Rhode Island Bar Journal

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RHODE ISLAND Bar Association 1898

Editor In Chief, Eric D. Correira, Esq., LLM

Editor
Erin Cute

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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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Upholding Ethical Standards in the Legal Profession

Christopher S. Gontarz, Esq.
President
Rhode Island Bar Association

"The rule of law and attorney ethics are essential to the proper and effective functioning of our legal system."

The legal landscape is strewn with a myriad of potential pitfalls for today's practitioners. Ever-more complex deal-making, domestic and international cross-border business entanglements, representing clients in contested elections, and potent emerging technologies are some of the challenges attorneys face in seeking to effectively represent their clients. An essential but oft-forgotten aid in navigating these obstacles is an attorney's committed fidelity to the principles and precepts of attorney ethics.

When I was sworn in as President of the Bar Association by Chief Justice Suttell, I was administered an oath that all my predecessors have taken. As part of the oath, I stated that, "I will continue to carry out the obligations imposed upon me by the Rules of Professional Conduct." When we are sworn in as attorneys by a Justice of the Supreme Court, we similarly "solemnly swear that in the exercise of the office of attorney and counselor we will do no falsehood, nor consent to any being done." In other words, ethics are a critical capstone component of our legal profession from the outset. We attorneys are held to high ethical standards to protect the integrity of the legal system and, more importantly, uphold the rule of law and ensure the fair and impartial administration of justice.

The rule of law and attorney ethics are essential to the proper and effective functioning of our legal system. As advocates, we must represent our clients and their positions with zeal. While pursing meritorious claims and contentions for clients, not to be overlooked is the mandate of Rule 3.3, Candor Toward the Tribunal. As noted in the preamble of the rules, "The Rules of Professional Conduct are rules of reason…Some of the Rules are imperatives, cast in the terms 'shall' or 'shall not'." Rule 3.3 is not discretionary in its directive (a) A lawyer shall not knowingly (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Knowingly is defined as "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." The comments to Rule 3.3 emphasize that the provisions of the rule collectively set forth the special duties of lawyers as officers of the court to avoid conduct that undermines the rule of law and confidence in the justice system.

We attorneys also have an obligation, while representing clients, to not knowingly make a false statement of fact or law to others. Rule 4.1 of the Rules states, "In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6"[1] (Confidentiality of Information). Lawyers can inadvertently violate Rule 4.1 by knowingly repeating an assertion of fact made by the client when the lawyer knows that the assertion is false and repeats the claim. The Comments to Rule 3.3 further emphasize that its provisions collectively set forth the special duties of lawyers as officers of the court to avoid conduct that undermines the rule of law and confidence in the justice system. A July 2024 opinion by the Supreme Court of the State of New York Appellate Division emphasizes the responsibility of attorneys regarding Rule 4.1. The disciplinary charges stem from the allegations that the lawyer communicated demonstrably false and misleading statements to courts, lawmakers, and the public at large in his capacity as a lawyer. The lawyer's defense was that he lacked knowledge that the statements he made were false and that he had a good faith basis to believe the allegations he made. The defense was rejected, finding that he had made knowing falsehoods, and that each falsehood was made with the intent to deceive. They found that the statements were made "wildly, falsely and dishonestly without regard for its truth or accuracy."[2] After 55 years of honorable and distinguished public service and no disciplinary complaints, the lawyer was disbarred.

I am stressing the importance of ethics for attorneys because consistent adherence to the Rules of Professional Conduct begets many benefits to practitioners and clients alike. *Maintaining public trust* is essential to maintaining public confidence

in the legal system and the rule of law. *Client confidence*: clients rely on attorneys to represent their best interests competently and with integrity. *Professional reputation*: ethical behavior contributes to an attorney's professional reputation, which, regardless of what we see advertised, is the cornerstone of the business in the practice of law. Avoiding *disciplinary actions* for violations of the Rules. *Protection of confidentiality* is crucial for preserving the attorney-client relationship. Ethical conduct by attorneys is essential for ensuring a fair and impartial administration of justice. Finally, our personal integrity reflects our commitment to upholding the values of justice and the rule of law.

Upholding ethical principles not only benefits clients and the legal system but also reinforces our own commitment to moral and professional standards. Ethical conduct by attorneys is fundamental to ensuring an unbiased and just legal system. Finally, our personal integrity reflects our commitment to upholding the values of justice and the rule of law. In my opinion, ethics serve as the foundation of the legal profession. Fidelity to the Rules of Professional Conduct should therefore serve as an aide to our ongoing duty to improve the administration of justice.

I would like to thank Justin Correa, Esq., legal counsel to the Rhode Island Supreme Court Ethics Advisory Panel for his excellent editorial assistance.

ENDNOTES

1 *Rhode Island Rules of Professional Conduct, 3.3; 4.1 and 1.6.*

2 ***In Re: Rudolph W. Giuliani**, AD3d1 (2024), Supreme Court of New York, Appellate Division, First Judicial District, Motions Nos. 24-1332, 2063 and 21-596. Decided July 2, 2024.* ◊

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.
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> 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
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> 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.

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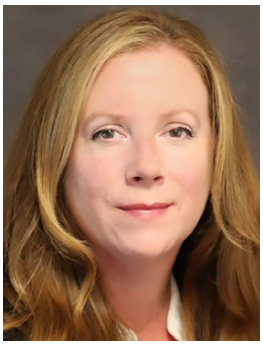
Filing for Bankruptcy Post-Foreclosure: A Possible Workaround for Debtors and How to Protect Creditors



Jennifer L. Joubert, Esq.
Demerle & Associates, P.C.
Boston

"The Debtor's equity of redemption extinguishes upon the execution of a memorandum of sale."

It is not so often that a Debtor files for bankruptcy after a non-judicial sale in Rhode Island, Massachusetts, or New Hampshire, nor is it ever fruitful in getting their home back. Why? Because the caselaw in the First Circuit has held that a Debtor cannot propose a bankruptcy plan to reinstate their mortgage.[1] The bankruptcy courts in Massachusetts and Rhode Island have also held this opinion.[2] Therefore, to protect their homes from foreclosure, Debtors file bankruptcy prior to the foreclosure sale, which is known as the "gavel rule." The gavel rule establishes that upon the conclusion of the foreclosure sale, marked by the fall of the gavel, the Debtors equity of redemption is extinguished.

It is also common practice in at least the Commonwealth of Massachusetts and likely in the neighboring states of Rhode Island and New Hampshire, which also perform non-judicial foreclosure sales, that documents evidencing a foreclosure sale are not quickly recorded, nor must they be. The states each have similar recording statutes ranging from 30 to 60 days, but recording even after these deadlines does not invalidate the sales. They are especially not recorded quickly when a third-party purchaser is the highest bidder at the foreclosure sale, as there is usually a closing set at least 30 days out.

Recently, in two separate Chapter 13 cases in the Commonwealth of Massachusetts, Debtors have attempted to use the trustee's inherent powers to avoid a foreclosure sale post-foreclosure. Pursuant to bankruptcy caselaw, the Trustee has inherent avoiding powers in a Chapter 13 case. The Debtor, however, has limited powers. While there was a case in Massachusetts years ago wherein a Chapter 7 Trustee was successful in invalidating a foreclosure sale[3] because documents were not recorded timely, there is not much caselaw wherein Debtors have attempted to use these same Trustee powers.[4] In the case where the Debtor appeared successful in avoiding the foreclosure sale, the Debtor specifically had a count in their Adversary Proceeding preserving any monies recovered for the benefit of the Bankruptcy Estate. Debtors do not have the same avoidance powers as Trustees.[5] Moreover, there is case law in the Commonwealth that the Debtor's equity of redemption extinguishes upon the execution of a memorandum of sale.[6] The case law does not require that the Memorandum of Sale be recorded, however.

In limited circumstances, the Debtor can use Section 522(h) of the Bankruptcy code. This section indicates that the Debtor can avoid a transfer of a property to the extent that the Debtor could have exempted such property under subsection g(1) of this section if the trustee had avoided such a transfer if that transfer was avoidable under certain sections available to the trustee under their avoidance powers and that the trustee does not attempt to avoid such a transfer. Taken in conjunction with g(1), that a transfer cannot be a voluntary transfer of the Debtor, and the Debtor did not conceal such property.

The first matter was decided on appeal from the Massachusetts Bankruptcy Court.[7] In **Jacobs**, the bankruptcy court in Massachusetts held that the Debtor could not avoid their pre-petition foreclosure sale. In this case, before the Debtor/homeowner filed for bankruptcy, a memorandum of sale and deed were recorded. There, the Debtor moved under 522(h) of the Bankruptcy Code and attempted to use the Trustees avoidance powers, arguing that he had an equity of redemption in which he could avoid the transfer of his equity of redemption because he believes that the foreclosure deed was defective. The bankruptcy court held that the Debtor's equity of redemption was extinguished at the conclusion of the foreclosure sale upon the execution of the memorandum of sale between the mortgagee and a third-party buyer. The Debtor appealed directly to the United States District Court for the Commonwealth of Massachusetts.[8]

The United States District Court for the Commonwealth of Massachusetts affirmed the Bankruptcy Court decision and additionally held that the Affidavit of Sale that was recorded provided constructive notice to third-party buyers, such

Rhode Island Bar Foundation

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

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

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that the Debtor was unable to avoid the transfer and the extinguishment of his equity of redemption.[9]

Even more recently was the Adversary Proceeding initiated by a Debtor a month or so post-foreclosure sale.[10] In **Neiva v. Loancare, LLC**, the Debtor's foreclosure sale occurred in January 2023. The highest bidder was a third-party purchaser, and a memorandum of sale was executed, not recorded. The Debtor filed bankruptcy in February 2023, proposed a sale plan, and indicated an intent to file an adversary proceeding against the lender. No proof of claim was filed, nor was there any objection to the bankruptcy plan, as the foreclosure sale was concluded previously, and therefore the property is not part of the bankruptcy estate.

The Debtor then filed an Adversary Proceeding with several different and distinct counts regarding the foreclosure sale. The most important count was the avoidance of the foreclosure sale pursuant to 522(h) of the bankruptcy code. The Debtor argued that the "transfer" (the foreclosure sale) was neither voluntary nor concealed and moved to avoid the transfer under Section 544 of the code in that there was nothing recorded on title to put a third-party purchaser on notice and therefore was avoidable. The Bankruptcy Court allowed the parties to stay all of the Counts of the Complaint and focus on the 522(h) Count only. Cross-summary judgment motions were filed as well as replies, and all were prior to the **Jacobs** decision. The Decision on **Neiva** came out after **Jacobs**.

On Summary Judgment as to the particular Count I under 522(h), the Court ruled most notably that the Debtor's equity of redemption could be redeemed because there was nothing on title to notice as to any bona fide purchasers that the foreclosure sale had concluded. Although the Creditor argued that 522(h) is for very limited circumstances, that the memorandum of sale was executed, the sale was voluntary, and that 2nd jurisdiction caselaw against Debtors using 522(h) to undo sale when it solely benefits them and not the estate, that the Debtor's sole purpose for Bankruptcy was to sell the home, and there were enough

pre-foreclosure sale recordings to put someone on notice, the Bankruptcy Court ruled that the Debtor's equity of redemption was not extinguished by the foreclosure sale.

Unless there are any other cases brought by Debtors or further appeals, foreclosure attorneys would need to protect their clients going forward by recording some sort of qualifying evidence that a sale has been completed. Rhode Island and New Hampshire are also in the First Circuit and perform non-judicial sales, so perhaps foreclosure attorneys also need to record some sort of affidavit of the sale as soon as possible to protect the sale from possible homeowners filing bankruptcy post-gavel.

ENDNOTES

1 ***In re Vertullo***, *610 B.R. 399 (B.A.P. 1st Cir. 2020).*

2 ***See TD Bank v. Lapointe (In re LaPointe)***, *505 B.R. 589, 595;* ***In re Medaglia***, *402 B.R. 530, 2009 Bankr. LEXIS 798, 61 Collier Bankr. Cas. 2d (MB) 1218.*

3 ***Weiss v. US Bank (In re Mularski)***, *565 B.R. 203 (Bankr. D. Mass. 2017).*

4 ***In re Giacchetti***, *584 B.R. 441 (Mass.BK. 2018).*

5 ***Kalesnik v. HSBC Bank USA (in re Kalesnik)***, *571 B.R. 491 (Bankr. D.Mass. 2017).*

6 ***Williams v. Resolution Case GGF OY***, *417 Mass. 377, 384 (1994).*

7 ***Tran v. Citizens Bank, et.al. (In re Tran).***

8 *Unless requested to appeal to the United States District Court of Massachusetts, a Bankruptcy Court Appeal goes directly to the Bankruptcy Appellate Panel.*

9 ***In re Tran (Tran v. Citizens Bank, N.A and Jacobs)***, *23-40128 (Mass. BK 2023).*

10 ***Nevia v. Loancare, LLC (In re Neiva)***, *23-4015 (MA BK 2023).* ◊

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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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Non-Refundable Retainers: A Minefield of Trouble

Jane Howlett, Esq.
Howlett Law, Inc.
Bristol

"The funds paid to the attorney by the client do not belong to the attorney immediately; rather, the attorney must earn the funds for services performed for the client."

A number of attorneys in the State of Rhode Island ask for non-refundable retainers, and often this leads them down the road to the Office of Disciplinary Counsel, a place where attorneys don't want to hear their name mentioned. In this article, I will address the different types of "retainers" as well as outlining the position taken by the Rhode Island Disciplinary Counsel on this issue. Rhode Island Rule 1.5 of the Rules of Professional Conduct states as follows:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Where the fee is not fixed or contingent, billings regarding the fees, costs, and expenses shall be provided to the client on a quarterly basis or as otherwise provided in the agreement.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

There are actually two types of payments to attorneys. The first is a "fee advance," which is

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If you have not yet signed up as a member of a 2024–2025 Rhode Island Bar Association Committee, you can still do so! Bar committee membership runs from July 1st to June 30th.

Even Bar members who served on Bar committees last year must reaffirm their interest for the current year, as committee membership does not automatically carry over from one Bar year to the next. Bar members may complete a committee registration form online or download and return a form to the Bar.

This year, we will continue to offer Bar committee participation in a hybrid manner whenever possible to accommodate those who would prefer to attend meetings virtually.

For more information, visit the Bar's website under For Attorneys – Bar Committees. Anyone signing up for Bar Committees after August 16th can do so by contacting Communications Coordinator NaKeisha Torres at (401) 421-5740 or ntorres@ribar.com.

typically known as a retainer in Rhode Island. In this scenario, the funds are deposited into an IOLTA account, and the attorney is paid for the time spent on that particular case from the funds held in the IOLTA account. The funds paid to the attorney by the client do not belong to the attorney immediately; rather the attorney must earn the funds for services performed for the client. The Retainer Agreement should specifically spell out the amount of the retainer and the hourly wage or flat fee for the services to be performed. In Rhode Island the attorney's fee must be earned and, failure to earn those funds must result in a refund of the unused portion of the retainer.

The second type of "retainer" or category of funds paid to an attorney by a client is also known as a "special retainers" or a "true retainers." These payments are made to the attorney to secure the attorney's availability for a specified period of time. The crux of these types of payments are that the attorney is being taken out of the work force due to dedication to one client and that the payment is made to secure an attorney's availability, to compensate the attorney for the loss of other employment opportunities and to secure an attorney's availability over a given period of time. However, the fee must still be "reasonable" pursuant to Rule 1.5. Historically, these types of "retainers" harken back to an earlier time when there were fewer attorneys and a client needed to secure an attorney's services. These types of "retainers" are not often seen today, however they are recognized by Rhode Island Rule 1.5 (b).

The client's absolute right to terminate the attorney's services and the attorney's right to withdraw from representing the client are also key issues in the attorney-client relationship. For example, if an attorney is discharged shortly after receiving a non-refundable retainer, they would receive a windfall prior to taking any substantial action on the subject of the representation. Such a fee would be considered unreasonable and would violate Rule 1.5.

The Ethics Advisory Panel issued an opinion in 1994[1] that stated that *"it is the Disciplinary Board's policy that the term 'retainer' as used by attorneys of this Bar is a fee advance and therefore refundable, minus a reasonable 'quantum meruit' amount."* The opinion went on to state that the attorney is entitled to the reasonable value of the services rendered under the quantum meruit theory and any unused portion of the fee must be returned to the client. The opinion explicitly states that the attorney is obligated to return the non-earned portion of the retainer fee.

The Ethics Advisory Panel issued a similar opinion in April 2024[2] when addressing fees assessed on real estate transactions by closing attorneys. The inquiring attorney stated that certain attorneys who were representing buyers in real estate closings were charging fees, classified as "seller" fees on the settlement statements. These "seller" fees included disbursement fees, courier fees and wire transfer fees, which were not actually costs incurred by the attorney. The opinion further stated that it is clear that for the fees to be "reasonable," the charges must either reflect "a reasonable amount to which the client has agreed in advance" or "the cost incurred by the lawyer." In particular, there were no fees assessed by the attorney's bank relative to wire transfers from the attorney's IOLTA account, and thus the attorney could not assess a line item fee at the closing for a non-existent fee that the attorney didn't incur. The opinion cited a previous opinion, specifically Rhode Island Supreme Court Ethics Advisory Opinion No. 2023-12, which determined that

the inquiring attorney could pass credit card processing fees to his or her clients in both flat fee and hourly billing matters and in situations when the client has paid fees to the attorney in connection with the issuance of payment to a third party. This was because the fees reflected no more than the costs actually incurred by the attorney during the course of representation. The opinion cites North Carolina's State Bar Formal Ethics Opinion 2021-3 by stating that "nothing in the Rules of Professional Conduct permits or empowers a lawyer to charge a third or opposing party for legal services performed for the benefit of her client without that party's consent." The opinion also references similar decisions by the Ethics Panels in New York, Alaska and Illinois.

Additionally, Rule 1.5(a) establishes that both attorney's fees and related expenses charged by lawyers must be "reasonable under the circumstances." Comment [1] to Rule 1.5 explains that "[a] lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer."

It is clear that an attorney must earn their fees, bill against the retainer and refund the unused or unearned portion of any retainer. This was reiterated by the Supreme Court in Rhode Island Supreme Court Ethics Advisory Panel Op. 2016-08, issued on August 15, 2016. This addressed payments by third parties (not credit card companies) and stated that "when an attorney receives funds for fees from a third-party payor, the third-party payor, and not the client, is entitled to the refund of excess fees at the conclusion of the representation, unless there are agreements specifying otherwise." An example of an agreement specifying otherwise would be a specific arrangement, set forth in writing, determining who should receive the unused portion of the retainer. This, again, does not refer to credit card companies as third-party payors but rather an individual or an entity paying the retainer on behalf of the client.

Finally, Rhode Island Supreme Court Rule 1.16(d) states as follows:

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. (Emphasis added.)

In summary, and in the immortal words of Justice Cardozo, "Membership in the Bar is a privilege burdened with conditions."[3] Although some members of the Bar will continue to ask for non-refundable retainers, in doing so they run the significant risk of facing disciplinary sanctions should the attorney-client relationship be terminated. The client will want their money back, and based on the foregoing, the attorney will ultimately have to return the unused portion of the retainer.

ENDNOTES

1 *Ethics Advisory Panel Opinion #94-63 Request #534 September 28, 1994.*

2 *Rhode Island Supreme Court Ethics Advisory Panel Op. 2024-02 April 11, 2024.*

3 ***In Re Rouss**, 116 N.E. 782 (NY 1917).* ◊

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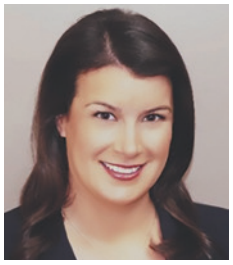
For traditional mentoring, our program matches new lawyers one-on-one with experienced mentors in order to assist with law practice management, effective client representation, and career development. If you would like to volunteer and serve as a mentor, please visit **ribar.com**, select the **MEMBERS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

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

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

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.



Angela Yingling, Esq.
RI Assistant Public Defender

Jenna Giguere, Esq.

Tamera Rocha, Esq.

Attorney Tamera Rocha's interest in the judicial system began when she was a child. As the daughter of a former police officer and current criminal justice professor, she had the opportunity to watch her father testify in court several times. She has fond memories of these court visits, where she could see her father in action, and even recalls the judge letting her sit at the bench and bang the gavel a few times—a harbinger, perhaps, of her future role leading the Rhode Island Supreme Court's Access to Justice Office.

The road to Ms. Rocha's current position, however, was not a direct one. As a marketing and logistics undergraduate student, Ms. Rocha added a minor in legal studies late in her collegiate career at Central Michigan University. As if that was not enough, she also ran track at Central Michigan University, where she earned Division IA All-American honors, specializing in the heptathlon, pentathlon, hurdles, long jump, and high jump. After graduating, she took a year off to run track professionally before being accepted to law school at the University of Toledo. Ms. Rocha continued multitasking during her first semester at law school, where she not only handled a full 1L courseload but also spent her spare time training for the Olympic trials! She recalled how challenging it was to juggle both school and such intense training, so she made the difficult decision to focus her remaining two years of law school on her future legal career. It was a tough choice, but she does not regret her decision. "Law school was where I needed to be," she said.

Like so many attorneys who graduated during the Great Recession, Ms. Rocha's legal career got off to a rocky start. Her first job offer was rescinded as a result of the economic conditions at the time, but this did not stop her from pivoting to a quasi-legal job recruiting students for her law school alma mater. She also held a temporary position in compliance in Troy, Michigan, thereafter.

After moving to Rhode Island with her husband, Ms. Rocha continued practicing in the compliance field at Textron. Looking for job opportunities within the state government, she applied for a staff attorney position in the Rhode Island Supreme Court's Office of General Counsel. Even during the interview process, she could feel that the position was a great fit for her—a feeling that has only solidified throughout her eight years of service and to the present day.

In her position as Director of the Access to Justice Office, Ms. Rocha oversees three vital court services: Language Access, Compliance with the Americans with Disabilities Act, and Services for Self-Represented Litigants. She has also served as legal counsel to the Committee for Character and Fitness and the Unauthorized Practice of Law Committee. In talking to Ms. Rocha, the accomplishment she is most proud of is spearheading the effort to increase the number of court interpreters on the courts' staff. As the number of litigants, witnesses, and members of the public who need the aid of an interpreter increases, Ms. Rocha has made it her mission to ensure enhanced accessibility—no matter what language a person speaks. In order to further provide access to justice services, she has also organized more training for court interpreter staff as well as increased vendor interpreter services. Ms. Rocha has also organized community listening sessions to better understand and document court users' language assistance needs. She has collaborated with community partners, both locally and nationally, to identify strategies to increase resources for self-represented litigants and to ensure that Rhode Island courts are accessible to the public in a multitude of ways.

The most rewarding period in Ms. Rocha's career is right now! She is enthusiastic about working for access to justice at a time when addressing the needs of court users directly is becoming a priority in many states. Nationally, this upward trend includes the restoration of the Office for Access to Justice within the Justice Department and supporting tools provided by the National Center for State Courts. One memorable sign of the movement within Rhode Island was the establishment of the Access to Justice Office within the Rhode Island Supreme Court in 2021 by Chief Justice Paul Suttell and State Court Administrator Julie Hamil. Seizing on the momentum, Ms. Rocha hopes to look back on the changes she has made in furtherance of access to justice and see the difference it has made for generations to come.

When asked about her favorite part of being a lawyer, Ms. Rocha thought for a moment and responded, "Issue spotting." Lest we think she is nostalgic for 1L final exams, she explains that this important skill has really helped her see beyond the immediate and focus on the bigger picture. It allows her to see gaps and barriers and identify what is broken or missing on a variety of issues she works on daily. As she notes, issue spotting is a critical precursor to effective problem-solving.

Ms. Rocha has sage advice for other lawyers: listen. She employs this important maxim in her career, especially when communicating with the members of the public she serves. Not only does active listening ensure that everyone is heard, but it also creates dialogues that are a more efficient use of time. After all, a lot of time can be wasted if a lawyer makes an assumption about a problem rather than adhering to the "listen first" strategy. In a career where we are constantly talking, listening can be an undervalued but critical tool in an attorney's toolkit. Ms. Rocha also encourages all attorneys to "take

your time with the opportunities that have been presented to you." In other words, be present in the moment in order to learn as much as you can. She places a particular emphasis on learning from those who have come before us, as they can often be an invaluable resource, and espouses patience and willingness to learn as important values for all attorneys.

Outside of her role leading the Access to Justice Office, Ms. Rocha is also part of the Advisory Council for the United State District Court of Rhode Island, serving on the Continuing Legal Education (CLE) and Access to Justice subcommittees; she is a member of the Executive Board for the Center for Mediation and Collaboration; and she was a participant of the inaugural RIBA Leadership Academy. Between all of her professional commitments and raising her young family, she does not have too much free time on her hands, but when she can, she enjoys traveling with her family, visiting new places, and learning more about the world. ◊

Member Benefit Spotlight

Introducing vLex Fastcase: Enhanced Legal Research for Rhode Island Bar Members

Fastcase legal research remains one of the most important benefits for Rhode Island Bar Association members, offering free access to cases, statutes, and regulations. In 2023, Fastcase merged with vLex, a global legal intelligence company, prompting questions about the impact on the free research benefit. The good news is that the vLex Fastcase merger is as committed as ever to democratizing legal research. By year's end, the Rhode Island Bar Association will launch an upgraded member benefit program, offering the same free core services with notable improvements.

The enhanced "vLex Fastcase" platform will provide free access to extensive primary law collections, including Rhode Island caselaw, statutes, the Constitution, Attorney General Opinions, Administrative Code, and court rules. You can search by citation, keyword, or natural language query to instantly retrieve the legal authorities you need.

Members will also have access to a rich selection of treatises, practice guides, legal forms, and secondary sources. Rhode Island-specific guides cover civil procedure, foreclosure law, legal malpractice, title standards, and trust and estate practice, with national materials on bankruptcy, employment law, and intellectual property. The *Rhode Island Bar Journal* articles will remain accessible on the new platform.

A key upgrade to the platform includes skills from **Vincent AI**, vLex's award-winning research assistant that will elevate your legal research. Vincent delivers automated headnotes, case summaries, and links to related materials, saving time and increasing precision. Its advanced capabilities, such as answering legal questions, drafting arguments, and conducting 50-state surveys, **will be available through a subscription add-on**, offering cutting-edge AI tools tailored for legal professionals.

The platform also includes the new Cert citator, a vast improvement over Fastcase's previous Bad Law Bot. Cert flags negative treatment and citing references to cases, with broader coverage and the added confidence of expert editorial review.

The vLex Fastcase platform is designed for ease of use. Enter a citation to pull up documents instantly, refine your searches with filters, and browse individual sections of statutes and guides via interactive outlines. Tag frequently used documents for quick access and set up alerts to stay on top of critical legal developments without manually searching.

Best of all, Rhode Island Bar Association members receive this premium service entirely free—a $1,140 annual value for non-members. Many firms have replaced their LexisNexis or Westlaw subscriptions with vLex Fastcase, as it offers the same primary law and much of the same secondary content.

In short, vLex Fastcase is no longer just a "free alternative"—it's a premium legal research tool that provides everything a modern law practice needs. More information regarding the switch to the new platform will be shared over the coming months, so keep an eye on your inbox for updates.

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1:00 – 2:00 pm, 1.0 credit
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12:30 – 1:30 pm, 1.0 ethics
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Reverse Discrimination "Background Circumstances" Test Causes Circuit Split

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

Damaris G. Hernandez, Esq.
Nixon Peabody
Providence

"...'reverse' discrimination cases originated from the discrimination that can sometimes accompany an employer's efforts to improve the record of his or her hiring practices."

Introduction

With affirmative action laws recently under the purview of the United States Supreme Court, all eyes shifted to the future of diversity, equity, and inclusion policies in the workplace.[1] Specific to the employment realm, practices with the intent to improve an employer's hiring practice record can result in a discrimination claim against the employer by employees in the "majority" population.[2] Once a claim of this nature reaches the court, it is usually adjudicated using the longstanding **McDonnell Douglas** burden-shifting framework.[3]

Recently, however, circuit courts have split over how the "majority" population proves discrimination under the framework.[4] Depending on where an employee is located, he or she may have additional factual requirements to set forth a *prima facie* case.[5] Some courts impose an additional "background circumstances" test, while others do not. This Article explores the origination of the "background circumstances" test as well as the circuit split that may inevitably reach the United States Supreme Court.

The United States Supreme Court Sets Forth the Framework For Employment Discrimination Claims

At 7:40 on the evening of June 19, after the longest debate in its nearly 180-year history, the United States Senate passed the Civil Rights Act of 1964.[6] The Civil Rights Act of 1964 prohibits discrimination in a broad array of private conduct, including public accommodations, governmental services, and education.[7] One section of the Act, referred to as Title VII, prohibits employment discrimination based on race, sex, color, religion and national origin.[8] Title VII applies to private employers, labor unions, and employment agencies.[9] The Act prohibits discrimination in recruitment, hiring, wages, assignment, promotions, benefits, discipline, discharge, layoffs, and almost every aspect of employment.[10]

If an employee believes their employer has engaged in discrimination and other unlawful acts in violation of Title VII, there are several potential legal claims they may pursue, including disparate treatment, disparate impact, quid pro quo sexual harassment, retaliation, or negligence.[11] Disparate treatment is the most obvious form of employment discrimination.[12] It occurs when an employer treats an employee or job applicant differently than other employees because of their race, color, religion, national origin, or sex.[13] Disparate impact occurs when a seemingly neutral practice unduly impacts employees in a protected class, often unintentionally.[14] For example, if employees must pass physical strength tests or meet a minimum height—requirements that appear neutral at first glance—it may still have a disparate impact on women or other protected groups.[15] Assuming an employee can prove a disparate impact, the employer would be allowed to show that the policy is necessary for the position and that no alternative policy or requirement would work.[16]

Where there is an adverse employment decision, the decision-maker, usually the employer, is unlikely to expressly state the reasons for the decision, especially where that decision was based on discrimination.[17] In recognition of the imbalance of information in employment cases, the **McDonnell Douglas** burden-shifting framework seeks to compel an employer to state its reason for making the adverse employment decision.[18]

Under the **McDonnell Douglas** framework, the employee bears the initial burden.[19] This framework requires first that the employee establish a *prima facie* case of discrimination by proving that (1) he or she belongs to a protected class; (2) he or she was qualified for the position; (3) though qualified, he or she suffered some adverse employment action; and (4) the employer treated similarly situated people outside of his or her protected class differently, or the circumstances under which the adverse employment action occurred give rise to an inference of discrimination.[20] Once the *prima facie* case is established, the burden of production shifts to the defendant-employer to articulate some legitimate, non-discriminatory reason for the adverse employment action.[21] Provided that the employer rebuts the presumption of discrimination by articulating some legitimate, non-discrim-

Thanks to Our CLE Speakers

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

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

Nicole Black, Esq.
MyCase

Jared D. Correia, Esq.
Red Cave Law Firm Consulting

inatory reason for the adverse employment action, the third phase of the **McDonnell Douglas** burden-shifting framework affords the employee a fair opportunity to show that the employer's proffered reason is pretextual or discriminatory in its application.[22]

The Introduction of the "Background Circumstances" Test in Reverse Discrimination Claims

Buttressed on what the Honorable Judge Abner Joseph Mikva of the D.C. Circuit Court of Appeals described as the "overt and blatant bigotry that marked the leading civil rights cases," "reverse" discrimination cases originated from the discrimination that can sometimes accompany an employer's efforts to improve the record of his or her hiring practices.[23] Cases under a theory of reverse discrimination rest on "the suspicion that the defendant is that unusual employer who discriminates against the majority."[24]

In **Parker v. Baltimore & O. R. Co.**, a Caucasian male aspiring to be a locomotive fireman sued his employer under Title VII, alleging that illegal preferences were being given to Black and female applicants.[25] Title VII protects the rights of all employees, no matter their protected characteristics or traits.[26] The original **McDonnell Douglas** standard requires the plaintiff to show "that he belongs to a racial minority."[27] But what about the plaintiffs who do not belong to a racial minority? Understanding this distinction, the Court made an adjustment.[28] The Court held that "majority plaintiffs" are allowed to rely on the **McDonnell Douglas** criteria to prove a *prima facie* case of intentional disparate treatment when "background circumstances support the suspicion that the defendant is that unusual employer who discriminates against the majority."[29] In doing so, the "background circumstances" test was born.[30]

The "Background Circumstances" Test As Applied Throughout The Circuit Courts

Throughout this nation's twelve general jurisdiction federal courts of appeals, claims factually similar to **Parker v. Baltimore & O. R. Co.** have arrived for appellate review.[31] However, as is their prerogative, each court can decide whether to adopt the "background circumstances" test.[32]

Currently, five circuit courts require this extra showing.[33] The Sixth Circuit, the latest court to adopt the test, did so as recently as December 2023 in **Ames v. Ohio Department of Youth Services**. Conversely, two circuit courts have expressly rejected this rule.[34] The remaining five circuits, including the First Circuit, simply do not apply it.[35]

The "background circumstances" test, however, is not without criticism. In his concurrence to the majority opinion in **Ames**, the Honorable Judge Raymond M. Kethledge warned that "the 'background circumstances' rule is not a gloss upon the 1964 Act, but a deep scratch across its surface."[36] Met with this disagreement in the circuit courts, the test could prompt the attention of the United States Supreme Court.

Conclusion

In light of many employers' respectable efforts to further their commitment to diversity, equity, and inclusion, the courts may see an influx of "reverse discrimination" cases. As such, the use of the "background circumstances" test may be an issue the United States Supreme Court will consider reviewing.

ENDNOTES

1 ***Students for Fair Admissions v. Harvard***, *600 U.S. 181 (2023); Kenji Yoshino & David Glasgow,* What SCOTUS's Affirmative Action Decision Means for Corporate DEI, *Harvard Business Review, https://hbr.org/2023/07/what-scotuss-affirmative-action-decision-means-for-corporate-dei (last visited Apr. 1, 2024).*

2 ***Parker v. Baltimore & O. R. Co.***, *652 F.2d 1012, 1017 (D.C. Cir. 1981).*

3 ***See Id.***

4 ***See Ames v. Ohio Dep't of Youth Servs.***, *87 F.4th 822, 827 (6th Cir. 2023).*

5 ***See Id.***

6 *EEOC History: The Law, U.S. Equal Employment Opportunity Commission, https://www.eeoc.gov/history/eeoc-history-law (last visited Jun. 6, 2024).*

7 ***Id.***

8 ***Id.***

9 ***Id.***

10 ***Id.***

11 What you need to know about Title VII of the Civil Rights Act, *Thomson Reuters, https://legal.thomsonreuters.com/en/insights/articles/what-is-title-vii-civil-rights-act ("This is not an exclusive list of the potential claims an employer may face under Title VII, and an employee may contemporaneously claims under state law.") (last visited Jun. 4, 2024).*

12 ***Id.***

13 ***Id.***

14 ***Id.***

15 ***Id.***

16 ***Id.***

17 *Connie Kremer,* McDonnell Douglas Burden Shifting and Judicial Economy in Title VII Retaliation Claims: In Pursuit of Expediency, Resulting in Inefficiency, *85 U. Cin. L. Rev. 857, 860 (2017).*

18 ***Id.****; see* ***TWA v. Thurston****, 469 U.S. 111, 121 (1985) ("The shifting burdens of proof set forth in* ***McDonnell Douglas*** *are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'").*

19 ***McDonnell Douglas Corp. v. Green****, 411 U.S. 792 (1973).*

20 *Kremer* ***supra note*** *15;* ***McDonnell****, 411 U.S. at 802 n.13 ("The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations.").*

21 ***McDonnell****, 411 U.S. at 802.*

22 ***McDonnell****, 411 U.S. at 807.*

23 ***Parker v. Baltimore & O. R. Co.****, 652 F.2d 1012, 1013 (D.C. Cir. 1981).*

24 ***Id.*** *at 1017.*

25 ***Id.*** *at 1014.*

26 ***McDonald v. Santa Fe Trail Transportation Co.****, 427 U.S. 273 (1976) (affirming that Title VII extends its protections to white workers as well as black).*

27 ***Parker****, 652 F.2d at 1017.*

28 ***Id.***

29 ***Id.***

30 ***Id.*** *(Stating that, "Whites are also a protected group under Title VII, but it defies common sense to suggest that the promotion of a black employee justifies an inference of prejudice against white co-workers in our present society.").*

31 ***See Charles Alan Wright & Mary Kay Kane****,* Law of Federal Courts *§ 3, at 11 (7th ed. 2011) ("In addition to the twelve geographically arrayed courts of general jurisdiction, the Federal Circuit Court of Appeals hears specialized federal appeals such as those concerning patents and cases decided by the Court of Federal Claims.").*

32 *Wayne A. Logan,* Constitutional Cacophony: Federal Circuit Splits and the Fourth Amendment, *65 Vand. L. Rev. 1137, 1139 (2012).*

33 ***Ames v. Ohio Dep't of Youth Servs.****, 87 F.4th 822, 827 (6th Cir. 2023);* ***See Parker v. Balt. & Ohio R. R. Co.****, 652 F.2d 1012, 1017-18 (D.C. Cir. 1981);* ***Mills v. Health Care Serv. Corp.****, 171 F.3d 450, 455-57 (7th Cir. 1999);* ***Hammer v. Ashcroft****, 383 F.3d 722, 724 (8th Cir. 2004);* ***Notari v. Denver Water Dep't****, 971 F.2d 585, 588-89 (10th Cir. 1992).*

34 ***See Iadimarco v. Runyon****, 190 F.3d 151, 157-62 (3d Cir. 1999);* ***Smith v. Lockheed-Martin Corp.****, 644 F.3d 1321, 1325 n.15 (11th Cir. 2011).*

35 ***See Williams v. Raytheon Co.****, 220 F.3d 16, 18-19 (1st Cir. 2000);* ***Aulicino v. N.Y.C. Dep't of Homeless Servs.****, 580 F.3d 73, 80-81 & n.5 (2d Cir. 2009);* ***Lightner v. City of Wilmington, N.C.****, 545 F.3d 260, 264-65 (4th Cir. 2008);* ***Byers v. Dallas Morning News, Inc.****, 209 F.3d 419, 426 (5th Cir. 2000);* ***Hawn v. Exec. Jet Mgmt., Inc.****, 615 F.3d 1151, 1156 (9th Cir. 2010).*

36 ***Ames****, 87 F.4th at 827.* ◊

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 Communications Coordinator NaKeisha Torres at ntorres@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!

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

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

HONOR ROLL

Volunteers Serving Rhode Islanders' Legal Needs

The Rhode Island Bar Association applauds the following attorneys for their outstanding pro bono service through the Bar's Volunteer Lawyer Program, Elderly Pro Bono Program, Ask A Lawyer Clinic, Legal Clinics, and VLP Mentor Program during June 2024 and July 2024.

JUNE 2024

Volunteer Lawyer Program

Denise Acevedo Perez, Esq., *RI Immigration and Family Law Group*
Michael A. Castner, Esq., *Jamestown*
Stefanie DiMaio-Larivee, Esq., *Providence*
Christopher M. Lefebvre, Esq., *Consumer & Family Law Center of Claude F. Lefebvre, Christopher M. Lefebvre*
John T. Longo, Esq., *Providence*
Paul B. McCarthy, Esq., *Warwick*
Laurie A. Meier, Esq., *Cranston*
Thomas L. Mirza, Esq., *TMirza, Esq.*
Eileen C. O'Shaughnessy, Esq., *Stewart Title Guaranty Company*
R. Andrew Pelletier, Esq., *Pelletier Law Group*
Stephen M. Robinson, Esq., *Robinson & Clapham*
John S. Simonian, Esq., *Pawtucket*

Elderly Pro Bono Program

Armando E. Batastini, Esq., *Nixon Peabody, LLP*
Michael A. Castner, Esq., *Jamestown*
Dadriana A. Lepore, Esq., *Coia & Lepore, Ltd.*
Rick J. A. Pacia, Esq., *Pacia & Pacia, LLP*
Steven Aaron Robinson, Esq., *Robinson & Robinson*
Denita M. Rossi, Esq., *Portsmouth*
John S. Simonian, Esq., *Pawtucket*

Legal Clinics

Peter M. Iascone, Esq., *Peter M. Iascone & Associates, Ltd.*

For information and to join a Bar pro bono program, please contact the Bar's **Public Services Director Susan Fontaine** at **sfontaine@ribar.com** or **401-421-7758**. For your convenience, Public Services program applications may be accessed on the Bar's website at **ribar.com** and completed online.

JULY 2024

Volunteer Lawyer Program

Denise Acevedo Perez, Esq., *RI Immigration and Family Law Group*
Robert A. Arabian, Esq., *Arabian Law Offices*
Andrew H. Berg, Esq., *Sammartino & Berg*
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Michael A. Castner, Esq., *Jamestown*
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Steve Conti, Esq., *North Providence*
Michael A. Devane, Esq., *Devane & Devane Law Offices*
Kathleen G. Di Muro, Esq., *Law Office of Kathleen G. Di Muro*
Priscilla Facha DiMaio, Esq., *Johnston*
Brian G. Goldstein, Esq., *Law Offices of Brian G. Goldstein*
Jacqueline M. Grasso, Esq., *Grasso Law Offices*
Lise M. Iwon, Esq., *Laurence & Iwon*
Dianne L. Izzo, Esq., *Dianne L. Izzo, Attorney at Law*
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Thomas P. Quinn, Esq., *McLaughlinQuinn LLC*

Ask A Lawyer

Robert D. Oster, Esq., *Oster Law Offices*

VLP Mentor Program

Joseph M. Proietta, Esq., *Law Office of Joseph M. Proietta*

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.

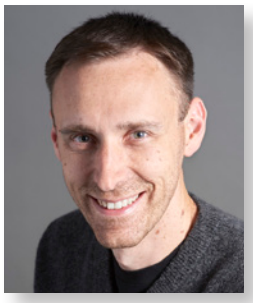
Be it resolved that in order to implement the above statement of policy the association urges each member to join and participate in a Volunteer Lawyer Program of the Rhode Island Bar Association.

Congratulations to our Volunteer Lawyer Program Raffle Winners!

Volunteer attorneys Robert Larder and Richard Pacia were the lucky winners of a recent drawing for Boston Red Sox tickets on the third base line, compliments of WEEI Sports Radio. Any Bar member who accepted a pro bono case during the first two weeks of June was entered to win the prize. We are so grateful for Bob and Rick's continued service to our program and to the public. We urge anyone interested in following in their footsteps to contact Public Services Director Susan Fontaine today at 421-7758 or sfontaine@ribar.com to find out more about the Volunteer Lawyer Program and the Pro Bono Program for the Elderly and how you can give back to those in need. We will even provide mentors for attorneys unfamiliar with a particular area of law, so don't let that stop you from reaching out.

We would also like to send a special thank you to WEEI 103.7 FM for their generous donation of Red Sox tickets for our raffle. By supporting our program, you have made a huge difference in the lives of many families in need!

TECH TIPS Brought to you by the RI Bar Association's Technology in the Practice Committee, this new feature will provide members with practical insights and informed advice, ensuring you stay ahead in the ever-evolving legal tech landscape.



The Quantum Creativity Conundrum: The Future of Copyrightable Generative AI

by Nicholas Matlach, Esq., ioLiberum Law Firm, P.C., Providence

The power and promise of Generative AI have sparked widespread debate. As Judge Stern and Brian Murphy aptly pointed out in the May/June issue of the *Rhode Island Bar Journal*, this and other emerging technologies sit at the "crossroads of tradition and progress,"[1] a tension that directly influenced the ABA's recent updates to its Model Rules of Professional Conduct.[2]

The rapid adoption of these new technologies is largely due to the efficiencies and cost savings they create for businesses. Generative AI can quickly produce first drafts of marketing copy, *Rhode Island Bar Journal* articles,[3] computer code, and images, all while freeing us up for more valuable tasks. However, the U.S. Copyright Office has made it clear that works created solely by machines are not eligible for copyright protection due to a lack of human authorship.[4] When man and machine combine to create a unique work of authorship, it appears to require the quantum dimension to determine the existence of "traditional elements of authorship in the work."[5]

Zarya of the Dawn

On September 15, 2022, Kristina Kashtanova submitted a graphic novel titled "Zarya of the Dawn" for copyright, and copyright was granted that same day.[6] Shortly after, Ms. Kashtanova made statements on social media describing her creative process as using Midjourney, a generative image AI tool, to create the illustrations that she then modified and arranged to accompany her writing.[7] The U.S. Copyright Office then determined that both the text and the arrangement were copyrightable under 17 U.S.C. § 102(a),[8] but the images created by Midjourney were not. This decision came despite her explanation that to create the images, she first had to create the prompt to guide Midjourney to produce images capable of conveying her intent, then she had to manipulate the images to fix defects and blemishes, and on certain images, she applied additional manual variations to evoke tone and intent.[9]

The Quantum Creativity Conundrum

While the Midjourney images created by Ms. Kashtanova didn't meet the standard for copyright, the Office stopped short of denying Generative AI images ever receiving copyright consideration. Rather, "works that contain otherwise unprotectable material that has been edited, modified, or otherwise revised by a human author, but only if the new work contains a 'sufficient amount of original authorship' to itself qualify for copyright protection" will be registered as copyrightable.[10] This draws on the 1991 US Supreme Court case of **Feist v. Rural Telephone**, wherein Justice O'Connor wrote, "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a de minimis quantum of [human] creativity."[11]

The Genisis of an Idea

At the fringes, the Copyright Office's guidance provides some clarity,[12] the core problem with the approach is that artists and authors using Generative AI now have the burden of documenting the genesis and progression of an idea to meet a de minimis threshold test for creativity.

With Generative AI content slipping into all aspects of the content we consume, from journal articles to Instagram feeds, determining how much of an idea was organic or artificially generated at its core becomes increasingly futile. Perhaps the genesis of my idea to write this article came from the ChatGPT-4 assistance in Judge Stern and Brian Murphy's article, which may, or may not,[13] have reached the de minimus threshold of human creativity necessary to make it an original work of authorship itself.

The Copyright Office's decisions seem to overlook a fundamental truth: all creative works, whether human- or AI-generated, build upon existing ideas, styles, and information. The very essence of human creativity (save the remarkable few) is derivative, iterative, and expansive of the world we create for ourselves and the expressions that exist within it. Large language models, in their own way, mirror this process. They ingest vast amounts of data, learn patterns, and generate new content based on those patterns. The difference, currently, lies only in legal recognition.

The Human Factor

A great number of the processes and tools used today to create both art and craft were entirely nonexistent five hundred years ago. Many advances have transformed our conception of 'creation,' from the silver gelatin negative to the Wacom tablet to Roget's Thesaurus. Predictably, each advance in technology was met with pearl-clutching over the erosion of the purity of human creativity. However, no advance to date in tool, medium or process has brought an end to human creativity or even served to obscure it momentarily. Humanity is the only audience for the creations of those who create, and we are a fiercely critical audience. Anyone using Generative AI to produce work that does not contain the de minimus quantum of human creativity when the audience expects it is not likely to last long in their role.

Much like the legal profession, the crossroads of copyright law must be navigated with prudence and foresight. But in treading carefully, it's also important not to sell ourselves short. Using Generative AI is no more likely to extinguish the human hunger for genuine creativity than the camera was, and any wholesale stance against it is likely to be no more effective than many art museums' decades-long refusal to accept photography into their collections.

ENDNOTES

[1] Rhode Island Bar Journal, *Volume 72, Number 6 (May/June 2024) at page 11.*

[2] *See In re Rhode Island Rules of Professional Conduct (R.I., filed February 16, 2007) (Order).*

[3] *Judge Stern and Brian Murphy's disclosed their "ethically embracing technology" by employing the assistance of ChatGPT-4 to assist in the authoring of their article. In similar*

transparency, I have used Google's Bard and now Gemini in the drafting of all Tech Column articles, including this one.

[4] Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190 (Mar. 16, 2023).

[5] U.S. Copyright Office, Artificial Intelligence and Copyright, at 3 (2023) https://www.copyright.gov/ai/docs/Federal-Register-Document-Artificial-Intelligence-and-Copyright-NOI.pdf (quoting U.S. Copyright Office, Sixty-Eighth Annual Report of the Register of Copyrights for the Fiscal Year Ending June 30, 1965, at 5 (1966), https://www.copyright.gov/reports/annual/archive/ar-1965.pdf.).

[6] U.S. Copyright Office, ***In re Zarya of the Dawn***, Registration No. VAu001480196 at 2-3 (Feb. 21, 2023) https://www.copyright.gov/docs/zarya-of-the-dawn.pdf.

[7] ***Id.***

[8] ***Id.*** at 4-5 ("The Supreme Court has explained that the term "original" in this context consists of two components: independent creation and sufficient creativity." citing ***Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.***, 499 U.S. 340, 345 (1991)).

[9] ***Id.*** at 6-11.

[10] ***Id.*** at 11. Citing U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 313.6(D) (3d ed. 2021).

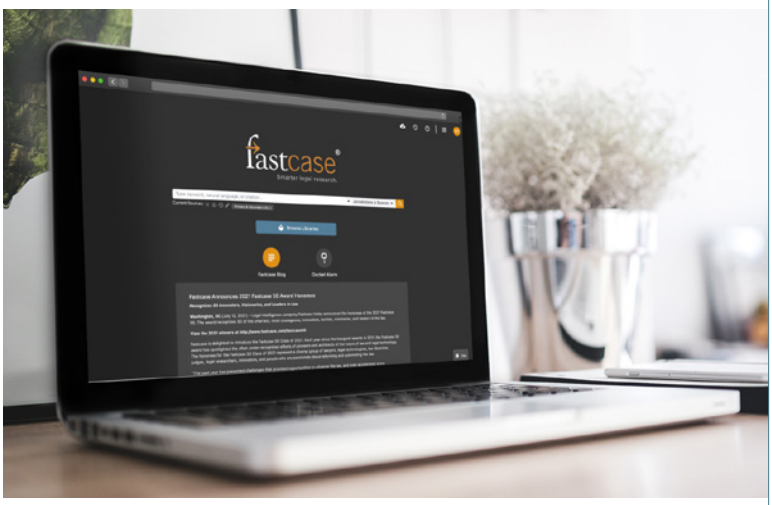
[11] ***Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.***, 499 U.S. 340, 363, 111 S. Ct. 1282, 1297 (1991).

[12] The Copyright Office provided additional clarity in the Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190 (Mar. 16, 2023) ((a) A prompt that produces "complex written, visual, or musical works in response" is not copyrightable. (b) The selection and arrangement of AI-generated material is a sufficiently creative way to gain copyright, but not to any individual element of the arrangement. (c) An AI-generated work may be modified by a human "to such a degree that the modifications meet the standard of protection." (d) A human generated work may be modified by an AI tool (such as Adobe Photoshop or ChatGPT-4) to such a de minimis degree as to not destroy copyright protection.).

[13] For the record, I believe it does meet the threshold in both quality of thought and writing. ◊

Fastcase Tip

List of Cases Citing a Statute Section



Follow the steps below to learn how to Find a List of Cases Citing a Statute Section within Fastcase.

Step One: Open a statute section for which you desire citing cases.

Step Two: Click the Annotations icon (looks like an A inside of a square) above the text of the opened statute section in the top left just under Find in Document.

Step Three: The listing of cases citing the statute section now open.

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

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

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RHODE ISLAND BAR ASSOCIATION
2024 LEGISLATIVE REPORT

William A. Farrell, Esq.
Rhode Island Bar Association Legislative Delegate

During the 2024 Legislative session, over 2,500 bills were introduced and reviewed by RIBA's legislative counsel, with approximately 245 of those bills deemed to impact the practice of law and forwarded to the relevant RIBA committees.

The RI Bar Association did not introduce any legislation this past legislative session.

In the closing weeks of the General Assembly, the Association was required to weigh in on a legislative proposal involving the Law Enforcement Officers' Bill of Rights (LEOBOR). Included in the proposal were references to appointments that were to be made by the Association's Committee on Equity and Fairness. The legislative reference to the Diversity, Equity, and Inclusion Committee of the Bar incorrectly cited a previously created Task Force established by the Association and which was now disbanded, being replaced by a newly created standing committee identified as the Diversity, Equity, and Inclusion Committee. In addition to the mislabeling of the Committee name, the legislation also failed to recognize the Association's Bylaw provision, which establishes that only the president can speak on behalf of the Association. Although the Association did not take a position on the merits of the legislation, it did initiate communications with Legislative leadership on the need for correction related to RIBA protocols and the referenced committee name. The discussions with the General Assembly leadership resulted in corrective language being inserted in the final draft of the proposal Chapter 069 (H 7263 Aaa (S 2096)).

Notwithstanding the fact that no legislation was initiated by the RIBA, numerous legislative bills impacting the legal practice were monitored. A full report of the legislation that, to one degree or another, would impact the practice of law or involve the administration of the state's court system has been submitted to the RIBA and is available upon request. Some of the more relevant proposals, which have now been enacted and take effect upon passage unless otherwise noted, are as follows:

REAL ESTATE. Speaker Shekarchi was successful again this year in making further amendments to the state's Zoning Ordinance to provide uniform zoning standards for Accessory Dwelling Units Chapter 284 (H 7062 SUB A (S 2998)). Additionally, bills permitting residents of a residential dwelling unit to extend the term of the rental agreement for 3 months after the death of the lessee Chapter 409 (H 7162 SUB A (S 2407)); amending the notice requirements that landlords of residential properties must give to tenants regarding rent increases Chapter 243 (H 7304 SUB A (S 2189)); requiring information on the public's rights and privileges of the shore to be included in disclosure forms for the sale of vacant land or real property Chapter 136 (H 7376 SUB A (S 2185)); were all adopted.

FAMILY COURT. Enacted was a provision that allows a magistrate of the Family Court the power and authority to hear contested divorce matters Chapter 439 (H 7271 (S 2226)). Also adopted was an Act that would permit state child support agencies to bring actions under the child support statute on behalf of a non-custodial parent who is incarcerated and unable to pay child support Chapter 052 (H 7975 (S 2825)); and, finally, a bill that would create custody procedures for pets in divorce and separation proceedings Chapter 402 (H 7970).

LITIGATION. An Act that would create a protective legal shield for healthcare providers precluding any civil or criminal action by other states or persons against healthcare providers involving persons seeking access to gender affirming healthcare services and reproductive healthcare services provided in this state Chapter 260 (H 7577 SUB A (S 2262)). Also adopted this past session was an Act that would provide any attorney appointed by the prosecuting authority who self-certifies that they have successfully completed a specialized domestic violence prosecuting training course shall have the authority to prosecute any violation of a protective order Chapter 282 (H 7567 SUB A (S 2833)). Revisions to the Arbitration process wherein additional notice provisions, together with an increase in fees and costs as well as sanctions for breach of the arbitration agreement, was enacted Chapter 445 (H 7952 (S 2671)).

CRIMINAL. In the case of Expungement, felonies that have been subsequently reclassified as misdemeanors are now eligible for expungement Chapter 386 (H 8342 (S 2227)). Also adopted was the elimination of an initial filing fee and service of process costs when a victim of a crime is owed restitution, and the victim seeks to enforce the civil judgment entered at the time of the criminal disposition Chapter 207 (H 7800 SUB A (S 2115)).

PROBATE. An Act outlining the process for a person petitioning to change their name in the Probate Court in the Town or City where they reside Chapter 163 (H 8155 SUB A (S 2667)).

UNIFORM COMMERCIAL CODE. Amendments to the UCC involving Emerging Technologies was adopted Chapter 065 (H 7210 SUB A (S 2781)).

GUARDIANSHIP. This Act provides that supportive decision-making pursuant to R.I. Gen. Laws 42-66-13 be added to the Limited Guardianship and Guardianship of Adult forms Chapter 178 (H 7239 (S 2112)).

Continued on page 30.

Help Us Grow Our List Serve

Free and available for all actively practicing Rhode Island attorney members, the Bar's List Serve gives you immediate, 24/7, open-door access to the knowledge and experience of over 700 Rhode Island lawyers. If you have a question about matters relating to your practice of law, you can post the question on the List Serve, and it will be emailed to all list serve members. Any attorney who wishes to provide advice or guidance can, and hopefully will, quickly respond. Help us grow our online community by joining TODAY! Visit **ribar.com** and the Members Only section, and click **List Serve** for instructions to join.

2024 Legislative Report

Continued from page 29.

DWI. The "lookback" period for repeat offenses involving driving under the influence of alcohol or drugs and for repeat offenders relating to failure or refusal to submit to chemical tests is extended from 5 to 10 years Chapter 217 (H 7631 aa (S 2937)).

CRIME VICTIM COMPENSATION PROGRAM. When applying for funds under the State Crime Victim Compensation Program, a victim of sexual assault may now submit a medical forensic exam report performed by a licensed health care provider in lieu of a police report Chapter 338 (H 7449 SUB A (S 2767)). In addition, a victim of a violent crime may receive up to $1,000 of the total award to make reasonable modifications to their residence to ensure future safety Chapter 032 (H 7747 SUB B (S 2777)).

MUNICIPAL. The Town of Foster is now enabled to establish a Municipal Court Chapter 180 (H 8028 (S 2996)). The existing 1984 Public Law allowing the Town of Johnston to establish a Municipal Court was repealed and a new enabling statute was adopted which establishes a new Municipal and Housing Court with expanded legal and equitable powers Chapter 451 (S 3118 Aaa).

MISCELLANEOUS. Adopted was an Act that would amend the definition of "authorized representative" in the Confidentiality of Health Care Communications and Information Act to provide that an authorized representative may include any heir at law when the person is deceased, and the personal representative is absent Chapter 352 (H 7646 (S 3044)). The Sexual Offender Board of Review will now be permitted to use a structured professional judgment approach, in addition to validated risk assessment tools in determining the level of risk that a sexual offender poses to the community Chapter 045 (H 7832 (S 2826)). Hospitals and other medical providers are now prohibited from reporting medical debt to Consumer Reporting Agencies Chapter 224 (H 7103 SUB A (S 2709)).

As mentioned above, the full report of all legislative proposals is available at the RIBA office.

Keep Your Directory Listing Up to Date

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

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.

Telephone: 401-222-8723

Email: EAP@courts.ri.gov

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

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

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

The CorpCare helpline provides counseling resources that quickly and professionally assist you in handling problems affecting your personal or work life. Counselors answer the phone 24/7 to provide immediate support and assistance. Simply pick up the telephone and call **866-482-8378** for confidential, round the clock support. Virtual telehealth consultations with a counselor are available upon request. Bar members can also access a wide variety of resources online by visiting corpcareeap.com and enter the Life Advantage code: RIBALAP.

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

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

Brian Adae, Esq.	(401) 831-3150
Donna Maria Arciero, Esq.	(561) 441-1679
James G. Atchison, Esq.	(401) 453-1200
Neville J. Bedford, Esq.	(401) 348-6723
Susan Leach DeBlasio, Esq.	(401) 274-7200
Sonja L Deyoe, Esq.	(401) 864-5877
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Mary Cavanagh Dunn, Esq.	(401) 831-8900
Christy B. Durant, Esq.	(401) 524-6971
Cassandra L. Feeney, Esq.	(401) 455-3800
Brian D. Fogarty, Esq.	(401) 821-9945
Merrill J. Friedemann, Esq.	(401) 270-0070
John K. Fulweiler Jr., Esq.	(401) 667-0977
Daniel Jon Holmander, Esq.	(401) 274-7200
Adrianna Hughes, Esq.	(401) 490-3954
Nicholas Trott Long, Esq. (Chairperson)	(401) 351-5070
Genevieve M. Martin, Esq.	(401) 595-3024
Patricia A. McLaughlin, Esq.	(401) 996-6618
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Erica S. Pistorino, Esq.	(401) 324-9786
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Lawyers Helping Lawyers Committee Members Protect Your Privacy

SOLACE

Helping Bar Members in Times of Need

SOLACE, an acronym for Support of Lawyers, All Concern Encouraged, is a new Rhode Island Bar Association program allowing Bar members to reach out, in a meaningful and compassionate way, to their colleagues. SOLACE communications are through voluntary participation in an email-based network through which Bar members may ask for help, or volunteer to assist others, with medical or other matters.

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

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer email network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

To sign-up for SOLACE, please go to the Bar's website at ribar.com, login to the Members Only section, scroll down the menu, click on the SOLACE Program Sign-Up, and follow the prompts. Signing up includes your name and email address on the Bar's SOLACE network. As our network grows, there will be increased opportunities to help and be helped by your colleagues. And, the SOLACE email list also keeps you informed of what Rhode Island Bar Association members are doing for each other in times of need. These communications provide a reminder that if you have a need, help is only an email away. If you need help, or know another Bar member who does, please contact Executive Director Kathleen Bridge at kbridge@ribar.com or 401-421-5740.

In Memoriam

Donald E. MacManus, Esq.

Donald (Don) Edward MacManus, 76, of Seekonk, passed away on May 2, 2024. Don was the husband of Lydia Sabatini. Born in Providence, he was the son of the late Robert MacManus and Claire (Bigoness) MacManus. Don earned his undergraduate degree in journalism at the University of Oregon. When he returned to Rhode Island in the summer of 1968, he became an intern at the *Pawtucket Times*. Don spent the early 80's working for the *Sun Chronicle* as a reporter, earning his law degree at Suffolk Law School, and starting a family. He practiced law for over 40 years and was an avid bike rider. In addition to his wife, Don is survived by his daughters, Jessica MacManus and husband Leland Crawford of Wrentham, MA, and Alicia MacManus and husband Andy Northrup of Seekonk, MA; his brother John MacManus and wife, Sandra, of Seekonk; his sister-in-law and husband, Trisha and Phil Shea of Mansfield, MA; four grandchildren; and many nieces and nephews. Don was predeceased by his brothers, Robert "Alan" MacManus and Jeffrey MacManus.

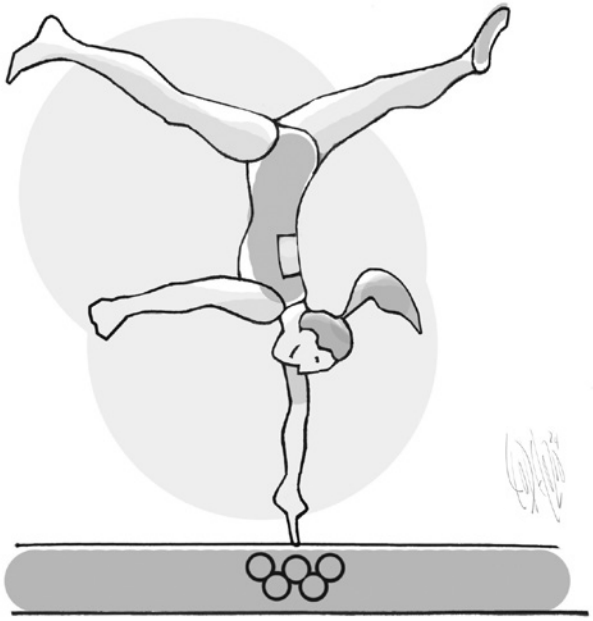
Hon. Edward C. Parker

Hon. Edward (Ed) Clark Parker, 85, died on Saturday, July 20, 2024. He was the husband of Martha Kenney Parker. Born to the late Edward F. (Tidge) Parker and Catherine Clark Parker, he was a lifelong resident of Pawtucket. Ed graduated from St. Raphael School before attending Boston College. He served for six years in the Army Reserve and earned his law degree from the New England School of Law. He was a partner in the firm of Keough, Parker & Gearon and served as Deputy Attorney General of Rhode Island under James O'Neil from 1987 to 1993. Ed was appointed to the bench in 1993 and retired in 2022. In addition to serving as the Vice-Chair of the Pawtucket Housing Authority, he was the Executive Director of the state's Fire Safety Code Board during his long career. In addition to his wife, he is survived by his son Edward F. Parker II and his wife Bethany, his daughter Jocelyn Parker and her husband Thomas, his daughter-in-law Jennifer, and many grandchildren. He was predeceased by his son John.

Alan H. Pearlman, Esq.

Alan H. Pearlman, 86, died on Sunday, July 28, 2024. He was the husband of Hope (Elkins) Pearlman. Born in Providence, he was the son of the late Israel and Ida (Mines) Pearlman. Alan lived in Boynton Beach, FL, for 12 years, previously residing in Connecticut. He was the owner of Pearlman & Wick, Attorneys at Law in Providence, retiring about 20 years ago. Alan was a Vietnam Army veteran. He graduated from the University of Michigan and earned his law degree from Cornell Law School. He volunteered for Big Brothers and was a member of Temple Torat Yisrael. In addition to his wife, he is survived by his children, Sarah Pearlman of Boynton Beach, FL, and Adam Pearlman and his wife, Rebeccah, of Bethesda, MD; his siblings, Mark Pearlman of Cranston, Adele Curham of Narragansett, and Carolyn Leighton of California; and two grandchildren. Alan was predeceased by his siblings Alice Mendel, Benjamin Pearlman, Lila Delman, Elaine Baron, Leonard Pearlman, Thomas Pearlman, and Anna Shabshelowitz.

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 September/October in the subject line.

Deadline for entry: Contest entries must be submitted by October 1st, 2024.

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 July/August

"If you had gone to Caw School like me you wouldn't just click through those user agreements."

JAMES BAGLEY, ESQ.

New to the Bar?
Join Us for a Night of Networking and Celebration!

New Member Reception

Thursday, October 10, 2024 | 5:00 – 8:00 PM
Rhode Island Bar Association
Enjoy complimentary drinks & hors d'oeuvres!

If you've been practicing for 10 years or fewer, don't miss this chance to network and celebrate with your peers! The Rhode Island Bar Association is thrilled to host another New Member Reception following last year's successful event. It's the perfect opportunity to connect with members of the Judiciary, Bar Association officers, committee chairs, and fellow new members.

Build lasting professional relationships, gain insights from seasoned legal professionals, and make connections that can elevate your career in Rhode Island's close-knit legal community.

Click here to RSVP by Friday, September 27th to secure your spot!

Questions? Contact Erin Cute, Director of Communications, at 401-421-5740 or ecute@ribar.com.

We look forward to celebrating with you!

Advertiser Index

INTRODUCING THE 2024–2025 LEADERSHIP ACADEMY CLASS

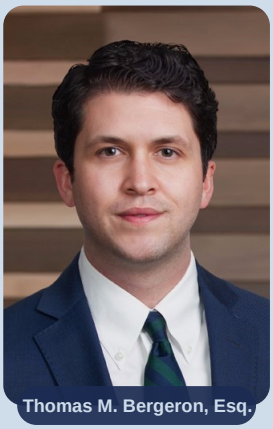

Crystal Abreu, Esq.


Samuel L. Agostini, Esq.


Julissa Arce, Esq.


Chelsea Baittinger, Esq.


Christina M. Behm, Esq.


Thomas M. Bergeron, Esq.

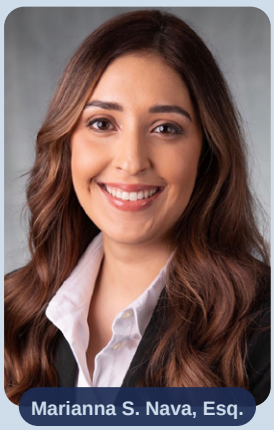

Danilo A. Borgas, Esq.


Kayla A. Faria, Esq.


Selena Fortes, Esq.


Samantha Kent, Esq.


Paige Macnie, Esq.


Marianna S. Nava, Esq.


Matthew R. O'Connor, Esq.


Christopher J. Yagoobian, Esq.

Follow RIBA on social media to learn more about each participant!