

Rhode Island Bar Journal

Rhode Island Bar Association Volume 70, Number 2, September/October 2021



**Changes to Attorney's Fees in
Social Security Disability Claims**

**Liability Among Joint Tortfeasors
in Rhode Island**

**Five Factors for Legal Leaders:
What Can We Learn from Healthy
and Satisfied Attorneys?**

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

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Front Cover Photograph by Brian McDonald

Point Judith Lighthouse seen from Camp Cronin in Narragansett, RI The original wooden lighthouse, built in 1806, was destroyed in a severe hurricane in September 1815. A 35-foot stone lighthouse was erected the following year and remains to this day. Camp Cronin is a popular fishing area at the southern tip of Narragansett, RI.

Prioritize Wellness



Lynda L. Laing, Esq.
President
Rhode Island Bar Association

Each of us has different interests that help us relax, and we should try to incorporate our interests into our work life. We need to put our wellness first!

With the increase of COVID-19 and its variants occurring, I find myself masking up more often in order to keep others around me safe. Do we require everyone to wear a mask inside? Do we require only non-vaccinated people wear masks? The CDC guidelines state that everyone should wear a mask inside regardless of their vaccination status, but not everyone follows the CDC guidance. I find myself getting more anxious about what the end of September and beginning of October will look like as Joseph Wendelken, spokesperson for the RI Department of Health, stated that is when the next surge will occur. I know I am not alone as RIBA conducted a survey last year, and many other attorneys stated that the pandemic caused them to have increased stress, fear about the pandemic, anxiety about the future, concern about work, and pressure to keep up with the demands of family and virtual meetings/schooling. Trying to find that work/life balance when working from home was difficult.

In 2016, a study by the Hazelden Betty Ford Foundation and the ABA Commission on Lawyer Assistance Programs showed “21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety.” Clearly, wellness needs to be a top priority for all members.

How do we incorporate wellness into our lives? Wellness consists of 5 elements:

- (1) Social – meaning relationships;
- (2) Career – enjoying work;
- (3) Physical – energy to succeed;
- (4) Community – enjoying where you live; and
- (5) Financial – smart money management.

The Bar continues to assist our members in this area through various programming and initiatives. One of these initiatives is the Bar’s Lawyers Living Well page on our website. Take time to view the page and see what it offers. I encourage you to try the different phone apps listed, as well as read the different articles and infographics relating to attorney wellness. I know that fitness has been a way for me to relax. Each morning I make time for myself and take an hour-long fitness class. I find that this helps me relax and I can start my day without

any stress, and I seem to get more done at work.

Another good source for stress relief are phone apps. There are a wide variety of phone apps that provide relaxation techniques and stress relief activities. I personally enjoy classical music. During the pandemic, when I started to feel stress because the phones were not ringing, I listened to the Rhode Island Philharmonic Symphony each Friday afternoon. Each of us has different interests that help us relax, and we should try to incorporate our interests into our work life. We need to put our wellness first!

The Bar also has a variety of wellness CLE programs located in our On Demand catalog. The 2021 Virtual Annual Meeting included a program called *A Progress Report on Lawyer Well-being*, which gave great suggestions on how to meditate and focus on our welfare. This program can be found in the On Demand catalog on our website along with other programs from the Virtual Annual Meeting.

The Bar also offers free, confidential assistance to Bar members and their families through the Lawyers Helping Lawyers Committee. Committee volunteers give generously of their time to help their colleagues. Their primary role is to lend an ear and assist in making an appropriate referral to professional resources. Also available to members is Coastline EAP, a private, non-profit consulting service contracted by the Association that can assist you at no charge. The professionals at Coastline EAP provide confidential consultations for a wide range of personal concerns.

October is emotional wellness month. I suggest you use October as an opportunity to take charge of your emotional wellness. Slow down and clear your mind of stress! To help assess your stress:

- (1) Review your financial plan;
- (2) Calculate your screen time and try to reduce the amount of time spent in front of the computer screen. Consider taking a short walk during the day to clear your mind;
- (3) Use the resources available to you;
- (4) Remember the relationships in your life; and
- (5) Check your physical health, add healthy eating habits, and increase physical activity to reduce overall stress.

We have the ability to reduce the stresses found in our busy practices and to learn how to manage stress caused by COVID-19 and the uncertainties we face. I encourage you to visit the Bar's website to learn more about all the resources that are available to help you start to prioritize your overall wellness. ◇

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Attorney **Samantha McCarthy**, a member of the Lawyer Referral Service, enthusiastically supports the program. *"Being a part of the Lawyer Referral Service has provided the opportunity to grow my client base and expand my firm, while also allowing me to serve our community. The ability to assist clients who may not otherwise be able to afford an attorney, but desperately need our services, is truly rewarding."*

Membership in the Rhode Island Bar Association's Lawyer Referral Service (LRS) is an excellent and inexpensive way to increase your client base and visibility within the community while expanding public access to legal representation. Optional special LRS projects include: **Ask A Lawyer** providing live, television studio lawyer panels in partnership with Channel 10; **Senior Citizen Center Clinics** throughout the year and the state; **Reduced Fee Program** offered to qualifying clients; and the **Arts Panel** for local artists' legal needs all offer unique opportunities for increasing your business while you provide an important public service to your community.

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

Rhode Island Bar Journal

Editorial Statement

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

Article Selection Criteria

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

Direct inquiries and send articles and author's photographs for publication consideration to:
Rhode Island Bar Journal Editor Erin Cute
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A Grateful Tribute to Our Volunteers



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

In short, the members of the Rhode Island Bar Association are annually providing thousands of hours of pro bono and reduced fee services to many low-income persons in Rhode Island. They are also providing many hours of volunteer services to your Bar Association and your Bar Foundation.

In my President's Message in the January/February 2021 *Bar Journal*, written before vaccines were available, I pointed out that your Bar Foundation continued to operate without interruption during the pandemic, due primarily to video conferencing technology. But, I noted that "there is one major drawback to doing things remotely. We all miss the human contact that occurs before and after our routine meetings, and I have especially missed our in-person Annual Meeting and Awards Luncheon. The small, personal interactions that occur at these meetings are an invaluable opportunity to connect with each other on a human level." I then went on to express "my fervent hope that we will soon have one or more vaccines that will eventually bring us all back together, in person, to deepen our personal and professional connections."

As you all know, vaccines have thankfully been developed and most of us (especially the "senior" members of the Bar, like me) are now fully vaccinated. As a result, after a long pandemic hiatus, we were finally able to meet together again in person at the Annual Luncheon on June 25, 2021 under a large tent at the Crowne Plaza Hotel in Warwick. It was the first time I was able to meet in person with a group in over a year and it was an extremely rewarding experience.

Although the event was set up for open unassigned seating, I was amazed when I looked around at the table I was sitting at and realized that, as I was beginning my third term as President of your Bar Foundation, I was seated at a table with three Past Presidents of your Bar Foundation – Joseph J. Roszkowski (6 terms), Susan Leach DeBlasio (5 terms), and Michael A. St. Pierre (an amazing 8 terms). I started thinking of the many volunteer hours represented by these three Past Bar Foundation Presidents, who each also previously served as Presidents of your Bar Association. I also noted that seated at our table was Victoria M. Almeida, a Past President of your Bar Association, who has also served on the Rhode Island Parole Board for over 20 years. Moreover, Susan Leach DeBlasio was being honored as the 2020 Florence K. Murray Award Recipient. In 2009, Susan previously

received the Ralph P. Semonoff Award for Professionalism, the Bar Association's highest honor. I realized that this one randomly-seated table was a prime example of the tremendous commitment to volunteer service made by so many attorneys in Rhode Island. And it represents just the tip of the iceberg.

I am so proud of the many attorneys in our Bar who regularly devote so many hours to volunteer service. They include (but are certainly not limited to) the members of our Executive Committee, who handle the day-to-day activities of the Bar Association, as well as the members, and especially the Chairpersons, of our very active 26 Bar Association Committees.

At the Luncheon, a number of attorneys who provided extraordinary volunteer services to the public were honored. They included Lise M. Iwon, a Past President of the Rhode Island Bar Association, who was honored with the 2021 Joseph T. Houlihan Lifetime Mentor Award. Lise has also received too many other awards to mention, but she has volunteered with the Bar Association's Volunteer Lawyer Program since its inception in 1986, and she is one of only a handful of attorneys to have received the Bar's Continuing Service Award twice. She has also twice received the American Bar Association's Pro Bono Publico Award.

Also honored at the Annual Luncheon were Nancy Davis, who was recognized for her volunteer work on behalf of Habitat for Humanity of Rhode Island-Greater Providence, Inc., and Allyson M. Quay who was recognized for her volunteer work on behalf of Providence Youth Student Movement.

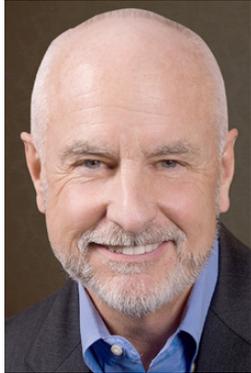
In addition, Janne Reisch and James Bagley both received 2021 Volunteer Lawyer Program Pro Bono Publico Awards. James provided 260 pro bono hours for the U.S. Armed Forces Legal Service Project and Janne provided 285 pro bono hours to the Volunteer Lawyer Program.

Our Bar Association's pro bono services are funded in part by your Bar Foundation, and they provide legal services to all low-income persons, the elderly, the Foreclosure Prevention Project, the U.S. Armed Forces Legal Services Project, and the Lawyer Referral Service Modest Means Program.

In short, the members of the Rhode Island Bar

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Association are annually providing thousands of hours of pro bono and reduced fee services to many low-income persons in Rhode Island. They are also providing many hours of volunteer services to your Bar Association and your Bar Foundation. It was very humbling to me that our Bar is so dedicated to providing volunteer services. As I sat at my table and participated in the Annual Meeting Luncheon, I realized I needed to publicly recognize the dedication and commitment of these volunteers in my next President's Message.

In addition to the awards that were given at the Annual Meeting Luncheon, we learned that Helen D. McDonald, the long-time Executive Director of both your Bar Association and Bar Foundation, has retired. She has certainly earned her retirement, having started at the Bar Association as Assistant Executive Director in 1979 and becoming Executive Director in 1985. This means that Helen has served either as Assistant Executive Director or Executive Director of your Bar Association and Bar Foundation for 42 years. On a personal note, I owe a huge debt of gratitude to Helen for her guidance and friendship throughout my years of service to your Bar Association and Bar Foundation. Helen, as any Past President of the Bar Association and Bar Foundation will attest, is not only a wonderful person and leader, she is a walking encyclopedia of Bar Association and Bar Foundation knowledge, both locally and nationally. She was also a terrific recruiter of new volunteers. She will be sorely missed by all of us, but we are confident that Katy Bridge, our new Executive Director (who was trained by Helen), will step into Helen's shoes and we will have a seamless transition.

The Annual Meeting Luncheon filled me with gratitude not only for the fact that we could get together in person for the first time in many months and share a meal together, but because of the outpouring of volunteerism represented by the wonderful people sitting under the tent at the Crowne Plaza Hotel. If any of you who are reading this have not had the rewarding experience of volunteering your services to the Volunteer Lawyer Program or the Bar Association, I strongly encourage you to do so. You will get much more out of it than you put into it. ♦



Rhode Island Bar Foundation

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

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

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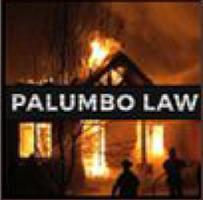
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Changes to Attorney's Fees in Social Security Disability Claims



Donna Nesselbush, Esq.
Marasco & Nesselbush, LLP
Providence, Woonsocket,
Warwick & Wakefield

“... this case was never really just about fees. Without lawyers, many disabled individuals are not effectively able to plead their cases for the disability benefits they need and deserve.”

On July 16, 2021, in the case of **Marasco & Nesselbush, LLP v. Collins**, No. 20-1397, the First Circuit Court of Appeals held that “SSA’s rules barring payments to attorneys for work completed before they enter government service is both arbitrary and, in some circumstances, in conflict with the statutory mandate to pay ‘a reasonable fee’ for successful representation of SSA claimants” and must be eliminated. The First Circuit also held that “SSA must adjust its rules... to ensure that the law firms that employ salaried associates to represent SSA claimants may receive direct payment of the attorney’s fees to which the firms’ associates are entitled for representation performed while employed by those law firms.”

Marasco & Nesselbush thanks the following organizations and individual attorneys who signed onto an amicus brief: the American Civil Liberties Union of Rhode Island; the Rhode Island Center for Justice; the Disability Law Center; the Rhode Island Association for Justice, the Rhode Island Bar Association and individual attorneys Andrew Horwitz, Esq.; Peter Margulies, Esq.; Lauren Jones, Esq.; and John Tarantino, Esq.

Marasco & Nesselbush, LLP, (M&N) is a Rhode Island law firm with offices in Providence, Woonsocket, Warwick, and Wakefield. They handle personal injury, medical malpractice, and a high volume of Social Security disability claims. In 2015 the Social Security Administration (SSA) hired three of their associate attorneys to work in various positions for the Providence Office of Hearing Operations (OHO), and later in 2018, SSA hired two more of their associates. According to Social Security’s rules, only individual attorneys (and not law firms) can be paid fees. Additionally, given the long delays associated with the payment of attorney’s fees in Social Security cases, hundreds of thousands of dollars of fees were initially at issue for cases that were handled by these Marasco & Nesselbush associates, but were not yet finally adjudicated, with fees not yet authorized. This case was never just about fees. This case was always about access to justice because access to justice requires access to attorneys.

Knowing that Social Security does not recognize law firms and will only pay individual attorneys, partners Joe Marasco and Donna Nesselbush tried to protect themselves by having their associate attorneys sign “Limited Powers of Attorney,” in which the associate attorney acknowledged that s/he was a salaried employee, and further acknowledging that all fees for her/his work on Social Security disability claims were the property of the law firm. Said “powers of attorney” authorized the partners of the firm to sign any and all fee-related documents so that the firm could be paid for the associate’s work on disability claims.

However, upon hiring M&N’s associates, the Office of Hearing Operations (OHO) required all of them to revoke the Limited Powers of Attorney they had previously signed and to waive all fees on cases they had handled for M&N. OHO alleged this was necessary because of criminal ethics statute, 18 USC § 203.

In 2015, when SSA hired the first three M&N associates, partner Donna Nesselbush wrote to several SSA high-level managers, including the Providence Hearing Office Director (HOD), the supervisory attorney of what was then the Office of Disability, Adjudication and Review (ODAR) and the Regional Management Officer for the Boston Region of SSA to inquire as to the procedure SSA wanted M&N to follow to request the fees at issue. M&N shockingly was told that there was no procedure and that M&N would have to forfeit those fees. As a result, M&N sought legal representation from the reputable Providence law firm of Whelan Corrente and Flanders, whose wisdom and skill helped M&N prevail.

M&N, with the help of their attorneys Robert Corrente, Timothy Baldwin, and Caroline Thibeault, decided to pursue a variety of legal theories that would enable M&N to collect its fees. Those legal theories ranged from mandamus to a claim that some of SSA’s fee rules (mostly contained in the POMS and the Hallex) are “arbitrary and capricious” in violation of the Administrative Procedures Act, to denial of substantive and procedural due process under the 5th Amendment of the United States Constitution, and an equal protection claim under the 14th Amendment (because M&N knew of other firms who had associates hired by SSA/OHO without such problems).



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In Federal District Court, SSA moved to dismiss M&N's complaint, and in July 2018, the Honorable John J. McConnell, Jr. dismissed M&N's mandamus and APA claims (*Marasco & Nesselbush v. Collins et al*, 327 F.Supp.3d 38 (D.R.I. 2018)). The District Court held that sovereign immunity bars any claim for mandamus that seeks payment of fees, and he concluded that M&N's challenges to the agency's fee-paying procedures were statutorily barred because the rules qualify as "action... committed to agency discretion" (quoting 5 U.S.C. § 701(a)(2)). The District Court found that M&N had adequately pled its constitutional claims, and with respect to the procedural due process claim, the Court held that M&N had properly asserted a protected property interest in the disputed fees, plausibly alleging that the defendants had interfered with that interest by "providing no process at all" for obtaining fees.

Regarding the substantive due process claim, the District Court ruled that a "rational finder of fact could conclude that SSA's actions were arbitrary and/or irrational." The District Court identified various rules that could be found irrational, including "that SSA recognizes law firms for tax purposes but not for attorneys' fees" and "that attorneys who leave M&N to work for SSA are not paid."

Concerning M&N's equal protection claim, the Court noted that M&N had sufficiently stated a claim for two types of harm: that SSA singled out M&N for adverse treatment relative to other law firms, a so-called "class of one" claim, and that the SSA irrationally discriminated against M&N "based on its status as a law firm as compared to SSA's treatment of individual attorneys."

Both parties moved for summary judgment. In March 2020, the Honorable John J. McConnell, Jr. granted SSA's motion and denied M&N's (*Marasco & Nesselbush, LLP. v. Collins et al*, 444 F.Supp.3d 317 (D.R.I. 2020)). The Court concluded that "M&N's procedural due process claim fails because M&N does not have a property interest in representative attorney's fees authorized by the SSA." That is so, the Court explained, because the SSA "made a reasonable choice within the statutory grant of its authority" "not to recognize entities like M&N as representatives." The Court also found that the agreements between M&N and its associates did not give the firm a protectable property interest because the SSA has complete discretion to grant or deny a fee request; violation of procedural due process, the Court explained, requires "more than a 'unilateral expectation' of a property interest."

On M&N's substantive due process claim, Judge McConnell held that M&N had not shown that SSA's framework for dispersing attorneys' fees lacked a rational basis. Noting the agency's assertion that recognizing only individuals as representatives allowed efficient management and oversight of the benefits process, the District Court observed that the question for rational basis review is not whether the agency chose "the best means to accomplish" its purpose. The District Court also rejected M&N's equal protection claim, including its "class of one" equal protection claim, finding that such claims required evidence of bad faith or malicious intent not in evidence in this case.

Having fought against Social Security's injustices for many years, M&N was determined to continue the fight, by appealing to the First Circuit Court of Appeals. At its heart, M&N believed this case was never really just about fees. Without lawyers, many disabled individuals are not effectively able to plead

their cases for the disability benefits they need and deserve. If law firms cannot get paid for the work of their associates, few will continue to do this work. Although daunted by the setback in the District Court, M&N believed that fundamental fairness, justice, and the Constitution were on their side.

M&N hoped that on appeal the First Circuit would upend SSA's system for fee payment to law firms, or that at least the Court would craft a way in law or equity for law firms to be compensated for work done by associates prior to leaving the employ of M&N and prior to working for the government. Though disappointed, M&N remained steadfast and resolute in their belief that SSA's rules were unlawful. M&N reasoned that it had to be somehow unlawful for them to be forced to forfeit fees for the work of five associate attorneys for hundreds of hours of work done before the associates entered government service. On appeal, M&N and their attorneys decided to take a bifurcated approach: while pleading for a result that would require SSA to recognize law firms, they would settle for a way (any way) to be paid their fees.

Meanwhile, years passed. Many of the cases the M&N associate attorneys had worked on years ago were finally adjudicated and ready for payment. Many ALJs recognized M&N's predicament and were willing to award fees in the name of the main representative, thereby allowing M&N to get paid. Nonetheless, there were many other instances where fees were (astonishingly) outright denied to M&N because the work had been done by an M&N associate who later went to work for the government.

Ultimately, on July 16, 2021, a three-judge panel of the First Circuit Court of Appeals found in favor of M&N, at least in part. The First Circuit found no need to decide the mandamus claim, ruling that mandamus requires that a party has "exhausted all other avenues of relief," and the First Circuit intoned that it was willing to grant relief.

M&N claimed that SSA violated the APA by adopting its rules on fee payments without adhering to the "notice and comment" requirements of the APA. The First Circuit found that SSA was not required to engage in the "notice and comment" process for the rule specifying that fee payments may be disbursed only to individual representatives. The Court declined to consider whether the agency should have gone through the "notice and comment" process for the rule barring payments to attorneys hired by the government.

In terms of the claim that certain SSA fee rules are "arbitrary and capricious, in violation of the APA, the First Circuit noted that although the agency is afforded broad discretion, that authority is rarely absolute. "There is a strong presumption of judicial review under the APA [internal citations omitted]." The Court noted that the fee rules and practices challenged as arbitrary and capricious are far different from the traditionally discretionary judgments of the SSA, like benefits eligibility which the Court noted was "the core of the SSA's discretionary responsibility and authority." The Court noted that M&N was challenging SSA's rules that it claims "unreasonably complicate the collection of reasonable fees that it should be paid for work performed" by its associates on behalf of the firm.

The First Circuit Court of Appeals saw no barrier to judicial review of M&N's challenge regarding 1) SSA's refusal to authorize attorney's fees attributable to the work of attorneys who left private practice for government jobs, if those fees were not

Ada Sawyer Centennial Celebration Postponed



Due to the worsening pandemic, and in consideration of the health and safety of our members and attendees, we must postpone our Ada Sawyer Centennial Celebration scheduled for October 14, 2021 at Rhodes-on-the-

Pawtuxet. The event will be rescheduled for a date in the spring of 2022.

The event, organized by the Bar Association's Ada Sawyer Centennial Planning Committee and supported by the RI Women's Bar Association and the Roger Williams University School of Law, will feature a plated dinner and cash bar with several exciting speakers. More information on the event will be disseminated in early 2022.

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It's Not Too Late to Sign Up For Your 2021-2022 Bar Committees!

If you have not yet signed up as a member of a 2021-2022 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 this year must reaffirm their interest for the coming year, as committee membership does not automatically carry over from one Bar year to the next. Please join no more than three committees. We anticipate offering Bar committee participation in a hybrid manner starting in the fall, 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 13th can do so by contacting the Bar's Communications Director Erin Cute at (401) 421-5740 or ecute@ribar.com.

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approved before the attorneys' departures; and 2) SSA's refusal to pay fees from past-due benefits to law firms on behalf of their salaried associates. On judicial review, the First Circuit found that the District Court erred in concluding that the APA foreclosed M&N's claim challenging certain SSA rules as "arbitrary and capricious." In previous motions, because both parties had developed the record and presented their legal and factual arguments on that issue, the First Circuit thought it appropriate to consider for itself whether the rules we challenged could survive "arbitrary and capricious" review under the APA, rather than remand the case to the District Court for re-litigation of this issue.

In the First Circuit's "arbitrary and capricious" evaluation, the Court noted that "the scope of review...is narrow, 'and a court is not to substitute its judgment for that of the agency.'" Having said that, the Court noted that SSA offered little justification for the rule barring payments to attorneys whose fees were not approved before their move to government employment. SSA does not explain how a statute that "bars compensation to attorneys for 'representational services... rendered...at a time' when they are working for the government supports its prohibition of fees for work" completed before that employment began. In a 2015 response to M&N's request for fees, SSA relied on a 1998 opinion from the Federal Office of Legal Counsel (OLC), invoking a footnote that stated, "a rule against retaining a contingent interest in fees reflects that a contingent fee covers the entire representation up to the payment, the amount remains uncertain until then, and the fee thus compensates, in part, for representational services performed after the employee began working for the United States." The First Circuit found that reasoning to be "inscrutable at best and, given the information available to the agency, facially irrational." The Court noted that the fee petition process itself allows the agency to confirm that the work underlying the fee request was performed before an attorney's government employment began. The Court thus saw no justification for rejecting fees for services that SSA can readily determine were completed before the associate attorneys changed employers. The OLC opinion itself, relied upon by SSA, also cautioned that, because a violation of § 203 can trigger criminal penalties, the statute should not be construed to extend more broadly "than that clearly warranted by the text."

"In sum, when fees sought through the SSA's fee petition process would not be for representation services that 'remained to be performed after the [attorneys'] entry into government service'; § 203 presents no barrier to the payments." The Court found the same to be true for "fees payable under fee agreements when the representation is both complete and successful, and only the agency's approval of the fee is pending." The Court concluded that "SSA's practice of denying fees for representation work that was completed before attorneys began government service is arbitrary for fees requested via the fee petition process, and... for fees specified in a fee agreement. Moreover, [the Court found that] where representation is successful, denying such fees is inconsistent with § 406's directive to pay the claimant's attorney a reasonable fee." The Court found that SSA offered no rationale for refusing to pay such fees directly from the claimant's past-due benefits.

SSA argued that because only individual representatives are recognized, its rules therefore only allow for fee payments to be paid to individual attorneys, not directly to law firms. Rather than decide the issue, the First Circuit held that SSA's fee pay-

ment rules are arbitrary and inconsistent in that they refuse to accept the practical reality—a reality which SSA recognizes for tax purposes—that law firms ordinarily are the ultimate recipients of fees paid to salaried associates.

The Court noted a 2015 report prepared by the SSA Office of the Inspector General, indicating that about 60% of the agency's direct representative fee payments in 2013 “related to affiliated firm income” and held that SSA failed to explain what “practical realities” justify an approach that “demonstrably burdens the very entities that supply the individual representatives.” Instead, the “‘practical realities’ would ... seem to weigh toward easing the participation of an important source of support for SSA claimants. Indeed, a firm’s inability to access its associates’ share of fees undermines the statutory objective to ensure “a reasonable fee” for the representation services provided to SSA claimants.” 42 USC section 406 (a)(1).

The First Circuit concluded that “the intricacy of the SSA framework for representation of claimants and attorney’s fees cannot justify refusing to alleviate the payment barriers which affect both attorneys who change firms and attorneys who move to government employment, transitions that regularly occur” in the real world. “Neither § 406 nor the regulations promulgated under it prevent the SSA from making direct payments from past-due benefits in a way that ensures the compensation reaches the entities that are, in fact, financing the representation of claimants.

The agency’s position that only “representatives” may be paid, and that representatives must be individuals, “does not foreclose mechanisms in which the fees remitted to individual attorneys could reliably and efficiently reach the law firms at whose expense the compensated services were performed.” The Court declined to determine what those mechanisms should be, but did give some suggestions and ordered SSA to revise its payment procedures. “[G]oing forward, the agency must provide a reasonably reliable means for law firms to obtain directly from claimants’ past due benefits the fee payments that, pursuant to existing SSA and federal tax rules, would be recognized as income to the firms.... SSA must also take appropriate action with respect to the specific fees that M&N seeks in its complaint.”

Lastly, the Court found it “unnecessary and... inappropriate” to reach M&N’s constitutional claims. “Under the doctrine of constitutional avoidance, federal courts are not to reach constitutional issues where alternative grounds for resolution are available.”

In sum, the Court concluded “that the SSA’s rule barring payments to attorneys for work completed before they enter government service is both arbitrary and, in some circumstances, in conflict with the statutory mandate to pay ‘a reasonable fee’ for successful representation of SSA claimants. Hence, that rule must be eliminated. In addition, the SSA must adjust its rules to ensure that the law firms that employ salaried associates to represent SSA’s claimants may receive direct payment of the attorneys’ fees to which the firm’s associates are entitled for representation performed while employed by those law firms.” SSA must release any fees that should be paid to M&N, and must revisit fee requests that it denied for work that was completed by M&N’s associates before they entered government employment and that were denied based on 18 U.S.C. §§ 203 and 205. With that, the case was remanded to the District Court for further proceedings consistent with the First Circuit’s decision.

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Donna M. Nesselbush, Esq. is a co-founder and partner in the law firm of Marasco & Nesselbush. She is a long-standing, sustaining member of the National Organization of Social Security Claimants’ Representatives. She is a former Rhode Island state senator who also serves as the Chief Judge of the Pawtucket Municipal Court. ◇

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If you attend this event and within 10 days following test positive for the virus you are agreeing to let the Bar know immediately (call Heather Chea, CLE Program Assistant at 401-421-5740 or email hchea@ribar.com) so that we may advise all those in attendance to help stop the spread. You do NOT need to identify yourself when you contact us in this regard, and we will NOT share any information of those who report as testing positive.

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Larry J. Cohen is a certified specialist in injury and wrongful death litigation who has focused his more than thirty-five years of law practice on serious medical injury and emotional damages cases, including brain injury claims. He received his J.D. from Northwestern University in 1985 and has been admitted to practice in Arizona since 1985. Mr. Cohen also has a master's degree and a Ph.D. from Syracuse University and has participated in a post-doctoral program in clinical neuropsychology. He has for many years been a member of the adjunct faculty at the Sandra Day O'Connor College of Law at Arizona State University where he has taught courses in professional responsibility, pretrial practice, trial practice, professional liability, and litigation ethics. He has taught and performed research at numerous other universities in Arizona and Michigan, and currently teaches as a member of the adjunct faculty at Norwich University. Mr. Cohen speaks nationally to a variety of different audiences about litigation and trial practice matters, legal ethics, alternative dispute resolution, issues in brain damage, law, medicine, and psychology. He has received numerous awards for excellence in continuing legal education from many bar associations in the southwest. He has for many years been listed by Southwest Super Lawyers and Arizona's Finest Lawyers as among the best lawyers in Arizona and has been recognized by the National Association of Distinguished Counsel as among the top one percent of lawyers in the United States.



Liability Among Joint Tortfeasors in Rhode Island



Brian C. Newberry, Esq.
Donovan Hatem LLP
Boston, MA/ Providence, RI

“...one thing it indisputably did was make it difficult for plaintiffs to settle cases with “less culpable” potential tortfeasors in matters with multiple alleged tortfeasors and large amounts of damages...”

The Rhode Island General Assembly has passed legislation substantially altering the way joint and several liability among joint tortfeasors will be apportioned going forward. The legislation brings Rhode Island more in line with other states and eliminates a quirk in existing Rhode Island law.

Under prior law, liability among joint tortfeasors was established based upon the greater of either (a) the amount a joint tortfeasor paid in settlement, or (b) the percentage of liability a jury might find a joint tortfeasor liable for at a trial, even though the joint tortfeasor had previously settled thereby capping its own monetary exposure and was only included on the jury verdict slip for apportionment purposes.

To put this in practical terms, here is an example from a trial in which I participated in 2011.

A personal injury plaintiff in an auto accident brought claims against four separate potential joint tortfeasors: the driver of the other car, a traffic engineer, a contractor, and RIDOT – the accident having taken place in a construction zone. Plaintiff’s attorney settled before suit was even filed with the insurance carrier for the other driver for the maximum payout under the policy of \$50,000. Suit and the eventual trial went forward against the remaining three targets and while the jury entered defense verdicts for the traffic engineer and RIDOT, they found against the contractor. However, they apportioned liability against the contractor at only 10% and assigned liability to the other driver of 90%. The other driver, despite not being a party to the case, was listed on the jury slip as a potential joint tortfeasor.

The net result was that when the jury entered damages in the sum of \$800,000, the contractor was only liable for 10% of that amount, or \$80,000, rather than \$750,000 representing \$800,000 less the \$50,000 payout from the other driver’s carrier. Of course, had the jury awarded, for example, \$50,000 in damages, the contractor could have elected to offset by the actual amount of settlement and wound up paying nothing.

From a policy perspective, one can debate whether this system of apportionment was wise or unwise, fair or unfair. But one thing it indis-

putably did was make it difficult for plaintiffs to settle cases with “less culpable” potential tortfeasors in matters with multiple alleged tortfeasors and large amounts of damages because of the risk a plaintiff’s attorney might take if a jury verdict were to surprise everyone and find a large amount of liability on a tortfeasor that even both plaintiff and defense counsel thought was only a small player from a liability perspective. Settling with a “small” party for lesser amounts only to wind up with a jury disagreeing was a surefire route to a malpractice suit.

This led to some bizarre legislation over the years in the General Assembly wherein special bills were passed enabling special settlements in high profile cases such as the Station Nighclub fire cases, the Ringling Brothers Circus accident, the St. Joseph’s pension plan case and, last but certainly not least, the State’s cases against the various 38 Studios defendants.

While I personally voted for all of those special pieces of legislation because it was in the interests of public policy to do so as well as the interests of both plaintiffs and defendants in each case, every time I did, I referenced during floor debate that it made the State legislature look like a kangaroo court enacting special benefits for certain plaintiffs and we needed to do something to end this practice.

We finally did.

Just recently, House Bill 5560 and matching Senate Bill 733 were passed by the General Assembly and became law without Governor McKee’s signature. Under this new legislation, liability among joint tortfeasors will be offset solely based on what a settling party paid in settlement, no longer based on a choice of the greater of the amount paid or the percentage of fault established.

To revisit the earlier example, the contractor would now pay the trial judgment of \$750,000 getting the benefit only of the \$50,000 offset actually paid by the settling driver.

This new contribution framework should provide some judicial efficiency going forward. Among other things, juries will no longer need to apportion liability among tortfeasors who have already settled out of the case. For another, it will facilitate settlements by “minor” parties who may



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have little or even no real exposure but who cannot escape on summary judgment for whatever reasons and would prefer to pay a lesser amount in settlement than it may cost in legal fees (and risk) to remain a party to a complex tort suit. In short, the new legislation will encourage out-of-court resolution.

Finally, it will put an end to the perception that in “special” cases, lawyers – both plaintiff and defendant – can run to the legislature for special “fixes” in special cases. Each of the examples cited above made sense from a public policy perspective at the time, but with each succeeding instance the idea that this was an exception and not a distasteful “norm” became harder to escape.

On balance this legislation is probably better overall for the plaintiff tort bar, for whom there is no downside, rather than the defense bar; though of course from the defense perspective, it would depend on a case by case basis. Many will argue that Rhode Island tort law is too “plaintiff friendly” but that is a broader discussion for another day. This legislation was long overdue.

Brian C. Newberry, a partner at Donovan Hatem, is an attorney specializing in professional malpractice defense, construction law and commercial litigation. He is the former House Minority Leader and a seven term member of the House of Representatives from District 48 North Smithfield/Burrillville. ◇



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Five Factors for Legal Leaders: What Can We Learn from Healthy and Satisfied Attorneys?



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“... it is important to understand the factors creating the crises and how these unhappy statistics collide with professional conduct regulations, leaders in the profession must examine the other side of the statistics to move forward and better train lawyers.”

Pick up any bar journal in America and you will surely find an article on attorney wellness and well-being. The topic is, of necessity, a timely one.

In the years since the 2016 landmark study from the American Bar Association and the Hazelden Betty Ford Foundation concluded that overwhelming numbers of lawyers were suffering from depression, anxiety, and substance abuse, the impetus to take action has gained renewed traction. In 2017, the American Bar Association National Task Force on Lawyer Well-Being released its own conclusions and recommendations stating: “to be a good lawyer, one has to be a healthy lawyer.”

The reasons behind the stark number in the Hazelden study – between 21-36 percent of lawyers are problem drinkers, 28 percent suffer from depression, 19 percent anxiety, and 23 percent stress – are varied, but most lawyers can make an educated guess. The stress of daily practice, the uncertainty inherent in litigation, the 24-hour nature of modern American life, a general lack of control over one’s schedule, business pressures, difficult opposing counsel, clients in conflict with unrealistic expectations, the list goes on. The demands on the modern lawyer run the gamut, and some of these challenges always have been inherent to the practice of law.

The evidence suggests that at least part of the problem begins in law school. Far from the profession simply attracting “type A” personalities predisposed to these challenges (or so the conventional wisdom claims) the reality is that most enter law school with a psychological profile similar to the general public, yet leave with 20 to 40 percent having psychological dysfunction. Stress among law students is reported at 96 percent in some studies, compared with 70 percent for medical students and 43 percent in graduate students.

But the alarming statistics alone do not explain the challenges practicing attorneys face. Why are so many attorneys unhappy? How do we fix a problem that the ABA concluded is reaching epidemic proportions and ultimately affects the quality of legal services delivered to clients? And

how can we as a profession overcome some of our own biases about these issues, a factor clearly singled out as problematic in the ABA studies?

For some, attorney wellness topics such as resilience training, development of “grit,” examination of secondary trauma issues (particularly for prosecutors and criminal defense attorneys,) awareness of addiction and mental health risk factors and warning signs, are a welcome addition to their practice toolkit. For others, the notions of “wellness” and “mindfulness” conjure up unwelcome, and perhaps unwanted, images of yoga sessions and suggest an absence of the “mental toughness” necessary to practice law.

This real debate is playing out in jurisdictions wrestling with certification of continuing legal education programs aimed at lawyer well-being and designed to tackle the crisis. In a profession predicated upon an understanding of the rules and regulations, we do tend to focus our efforts by studying past problems (the “case-method” in law school) and professional regulations.

However, in the area of wellness and lawyer success, I’d suggest that is a little like trying to learn how to become a winning NASCAR driver by reading speed limit statutes and auto-accident case law. Statutes and failures teach us what not to do, but they do little to teach us what to do.

Thus, just as it is important to understand the factors creating the crises and how these unhappy statistics collide with professional conduct regulations, leaders in the profession must examine the other side of the statistics to move forward and better train lawyers. What makes some attorneys successful and, if we dare say it, even happy to be a lawyer? If we understand that point along with the risks of the profession, we can begin to build a better bar and lessen the suffering too many of our colleagues live with every day.

Fortunately, there is another dimension to this harsh landscape. While the statistics are alarming, not every attorney is depressed. Not every attorney suffers from crippling anxiety. And most importantly, not every attorney is unhappy in their career and wouldn’t recommend it to someone starting out.

So, who are these satisfied lawyers and what can we learn from them?



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We all likely know some, and you may even be one. Their success doesn't come from some fad exercise routine or a special daily planner. They may practice yoga or meditation, but most probably do not. They may seek recognition, or they may quietly go about their work.

For nearly a decade, I've had the opportunity to work with attorneys, but largely outside of the opposing counsel mindset that marked my previous decade in private and government practice. I have worked closely with lawyers as they celebrated career achievements and milestones, contemplated financial contributions to future generations, and engaged in building a better legal education system. I now have the great privilege to work with them as they volunteer their time and talent to bar activities and the regulation and improvement of the profession.

From my observation, the success of these attorneys, and perhaps the antidote to our broader challenges as a profession, come from five distinguishing factors.

First, these successful attorneys are **grounded** not only in their substantive knowledge of the law, but importantly in their knowledge of *who* they are personally and professionally. Second, they are **steady** in the way they approach their practice and life. Third, they are **continual learners**, both personally and professionally. Fourth, outside of the practice of law, they have **something that gives them joy**. And finally, they have a fifth practice, almost universally: **They give back** to their communities and to their profession.

Does that description match the satisfied and successful attorneys you know? And let me suggest the opposite: Does that description match the attorneys you know who are struggling mightily? While there are always exceptions, and certainly addiction and depression come in many disguises, my hypothesis is that these characteristics are not associated with struggling attorneys.

Forgetting lawyers for a moment, does that description match the successful non-attorneys you interact with? I'd venture to guess, yes. In reality, we can find these distinguishing characteristics in individuals from all walks of life who are living life in a way that most of us aspire to.

So, let's ask a few questions. Can one successfully navigate modern law practice without knowing the fundamentals, let alone having a good personal grounding? Likely not well.

Can a lawyer be "steady" without practicing meditation? Yes, though certainly meditation might be a way of staying grounded or steady. So too might be walking, or playing bridge, or fly-fishing. But can one be steady by burning the candle at both ends, never taking care of the physical body, and binging after every trial or brief filing? Science, let alone common sense, would tell us that the answer is no.

Can one be a highly peer-rated attorney without having something outside of law that gives "joy," or without being a "continual learner?" Maybe, but I'm not sure I've met any. Have you?

What about giving back – do you have to "give back?" Well, you don't have to, but some of the happiest moments I've experienced as an attorney were working with other lawyers to give back, whether that's financially, or more commonly, through judging a speech meet, participating in a bar activity, or serving on a local nonprofit board.

Why do attorneys who live and work this way, who appear to embody these five characteristics, seem to be the most satisfied and successful in navigating the pressures of practice?

Surely something must be at work.

One answer can be found, in part, in what science is telling us about the brain. Recent studies at the University of California, Berkley, demonstrated that chronic stress actually rewires brain circuitry potentially making an individual predisposed to more stress and placing the brain in a constant state of fight or flight. (Does that sound like any lawyers you know?)

That research lends credence to the statistics revealing that what begins with the stress of law school has manifested itself in significant mental health issues by early career for many attorneys. And the cumulative effects of stress make real biological changes leading one to be more susceptible to major depression.

The antidote is in the behaviors that counteract stress-related hormones and enhance positive neurotransmitters and feelings of well-being. That's not "new-age" thinking, but what hard science tells us about the chemical composition of our brains and what is necessary to counteract these changes without pharmacological intervention.

Not surprisingly, being grounded, steady, and a continual learner all correlate to positive health. Any number of studies have reached that conclusion, which author John Coleman succinctly noted in a 2017 *Harvard Business Review* column: "The reasons to continue learning are many, and the weight of the evidence would indicate that lifelong learning isn't simply an economic imperative but a social, emotional, and physical one as well."

As I've said in past columns, recent studies also confirm the positive correlation between things like joy and gratitude in developing positive mental well-being. These studies show that giving and altruism stimulate the reward areas in the brain.

Thus, while the five factors described above were deduced through observation and experience, each finds support in modern neuroscience. Are these lawyers happy because they have always practiced these five factors, or are they not unhappy because these ways of living mitigate the inherent stresses of the profession?

Whether predictive or prescriptive, we know that these satisfied and successful lawyers are on the right side of the statistical ledger when we think about well-being. It seems that these five characteristics can tell us something about why that is.

Perhaps we should take a step back to study the lawyers who are successful in navigating the pressures of this profession, not just the statistics. As we move forward with this important national discussion, that may give us a better map to our own enjoyment, satisfaction and success.

This article originally appeared in the February 2019 issue of the Montana Lawyer and is presented in the Rhode Island Bar Journal by the Lawyers Helping Lawyers Committee. John J. Mudd is the Executive Director of the State Bar of Montana and can be reached at jmudd@montanabar.org. ◇



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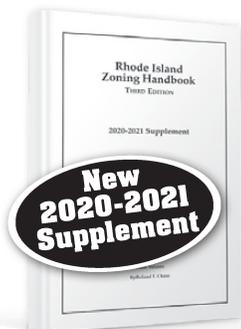


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Our Bar Association is proud to offer mentorship opportunities to our members, promoting professional development and collegiality, and assistance and guidance in the practice of law. Experienced practitioners can share their wealth of knowledge and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

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

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

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

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

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

An Interview with Samantha Armstrong, Esq.

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

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

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

In October 2020, I started my position as a staff attorney at Catholic Social Services of Fall River. My department is called ILEAP, which stands for Immigration Law Education & Advocacy Project. I work almost exclusively with asylum seekers, representing them before the immigration court and the asylum office.

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

I talk to clients, prepare declarations, prepare affidavits, conduct research on country conditions, compile affidavits from family members, and gather evidence from sources like medical records or police reports. Most of my clients are from Central America. While I only know a limited amount of Spanish, we have great paralegals and an Americorps Legal Advocate who speak Spanish and help us with translation.

> **Can you tell us what you have learned while being a new attorney?**

Prior to starting in my position, I clerked for one year in the Law Clerk Department in Rhode Island Superior Court. Then I clerked for one year for Justice Robinson in Rhode Island Supreme Court. I had the opportunity to work with great judges and court staff, and I got to see countless numbers of attorneys in action. I learned the value of being kind to people, the value of being thorough, and the value of producing quality work when you are representing your clients. I learned that judges are people too. They are human and are concerned about others, about the litigants, and about how the results of cases will affect others. I never felt like anyone was trying to push their agenda, rather the judges I worked with were really focused on the impact of their decisions on others and the law.

> **Who is your biggest inspiration inside or outside of law?**

Within the law, I have been inspired by Justice Robinson, previous supervisors, and co-clerks. Justice Robinson inspires me to never stop learning and working hard. My mentors in practice have taught me how to interact with clients, how to draft documents, and even the importance of closely reviewing emails before hitting send. Outside of the law, Jesus is a role model for me in how I live and work. I work to treat people fairly and deny my own selfish tendencies. Jesus is a model of humility and grace and treating others fairly.

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

I like to spend time outside with the people I care about most—my husband and my kids. I like to take my dog for a walk or go for a hike. I also like to take my kids to the playground.

> **What is your favorite restaurant in Rhode Island?**

I love Mexican food, so Tallulah's Taqueria and the Burrito Bowl.

> **You are not originally from New England, how did you end up here?**

I met my husband in college in Auburn, AL. After college, I moved to



SAMANTHA ARMSTRONG, ESQ.

Nashville and he moved to New England to take a job in Groton, CT. I looked at law schools up here and then landed on Roger Williams and have never left. What I like most about this area is that you are always only a short drive, or even walking distance, from the coast or some body of water.

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

I could not live without Facetime or some video-calling app. All of our family members are spread across the country, and I need regular contact with my and my husband's family.

> **What is it like being a new attorney who is the working mom of 2 young children?**

It is busy and stressful at times, but coming home from work to my kids provides the perfect balance for me. I am really thankful for the flexibility in the job I have. Since graduating, my employers have embraced me and my kids and have been understanding with childcare issues.

> **What advice do you have for new working moms?**

When I first went back to work after my son was born, I felt so bad that he was spending nine hours a day at daycare. I started to think that if I was away from him that much, he would be more attached to



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FOCUS ON THE FUTURE

Continued

his teachers at daycare than me. But this was never true; the bond we have is much stronger than that. So I would say, don't feel any guilt about working and daycare. Just focus on making the time you have with your kids special. Don't be too stressed about household chores. If the laundry needs to be done and your kid wants to play, play!

> **What do you find the most meaningful in your work?**

Part of the reason I went to law school was my previous work with a refugee resettlement agency. Working there sparked my interest in working with immigrants because I loved hearing their life stories and helping them get their lives established here in the US. I try to provide some hope for the future for clients who have had such traumatic pasts. Also, I have found that many low-income clients end up involved in the legal system, but have no real context of what is going on. I find it meaningful to be able to explain the law to them and to help them understand what is going on when they feel like they are being shuffled around through the legal system without any choice in the matter.

> **What do members of the bar who do not practice asylum law need to know about asylum law?**

The media can sometimes make it seem that the majority of asylum seekers are falsely claiming asylum to stay in the US as long as possible. That is not true. There is a backlog, sometimes up to seven years. Many of those impacted by the delays want nothing more than to have their claims heard so they can move on with their lives. The administration of the process is imperfect and unnecessary delays are endemic. Before this work, I didn't know the extent of these delays. I think it is important for people to understand the extent of the backlog. More generally, I think it is important for all attorneys to remember that everyone has a unique story to tell and to not place clients into stereotypes before getting to know them.

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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, and the US Armed Forces Legal Services Project during June 2021 and July 2021.

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

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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 **Coastline Employee Assistance Program (EAP)** 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 Coastline EAP 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.

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

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

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.

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

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

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

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

SOLACE Helping Bar Members in Times of Need

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

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



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

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RIBA Members Now Have Access to Fastcase!

The Rhode Island Bar Association transitioned from Casemaker to the Fastcase platform on August 17th, due to the two companies merging in January of 2021. After the transition was complete, it was brought to our attention that data that was available on Casemaker was not available in Fastcase as promised. Fastcase informed us that they experienced unforeseen technical issues moving this data over to the Fastcase platform.

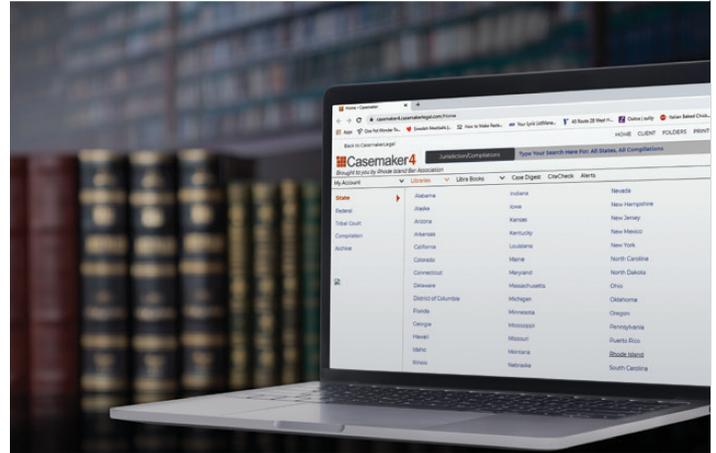
We understand that this caused issues for many of our members who rely on this important member benefit to conduct research in your daily practices. We want to inform you that RIBA members once again have access to both platforms while the Fastcase team works to move the data from Casemaker over to Fastcase.

To access either platform, connect to the Rhode Island Bar Association website at ribar.com as you always have. Sign in using your Bar ID and password, and click on the Fastcase logo. You will be taken to a page where you have the option to start using Fastcase or continue to use Casemaker. If you choose to start using Fastcase, you will be redirected to its legal research platform.

We encourage you to start using Fastcase and explore the platform. To help ease your transition, visit the [Fastcase Resource Library](#) where you can access tutorial videos, register for training webinars, and find answers to your questions. A recent addition to the Resource Library are two guides (Casemaker4 to Fastcase & Casemaker Legal to Fastcase) where users familiar with Casemaker can see how the same functions work in Fastcase.

What this means for you.

Your RIBA member benefit remains the same! The Casemaker/Fastcase team is working to provide RIBA members with the best capabilities of both companies. This means your free RIBA member benefit is now an even more enhanced and comprehensive



online legal research tool! To access Rhode Island Fastcase, connect to the Rhode Island Bar Association website at ribar.com as you always have. Sign in using your Bar ID and password, and click on the Fastcase logo to explore the new platform.

Casemaker and Fastcase compiled a number of frequently asked questions in the Fastcase Resource Library. If you have any more questions, see the contact information for Fastcase below.

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RHODE ISLAND BAR ASSOCIATION

2021 LEGISLATIVE REPORT

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

The 2021 session of the Rhode Island General Assembly recessed on the 45th legislative day on Thursday, July 1, 2021. During the course of the session, over 2,400 pieces of legislation were introduced and reviewed by William A. Farrell & Associates LLC., including hundreds of bills that were eventually amended. Of this number, 331 (including amended bills) were deemed to be of interest to the practice of law and were passed on to the RIBA for review and comment.

While Rhode Island continued to see increases in COVID-related illnesses and with a vaccine only just beginning to become available, the General Assembly, in January, moved its operation out of the State House and into facilities at the Veterans Memorial Auditorium and to the auditorium at Rhode Island College. Both the House and the Senate convened for only a few days per week with all committee deliberations taking place in a virtual format. Lobbyists, as well as the general public, were unable to attend the General Assembly sessions.

The RIBA Executive Committee reviewed a number of Committee recommendations for legislation, but due to the uncertainty of the state's fiscal condition, any proposal which would have had a fiscal impact was tabled for this year. The Executive Committee did, however, approve as a RI Bar introduction, the recommendation of the Business Organizations Committee which involved a revision to the Uniform Limited Partnership Act (ULPA).

A second proposal involving "Directed Trusts" was not presented in time for the Executive Committee to review and was subsequently introduced separately. Since the proposal had the support of the Association's Probate & Trust Committee and had been approved by the Executive Committee in the past, letters of support were provided on behalf of the Association.

Unfortunately, due to the complexities of the ULPA and the inability to interact with legislators, the ULPA died in the House on the last day of the session after passing the Senate.

Other legislative proposals which were of particular interest to the RIBA involved an update to the state's Notarization law and a proposal involving the state's Open Meeting act. Neither of these two proposals made it to the Governor's desk.

There remains the possibility that the General Assembly will reconvene in the fall to review various proposals involving

the disbursement of federal COVID funds. If the General Assembly is called back into a fall session, all filed legislation would technically be eligible for review. However, it is unlikely that anything other than legislation addressing the COVID grant will be taken up.

A full status report of all legislation of interest is available from the Bar Association, however, a few of the more germane proposals that were enacted are listed below.

Chapter 127 (H 5975 (S 726))

This act would provide that the rules of the unauthorized practice of law committee would be approved and promulgated by the Supreme Court.

This act would take effect upon passage.

Chapter 138 (H 5984 SUB A (S 789))

This act amended the time frame for the filing of annual reports for domestic and foreign business corporations, nonprofit corporations, and limited liability companies.

This act would take effect on January 1, 2022.

Chapter 222 (H 6084 SUB A (S 903))

This act would provide for minimum qualifications for court constables to include education, military, or law enforcement.

This act would take effect upon passage and any person certified as a constable on the effective date of this act shall continue to be certified without complying with the certification requirements prescribed by this act.

Chapter 144 (H 6237 SUB A (S 133))

This act would increase the maximum amount to be recovered in civil court action as a small claims from two thousand five hundred dollars (\$2,500) to five thousand dollars (\$5,000).

This act would take effect upon passage.

Chapter 386 (H 5051 SUB A)

This act would increase the time that the secretary of state can withdraw a certificate of revocation for a corporation, nonprofit corporation, or limited liability company from ten (10) to twenty (20) years without the corporation or limited liability company being required to seek reinstatement by the legislature.

This act would take effect upon passage.

Chapter 0004 (H 5257 aa (S 561))

This act would prohibit discrimination in housing against

2021 LEGISLATIVE REPORT *(cont.)*

those persons who have a lawful source of income.

This act would take effect upon passage.

Chapter 411 (H 5560 (S 733))

This act would repeal the section of the law which provides that a joint tortfeasor receives the greater benefit of the sum paid by a released tortfeasor or the percentage of fault attributed to the released tortfeasor.

Chapter 134 (H 5874 SUB A (S 801))

This act would establish the policies and procedures required for the recognition and enforcement of Foreign-Country Money Judgments and Registration of Canadian Judgments by the Superior Court.

This act would take effect upon passage and would apply to foreign and Canadian judgments obtained on or after the effective date of this act.

Chapter 140 (H 5974 (S 735))

This act would invest the chief justice of the Supreme Court with the explicit authority to address issues affecting the conduct of judicial business and order whatever response(s) he or she deems necessary, in his or her discretion as the executive head of the unified judicial system, to ensure the continued operation of the courts.

This act would take effect upon passage.

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Getting to the Bottom of Our Ethical Ills**
Wednesday
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY!

September 9 **The Future of Law Post-Pandemic:
A Roller Coaster**
Thursday
1:00 – 2:00 p.m., 1.0 credit
LIVE WEBINAR ONLY!

September 22 **LA Law(less): Don't Be Like Mike Kuzak**
Wednesday
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY!

An Ethical Day at the Movies

September 28 *Tuesday* 5:30 – 7:30 p.m., 2.0 ethics
In-person only at Rhodes-on-the-Pawtuxet

September 29 *Wednesday* 2:00 – 4:00 p.m., 2.0 ethics
LIVE WEBINAR ONLY!

September 30 *Thursday* 9:00 – 11:00 a.m., 2.0 ethics
LIVE WEBINAR ONLY!

October 6 **Fantasy Supreme Court League:
The 2021 Season**
Wednesday
12:00 – 2:00 p.m., 2.0 credits
LIVE WEBINAR ONLY!

October 7 **The Intersection of Ethics and Artificial
Intelligence**
Thursday
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY!

October 20 **The CARES Act & Implications for Family Law**
Wednesday
Rhode Island Law Center, Cranston
2:00 - 5:00 p.m., 3.0 credits
Also available as a LIVE WEBINAR!

October 27 **Boston (II)legal**
Wednesday
1:00 – 2:00 p.m., 1.0 ethics
LIVE WEBINAR ONLY!

October 30 **The 2021 Ethy Awards**
Saturday
11:00 a.m. – 2:00 p.m., 3.0 ethics
LIVE WEBINAR ONLY!

November 19 **Recent Developments in the Law 2021**
Friday
Crowne Plaza Hotel, Warwick
9:00 a.m. – 4:00 p.m., 6.0 credits + 1.0 ethics

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

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Seminars are always being added to the CLE schedule, so visit the **CLE calendar** for the most up-to-date information.

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

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

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

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In Memoriam

Ernest G. Barone, Esq.

Ernest G. Barone, 76, died on December 11, 2020 in St. Pete Beach, FL.

William Durand, Esq.

William (Bill) Durand, 71, died on July 15, 2021. He was the husband of Jeanne (Briere) Durand. Born in Pawtucket, he was the son of the late Francis Z. and Jeannette (St. Pierre) Durand. Bill was a musician and graduated from Rhode Island College with a BS in music education and an M.Ed. in instructional technology. Bill graduated from Suffolk University Law School in 1983. He taught music for nine years at Cumberland Middle School. He was elected five times to the Rhode Island House of Representatives (1976-1985) and started a new career in the cable television industry in 1981 at RI Cable TV/Times Mirror managing the studios and advertising sales department. In 1985 he joined the New England Cable & Telecommunication Association (NECTA) as Legal Counsel for 31 years, retiring as Executive Vice President & Chief Counsel in 2016. Bill taught business law and legal environment of business at Providence College for 22 years. Besides his wife, he is survived by his son, Brian Durand (Laurie) and daughter Jennifer (Durand) Sousa (Jason); five grandchildren, and many nieces and nephews. He was the brother of Paul R. Durand (Paula), Douglas N. Durand (Elizabeth), Nancy (Durand) McAllister (James), Lynne (Durand) Clay (Robert), the late Emma Durand, the late Susan (Durand) Ritchotte (Ed) and the late Stephen Durand (Loretta).

Norman L. Grant, Esq.

Norman L. Grant, 92, died on July 15, 2021. He was the husband of the late Rita (Hemond) Grant. Born in Pawtucket, he was a son of Joseph and Mary (LaSalle) Grant. Norman worked as an attorney for over sixty years before retiring. He was chairman of the Pawtucket zoning board in the 1960s. Norman is survived by his loving children, Norman L. Grant, Jr. (wife, Maryann Matano), Michael B. Grant (wife, Sheila), and Carolyn R. Aspinwall (husband, John); and several grandchildren. He was predeceased by his siblings, Joseph "Ben" Grant, Russell Grant, and Mary Oreita Thomas.

Robert R. Nocera, Esq.

Robert (Bob) R. Nocera, 76, died on July 30, 2021. He was the husband of Judith (Oakes) Nocera. Born in Providence and raised in East Providence, he was the son of the late Cosmo and Carmella (Ricci) Nocera. Bob attended Lasalle Academy, Georgetown University, and Suffolk Law School. Bob was a member of the Rhode Island Bar for more than fifty years. He owned and operated his own family law practice in Pawtucket for the majority of his career. In addition to his private practice, he served the City of East Providence in the role of city solicitor for many years. He was an active member of several legal associations, including the Pawtucket Bar Association and the Justinian Law Society of Rhode Island. Bob was an active member of the RI Bar Association's Volunteer Lawyer Program, logging hundreds of pro bono hours per year. In recognition of his pro bono service through the Volunteer Lawyer Program, he received the RI Bar Association's Pro Bono Publico award in 1998. Bob was also a volunteer at his alma mater, Georgetown University, in various capacities. Besides his wife, Bob leaves behind his children, Lauren S. Nocera of Providence (partner Shawn Wheeler), stepfather to Amy C. Long of Lancaster, OH (husband Howard

Long), and grandfather to Katherine E. Long of Westerville, OH (fiancé Alex Maldonado). In addition to other family members, he also leaves behind one sister, Janice Fournier of West Haven, CT.

James P. Renaldo, Esq.

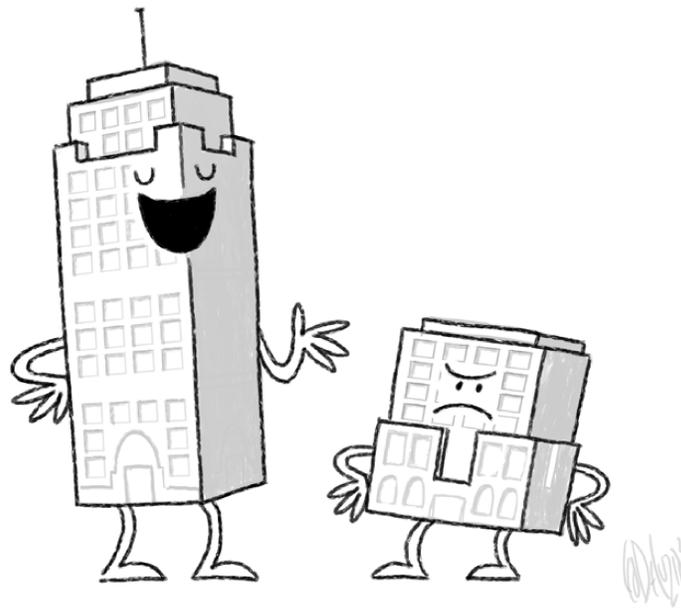
James P. Renaldo, 79, of North Providence, died on February 18, 2021. Born in Providence, he was a son of the late Pasco and Mary (Kanaczet) Renaldo. James graduated from North Providence High School. He received his bachelor's degree from Providence College, and his Juris Doctorate from Suffolk University. Before he entered private practice, he was a prosecutor for the Rhode Island Attorney General's office, eventually becoming chief of the criminal division. He was the first person to successfully prosecute someone to a life sentence without the possibility of parole. James also taught criminal law at the Rhode Island State Police Academy and the Rhode Island Municipal Police Academy. He served honorably in the United States Army during the Vietnam War. James is survived by his son, James P. Renaldo, II and his wife Rachel of Johnston.

Peter K. Rosedale, Esq.

Peter K. Rosedale, of Warwick, died on July 14, 2021. He was born in Essen, Germany to Otto and Martha Rosedale. Peter arrived in the U.S. with his parents in 1939 at the height of the Great Depression, just before World War II, and his parents chose to settle in Providence. Peter graduated from Hope High School. He graduated from Boston University (College of General Education and the School of Law). After serving in the U.S. Army, he practiced law in Providence for over 40 years and was an active arbitrator in the public sector for the American Arbitration Association. Peter served as a member of the Providence City Council, state Representative for 10 years, a member of the state Democratic party Executive Committee, 9th Ward chairman, and chairman of the representative and senate district committees. Peter served as judge of the Providence Municipal Court, chair of the RI Bar Association District Court Bench/Bar committee, chair of the Board of the former Cranston General Hospital, chair of the Warwick Board of Canvassers, Board member of the former Temple Beth Israel and President of the former Roger Williams Lodge of B'nai B'rith. He was a member of the Aurora Civic Association. Peter leaves behind his wife of 52 years, Beverly (Costantino) Rosedale. Besides his wife, Peter is survived by his five children, Steven and Aileen (late) of CT; Michael of MA; Nancy and her fiancé Robson De Oliveria of MA; Paul of North Kingstown; and Tom and his wife Tiffany of MA. Peter is also survived by several grandchildren.

Caption This! Contest

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



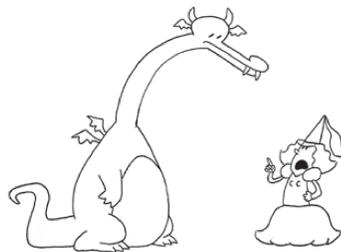
How It Works: Readers are asked to consider what's happening in the cartoon above and submit clever, original captions. Editorial Board staff will review entries, and will post their top choices in the following issue of the *Journal*, along with a new cartoon to be captioned.

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

Deadline for entry: Contest entries must be submitted by October 1st, 2021.

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



"What do you mean your duty to defend only extends to the castle and not the inhabitants!"

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Armando E. Batastini, Esq. is now managing partner at **Nixon Peabody LLP**, One Citizens Plaza, Providence, RI 02903-1345.
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Mental Health Matters

10 Tips to Boost Your Mental Health This Fall



Value Yourself

Treat yourself with kindness and respect. Negative self-talk can affect us in many damaging ways. Learn to notice when you're being self-critical so you can begin to take steps to stop.



Practice Gratitude

Make time every day to be thankful for the good things in your life. Think about what you are grateful for and write it down in a journal. Practicing gratitude can help you to see your life differently.



Keep Active

Regular exercise can boost your self-esteem and help you concentrate, sleep, and feel better. All of which provide significant benefits towards improving your mental health.



Take a Break

We all need to take time to slow down and relax. It is a big part of managing stress and enjoying our lives. A few minutes can be enough to de-stress you. Give yourself some 'me time'.



Set Realistic Goals

Write down the steps you need to realize your goals. Be realistic and don't over-schedule. You'll enjoy a tremendous sense of accomplishment as you progress toward your goal.



Ask for Help

Asking for help is a sign of strength, not weakness; it's easier to deny you have a problem than it is to make an effort to fix it.



Develop Coping Skills

Knowing what triggers your stress and how to cope is key to maintaining good mental health. If you break down your worries and write them down, you may start to realize that they are manageable.



Work Your Strengths

Enjoying yourself can help beat stress. Doing an activity you enjoy probably means you're good at it, and achieving something boosts your self-esteem.



Eat Well

A diet that's good for your physical health is also good for your mental health. Snack on fresh food, and cut back on salt, sugar, and fat.



Disconnect

Leave your smart phone at home for a day and disconnect from constant emails, alerts, and other interruptions. Spend time doing something fun without distraction.

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