c. Conduct not governed by the Rules of Professional Conduct;
- d. Requests based on past conduct or a matter pending before the Disciplinary Board;
- e. Requests that contain insufficient information on which the Panel can make a judgment;⁴
- f. Requests that are not in writing, including the factual situation;
- g. Questions of law involving substantive questions of law outside ethics and discipline;
- h. Requests that concern a matter that is pending in litigation in court or tribunal.

While the name of the attorney who requests an opinion is confidential, the advisory opinion and factual basis are published in the *Bar Journal*, *Lawyers Weekly*, and are included on the website. This is a valuable resource for attorneys who have similar questions and concerns.

The EAP is available to answer your questions regarding the applicability of the Rules of Professional Conduct to your inquiries. Take advantage of it. It is free, confidential, protective, and it educates other lawyers on ethical issues they may not have even contemplated. Contact Legal Counsel for the EAP: Meredith Benoit, Esq., Office of General Counsel, 250 Benefit Street, Providence, RI 02903; 401-222-8723; EAP@courts.ri.gov.

ENDNOTES

¹ *Ethics Advisory Opinion* 2011-05.

² *Ethics Advisory Opinions* 2022-1.

³ *Ethics Advisory Opinion* 1990-20.

⁴ *In such circumstances, legal counsel may request supplemental information.* ◇

ARE YOU

- _____ A Rhode Island Lawyer?
- _____ Have a question that concerns your future conduct?
- _____ About an actual situation you are facing?
- _____ That involves an ethical issue and the Rules of Professional Conduct?
- _____ Want to get a confidential opinion from experienced lawyers?
- _____ That is provided without charge?
- _____ That provides protection against any claim of impropriety if you follow the opinion?

If so, please contact the Ethics Advisory Panel, Attention: Meredith Benoit, Esq., Counsel to the Ethics Advisory Panel, 250 Benefit Street, Providence, RI 02903.

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Email: EAP@courts.ri.gov

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Practice Form 12

Checklist for Rhode Island Foreclosures

Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by **John A. Comery, Esq.**, at their meeting on February 16, 2023, voted unanimously to submit the following Proposed Practice Form 15 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes, no later than June 1, 2023, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail at 41 Sharpe Drive, Cranston, RI 02920 or email at kbridge@ribar.com.

Property Address: _____

Assessor's Plat: _____ Lot: _____ Unit: _____

Mortgage Deed Recording Info: Book: _____ Page: _____ Date: _____ Time: _____

Mortgagor(s): _____

Mortgagee: _____

Assignee: _____ Date: _____

Assignee: _____ Date: _____

Assignee: _____ Date: _____

I. Mortgage Deed

- ____ 1. Are all of the title holders named as mortgagors in the granting clause of the Mortgage Deed?
- ____ 2. Is the mortgagee clearly identified in the Mortgage Deed?
- ____ 3. Does the Mortgage Deed incorporate the Statutory Power of Sale by reference?
- ____ 4. If the Mortgage Deed does not incorporate the Statutory Power of Sale by reference, does it include language that addresses at least the following: (a) the right to hold a non-judicial sale upon default; (b) notice to the mortgagor; (c) place of publication of notice of sale; (d) power to adjourn the sale, and procedure for publishing notice after adjournment; and (e) power to execute a deed to the foreclosure sale purchaser.
- ____ 5. Is the Mortgage Deed properly executed by all title holders, and are their signatures properly acknowledged?
- ____ 6. Does the Mortgage Deed contain a valid, accurate legal description of the mortgaged premises?
- ____ 7. Is the Mortgage Deed recorded in all cities and/or towns where the property is located?
- ____ 8. Does the mortgage constitute a first lien on the property?

II. Assignment(s) of Mortgage Deed

- ____ 1. Are there any assignments of the mortgage?
- ____ 2. Was the assignor the holder of the mortgage (either as original mortgagee or subsequent assignee) on the date that the assignment was executed?
NOTE: The actual date of execution is the effective date of the assignment. It cannot be back-dated by reference to an "effective date" that is prior to the date of execution!
- ____ 3. Is there an unbroken chain of assignments into the assignee that conducted the foreclosure?
- ____ 4. Is all of the information in each assignment of mortgage correct?

III. Foreclosure Deed/Affidavits/Powers of Attorney

- ____ 1. If the mortgage was assigned, was the mortgage foreclosed by the last record holder of the mortgage?
- ____ 1A. Was the foreclosing entity the record holder of the mortgage when the foreclosure process was initiated?
- ____ 2. Is the grantor in the foreclosure deed the same party that conducted the foreclosure?
- ____ 3. Is the mortgagor/mortgagee/mortgage recording information stated correctly everywhere in the Foreclosure Deed, including the copy of the foreclosure ad? Is a legible true copy of the foreclosure ad attached to the deed?
- ____ 4. Is the grantee the high bidder or the assignee thereof? If the latter, is an assignment of bid recorded with the Foreclosure Deed?
- ____ 5. Does the foreclosure deed contain a valid recitation in order to release the lien arising under R.I. Gen. Laws 44-30-7.3?
NOTE: The language should be substantially similar to the following: "This transfer resulted from a foreclosure, and there were no net proceeds subject to the withholding provisions of R.I. Gen. Laws § 44-30-71.3."
- ____ 6. Are the foreclosure deed and all affidavits properly executed and acknowledged?
NOTE: Affidavits must be notarized with a jurat, rather than a "free act and deed" acknowledgement format.
- ____ 7. If executed by an attorney-in-fact, is the power of attorney recorded in the city or town in which the property is located?
- ____ 8. Are the parties to the power of attorney correctly stated in both the power of attorney and the foreclosure deed?
- ____ 9. Was the power of attorney executed prior to the execution of the foreclosure deed and accompanying affidavits?
- ____ 10. Does the power of attorney grant attorney-in-fact the authority to perform the acts undertaken by the attorney-in-fact (e.g., execution of the foreclosure deed)?

Practice Form 12
Checklist for Rhode Island Foreclosures (continued)

- ___ 11. Was the power of attorney still in full force and effect on the date of the acts undertaken by the attorney-in-fact?
- ___ 12. Is the legal description the same as in the Mortgage Deed?
- ___ 13. Does the Affidavit of Sale state that the principal and interest obligations in the mortgage were not paid, tendered or performed when due?
- ___ 14. If the mortgagor was not an individual consumer mortgagor, does the Affidavit of Sale state that, pursuant to R.I. Gen. Laws §§ 34-11-22 and 34-27-4, notice of the foreclosure was sent to the mortgagor(s) at least 20 days prior to the first publication of notice of the foreclosure?
- ___ 15. If the mortgagor(s) was an individual consumer mortgagor, does either the Affidavit of Sale, or a separate affidavit of compliance, state that pursuant to R.I. Gen. Laws § 34-27-3.1, a notice was sent to mortgagor(s) at least 45 days prior to initiation of the foreclosure (the 45-Day Notice)?
- NOTE:** This applies for all non-judicial foreclosures that were initiated between March 6, 2010 and October 8, 2014, and for all non-judicial foreclosures that were initiated on or after June 29, 2018.
- ___ 16. Was the correct mortgagee named in the 45-Day Notice?
- NOTE:** Compare date of mailing of the 45-Day Notice with the date of assignment(s) listed above to determine correct party. Consult the title insurance company if a mortgagee other than the record holder of the mortgage on the date the 45 Day Notice was mailed is named as mortgagee in the 45 Day Notice.
- NOTE:** 45-Day Notice is only required for non-judicial foreclosures.
- ___ 17. If the mortgagor(s) was an individual consumer mortgagor, does the Affidavit of Sale state that, pursuant to R.I. Gen. Laws §§ 34-11-22 and 34-27-4, notice of the foreclosure was sent to the mortgagor(s) at least 30 days prior to the first publication of the notice of foreclosure?
- ___ 17A. If the mortgagor(s) was an individual consumer mortgagor, does the Affidavit of Sale or a separate affidavit state that notice of the foreclosure was sent to the mortgagor(s) at least 46 days after the date on which the 45-Day Notice notice was mailed?
- NOTE:** This applies for all non-judicial foreclosures that were initiated between March 6, 2010 and October 8, 2014, and for all non-judicial foreclosures that were initiated on or after June 29, 2018.
- ___ 18. If the mortgagor(s) conveyed title to a third party prior to initiation of the foreclosure, does the Affidavit of Sale state that notice of the sale was also sent to that third party? If not, consult the title insurance company to determine if further inquiry is required.
- ___ 19. Does the Affidavit of Sale include a statement of compliance with R.I. Gen. Laws § 34-27-4 (c) & (d) regarding notice to servicemembers?
- NOTE:** This applies to foreclosures initiated on or after June 6, 2012.
- ___ 20. Have more than six (6) months elapsed between the mailing of the 45-Day Notice and 30-Day Notice? If yes, consult the title insurance company to determine whether the recording of a supplementary affidavit regarding the delay will be required.
- ___ 21. Was the Mortgagee's Sale of Real Estate notice published for three consecutive weeks, the first publication being at least 21 days before the originally-scheduled sale date?
- ___ 22. Was the notice of sale published in the newspaper prescribed by R.I. Gen. Laws § 34-11-22?
- ___ 23. Is a legible copy of the newspaper advertisement attached to the Affidavit of Sale?
- ___ 24. Does the newspaper advertisement contain accurate information relative to:
- ___ a. The address (and possibly plat and lot) of the property?
- ___ b. The book and page of the mortgage deed?
- ___ c. The name of the mortgagor?
- ___ d. The date of sale and any postponements?
- ___ e. The location of the sale?
- ___ 25. If only a portion of the property described in the mortgage deed was sold, is that portion sufficiently described in the advertisement?
- ___ 26. Is the date and time of the sale stated in the advertisement consistent with the sale date and time recited in the foreclosure deed and any other notices recorded with the foreclosure deed?
- ___ 27. Did the sale occur no less than seven (7) and no more than fourteen (14) days after the date of the third publication?
- NOTE:** Applies to foreclosures initiated on or after July 5, 2008.
- ___ 28. If the sale was adjourned from the originally scheduled date and time, does the Affidavit of Sale state that the sale was adjourned by public proclamation to a day within the same calendar week as the original sale, and are the date and time of the adjourned sale specifically stated?
- ___ 29. If the sale was adjourned to a date not within the same calendar week as the original sale, was publication of the advertisement continued once each week commencing with the calendar week following the originally scheduled date of the sale, with the adjourned sale occurring during the same calendar week in which the final notice of the adjourned sale was published?
- NOTE:** For foreclosure sales initiated on or after July 5, 2008, the sale must occur at least one day after the last notice is published.
- ___ 30. Does the Affidavit state that an inquiry was made under the Servicemembers Civil Relief Act regarding the military status of the mortgagor(s) and that the mortgagor(s) was not, at the time of the foreclosure sale, or within

continued on next page



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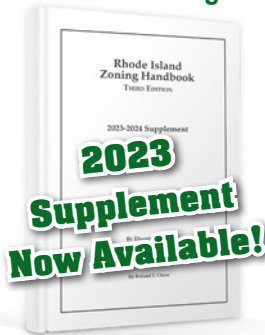
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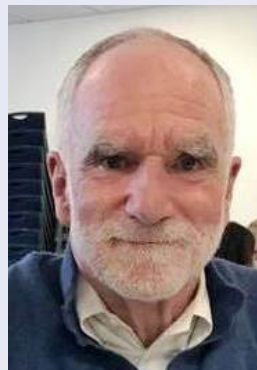
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The Bar's online Attorney Directory is available for the convenience of Bar members, clients, and potential clients, so be sure to keep your listing up-to-date! Attorney Directory contact information may include the Bar member's name, photograph, law 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.



Arbitrator
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Nicholas Trott Long, Esq.

401-351-5070

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Practice Form 12

Checklist for Rhode Island Foreclosures (continued)

the correct post-duty period in effect on the date of foreclosure, a servicemember as defined in that Act?

NOTE: The Act has been amended several times to change the "correct post-duty period" as follows:

Prior to July 30, 2008: 90 days
July 30, 2008 to February 1, 2013: 9 months
On or after February 2, 2013: one year

- ____ 31. Is there an affidavit stating that the mortgage is exempt from the requirements of R.I. Gen. Laws § 34-27-3.2?

NOTE: This requirement and the requirement below in 31B apply to foreclosures initiated on or after May 16, 2013.

- ____ 31A. If there is such an affidavit, and the property is located in a city or town which has enacted a foreclosure conciliation ordinance, does the foreclosure deed contain a certificate of compliance with that city or town's ordinance?

- ____ 31B. If there is no such affidavit, is there a Certificate of Mediation Compliance issued by Rhode Island Housing?

- ____ a. Does the certificate identify the foreclosing entity, the servicer or the investor of the loan as the mortgagee?
- ____ b. If the certificate identifies the foreclosing entity as the mortgagee, verify that the foreclosing entity was the holder of the mortgage on the date the mediation notices were mailed pursuant to R.I. Gen. Laws § 34-27-3.2.

- ____ 32. Is there an affidavit stating that the mortgagee's notice of default complied strictly with the conditions precedent contained in the mortgage, or that the mortgage contained no notice requirement?

NOTE: Applies to foreclosures initiated on or after October 12, 2016.

- ____ 33. Is there an affidavit stating that the foreclosure is not subject to a foreclosure moratorium either because the property is not a federally backed loan or because the property is vacant/abandoned?

NOTE: Applies to foreclosures initiated between March 17, 2020 and July 31, 2021.

IV. Judicial Foreclosures

- ____ 1. Is there an Order from the Superior Court allowing the foreclosure sale of the property? Review the order to confirm it correctly identifies the foreclosing entity as well as the mortgage and the property being foreclosed.
- ____ 2. Does the foreclosure advertisement refer to the Order authorizing foreclosure?
- ____ 3. Is there a Final Judgment, dated after the sale, approving the foreclosure?

V. Miscellaneous Considerations

- ____ 1. If the mortgagor(s) filed a bankruptcy petition, is there on record a copy of the order granting such relief, or was the foreclosure commenced after the bankruptcy case was closed?

- ____ 2. If the property was encumbered by an IRS lien recorded more than 30 days prior to the date of sale, does the affidavit of sale state that the IRS received notice of the sale at least 25 days prior to the date of sale as required by 26 U.S.C. § 7425(c)(1)?

____ a. Has mortgagee's counsel provided documentary evidence that the IRS was mailed notice in accordance with the above-referenced statute?

____ b. Was the notice sent to the correct address?
See IRS Publication 4235 for correct address.

____ c. Have 120 days elapsed since the date of sale?
The IRS has 120 days from the date of sale to redeem the property.

- ____ 3. If the property was encumbered by a mechanic's lien recorded subsequent to the foreclosed mortgage, and the lienor filed a petition to enforce the mechanic's lien, was a certified copy of an order from the Superior Court granting the mortgagee's petition to foreclose recorded?

- ____ 4. If your title report lists any undischarged senior lien, has foreclosure counsel provided you with releases, or a copy of the mortgagee's title policy insuring its mortgage as a first lien?

- ____ 5. If residential property is occupied by tenants other than mortgagor, comply with R.I. Gen. Laws § 34-27-7 and mail Notice of Pending Foreclosure Sale (See R.I. Dep't of Bus. Regulations, Banking Bulletin 2018-3 for form of notice).

NOTE: Applies to foreclosures initiated on or after October 20, 2014. R.I. Gen. Laws § 34-27-7 provides that failure to send notice as required by the statute shall not affect the validity of the foreclosure. The effect on a post-foreclosure eviction of failing to send notice is unclear.

COMMENT: Users should be mindful of the passage of statutes or the issuance of decisions after the date of the most recent revisions to this Practice Form, as the requirements for the conduct of Rhode Island foreclosures may change.

History: This form was approved by the Executive Committee of the Rhode Island Bar Association on March 26, 2013. Use of Approved Forms is suggested, but any substantially equivalent form is acceptable.

Proposed Additions to Practice Form 15 Rhode Island Acknowledgement Forms Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by **John A. Comery, Esq.**, at their meeting on March 16, 2023, voted unanimously to submit the following Proposed Practice Form 15 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes, no later than June 1, 2023, by contacting Rhode Island Bar Association Executive Director Kathleen Bridge by postal mail at 41 Sharpe Drive, Cranston, RI 02920 or email at kbridge@ribar.com.

16. COPY CERTIFICATION

STATE OF RHODE ISLAND
COUNTY OF _____

On this _____ day of _____, I certify that the document is a true, exact, complete, and unaltered copy made by me of _____ (description of the document), presented to me by _____, and to the best of my knowledge the copied document is neither a vital record nor a publicly recordable document that may be available as a certified copy from an official source other than a notary public.

Notary Public _____

Printed Name: _____

My commission expires: _____

17. REMOTE NOTARY

For any notarial act completed remotely, the following statement must be added after the standard notarial certificate:

This notarial act involved the use of communication technology.

COMMENT: Effective June 30, 2022, Rhode Island allows notarial acts to be performed for remotely located individuals using communication technology. In all cases where a notarial act involves the use of communication technology, the following statement, or its substantial equivalent, must be added to any of the above-referenced forms: "This notarial act involved the use of communication technology." See R.I. Gens. Laws §42-30.1-12.1. Note that many service providers/vendors that are authorized by the Rhode Island Secretary of State automatically append this notice.

Fastcase Tip

Save a Search

Follow the steps below to learn how to save a search in Fastcase.

Step One: Run the search you wish to save.

Step Two: On the results page, click the down arrow to the right of the search bar (and just left of Jurisdictions and Sources) at the top of the results page.

Step Three: Select Save this Search.

Step Four: You can find saved searches under the Bookmarks, History, Alerts menu (icon is found in the furthest top right of the results page and looks like a clock surrounded by a circular line).

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

To access Rhode Island Fastcase, connect to the Rhode Island Bar Association website at ribar.com. As always, feel free to contact cus-



tomers support with any questions you may have. Support is available Monday – Friday from 8 am to 9 pm EST and can be reached by email at support@fastcase.com or by phone at 866.773.2782.



Let the Good Times Roll at the Mid-Year Annual Meeting

American Bar Association Delegate Report Mid-Year Meeting 2023



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

The ABA House of Delegates met on February 6, 2023, in New Orleans for its' 84th Mid-Year Meeting. It was an interesting meeting because a number of unique Resolutions were passed by the House. After a televised welcoming address by Louisiana Governor John Bel Edwards, a lawyer himself, we were addressed by ABA President Deborah Enix-Ross, who emphasized the dire need for public education of our legal and justice systems. She also noted that the ABA has been successful in its opposition to legislation that would have regulated lawyers and law firms as financial institutions. Also successful were, and are, the ABA's continuing efforts to properly fund the Legal Services Corporation.

We were also addressed by Loretta H. Rush, Chief Justice of the Supreme Court of Indiana and the President of the Conference of Chief Justices. She stressed the importance of the national mental health and substance abuse crisis, how technology has changed the Courts and how it must be embraced, and she praised the ABA civics education initiatives, but emphasized the need for more education.

Another highlight of the meeting was the nomination of our own Tom Lyons to the Board of Directors of the ABA. Tom has worked tirelessly for many ABA initiatives such as the Future of the Profession and in the National Conference of Bar Presidents. Congratulations to Tom on his well-deserved nomination!

As the Rhode Island Bar Delegate, I had to juggle many meetings: the National Caucus of State Bar Presidents, of which I am a Past President; the State Membership Committee, of which I am the Rhode Island chair; the New England Bar Association; the House Committee on Resolution Impact and Review; and the Diversity and Inclusion Committee. Previously, I have served on the Gun Violence Committee, the Constitution and Bylaws Committee, and the Solo, Small Firm and General Practice Division. I still attend and follow their meetings.

Resolutions come in two forms: international and national issues of the day and nuts and bolts issues that directly affect the profession. Among the former were Resolutions passed on the Russia/Ukraine conflict and condemnation of

the resurgence of antisemitism and domestic terror attacks on all minorities. Among the latter were Resolutions that passed regarding a required Code of Ethics for the U.S. Supreme Court Justices, introduced by a YLD (Young Lawyer Delegate). The Court is already subject to statutory ethical obligations, but this Resolution goes a step further. Several other Resolutions were passed: making it unlawful to possess a firearm on college campuses; regulation of AI systems and their capabilities; gender-identity protections in the bar admission process; removal of stigmatizing and inhumane labels in the criminal justice system; "wildlife protection" protocols; a Resolution allowing junior lawyers to participate in court proceedings, thereby allowing multiple attorneys to argue for a party; removal of Confederate symbols and depictions in and around courthouses; and adopting policies for the treatment of those with dementia who are involved in the criminal justice system.

As always, it is a privilege and honor to represent the Rhode Island Bar at the ABA. I would encourage membership as one value-added tool for professional advancement and education. I am always available by telephone or email with any suggestions or comments. ◇

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

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

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

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

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

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

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

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

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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 Kathleen Bridge at kbridge@ribar.com or 401.421.5740.

In Memoriam

Edward B. Corcoran, Esq.

Edward B. Corcoran (Ned), 96, of Middletown, died on January 25, 2023. Ned was born in Newport to Edward J. and Mary W. Corcoran on October 14, 1926. He was a graduate of Rogers High School, Brown University (1950), and Columbia Law School. He was the husband of Ruth Chatterton Corcoran. Ned practiced law at the firm Corcoran, Peckham, & Hayes in Newport for almost 70 years, retiring at the age of 95 in 2022. The firm was founded by his father, Edward. Ned practiced with his brother Bill for over 60 years, until Bill's death in 2020, and he also practiced with his son Edward J. Corcoran II for 8 years, until his son moved to Boston in 1991. Ned was heavily involved in the community, serving on many municipal and charitable boards. Ned served as president of the Middletown Town Council and was a founding member of the board of the Boys & Girls Club of Newport County. In addition to his wife, Ned is survived by six of his seven children; Ned and Alison Corcoran of Boston; Julie and Chris Jocham of Eagle, ID; Ruthie Corcoran of Middletown; Allen Corcoran of Middletown; Mary and Ned Truslow of New Canaan, CT; and Jim Corcoran, also of Middletown.

Sanford Gorodetsky, Esq.

Sanford Gorodetsky, 94, of Warren, died on Saturday, February 25, 2023. He was born in Providence to the late Louis and Sally (Rice) Gorodetsky. He was the husband of Barbara Blossom. Sanford was a graduate of Classical High School, Providence College, and earned a J.D. from Boston University Law School. Prior to joining the legal profession, he enlisted in the military and served active duty in the Pacific Region. Dedicated to Providence, he served as the Providence Director of Public Safety, as Chief Judge for the Providence Municipal Court, and as a member of the Providence City Council. He practiced law for 62 years. Active in the veteran's community, Sanford served as Commander of the Jewish War Veterans of the USA, Rhode Island Chapter. He was a former secretary for the Permanent Advisory Council of the House Veteran Affairs Committee and a member of the United Veterans Council, Disabled American Veterans Chapter 15 in Bristol, and the World War II Monument Committee. In addition to his wife, Sanford is survived by his sons, Evan Gorodetsky and Brian Gorodetsky; stepdaughters, Robin Blossom and Perry (Pam) Blossom; and sister, Lenore Gorodetsky. He was predeceased by his ex-wife, Harriet (Lieberman) Gorodetsky.

Hon. Michael Higgins

The Honorable Michael A. Higgins, 79, of Matunuck, died on Monday, April 3, 2023. Born in Ireland, he was the son of the late Michael and Margaret Alice (Beirne) Higgins. He was the husband of Geraldine (Girard) Higgins. Michael emigrated from Ballinamore, Leitrim, with his parents when he was four years old. He grew up in Providence, where he attended St. Paul Catholic School and Hope High School. Michael graduated from Providence College and continued on to Catholic University Law School, where he earned his Juris Doctor. While practicing law at the Offices of Cobleigh and Higgins, he was elected to the Rhode Island House of Representatives and served as the House Majority Leader. Michael was appointed as an Associate Judge to the Rhode Island District Court in 1980, during which he became the court's Administrative Judge and later the Acting Chief Judge until his retirement in 2010. In addition to his wife, he is survived by his children, Bethany Parker and her husband Edward, Caitlin Pouliot and her husband Adam, and Michael A. Higgins Jr. and his wife Heather; his brothers, Kevin and Barry Higgins; and multiple grandchildren, nieces, and nephews. Michael was predeceased by his daughter, Tara Higgins, and by his sister, Deirdre Horan.

Joseph R. Miller, Esq.

Joseph R. Miller, 64, of Providence, died on February 6, 2023. He was born on April 13, 1958, in Providence to the late Joseph E. Miller and Dolores (Silva) Miller. He was the husband of Maria J.R. Goncalves. Joseph graduated from George Washington University and George Washington

School of Law. He was admitted to practice law in Rhode Island in 1987 and eventually became a partner at Miller and Caine, LLP. Joseph worked in banking law and corporate immigration for 35 years. He was a member of multiple professional organizations and numerous clubs and charities. In addition to his wife, he is survived by his son Carsten James Miller; his daughter, Alexandra Zuri Miller; his sisters June (Miller) Raposa and Rosemary (Miller) Silva; and brother-in-law David A. Silva of Barrington.

Mortimer C. Newton, Esq.

Mortimer C. Newton, 83, died on Sunday, February 12, 2023. He was the husband of Mary McGann. Mortimer (Mort) was born in 1939 in West Warwick to the late Mortimer W. and Margaret Newton. Mort graduated from LaSalle Academy in 1956 and attended Our Lady of Providence Seminary and the University of Leuven, Belgium. In June 1964, Mort was ordained as a priest for the Diocese of Providence. He spent his time teaching at Our Lady of Providence High School Seminary and LaSalle Academy. He was a founding member of the community organization PACE (People Acting Through Community Effort). Mort graduated from Boston College Law School in 1977 and began a 45-year law career. Throughout his career, Mort helped multiple nonprofits, including Ocean Tides, West Bay Residential Services Inc., Amos House, McAuley House, and The Fund for Community Progress, among others. He was recognized for his community service with the RIBA Dorothy Lohmann Community Service Award and the Pro Bono Publico Award. He was an Adjunct Professor of Criminal Procedure in the Salve Regina Criminal Justice Division. In later years, he served two terms on the board of the Character and Fitness Committee for the Rhode Island Supreme Court. In addition to his wife, Mort is survived by his sisters Mary Jane Goudreau and her husband Paul of New Jersey, and Margaret Deslaurier and her husband Joseph of Charlestown, RI, his brother-in-law John McGann FSC of Narragansett, and many nieces, nephews, grand-nieces, and grandnephews. Mort was predeceased by his brother Robert D. and sister-in-law Patricia Newton of Charlestown, RI, and Wayland, MA.

Jacob D. Portnoy, Esq.

Jacob D. Portnoy, 91, of Cranston, died on Monday, February 6, 2023. He was the husband of Patricia (Romanoff) Portnoy. Born in Providence, he was the son of the late Bradford M.S. and Rebecca (Tanenbaum) Portnoy. He attended Boston University for his undergrad and received his J.D. from Yale. Jacob was an attorney for many years, proudly serving his clients prior to retiring in 2013. In addition to his wife, Jacob is survived by his sons, Eric Portnoy of Boston, MA, and Robert Portnoy of Colorado; his sister, Eveline (Portnoy) Rothman of Manhattan, NY; and his niece.

Frederick G. Tobin, Esq.

Frederick G. Tobin, 75, died on Tuesday, November 15, 2022. He was the husband of Donna C. (Caruso) Tobin and the son of the late Gerald and Suzanne Tobin. Fred graduated from Hewlett High School in New York, where he was recognized as an All-State soccer player. He continued his soccer career at the University of Rhode Island, where he majored in Journalism. Fred went on to study law at Syracuse University. He had a 50-year career as an attorney working in private practice. Fred served as the Coventry Town Council President, the Coventry School Committee attorney, and the Coventry Town and Fire Department Solicitor. He was also involved in his community as a member of the Coventry Jaycees and the Freemasons. In addition to his wife, he is survived by his four daughters: Joy Souza and her husband Robert of Cranston; Brooke Macomber and her husband Raymond of Cranston; Shana Hermans and her husband William of Millbury, MA; Morgan Tobin and her wife Jennifer of Springfield, MA; and his sister, Patrice Oliver and her husband Brian of the UK. He was predeceased by his son Judd Tobin and his brother Stephen Tobin.

Caption This! Contest

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



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

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

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

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

**Winning caption for
March/April**



"Revenge may be a dish best served cold, but justice is best baked for 30-35 minutes at 350 degrees and served warm, with ice cream."

ROLFE I. HUBLEY, ESQ.

Lawyers on the Move

Sarah F. O'Toole, Esq., is now an attorney at **Conley Law & Associates**, 123 Dyer Street, Suite 2B, Providence, RI 02903.
401-415-9835 sotoole@conleylawri.com conleylawri.com

RIBA DEI Committee Call to Action!


For those who may be interested, the Rhode Island Bar Association's Diversity and Inclusion Task Force created a Diversity, Equity, and Inclusion ("DEI") Pledge that invites lawyers, law firms, legal departments, legal services, and law-related organizations to join RIBA in its commitment to increase diversity in the legal profession. Those who participate in the Pledge will be acknowledged on the RIBA website and in the quarterly DEI Newsletter for their good faith efforts. For more information on the Pledge and how to sign up, visit the DEI page on the Bar's website.

The RIBA DEI Committee is in the process of creating a list of contacts of DEI chairpersons at the various law firms in the state. The list will be used as a resource to communicate and collaborate on RIBA's DEI initiatives. We are working to compile the list of contacts over the next few months. If your firm has a DEI Committee, Task Force, and/or contact person, please reach out to Membership Services Coordinator NaKeisha Little at nlittle@ribar.com with the contact information of your firm's DEI Committee chair.

Thank you in advance for your help and support in making the Bar Association a more inclusive organization for all of our members!

Advertiser Index

Alliant Title and Escrow – Florida	32
Arbitrator – Nicholas Trott Long	32
Barrett Valuation Services, Inc.	26
Briden, James – Immigration Law	20
Briden, James – Office for Rent	26
Coia & Lepore, Ltd. – John Cascione	28
Coia & Lepore, Ltd. – Mediation	11
Cohn & Dussi, LLC.	29
Connecticut Lawyers- Messier, Massad, Burdick & Flynn, LLC.	10,28
Dennis, Stephen – Workers' Compensation	21
Enright Law LLC	10
Humphrey, Richard – Law Offices	32
Lavoie Law LLC	28
Law Offices of Michael W. Favicchio	26
LawPay	Back Cover
Leone Law, LLC – Anthony R. Leone II	11
Marasco & Nesselbush – Personal Injury Law Firm	32
Mignanelli & Associates, LTD. – Estate Litigation	21
Morowitz, David – Law Firm	14
Norcom Mortgage	18
Palumbo, Richard – Condominium Law	20
Palumbo, Richard – Property Damage & Insurance	24
PellCorp Investigative Group, LLC	26
Pfiefer, Mark – Alternate Dispute Resolution	24
Pilgrim Title & Closing Services, LLC	28
Red Cave Legal Consulting	11
Secure Future Tech Solutions	16
Slip & Fall – Henry S. Monti	21
Soss, Marc – Florida Estates/Probate/ Documents.	17
Withum – Forensic & Valuation Services	19
Workers' Compensation – Revens, Revens, & St. Pierre	26
Zoning Handbook, 3rd Edition – Roland Chase	32



*“All learning has an
emotional base.”
– Plato*

Emotional intelligence is measured by the ability to recognize and control one's emotions while also recognizing and tending to the emotions of others. Have you ever heard the phrase “read the room?” People who have high levels of emotional intelligence can do just that-- easily pick up on the moods and behaviors of those around them.

Emotional intelligence includes self-awareness, empathy, self-control, and people skills.

Emotional intelligence is very helpful in personal relationships as well as in many person- centered professions. High emotional intelligence allows you to control impulses, communicate effectively, solve problems, and build rapport. Individuals with strong emotional intelligence are successful in career fields such as healthcare, human resources, education, corrections, and more.

Increase your EI by asking these questions:

1. How am I feeling right now, at this moment?
2. How would I describe the mood of my environment?
3. How is the person I'm talking to feeling?
4. How would I feel if I was in that person's situation?
5. How does my attitude and body posture match the energy of the person/environment?



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