

Rhode Island Bar Journal

Rhode Island Bar Association Volume 72, Number 2, September/October 2023



**A Primer on Rhode Island's Shoreline
Access Rights**

**The State of Expert Witness Discovery
Post *Cashman v. Cardi* and the Rule
Change to Super. R. Civ. P. 26**

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

Article

7 A Primer on Rhode Island's Shoreline Access Rights

Sean Lyness, Esq.

15 The State of Expert Witness Discovery Post *Cashman v. Cardi* and the Rule Change to Super. R. Civ. P. 26

Zachary M. Mandell, Esq. and Hannah Vitello Colone, Esq.

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

Jenna Giguere, Esq. and Angela Yingling, Esq.



FEATURES

- | | | | |
|----|---|----|--|
| 3 | A Supreme Challenge | 28 | CLE Publications Order Form |
| 4 | Stay Connected | 29 | RI Bar Association Continuing Legal Education Seminars |
| 5 | The Bar Foundation Scholarship Program | 30 | Thanks to Our CLE Speakers |
| 8 | Build your Client Base and Serve Your Community with the Bar's Lawyer Referral Service | 30 | Keep Your Directory Listing Up to Date |
| 12 | Seeking Law Related Education Program Attorney Volunteers: Update Your Preferences Today! | 31 | Lawyers Helping Lawyers |
| 12 | Help Us Grow Our List Serve | 31 | SOLACE |
| 13 | It's Not Too Late! Sign Up For Your 2023-2024 Bar Committees | 32 | Fastcase Tip: Search Within |
| 22 | Are You – Ethics Advisory Panel | 32 | In Memoriam |
| 23 | IOLTA Honor Roll Banks | 33 | Introducing the 2023-2024 Leadership Academy Class |
| 25 | Honor Roll | 34 | Cartoon |
| 25 | Pro Bono Publico Resolution | 34 | Lawyers on the Move |
| 27 | Rhode Island Bar Association 2023 Legislative Report | 34 | RIBA DEI Committee Call to Action! |
| | | 34 | Advertiser Index |
| | | 35 | Recognizing Grief |

Front Cover Photograph by Brian McDonald

Mount Hope Bridge Built in 1929, the Mount Hope Bridge is a two-lane suspension bridge spanning Mount Hope Bay in eastern RI at one of the narrowest gaps in Narragansett Bay. The bridge connects the towns of Portsmouth and Bristol. The Bridge was added to the National Register of Historic Places in 1976.



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

Editor

Erin Cute

Editorial Board

Victoria M. Almeida, Esq.
William J. Delaney, Esq.
Nicole P. Dyszewski, Esq.
Samantha C. Ferrucci, Esq.
Michael B. Forte, Jr., Esq.
Christopher I. Henry, Esq.
Tobias Lederberg, Esq.
Steven M. Richard, Esq.
Alexander L. Ried, Esq.
Jordan Zaccaria Sasa, Esq.
Angelo R. Simone, Esq.
Hon. Brian P. Stern

RHODE ISLAND BAR ASSOCIATION LAWYER'S PLEDGE

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

Association Officers

Nicole J. Benjamin, *President*
Christopher S. Gontarz, *President-Elect*
Patrick A. Guida, *Treasurer*
Dana M. Horton, *Secretary*

Executive Director

Kathleen Bridge

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

USPS (464-680)ISSN 1079-9230

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

PERIODICALS POSTAGE PAID AT PROVIDENCE, RI

Subscription: \$30 per year

Postmaster

Send Address Correction to:
Rhode Island Bar Journal
41 Sharpe Drive
Cranston, RI 02920

ribar.com

A Supreme Challenge



Nicole J. Benjamin, Esq.
President
Rhode Island Bar Association

“In keeping with our oath to support the Constitution and the laws of the United States, it is incumbent upon us to know and understand the state of the law, particularly as it evolves.”

On June 29, 2023, the United States Supreme Court decided *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*¹, holding that the admissions programs instituted by Harvard College and the University of North Carolina (UNC) violated the Equal Protection Clause of the United States Constitution. In so holding, the Court struck down affirmative action in college admissions and effectively overruled its prior decisions in *Grutter v. Bollinger*² and *Regents of the University of California v. Bakke*.³

While the Supreme Court’s decision invalidated race-based admissions programs in which some students may obtain preferences on the basis of race alone, the majority expressly stated, “nothing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”⁴ However, it also cautioned that “universities may not simply establish through application essays or other means the regime we hold unlawful today.”⁵

In the weeks and months following the Court’s decision, lawyers across America have worked to predict its reach. Although decided on equal protection grounds, many have predicted that the Court’s central holding—that race-based admissions programs in which some students may obtain preferences on the basis of race alone are unconstitutional—may extend beyond higher education to the workplace, nonprofits and even private organizations in certain contexts.

But hours after the Supreme Court issued its decision, U.S. Equal Employment Opportunity Commission (“EEOC”) Chair Charlotte A. Burrows issued a statement that “[i]t remains lawful for employers to implement diversity, equity, inclusion and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace.”⁶

So where does that leave us?

In due course, as other cases make their way through the court system, we will have further guidance from our courts on the reach of the Supreme Court’s decision. In the meantime, we must determine how to govern ourselves and how to advise our clients.

As a condition of our admission to practice law in Rhode Island, we have all taken an oath to “support the constitution and laws of this state and the constitution and laws of the United States.”⁷

As lawyers, we enjoy a unique position in society. Our role extends far beyond the provision of legal advice to our clients. Some of us are employers; others serve on the boards of for-profit companies or non-profit organizations. In keeping with our oath to support the Constitution and the laws of the United States, it is incumbent upon us to know and understand the state of the law, particularly as it evolves.

For many years, but especially in recent years, a wide variety of programs that provide preferences on the basis of race alone have been implemented in a wide variety of settings (not just education) for the laudable purpose of promoting diversity, equity and inclusion. If the Supreme Court’s holding is applied beyond the context of higher education, those programs may no longer pass constitutional muster.

But, as EEOC Chair Burrows explained, that does not mean that diversity, equity and inclusion programs all suffer a similar fate. The Supreme Court’s decision did not, in any way, invalidate diversity, equity and inclusion programs in and of themselves.⁸

Instead, the Supreme Court’s decision challenges us to analyze diversity, equity and inclusion programs to ensure they do not employ preferences based on race alone and are not premised on racial stereotyping, as the Court determined was the case with Harvard and UNC’s admissions programs. And if they do, it is incumbent on us to rethink how those programs can be designed to achieve the otherwise commendable goal of diversity, equity and inclusion.

The majority opinion expressly found that the educational benefits Harvard and UNC advanced in support of their admissions programs were

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

“commendable goals,” although even those commendable goals could not be used to justify preferences on the basis of race alone.⁹

For example, the Court found Harvard’s goals of (1) training future leaders; (2) preparing graduates to adapt to an increasingly pluralistic society; (3) better-educating students through diversity; and (4) producing new knowledge stemming from diverse outlooks, all to be commendable goals.¹⁰

The Court likewise found UNC’s goals of (1) promoting the robust exchange of ideas; (2) broadening and refining understanding; (3) fostering innovation and problem-solving; (4) preparing engaged and productive leaders; and (5) enhancing appreciation, respect, and empathy, cross-racial understanding, and breaking down stereotypes, all to be commendable goals.¹¹

If, as the Supreme Court found, these are all commendable goals, then the Court’s challenge to us is to determine how those commendable goals can be achieved without preferences based on race alone.

At the Bar Association, we remain deeply committed to diversity, equity and inclusion. Through numerous initiatives, we strive to create a sense of community and belonging for all our members and to open pathways for future leaders.

We recognize the importance of generating the interest of our youth in the practice of law, and we do that through programs that reach across communities in our state, including Law Day, Lawyers in the Classroom, and a brand-new collaboration with the Rhode Island Judiciary on Constitution Day, among others.

We also collaborate with Roger Williams University School of Law and support its students with the goal of retaining diverse talent in our state long after their commencement.

And, this year, we instituted our Leadership Academy, designed to achieve many of the goals the Supreme Court found commendable. With the intention of creating a strong pipeline to leadership, application to our program is open to all active members of our Bar. Those admitted to the academy receive the benefit of professional supports—coaching, training and mentorship—that they can bring back to

their own workplaces and use to further their own leadership in the Bar. The Academy also includes diversity training so we may continually ensure that diversity, equity, and inclusion are woven into the fabric of our Bar. In sum, the Academy brings together participants from a wide variety of backgrounds, including life experiences, levels of professional experience, and practice areas, to create an inclusive forum for professional trainings and coaching, relationship building, and the exchange of ideas.

We are making diversity training available not only to the participants in our leadership academy but also to our Executive Committee and committee chairpersons.

Our work to promote diversity, equity, and inclusion does not end here. The Supreme Court’s decision challenges us to think harder and do better. It makes no promise that it will be easy. But together, we can do that hard work. The future of our profession depends on it.

ENDNOTES

- Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 216 L. Ed. 2d 857, 896 (2023).
- Grutter v. Bollinger*, 539 U. S. 306, 326 (2003).
- Regents of Univ. of Cal. v. Bakke*, 438 U. S. 265 (1978).
- Students for Fair Admissions, Inc.*, 216 L. Ed. 2d at 896.
- Id.*
- Statement from EEOC Chair Charlotte A. Burrows on Supreme Court Ruling on College Affirmative Action Programs (June 29, 2023), available at <https://www.eeoc.gov/newsroom/statement-eeoc-chair-charlotte-burrows-supreme-court-ruling-college-affirmative-action>.
- R.I. Sup. Ct. Art. II, R. 8.
- See also *Students for Fair Admissions, Inc.*, 216 L. Ed. 2d at 982 (Sotomayor, J., dissenting) (“To be clear, today’s decision leaves intact holistic college admissions and recruitment efforts that seek to enroll diverse classes without using racial classifications. Universities should continue to use those tools as best they can to recruit and admit students from different backgrounds based on all the other factors the Court’s opinion does not, and cannot, touch.”).
- Students for Fair Admissions, Inc.*, 216 L. Ed. 2d at 886.
- Id.*
- Id.* ◇

Rhode Island Bar Journal

Editorial Statement

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

Article Selection Criteria

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

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

Rhode Island Bar Journal Editor Erin Cute
email: ecute@ribar.com
telephone: 401-421-5740

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

STAY CONNECTED!

FOLLOW US

Facebook: @RIBarAssociation
Twitter: @RIBarAssoc
Instagram: @RIBarAssociation
LinkedIn: [linkedin.com/company/ri-bar-association](https://www.linkedin.com/company/ri-bar-association)

The Bar Foundation Scholarship Program



Steven J. Boyajian, Esq.
Treasurer
Rhode Island Bar Foundation

“The award of scholarships by the Bar Foundation is an annual reminder of the incredible potential that aspiring lawyers in Rhode Island hold.”

For more than three decades, the Bar Foundation has administered the Thomas F. Black, Jr. Memorial Scholarships, which have enabled dozens of promising Rhode Islanders to attend law school. The Black Scholarships, which now provide \$25,000 for each of the two annual recipients, are awarded to applicants based on their financial need, academic excellence, dedication to community service, and abiding connections to Rhode Island that indicate the recipient is likely to join the legal community here. These scholarships have been made possible by the generosity of the Horace Kimball Foundation, the Champlin Foundation, the Nicolas J. Caldarone Foundation, and the Fellows of the Foundation that have designated funds to the Bar Foundation’s scholarship fund.

Beginning in 2021, the Bar Foundation was asked to administer additional scholarships thanks to the generosity of the Papitto Opportunity Connection. This year, the Bar Foundation awarded two Papitto Opportunity Connection scholarships, each in the amount of \$25,000. Applicants are evaluated on the same criteria used to award the Black Scholarships, with the additional requirement that awardees be Black, Indigenous or people of color. Each year, the Foundation’s Scholarship Committee evaluates many applications, and, due mostly to the caliber of the applicants, the Committee’s decisions are difficult. However, the difficult decisions lead to sometimes lengthy discussions, which allow us all to see qualities and accomplishments in the eventual awardees that set them apart from the crowd.

In 2023, the Bar Foundation’s Scholarship Committee selected Irina Abdelaziz Abdrabboh and Kathleen Casey as recipients of the Thomas F. Black, Jr. Memorial Scholarships. Irina is a resident of North Providence and grew up in Morocco. She graduated from New England Tech in 2022, *magna cum laude*. Throughout her undergraduate career, Irina worked roughly seventy hours per week in a variety of positions, including for Allstate Insurance, serving in the National Guard, and as a policy intern for the General Assembly. Irina served in the United States Army and was deployed in support of Operation Enduring Freedom for a year. While serving in the

Army, Irina was confronted with unspeakable racism and sexism, mocked for her religion and hijab, and called a terrorist. Realizing that hate is caused by ignorance, Irina volunteered to brief thousands of soldiers in her battalion in preparation for their deployment on Middle Eastern culture, the Arabic language (one of four languages Irina speaks) and behavior in Middle Eastern countries. Irina will attend Suffolk Law School in the fall.

Kathleen Casey graduated from the College of the Holy Cross in 2023 and studied abroad at the University of Oxford. At the time of the scholarship awards, Kathleen had accumulated a 3.86 grade point average. She volunteered her time tutoring refugees and interned in the Office of the Rhode Island Attorney General, helping to develop a tracker to measure the effectiveness of initiatives to combat violent crime. In her scholarship application, Kathleen recounted the first time she cross-examined a witness, at age twelve, in a mock trial at the Garrahy Judicial Complex as part of a team coached by a number of longstanding members of the Rhode Island Bar. Kathleen then went on to coach youth mock trial teams herself. Kathleen held a number of demanding jobs to help fund her undergraduate education, including as a waitress, a Doordash delivery driver, and a law office clerk. Kathleen looks forward to returning to Rhode Island to practice after her legal education at Notre Dame Law School, which begins this fall.

The Papitto Opportunity Connection Scholarships were awarded to two equally extraordinary students—Lauren Arthenayake and Sofia DeSimone. Lauren is a *summa cum laude* graduate of the University of Rhode Island. During her time at URI, Lauren interned for the Domestic Violence Resource Center. Her extraordinary academic record was compiled despite trauma that would lead many to give up. Lauren worked between twenty and thirty hours per week during her undergraduate career and, after graduation, worked

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



Rhode Island Bar Foundation

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

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

Help Our Bar Foundation Help Others

RHODE ISLAND BAR FOUNDATION GIFT

PLEASE PRINT

My enclosed gift in the amount of \$ _____

Please accept this gift in my name

or

In Memory of _____

or

In Honor of _____

Your Name(s) _____

Address _____

City/State/Zip _____

Phone (in case of questions) _____

Email: _____

Please mail this form and your contribution to:

Rhode Island Bar Foundation

41 Sharpe Drive

Cranston, RI 02920

Questions? Please contact Theresa Gallo at 421-6541

or tgallo@ribar.com

in a law office here in Rhode Island. Lauren's bravery in the face of unimaginable challenges led her to tell the committee, "Instead of reacting with despair, I want to join the arduous fight." The letters of recommendation written on Lauren's behalf show that she is more than sincere in her desire to fight for others. One professor recounted the way that Lauren's contributions to class showed that she would "stand up for victims" and that Lauren would remind everyone of people's humanity. Lauren will begin her legal education at Quinnipiac Law School in the fall.

Sofia DeSimone graduated from Columbia University in 2023. At the time of her scholarship application, she had been on the Dean's List for three semesters. Sofia has interned twice with the American Civil Liberties Union and, through her work, earned a full-time position there. Sofia hopes to use her legal education to work for environmental justice for underserved and diverse communities. Sofia's ACLU supervisor told the Committee that, after interviewing hundreds of applicants annually, Sofia sticks out as "easily one of the top five most gifted, thoughtful, witty, and passionate" applicants she has met. Her scholarship application materials made that apparent to the Scholarship Committee as well. Sofia will matriculate at New York University Law School in the fall.

The award of scholarships by the Bar Foundation is an annual reminder of the incredible potential that aspiring lawyers in Rhode Island hold. Applicants recount to the Scholarship Committee their experiences of being orphaned, poverty, disability, sexual assault, domestic violence, racism and innumerable other challenges. After reading those stories, we see a college transcript for the same applicant showing straight A's, a work history that would hardly permit an ordinary person to attend class, let alone study for exams, and recommendations that confirm every extraordinary impression imparted by the rest of the application. The Foundation is able to help these Rhode Islanders realize their near-boundless potential and is grateful to all of the donors who make it possible.

Each of the Bar Foundation's Fellows can play an important part in this too. Please consider designating your annual contribution to one of the Foundation's scholarship or fellowship programs. The scholarship application materials we receive include tuition and financial aid materials that show the cost of attending some law schools is reaching nearly unattainable heights. The financial aid packages offered, even to the most accomplished applicants, are often insufficient to make a legal education a realistic possibility. Irinia, Kathleen, Lauren, and Sofia will benefit from years of generosity by prior donors, but your donations today will help pave the way for the scholarship recipients in future years. ◇

A Primer on Rhode Island's Shoreline Access Rights



Sean Lyness, Esq.*
New England Law
Boston

“Perhaps as a result of the pandemic—and its accompanying surge in outdoor recreation—contestations of public and private rights along the shore intensified in recent years.”

If you’ve been following the news lately, you’ve probably seen articles about a recent shoreline access law—passed by the General Assembly and signed by the Governor—and the ensuing litigation it engendered.¹ But the law is just the latest link in a chain going back to the colony’s founding; a history of conflicts at the shoreline. And this makes some sense, as the shoreline is a collision point between two “treasured sets of expectancy interests”: private property rights and public access rights.²

This article seeks to provide historical context for the current shoreline access court case. Rhode Island’s history of shoreline access rights is rich and complex. The article starts with a background on the shoreline access legal doctrine that governs—the public trust doctrine—and then covers the legal history of that doctrine in the state. It concludes with a preview of the pending lawsuit.

I. A BRIEF BACKGROUND ON THE PUBLIC TRUST DOCTRINE

Let us begin, then, with the public trust doctrine itself. When we talk about the public’s rights in the shoreline, we are really talking about the public trust. The doctrine is a simple but radical idea: certain resources are held by the government in trust for the people.³ Accordingly, the government has a responsibility to prevent impairment of those public trust resources.⁴ In other words, the public trust doctrine functions as a check on democratic institutions, ensuring that their actions maintain and preserve public trust resources.⁵

The doctrine was well-established by the seventeenth century in England.⁶ There, under English common law, “the title and the dominion in lands flowed by the tide were in the King for the benefit of the nation.”⁷ To properly protect the public’s ability to use these tidal waters, the title to the land was “vested in the sovereign for the benefit of the whole people.”⁸

When the United States declared its indepen-

dence, the title-vested sovereign changed from the King to the state.⁹ The public trust doctrine is thus principally a matter of state law.¹⁰ And, as a result, there is no single public trust doctrine but instead 51 state-specific public trust doctrines, each with its own idiosyncrasies.¹¹ To understand the Rhode Island public trust doctrine, then, we must examine it on its own terms.

II. THE RHODE ISLAND PUBLIC TRUST DOCTRINE

A. Charter to Constitution

What is most remarkable about Rhode Island’s public trust doctrine is that it is codified—and has been from the start. Issued by King Charles II, the 1663 Charter is the foundational document for the colony of Rhode Island.¹² Coming less than 30 years after the founding of Providence in 1636, the Charter set forth a series of rights and principles for the colony.¹³ In so doing, the Charter made plain that the colonists enjoyed certain rights in the shoreline; specifically, that the colonists “shall have full and free power and liberty to *continue and use the trade of fishing upon the said coast* * * * * and to *build and set upon the waste land belonging to the said Colony and Plantations*, such wharves, stages and workhouses as shall be necessary for the salting, drying and keeping of their fish[.]”¹⁴

Though the Charter is clearly aimed at protecting the public’s right to fish, the resulting effect is nonetheless a guarantee of public access to the shore. After all, Rhode Islanders have the right to “use the trade of fishing” and they can even “build” on tidal lands to do so.¹⁵ A necessary implication is public access to the shore. And the fact that the public’s rights were codified at all—and, at that, just a few decades after the colony’s founding—is telling as to their significance.

Unlike other colonies that wrote state constitutions in the latter half of the eighteenth century, Rhode Island persisted under the 1663 Charter until 1843.¹⁶ And, with respect to shoreline rights,

* Assistant Professor of Law, New England Law | Boston. I have written previously on Rhode Island’s public trust doctrine in Sean Lyness, *A Doctrine Untethered: “Passage Along the Shore” Under the Rhode Island Public Trust Doctrine*, 26 ROGER WILLIAMS U. L. REV. 102 (2021).

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

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



Attorney **Thomas Mirza**, a member of the Lawyer Referral Service, enthusiastically supports the program. *“The Bar Association’s Lawyer Referral Service has provided my practice with an opportunity to serve people in the community with limited means, either through their “Reduced Fee” and/or “Pro Bono” programs. The regular referrals have had a positive impact on my practice economically, but more*

important to me as a long-term practitioner, the bulk of these clients are genuinely appreciative of the work performed on their behalf. The LRS staff is great to work with, and I recommend this program to lawyers looking to increase their clientele and those looking for ways to contribute to the community.”

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

the state’s new constitution was written with the goal of changing very little. The 1843 Constitution provided that “[t]he people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state.” The Constitution then clarified that “no new right is intended to be granted, nor any existing right impaired, by this declaration.”¹⁷

Despite its best attempts to change nothing, the text does more than lock in the status quo. No longer focused on a purely fishing context, the Constitution now granted all Rhode Islanders the “privileges of the shore.”¹⁸

B. Interpreting the 1843 Constitution

What are the “privileges of the shore”? The phrase’s import remained hidden for many years.¹⁹ But a few Rhode Island Supreme Court opinions from the turn of the twentieth century show that the doctrine remained robust and vital.

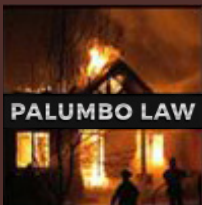
Take **Allen v. Allen**, for example.²⁰ In that 1895 case, the defendant was found to have trespassed across the plaintiff’s property while digging for clams.²¹ Overturning the finding of liability by the lower court and granting a new trial, the Rhode Island Supreme Court made plain that the public trust doctrine guarantees public rights, among these “the rights of passage, of navigation, and of fishery[.]”²² The state, “by virtue of its sovereignty,” “holds the legal fee of all lands below [the] high-water mark” for the benefit of the public.²³ Repeatedly using the term “high-water mark,” the Court held that “any inhabitant may take shellfish anywhere in the waters of the state, and on the shores below high-water mark as it exists from time to time.”²⁴

This is a full-throated endorsement of the state’s public trust rights. And the inclusion of the right “of passage” appears to reference the “privileges of the shore” guaranteed in the then-operative 1843 Constitution.

Next, look to **Narragansett Real Estate Co. v. Mackenzie**, a 1912 case involving land in Little Compton.²⁵ Students of Rhode Island history will recall that the far eastern portion of Rhode Island was disputed for several decades with Massachusetts and finally settled in Rhode Island’s favor in the mid-eighteenth century. In this action for trespass on land once disputed, the plaintiff argued that it owned the land to the “low water mark” as it would have in Massachusetts.²⁶ The Rhode Island Supreme Court disagreed, noting that Rhode Island’s success in contesting Massachusetts’ claims of ownership signified “the rightfulness of Rhode Island’s claim from the outset[.]”²⁷ As such, “the plaintiff *** has title in fee *only to ordinary high-water mark*, and that the fee of the land below ordinary high-water mark is in the state.”²⁸

Clearly, Rhode Islanders had rights in the shoreline. But the major interpretive work on the “privileges of the shore” did not come until nearly a century later in the famous **Jackvony v. Powell**.²⁹ There, the Rhode Island Attorney General, Louis V. Jackvony, sued three members of the Easton Beach Commission of the City of Newport seeking to stop the Beach Commission “from erecting or causing to be erected a fence or other barrier on such portion of the shore between the high and low water lines[.]”³⁰ But this was no rogue local actor; the Beach Commission had been granted statutory authority by the General Assembly over “control and charge” of the beach, “including the shores thereof between high and low water marks.”³¹

Tell Your Insurance Company “NO” 401-PALUMBO



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

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

401-PALUMBO

propertydamageinsuranceclaimsattorney.com

Offices in RI, MA & CT

Jackvony thus centered on whether the General Assembly could inhibit the public's access to the shoreline. Our state Supreme Court unequivocally said, "no." The constitutional "privileges of the shore" "belong[] to the people[,] * * * which the framers and adopters of the constitution intended to change into 'rights', beyond the power of the general assembly to destroy."³² What did those "rights" in the shoreline entail? Well, for a start, "rights of fishing from the shore, taking seaweed and drift-stuff therefrom, going therefrom into the sea for bathing, and also, as *necessary for the enjoyment of any of these rights*, and perhaps as a separate and independent right, that of *passing along the shore*."³³ Of course, that right of passage was "subject, very possibly, to *reasonable* regulation by acts of the general assembly in the interests of the people of the state."³⁴ But fences blocking access were not reasonable.

C. State v. Ibbison

And so **Jackvony's** holding—that passage along the shore is a constitutional public trust right—remained good law for decades. That is, however, until the 1982 Rhode Island Supreme Court case **State v. Ibbison**.³⁵ In a sea of shoreline access litigation, it is hard to imagine a set of facts more sympathetic. There, six defendants were convicted of criminal trespass for traveling along a beach during a beach clean-up operation in Westerly.³⁶ The defendants were stopped by police between the high-water mark and the mean high-water line.³⁷

As described by the **Ibbison** Court, the high-water mark was "a visible line on the shore indicated by the reach of an average high tide and further indicated by drifts and seaweed along the shore."³⁸ More colloquially, we call it the seaweed line. The mean high-water line, on the other hand, referred to by the Court as the "mean high tide line," was "at the time of the arrest * * * under water."³⁹

The Court began its opinion by quickly addressing and dismissing **Jackvony's** holding and reasoning.⁴⁰ The Court noted that "[a]t various times in the **Jackvony** case, the Court referred to the high-water line or mark, and at other times it referred to the mean high tide * * * We find that the **Jackvony** court used the two terms interchangeably."⁴¹

But this conclusion misses **Jackvony's** central holding: that the "privileges of the shore" specifically included "a public right of passage along the shore."⁴² And, given that the mean high-water mark was underwater at the time of the arrest, the only possible application of **Jackvony** to **Ibbison's** facts is that the public trust land must be located at the high-water mark (seaweed line) to preserve the right of passage along the shore.⁴³

Nonetheless, the **Ibbison** court picked the mean high-water mark as the extent of the public trust in the shoreline.⁴⁴ Curiously, the **Ibbison** court noted that the new demarcation "is not readily identifiable by the casual observer."⁴⁵ But, reasoned the Court, it was "the point that can be determined scientifically with the greatest certainty[.]" and, in any event, "[w]e doubt, however, that any boundary could be set that would be readily apparent to an observer when we consider the varied topography of our shoreline."⁴⁶ That is an odd aside from a court that just pages ago described the high-water mark as identifiable by seaweed.⁴⁷ In resolving the case at hand, however, the Court recognized that it was setting a new limit on the public trust doctrine and accordingly dismissed the criminal trespass charges on due process concerns.⁴⁸

withum

ADVISORY TAX AUDIT

demand integrity

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

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



withum.com/legal

MIGNANELLI & ASSOCIATES, LTD.

Attorneys At Law



Anthony R. Mignanelli
Attorney At Law

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

Attorney to Attorney Consultations / Referrals

PROVIDENCE

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

WESTERLY

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

NEWPORT

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

www.mignanelli.com

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

CONDOMINIUM LAW

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

PALUMBO LAW



481 Atwood Avenue, Cranston, RI 02920
401-PALUMBO info@richardpalumbolaw.com
Offices in RI, MA & CT

Whether you agree with **Ibbison** or not, there is no denying that **Ibbison** swept aside **Jackvony's** holding regarding passage along the shore.⁴⁹ No longer would the public trust doctrine guarantee a right to passage along the shore; **Ibbison** affixed the public trust line to a point on the shoreline that was, by the **Ibbison** court's own admission, often submerged and only identifiable by scientific instruments.⁵⁰ The Court did so despite being admittedly "handicapped by the absence of a record in this case."⁵¹

D. The 1986 Constitution and Beyond

But **Ibbison** did not unilaterally change shoreline access rights without public response. Beginning in 1983—the year after **Ibbison**—Rhode Island convened a constitutional convention that proposed changes that were ratified in 1986. Among the changes was an overhaul to the public trust doctrine provision, clarifying that the rights of fishery and privileges of the shore are "including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore."⁵²

The drafters of this provision made plain their intent in an annotated version of the constitutional convention, explaining that "[t]he committee was concerned with the absence of [a] constitutional definition of the 'privileges of the shore' to which Rhode Islanders are entitled."⁵³ Recognizing **Jackvony** as "central to the deliberations of the committee[,] the drafters emphasized that "[t]he [**Jackvony**] court specifically recognized a public right of passage along the shore"⁵⁴ Accordingly, "[t]he committee strongly affirmed that the [**Jackvony**] case accurately reflected those shore privileges which have been in place in Rhode Island historically. The resolution reflected that sentiment."⁵⁵

The upshot is that the 1986 Constitutional Convention codified **Jackvony** and all but overruled **Ibbison**. But, as I have written previously, the Rhode Island Supreme Court has not once addressed this change.⁵⁶ In fact, curiously, the Court has continued to cite **Ibbison** as good law.

III. THE SHORELINE ACCESS LAW

Shoreline disputes did not end with the 1986 constitutional changes. Perhaps as a result of the pandemic—and its accompanying surge in outdoor recreation—contestations of public and private rights along the shore intensified in recent years. In a well-publicized example, a man was arrested in South Kingstown for gathering seaweed in 2019; he later settled a civil lawsuit against the Town for \$25,000.⁵⁷

The General Assembly stepped in to help. A House Study Commission on Lateral Shoreline Access convened in 2022 to examine the issue, hearing from scientists, shoreline advocates, and private property owners. The evidence was overwhelming: the public did not know where their rights in the shoreline began or ended, and the mean-high tide line endorsed by **Ibbison** was impossible to discern without scientific equipment, not to mention underwater more than half of the time. The Commission proposed a shoreline access bill that would clarify the public's rights in the shoreline. Although it passed the House unanimously in 2022, the bill did not garner a vote in the Senate that year. It took another year for both chambers to settle on a compromise bill—one that easily passed both the House and Senate in 2023. The Governor signed it into law this past June.⁵⁸

The new law is simple: it clears up where Rhode Islanders may exercise their privileges of the shore, *including* 1986's

addition of “passage along the shore.” The law clarifies that the public can exercise its rights within ten feet inland of the “recognizable high tide line,” also known as the seaweed line.⁵⁹ In cases where there are multiple seaweed lines, the most seaward line prevails.⁶⁰ And, to be sure, nothing in the law allows trespass where no passable shore exists: lawns, seawalls, and the like.⁶¹

For many, including the author, the law is a vindication of long-existing constitutional rights. For some, however, the law is unwelcome. Even before the bill passed, a group of private property owners threatened litigation. Within weeks of the Governor’s signature, they followed through.

Filed in Rhode Island’s Federal District Court, the Rhode Island Association of Coastal Taxpayers’ lawsuit seeks injunctive relief to stop the law under a theory that the law is a “taking” under the Fifth Amendment.⁶² Peter Neronha, the Rhode Island Attorney General, is defending the suit.

While the litigation plays out in federal court (or, perhaps, the Rhode Island Supreme Court if the district court certifies a question), expect Rhode Island’s unique—and uniquely consistent—history of constitutionally protected shoreline rights to play a huge role. Even though the case is framed in federal constitutional terms, the takings claim depends on the extent of property rights under state law. Importantly, this means that the 1986 constitutional amendments will face their first judicial scrutiny in decades. Stay tuned for how this case will impact the Rhode Island public’s nearly four-centuries of shoreline access rights.

ENDNOTES

1 See, e.g., Brian Amaral, “Property owners’ suit seek to block new R.I. shore access law,” *THE BOSTON GLOBE*, July 7, 2023 (<https://www.boston-globe.com/2023/07/07/metro/property-owners-suit-seeks-block-new-ri-shore-access-law/?p1=StaffPage>).

2 Charles F. Wilkinson, *The Headwaters of the Public Trust: Some of the Traditional Doctrine*, 19 *ENVTL. L.* 425, 426 (1989).

3 See, e.g., *Ill. Cent. R.R. Co. v. Illinois*, 146 U.S. 387, 458 (1892); see also *Wilkinson*, *supra* note 1 at 425-27.

4 See *Wilkinson*, *supra* note 1, at 452 (noting that the Supreme Court in *Ill. Cent.* “left no doubt that the traditional public trust doctrine imposes obligations on the states[.]”).

5 See *id.*

6 See, e.g., *Ill. Cent. R.R. Co.*, 146 U.S. at 458 (“The title to lands under tide waters, within the realm of England, were by common law to be vested in the King as a public trust[.]” (quoting *People v. N.Y. & Staten Island Ferry Co.*, 68 N.Y. 71, 76 (1877))); see also *PPL Montana, LLC v. Montana*, 565 U.S. 576, 589-93 (2012) (*same*).

7 See *Shively v. Bowlby*, 152 U.S. 1, 57 (1894).

8 *Id.*

9 See *id.* (“Upon the American Revolution, these rights, charged with a like trust, were vested in the original States within their respective borders, subject to the rights surrendered by the Constitution to the United States.”).

10 See *id.* at 57-58; see also *Greater Providence Chamber of Com.*, 657 A.2d at 1042 (discussing the latitude that the *Shively* case affords each state in its articulation of the public trust doctrine (citing *Shively*, 152 U.S. at 26)).

11 See Robin Kundis Craig, *A COMPARATIVE GUIDE TO THE EASTERN PUBLIC TRUST DOCTRINES: CLASSIFICATIONS OF STATES, PROPERTY RIGHTS, AND STATE SUMMARIES*, 16 *PENN. ST. ENVTL. L. REV.* 1 (2007) (comparing and contrasting various states’ public trust doctrines); see also *Wilkinson*, *supra* note 1, at 425 (“The public trust doctrine is complicated—there are fifty-one public trust doctrines in this country alone.”).

12 See Patrick T. Conley & Robert G. Flanders, Jr., *THE RHODE ISLAND STATE CONSTITUTION: A REFERENCE GUIDE* (OXFORD UNIV. PRESS 2011) AT 110; see also *Rhode Island Royal Charter, 1663*, at 1, *R.I. STATE ARCHIVES* (available at <https://www.sos.ri.gov/assets/downloads/documents/RI-Charter-annotated.pdf>). As a founding and organizing document, the 1663 Charter may be considered “constitutional” in nature. Indeed, the 1663 Charter remained the governing document for Rhode Island until 1843, long after

REVERSE MORTGAGE LENDER



Norcom
Mortgage NMLS ID # 71655

**GARRETT
DUFFY**

NMLS #1626638

401.330.7317

garrett.duffy@norcom-usa.com

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

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

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

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

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

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

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

Lawyers in the Classroom

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

Speakers Bureau

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

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

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

Help Us Grow Our List Serve

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

Rhode Island's entrance into the Union.

13 *See id.*

14 *See Rhode Island Royal Charter, 1663, supra note 15, at 11 (emphasis added).*

15 *Id.*

16 *See G. Alan Tarr, UNDERSTANDING STATE CONSTITUTIONS 60 (2000) (noting that by 1780 eleven of the thirteen original colonies had already adopted state constitutions).*

17 R.I. CONST. art I, § 17 (1843) (amended 1986).

18 *Id.*

19 *See Jackvony v. Powel, 21 A.2d 554, 556 (R.I. 1941).*

20 *Allen v. Allen, 19 R.I. 114, 32 A. 166 (1895).*

21 *Id.* at 166.

22 *Id.*

23 *Id.*

24 *Id.*

25 34 R.I. 103, 82 A. 804 (1912).

26 *Id.* at 805.

27 *Id.*

28 *Id.* at 806 (emphases added).

29 67 R.I. 218, 21 A.2d 554 (1941).

30 *Id.* at 554.

31 *Id.* at 555 (quotations omitted).

32 *Id.* at 556. This passage recognizes an important result of codification—the elevation of certain practices into “rights.”

33 *Id.* (emphases added).

34 *Id.* (first emphasis added).

35 *State v. Ibbison, 448 A.2d 728 (R.I. 1982).*

36 *Id.* at 729.

37 *Id.*

38 *Id.*

39 *Id.* at 730.

40 *Id.*

41 *Id.*

42 *Jackvony, 21 A.2d at 558.*

43 *See id.*

44 *Ibbison, 448 A.2d at 732.*

45 *Id.*

46 *Id.*

47 *Id.* (“Presumably, the point reached by the spring tides is the same point as that argued by defendants as being the high-water mark evidenced by drifts and seaweed.”).

48 *Id.* at 733.

49 *See supra Part I., Section B.*

50 *Id.* at 729-30 (noting that at the time of the arrest the mean high tide line was submerged).

51 *Id.* at 730.

52 R.I. CONST. art. I, § 17

53 CONSTITUTION OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS: ANNOTATED EDITION 8-10 (1988), helindigitalcommons.org/cgi/viewcontent.cgi?article=1026&context=lawarchive

54 *Id.*

55 *Id.* (emphasis added).

56 *Sean Lyness, A Doctrine Untethered: “Passage Along the Shore” Under the Rhode Island Public Trust Doctrine, 26 ROGER WILLIAMS U. L. REV. 102, 118 (2021).*

57 *See, e.g., Brian Amaral, “Advocates say shore access more contentious in wake of R.I. Assembly failure to settle issue this year,” THE BOSTON GLOBE, Aug. 1, 2022 (https://www.bostonglobe.com/2022/08/01/metro/advocates-say-shore-access-more-contentious-wake-ri-assembly-failure-settle-issue-this-year/).*

57 *See, e.g., Brian Amaral, “Property owners’ suit seek to block new R.I. shore access law,” THE BOSTON GLOBE, July 7, 2023 (https://www.bostonglobe.com/2023/07/07/metro/property-owners-suit-seeks-block-new-ri-shore-access-law/?p1=StaffPage).*

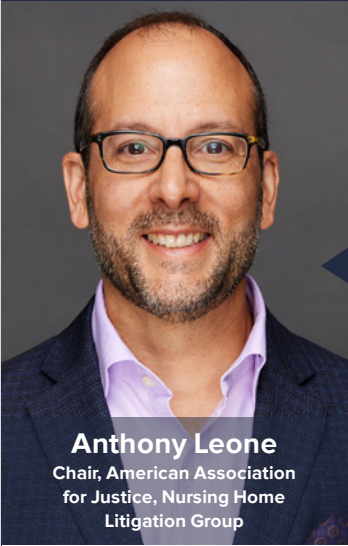
59 *See id.*

60 *See, e.g., Brian Amaral, “Shore access bill passes R.I. Assembly in historic step for Ocean State,” THE BOSTON GLOBE, June 15, 2023 (https://www.bostonglobe.com/2023/06/15/metro/ri-assembly-takes-historic-step-address-shore-access/?p1=Article_Inline_Text_Link).*

61 *See id.*

62 *Rhode Island Association of Coastal Taxpayers v. Peter Neronha, 1:23-cv-00278 (D.R.I. July 7, 2023).* ◇

Representing Residents Injured in Nursing Homes



Anthony Leone
Chair, American Association
for Justice, Nursing Home
Litigation Group

- Abuse and neglect
- Pressure injuries
- Resident falls
- Understaffing and Corporate Negligence
- Dehydration and malnutrition related injuries
- Medication errors



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

It's Not Too Late! Sign Up For Your 2023-2024 Bar Committees

If you have not yet signed up as a member of a 2023-2024 Rhode Island Bar Association Committee, you can still do so! Bar committee membership runs from July 1st to June 30th.

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

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

For more information, visit the Bar's [website](#) under For Attorneys – Bar Committees. Anyone signing up for Bar committees after August 11th can do so by contacting the Bar's Membership Services Coordinator NaKeisha Little at (401) 421-5740 or nlittle@ribar.com.

WORKERS' COMPENSATION

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

946 Centerville Road, Warwick, RI 02886

telephone: (401) 822-2900

facsimile: (401) 826-3245



Michael A. St. Pierre
mikesp@rrswlaw.com



David M. Revens
drevens@rrswlaw.com

Attorney to Attorney Consultations/Referrals

Slip & Fall - Henry Monti



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

Gemma Law Associates, Inc.
401-467-2300
henry@gemmalaw.com

EXPERIENCED, THOROUGHLY PREPARED & SUCCESSFUL TRIAL ATTORNEY



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

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

**I welcome your referrals. My case load is exceptionally small.
I do and will continue to personally handle every aspect of your client's
medical malpractice or serious personal injury case from beginning to end.**

THE LAW OFFICE OF DAVID MOROWITZ, LTD.

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

morowitzlaw.com

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

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

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

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

The State of Expert Witness Discovery Post *Cashman v. Cardi* and the Rule Change to Super. R. Civ. P. 26



Zachary M. Mandell, Esq.
Mandell, Boisclair & Mandell, Ltd.
Providence
Co-Chair Superior Court
Bench/Bar Committee



Hannah Vitello Colone, Esq.
Mandell, Boisclair & Mandell, Ltd.
Providence

“Without the ability to obtain this documentation, there would be a significant shortfall in the ability to fully determine an expert’s opinions and also to fully prepare to cross-examine an expert.”

For many years, trying to forecast what documents were discoverable from expert witnesses in Rhode Island state court was not easy. The determination was subject to a rule of civil procedure that did not spell out with particularity (1) what documents could be discovered, (2) the manner in which the documents could be discovered, and (3) what documents were protected by privilege. This often led to inconsistencies from case to case in terms of what documents would be produced, when they would be produced, and what a party could claim as privilege.

In 2016, the issue came to a head before the Rhode Island Supreme Court in *Cashman Equipment Corporation, Inc. v. Cardi Corporation, Inc!* In *Cashman*, the Rhode Island Supreme Court was deciding a discovery dispute in a complicated case concerning work performed in building the Sakonnet River Bridge. The merits of the case addressed, among other issues, whether or not Defendant Cardi provided a defective cofferdam² design for the bridge project. Cashman filed a writ of certiorari seeking review of the denial of a motion to compel the production of the following from Cardi’s expert: “all materials and documents, less core attorney work product, including all computer models and drafts of materials and documents, developed and considered by [Cardi’s] testifying expert * * * in the process of formulating his written expert opinions.”³

Cashman contended that the hearing justice erred in denying its motion because, in Cashman’s view, materials “considered” by a testifying expert in formulating his or her opinion were discoverable. According to Cashman, it was an error for the hearing justice to refuse to grant the motion to produce the requested documents.

Cashman was specifically seeking the production of certain computer models and draft reports created by Cardi’s expert. Cashman argued that under the Federal Rules of Civil Procedure, these documents would be discoverable. Cardi argued it was not within the plain language of Super. R. Civ. P. 26(b)(4)(A) to discover this material. After reviewing the scope of Rule 26 *de novo* the Court in *Cashman* stated,

Our review of the language of Rule 26(b)(4)(A) leads us to the ineluctable conclusion that the

rule is indeed clear and unambiguous. The first sentence specifically states what one party may require of another party, through interrogatories, with respect to testifying expert witnesses. The second sentence allows a party to depose an expert expected to testify at trial. Thus, the rule is confined by its very terms to discovery through interrogatories or deposition. It does not provide for the disclosure of documents. In light of our well-settled principles of interpretation, we are duty-bound to apply the plain meaning of the rule to the instant case; therefore, it is our conclusion that *Cashman* is not entitled to the discovery which it seeks from *Cardi*.⁴

The Court further stated,

We have no desire to deprive the Superior Court of the right to make a recommendation, by a majority of its members, to this Court with respect to any changes to the Superior Court Rules of Civil Procedure. We recognize that the hearing justice in the instant case, if he were “writing on a clean piece of paper,” would have preferred to rule in *Cashman*’s favor. But, if there is to be a change made to Rule 26(b)(4)(A) to effectuate the result for which *Cashman* advocates, that change must come from the Superior Court in accordance with § 8-6-2(a); it will not be effectuated by this Court under the circumstances presented in the instant case.⁵

This decision left practitioners who regularly use expert witnesses a little perplexed. A routine part of the expert discovery process involves obtaining from an opposing party’s expert the foundational support for their opinions. This foundational support is often derived from documents provided to the expert, documents created by the expert, and documents the expert customarily relies upon in their field. Without the ability to obtain this documentation, there would be a significant shortfall in the ability to fully deter-

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

FLORIDA LEGAL ASSISTANCE



Marc J. Soss, Esquire

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

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

YOUR CONNECTICUT CONNECTION



Gregory F. Massad † Jason R. Burdick *† Alan R. Messier *† Adam D. Ferrare *

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



On your side. In your corner.

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

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

PRACTICE AREAS

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

www.MessierMassad.com

mine an expert's opinions and also to fully prepare to cross-examine an expert.

One of the many wonderful things the Rhode Island Bar Association does for its members is the creation of bench bar committees. These committees, comprised of members of both the bench and the bar, serve as a breeding ground for new ideas to help assist the particular court. The Superior Court Bench Bar Committee is one of these wonderful committees. Following the decision in *Cashman*, the Superior Court Bench Bar Committee decided to draft potential amendments to Super. R. Civ. P. 26. It did so in an effort to sort out the issues raised in the *Cashman* decision.

The Committee debated the issues raised in *Cashman* over the course of many months. Among the issues debated were (1) whether the standard for discovery of documents from experts should be limited to documents the expert "reviewed" or documents the expert "relied" upon, (2) whether expert reports were mandatory and/or discoverable, (3) the method for obtaining documents from experts, and (4) whether communications between attorneys and experts are discoverable.

Following several drafts of potential amendments, the proposed rule changes went through the routine process at the Rhode Island Bar Association. The proposed amendments were sent to and approved by the Executive Committee and the House of Delegates of the Rhode Island Bar Association. Ultimately, the Bar Association approved the draft amendments and transmitted them to the Rhode Island Superior Court.

Presiding Justice Gibney, after receiving the draft amendments, formed a committee of Superior Court Justices to review the proposed rule changes. The Superior Court Committee ultimately recommended passage of the changes to the full Superior Court. The proposed changes were approved by a vote of all members of the Rhode Island Superior Court.

On December 10, 2020, the Rhode Island Supreme Court issued an order formally changing the language of Super R. Civ. P. 26. The Order, which details the amendments to Rule 26, reads as follows:

(4) Trial Preparation: *Experts*.

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, ~~and~~ to state the substance of the facts and opinions to which the expert is expected to testify, ~~and a summary of~~ to summarize the grounds for each opinion. A party may, through a request for production pursuant to Rule 34, a request attached to a notice of deposition pursuant to Rule 30(b)(5), or subpoena duces tecum pursuant to Rule 45, require any other party to produce all documents and materials relied upon by a person whom the other party expects to call as an expert witness at trial in formulating that expert's opinion(s). If documents and materials are requested, the procedures of Rules 34 and 45, respectively, shall apply to the request.

A party may depose any person who has been identified as an expert expected to testify when the expert interrogatory has been responded to by the other party. Unless otherwise ordered by the court, the party seeking to depose the expert shall pay the expert the reasonable

fee for the time spent attending the deposition and the reasonable expenses incurred in attending the deposition. In the absence of agreement between the parties as to the timing of disclosures required under this subdivision, any party may apply to the court for an order establishing a schedule of such interrogatories, responses, and depositions. Obligation to respond to interrogatories shall be stayed until the ruling on the application.

Written reports are not required under this rule. However, to the extent an expert prepares a report that is disclosed, the provisions of subdivision (b)(3) of this rule protect drafts of any such report regardless of the form in which the draft is recorded.

...

(D) These rules protect communications between the party's attorney and any witness designated as an expert under these rules, regardless of the form of the communications, except to the extent that the communications:

- (i) Relate to compensation for the expert's study or testimony;
- (ii) Identify facts or data that the party's attorney provided and that the expert relied on in forming the opinions to be expressed; or
- (iii) Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Super. R. Civ. P. 26(b)(4)(A) is now clear that a party has the right to discover documents and materials “relied upon” by the testifying expert witness. This means that all documentation the expert is basing their opinions on is discoverable. This does not include, however, documents the expert “reviewed” but is not “relying upon.” The Superior Court Bench Bar Committee determined that the “relied upon” language was more consistent with prior Rhode Island Supreme Court case law and the need for attorneys to be able to question their experts without the fear of those questions being discoverable.

The method for obtaining documentation from experts is spelled out in the rule. The rule specifically allows for requests for documents from experts pursuant to: (1) a request for production under Rule 34, (2) a “Schedule A” to a deposition notice under Rule 30, or (3) a subpoena duces tecum under Rule 45. Although this addition would not have likely made a difference in the *Cashman* litigation, it provides consistency for future litigation and discovery.

The new rule states that written reports are not required. The fact that written reports are not required is in contrast to FRCP 26.⁶ The new rule also protects the drafts of any written reports prepared by the experts that are shared with an opposing party. The committee again felt this was consistent with prior Rhode Island Supreme Court case law and also the practice as it existed in Rhode Island state courts.

Finally, Super. R. Civ. P. 26(b)(4)(D) now exists to generally protect communications between attorneys and their experts. This addition gives clarity to attorneys regarding their substantive communications with expert witnesses. This protection encourages open and honest communication between attorneys and experts. It allows parties to consult with their experts without fear that it could potentially harm their case.

Office Space Available in Existing Law Office

Budget-Friendly

Amenities

Class A space
Parking
Receptionist
Conference rooms
Secretarial stations
Equipment and more

Contact Janet J. Goldman, Esq.
51 Jefferson Blvd.
Warwick, RI 02888
401-785-2300



Enright Law advises and represents clients facing employee rights issues including

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

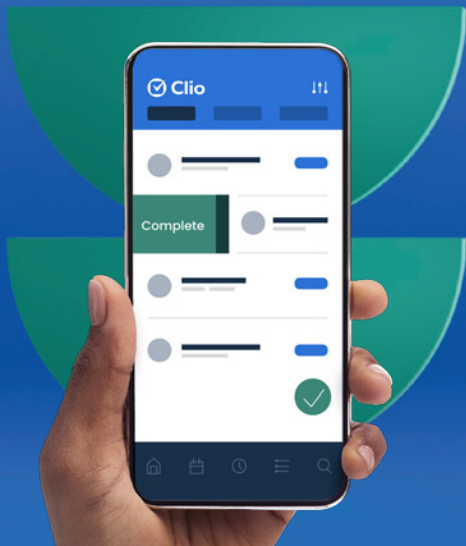
ENFORCING EMPLOYEES' RIGHTS



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



Keep clients
in the loop
automatically.



Claim your 10% RI Bar
discount at clio.com/ribar



SCAN ME

Law Offices Of Michael W. Favicchio

Favilaw.com

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

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

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

There are three exceptions to the protection of communications with experts. First, communications about compensation and fee structures are not protected. The committee found the production of billing records from experts was a routine part of discovery, and it would be unfair to shield that information from an opposing party just because it was in the form of a “communication.”

The second and third exceptions to subsection (D) relate back to the new subsection (A), which states: “A party may, ... require any other party to produce all documents and materials relied upon by a person whom the other party expects to call as an expert witness at trial in formulating that expert’s opinion(s).” The second and third exceptions state that “facts” or “assumptions” given by an attorney are discoverable if the expert relied upon them. An example of a fact or assumption would be if defense counsel in a medical malpractice case were to inform its expert of the position of the defendant doctor not found in any medical records and prior to this information being obtained through deposition. If the expert relies on this information to form their opinions, such information would be discoverable.

Materials relied upon by an expert in forming their opinions are discoverable even if in the format of a communication from an attorney. Practitioners should be mindful of how they are providing materials to experts (mail, email, dropbox) and should be thoughtful of which materials they provide. Under the new rule, some of this information will be discoverable by the other side and can be inquired into at deposition or at trial.

The *Cashman* decision limited the scope of expert discovery for practitioners. The new rule changes to Super R. Civ. P. 26, spearheaded by the Superior Court Bench Bar Committee, ultimately provide more clarity and uniformity to practitioners who use expert witnesses in Rhode Island.

ENDNOTES

1 139 A.3d 379 (R.I. 2016).

2 A cofferdam is “[a] temporary watertight enclosure that is pumped dry to expose the bottom of a body of water so that construction, as of piers, can occur.” *Cashman v. Cardi*, 139 A.3d at n2 (quoting *The American Heritage Dictionary of the English Language* 358 (5th ed. 2011)).

3 *Cashman*, 139 A.3d at 380.

4 139 A.3d 382-83 (emphasis added).

5 *Id.* at 383 (emphasis added).

6 RCP 26(a)(2)(B) states:

(2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony. The report must contain:

- a complete statement of all opinions the witness will express and the basis and reasons for them;
- the facts or data considered by the witness in forming them;
- any exhibits that will be used to summarize or support them;
- the witness’s qualifications, including a list of all publications authored in the previous 10 years;
- a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- a statement of the compensation to be paid for the study and testimony in the case. ◊



President Nicole J. Benjamin, Esq., connected with RI-native and incoming Alaska Bar Association President Jeffrey W. Robinson, son of RI Supreme Court Associate Justice William P. Robinson III, at the NCBP retreat. President Benjamin and President-Elect Robinson both graduated from their respective law schools in 2006, Nicole from Roger Williams University School of Law and Jeffrey from the University of Notre Dame Law School.

President Nicole J. Benjamin, Esq., and President-Elect Christopher S. Gontarz, Esq., attended the National Conference of Bar Presidents (NCBP) retreat in Denver, Colorado, in early August. The conference offered guidance on how bar organizations can enhance their relevance and support the way newer lawyers practice law, how to navigate the future of bar leadership, and key issues bar leaders need to consider about AI and the legal profession going forward.

Your trusted title and closing resource in New England for over 25 years



450 Veterans Memorial Parkway, Suite 7A, East Providence, RI 02914
Phone: 401-274-9100 | Fax: 401-274-9102

Also offers a full service Florida office dedicated to handling your transactions in the Sunshine State



Christopher J. Montalbano, Esq.
Admitted in: RI, MA and FL

Florida Office
650 Celebration Ave, Suite 210
Celebration, FL 34747
Phone: (321) 500-0508
Fax: (321) 939-1098
contactus@pilgrintitle.com
www.pilgrintitle.com



COIA & LEPORE, LTD.
Attorneys at Law

**WORKERS' COMPENSATION
RI & MA**



John F. Cascione, Esquire

226 South Main Street
Providence, RI 02903
401.751.5522
information@coialepore.com

Attorney To Attorney Referrals



YLS

YOUNG LAWYERS SECTION

Proudly Presents

The Northeast Regional Professional Development Conference for Young Lawyers



Join us to network and gain skills to enhance your career and grow your leadership potential with young lawyers from New England, New Jersey, and New York.

Thursday, September 21 to Saturday, September 23

Mohegan Sun, Uncasville, CT

Learn More and Register at ctbar.org/YLSPDConference

Hon. Patricia A. Hurst (Ret.)

NEUTRALITY / ARBITRATION / MEDIATION / PRIVATE TRIALS

Over 40 years of legal, trial court, and appellate mediation experience.

PAH PROFESSIONAL SERVICES LLC
patriciahurst322@gmail.com



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

Mediation



**FAMILY DISPUTES
DIVORCE AND SEPARATION
DOMESTIC MATTERS**

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

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

**“Too Many Law Firm Partners Think,
a hacker is not interested in me”**

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

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

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



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

Rhode Island Women Lawyers: Past, Present, & Future

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



Hon. Linda Rekas Sloan
RI Superior Court Associate Justice

From birth, the Honorable Associate Justice Linda Rekas Sloan has been influenced by the dual cultures of her Taiwanese mother and American father. Born in her mother's native Taiwan and given the name "I-Fan," her name was officially changed to "Linda" when the family moved to the United States. As a Navy kid, Judge Rekas Sloan had rich experiences in her young life, including living on the Hawaii Naval Base, as her father's career took them to various parts of the country. Her family eventually settled in her father's hometown, Coventry, Rhode Island, where she matriculated through the Coventry Public School system.

After high school, Judge Rekas Sloan continued her education at Providence College and Boston University School of Law. During her 1L summer, she interned at the Rhode Island Office of Attorney General through the State Internship Program. Then, after her second year at BU Law, she interned at Olenn & Penza, the firm at which she would spend the first four years of her career. There, she practiced insurance defense, gaining foundational litigation skills by trying cases from the ground up.

Judge Rekas Sloan stresses the importance of networking and how it affected her career moves following her time at Olenn & Penza. In relationship-rich Rhode Island, she emphasized

how crucial it was to develop and maintain professional contacts—an essential skill for young attorneys and a skill that could lead to unexpected opportunities. As a relatively new practitioner, she became involved with the Rhode Island Bar Association's New Lawyers Committee (NLC) by attending meetings, CLEs, and participating in volunteer projects. It was through the NLC that she met the managing partner of Salter McGowan, who helped bring her into the firm, where she went on to develop a creditors' rights and insolvency practice.

As she moved further along in her career, Judge Rekas Sloan recognized that a candidate's personal fit within a company's culture can be more indicative of success rather than his or her substantive knowledge of a certain practice area. After all, a lawyer who has a general aptitude for legal thinking and is willing to work hard can master any practice area with appropriate guidance. However, it is also the intangibles—a person's ability to be a supportive team player and a personable coworker—that can really forecast a successful workplace relationship.

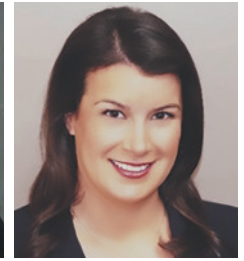
Throughout her insolvency practice, Judge Rekas Sloan and Ted Orson were adversaries on numerous cases; however, he eventually convinced her to join his firm, Orson & Brusini. Once again, another unexpected turn in her career path was presented when she received a call from Christopher Montalbano, where she became an underwriter at Mortgage Guarantee & Title Insurance Company, developing adjacent but distinct skills in the process. As a person who loves taking on challenges and new disciplines, Judge Rekas Sloan took advantage of this next opportunity.

A lifelong learner, Judge Rekas Sloan tackled another area of practice that made her reminiscent of being back in school, where she was constantly exposed to ever-changing topics and ideas. When the title insurance company was bought out, she returned to practice at Salter McGowan, further honing her practice in the insolvency arena.

Judge Rekas Sloan's next major career move came when she thought about setting up her own firm. It was at that moment she faced, once



Jenna Giguere, Esq.



Angela Yingling, Esq.
RI Assistant Public
Defender

again, another unexpected opportunity. She was approached by Fidelity National Title Insurance Group for an exciting underwriting role. However, she was motivated to begin her career as a sole practitioner because she did not want to lose her courtroom experience. Instead of feeling as though she had to choose one opportunity over the other, she negotiated a creative solution that allowed her to have an insolvency practice through her own firm while also working full-time at Fidelity—a combined career that would seem daunting to most but a challenge that she took on with gusto.

Reflecting on her insolvency cases, Judge Rekas Sloan noted that there were very few women who regularly practiced in that area when she was an up-and-coming attorney; indeed, only about three easily came to mind, including the now-Honorable Diane Finkle of the United States Bankruptcy Court. Although a few more women have joined the field in recent years, it remains an extremely male-dominated area of the law. Judge Rekas Sloan recognized that many of the judges on the business calendar were aware of this discrepancy and made concerted efforts to encourage women to join the receivership panel and appoint them to cases. She recalled with gratitude that Judges Silverstein, Stern, and Licht all made sure that she was given the same opportunities as the male attorneys on the list. Judge Rekas Sloan greatly enjoyed receivership work, applying her knowledge of the Uniform Commercial Code and secured transactions to her cases, and found it particularly satisfying when she could implement creative solutions to complex financial problems. She also praised the implementation of the business calendars, which provided a flexible, business-friendly forum for Rhode Island.

In addition to her busy legal and underwriting practice, Judge Rekas Sloan also served on the West Greenwich Town Council and is an active member of the local chapter of the Rotary Club. These experiences left her yearning for an even greater role in public service. So, she decided to give it a try and submitted her name for a judgeship position. Judge Rekas Sloan recalled the details of her nomination process, which

Office Space Available in Existing Law Office

Budget-Friendly

Amenities

Class A space
Parking
Receptionist
Conference rooms
Secretarial stations
Equipment and more

Contact Janet J. Goldman, Esq.
51 Jefferson Blvd.
Warwick, RI 02888
401-785-2300

ARE YOU

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

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

Telephone: 401-222-8723

Email: EAP@courts.ri.gov

PELLCORP INVESTIGATIVE GROUP, LLC

Your
One
Call

Private Investigations

Edward F. Pelletier III, CEO

(401) 965-9745

pellcorpinvestigativegroup.com

Rhode Island's *Trusted* Legal Team



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

PERSONAL INJURY • MEDICAL MALPRACTICE • MOTOR VEHICLE ACCIDENTS

MN MARASCO &
LAW OFFICES NESSELBUSH LLP

401.274.7400 | M-N-Law.com

PROVIDENCE | WAKEFIELD | WARWICK | WOONSOCKET

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

took place during the height of the COVID-19 pandemic. After a significant amount of time had elapsed since she filed her application, she had essentially given up on the idea. So, when she received the call from Governor Gina Raimondo appointing her to the bench on the Rhode Island Superior Court, she was completely shocked. That moment is forever imprinted in her memory; she even remembers that she was watching an episode of *The Voice* when she received the life-changing call.

Due to the pandemic, Judge Rekas Sloan's swearing-in ceremony included a limited number of people in the Presiding Justice Gibney's courtroom, but it was nonetheless a momentous occasion. While every ceremony is special, Judge Rekas Sloan's elevation to the bench was significant for an additional reason as well: she is the first Asian-American attorney to sit on the Rhode Island Superior Court.

It is now two and a half years later, and Judge Rekas Sloan has served on a flurry of calendars: the Providence Formal & Special Cause Calendar, the Providence Daily Criminal Calendar, the Providence Dispositive Motion Calendar, and the Costs, Fines, and Restitution Calendar. Most recently, she has been sitting in Courtroom 4E in Kent County, presiding over the Daily Criminal Calendar.

To this day, she still remembers the butterflies in her stomach on her first day taking the bench after training with Judge Montalbano and is still grateful to him for whispering helpful hints to her on her first day. Certainly, assuming a judgeship requires an immense amount of learning, even for a seasoned litigator. One must become familiar with new areas of the law, embrace foreign-seeming courtroom procedures, and learn a whole different "lingo." As is her wont, Judge Rekas Sloan approaches the bench with humility; practitioners appreciate that she is not afraid to say she doesn't have an immediate answer or needs more time to get up to speed on a matter. According to several attorneys who practice before her now, the judge's lifelong love of learning, as well as her kindness and understanding, make her particularly well-equipped to handle the challenges of the bench.

Reflecting on diversity, equity, and inclusion, Judge Rekas Sloan praised Krystle Tadesse and the Judicial Nominating Commission for making more direct efforts to get diverse applicants for judgeships, such as reaching out to affinity bar associations. She also highlighted her efforts during her term as President of the Bar Association, including the recommendation that the Task Force on Diversity and Inclusion made to RIBA leadership about implementing a DEI CLE requirement, which will be mandatory in the next reporting year. Judge Rekas Sloan reflects and acknowledges that DEI work is hard and uncomfortable; however, she has seen how progress can be made, often by opening minds incrementally; she especially values one-on-one conversations.

Judge Rekas Sloan was open about experiencing "imposter syndrome" during both her practice and her time on the bench, something that these authors found both reassuring and inspiring. Navigating the challenges of imposter syndrome, which affects all genders but is often felt by those who identify as female, is far from a unique experience. However, it is helpful to hear others' stories and battles and to discuss ways of combating the issue. To this day, Judge Rekas Sloan still experiences times when she feels like an outsider, pinching herself to make sure her judgeship is actually real. She suggested that talking about imposter syndrome regularly—as opposed to avoiding the topic or pretending that it doesn't exist—may be one of the best ways to chip away at those defeating thoughts. Judge Rekas Sloan has benefited from people who have given her sage advice over the years and feels a corresponding desire to "pay it forward." As she recognizes, it is especially important to share advice and knowledge with young lawyers and lawyers from diverse backgrounds. The best—and occasionally worst (but mostly best!)—thing about Rhode Island is its small size, so Judge Rekas Sloan encourages us all to get to know each other better as a legal community, advice that can be taken to heart by both newer attorneys and seasoned practitioners alike. ♦

IOLTA Honor Roll Banks

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



SOCIAL SECURITY DISABILITY

Mariam Alexanian Lavoie, Esq.



*Partnering with clients
for over 30 years.*



*Attorney to Attorney
Consultations/Referrals.*

300 Centerville Road
Summit West, Suite 300
Warwick, RI 02886

t: 401.825.7900
f: 401.825.7920
mariam@mlavoielaw.com



RIBA Public Services Director Susan Fontaine (R) and Public Services Senior Coordinator Elisa King (L) attended the Jamestown Senior Center Aging in Place Resource Fair on June 21, 2023, at Fort Getty, Jamestown. Over 200 seniors participated, and staff distributed information about our Legal Information & Referral Service for the Elderly.

RIBA was invited to this event in response to the Public Services Department's Older Americans' Month flyer that was sent out in the spring. The Public Services department received 13 requests from senior organizations in addition to the resource fair, including requests for legal clinics and Ask A Lawyer programs. The department also sponsored two in-house legal clinics in August as part of our summer community outreach.

MARK A. PFEIFFER

Alternative Dispute Resolution Services
www.mapfeiffer.com

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



ARBITRATION MEDIATION PRIVATE TRIAL

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

IMMIGRATION LAW

JAMES A. BRIDEN

(401) 323-8641

Member of the
 American Immigration Lawyers Association

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

Business Valuation Services

Thoughtful & Credible Assessments of Value



BVS

BARRETT VALUATION SERVICES, INC.

The Business Valuation Advisors

BUSINESS VALUATIONS FOR

Estate and Gift Planning

Federal Estate Tax Reporting

Marital Dissolution

Shareholder Disputes

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

989 Reservoir Avenue, Cranston, RI 02910

Tel: (401) 942-3900

Email: jbarrettval@hotmail.com

Visit our website resource page at

www.barrettvaluation.com

HONOR ROLL

Volunteers Serving Rhode Islanders' Legal Needs

The Rhode Island Bar Association applauds the following attorneys for their outstanding pro bono service through the Bar's Volunteer Lawyer Program, Elderly Pro Bono Program, Legal Clinics, and interpreting services during June 2023 and July 2023.

JUNE 2023

Volunteer Lawyer Program

Michael A. Castner, Esq., *Jamestown*
Joanne C. D'Ambra, Esq., *Cranston*
Barry L. Dolinger, Esq., *Providence*
Patrick F. Dowling, Jr. Esq., *North Smithfield*
Dadriana A. Lepore, Esq., *Coia & Lepore, Ltd.*
Stephen G. Linder, Esq., *Law Office of Stephen G. Linder*
Amy Manfred, Esq., *Attorney at Law*
Paul B. McCarthy, Esq., *East Providence*
Laurie A. Meier, Esq., *Providence*
Adam G. Northup, Esq., *Law Office of Adam G. Northup*
Russell D. Raskin, Esq., *Raskin & Berman*
Frank A. Ribezzo Jr., Esq., *Law Office of Devane, Fogarty & Ribezzo*
John S. Simonian, Esq., *Pawtucket*
Jolee E. Vacchi, Esq., *Whitinsville*

Elderly Pro Bono Program

Timothy J. Chapman, Esq., *East Providence*
Richard K. Foster, Esq., *Coventry*
Susan Gershkoff, Esq., *Susan Gershkoff, Esq., Ltd.*
Lise M. Iwon, Esq., *Laurence & Iwon*
Richard J.A. Pacia, Esq., *Pawtucket*
Kathleen Collins Peterson, Esq., *Providence*
Elizabeth Silberman Phillips, Esq.,
Hackman and Phillips Elder Law RI LLC
Thomas P. Quinn, Esq., *McLaughlinQuinn LLC*
Peter J. Rotelli, Esq., *East Providence*
John S. Simonian, Esq., *Pawtucket*
Joseph D. Tudino, Esq., *Dominic Tudino, Esq. Inc.*

Legal Clinics

William W. Harvey, Esq., *Moore, Virgadamo & Lynch, Ltd.*
Peter M. Iascone, Esq., *Peter M. Iascone & Associates, LTD.*
Samantha McCarthy, Esq., *McCarthy Law, LLC*
Janne Reisch, Esq., *Janne Reisch, Attorney at Law*
Daphne B. Robson, Esq., *McCarthy Law, LLC*

JULY 2023

Volunteer Lawyer Program

Whitney R. Anderson, Esq., *Updegrove Law, Ltd.*
Robert J. Burke, Esq., *Central Falls*
Jodie A. Caruolo, Esq., *Cumberland*
Michael A. Castner, Esq., *Jamestown*
Edward J. Gomes, Esq., *Law Office of Edward J. Gomes*
Thomas L. Mirza, Esq., *Attorney at Law*
R. Andrew Pelletier, Esq., *Pelletier Law Group*
Elizabeth Silberman Phillips, Esq.,
Hackman and Phillips Elder Law RI LLC
Joseph M. Proietta, Esq., *Law Office of Joseph M. Proietta*
Ellen M. Saideman, Esq., *Barrington*
Jill M. Santiago, Esq., *Attorney at Law*

Elderly Pro Bono Program

Whitney R. Anderson, Esq., *Updegrove Law, Ltd.*
Michael A. Castner, Esq., *Jamestown*
Ashley Fallon Gnann Hirsch, Esq., *East Greenwich*
Christopher M. Lefebvre, Esq.,
Consumer & Family Law Center of Claude F. Lefebvre
Samantha McCarthy, Esq., *McCarthy Law, LLC*
Dawn F. Oliveri, Esq., *Providence*
John S. Simonian, Esq., *Pawtucket*
Suzannah Skolnik, Esq., *City of Providence Solicitor's Office*

Legal Clinics

Marcia J. Boyd, Esq., *Sayer Regan & Thayer, LLP*
Daphne B. Robson, Esq., *McCarthy Law, LLC*

Interpreter Services

Maria Valdez, *One Voice Interpreting & Translation Services*

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

PRO BONO PUBLICO RESOLUTION

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

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

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

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

YOUR
CONNECTICUT
CONNECTION



Gregory F. Massad † Jason R. Burdick *† Alan R. Messier *† Adam D. Ferrare *

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



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

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

PRACTICE AREAS

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

www.MessierMassad.com



*A local connection for your
Florida Real Estate needs*

Attorney Owned and Operated Since 2004



Anthony M. Gallone, Jr., Esq.



Timothy H. Olenn, Esq.

Ph: 561-912-0922

olenn@AlliantFL.com

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



Injured at Work?

Accepting referrals for matters of

Workers' Compensation

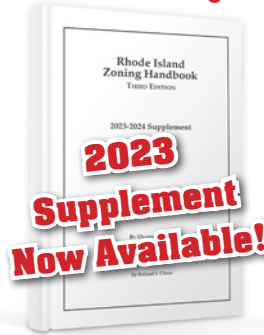
Call Stephen J. Dennis Today!

1-888-634-1543

or 1-401-453-1355

RI Zoning Handbook, 3rd Ed.

The essential guide to state and federal zoning law.



The annual supplement includes cumulative updates, recent RI Supreme Court zoning decisions, and 2022 changes to zoning statutes.

Roland F. Chase, Esq.
Dianne L. Izzo, Esq.
(c) Lawyers Weekly, Inc.

Purchase from Lawyers Weekly Books:
<http://books.lawyersweekly.com>
or email Susan Bocamazo at
sbocamazo@lawyersweekly.com

RICHARD S.
HUMPHREY
LAW OFFICES

Richard S. Humphrey – Christina Dzierzek

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

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

**ADR COMMERCIAL LAW
MEDIATIONS, ARBITRATIONS
AND FACT FINDINGS**

William J. Delaney

Cohn & Dussi, LLC

536 Atwells Avenue
Providence, RI 02909

401-632-8987

wdelaney@cohnanddussi.com

RHODE ISLAND BAR ASSOCIATION 2023 LEGISLATIVE REPORT

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

During the 2023 Legislative session, over 2,600 bills were introduced and reviewed by RIBA's legislative counsel, of which approximately 225 were deemed to impact the practice of law and were forwarded to the relevant RIBA committees.

As has been the case for the past two years, the RI Bar Association did not introduce any legislation. As more clarity develops regarding the participation of mandatory Bar Associations in legislative affairs, the House of Delegates may reassess its current moratorium on initiating legislation that is determined to be germane to the practice of law.

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

REAL ESTATE. Speaker Shekarchi was successful in the adoption of several bills aimed at the affordable housing issue and Land Use Planning. Additionally, bills establishing an expedited Land Use calendar in the Superior Court Chapter 306 (H 6060 SUB A (S 1053)), increasing the amount a tenant can deduct from rent for repairs Chapter 286 (H 5108 SUB A (S 1099)), increasing the penalty for failure to comply with seller disclosure statement Chapter 071 (H 5366 (S 33)), making permanent the foreclosure mediation requirement by eliminating the sunset provision which currently exists Chapter 075 (H 5761 Aaa (S 163)), and including the recovery of attorney fees along with increased penalties in lead hazard violations cases Chapter 084 (S 739 (H 6201)), were all ultimately enacted into law.

FAMILY COURT. The streamlining of the adoption process in cases where a child is born through assisted reproduction Chapter 091 (H 5226 SUB A (S 121)); the prohibition of abusive litigation in domestic violence, sexual assault, or stalking cases Chapter 171 (H 5883 SUB A

(S 604)); and the transferring of Jurisdiction in child endangerment matters to the Superior Court Chapter 067 (H 5897 (S 907)); were all adopted in the 2023 session.

LITIGATION. Numerous bills involving electronic transmission of Settlements Chapter 150 (S 1098 (H 5438)); expanding the immunity of school officials to include "employees" who are directly involved in working with students Chapter 262 (H 5564 Aaa (S 381)); granting protection of confidential information provided to court appointed translators Chapter 065 (H 5906 (S 893)); and, finally, to increase the cap on wrongful death actions from \$250,000 to \$350,000 Chapter 196 (H 5513 SUB A (S 1056)); are a few of the important bills that were adopted this past session.

CRIMINAL. The shortening of time for sealing of District Court records once the criminal matter has been dismissed was adopted Chapter 154 (S 906 SUB A (H 5913)). A bail deposit can now be applied to Court-ordered restitution Chapter 266 (H 5685 aa (S 653)); and, going forward, individuals convicted of a felony but who are not currently serving a sentence of confinement are eligible to serve as jurors Chapter 367 (H 5569 (S 812)).

MISCELLANEOUS. Commencing on 12/31/2023 for taxes payable in the calendar year 2024, a tax exemption of fifty thousand dollars (\$50,000) relating to the assessment of municipal tangible property will be effective.

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

CLE Publications Order Form

The CLE Department has embraced a paperless approach.

Going forward, all CLE publications will be emailed as PDF files, ensuring convenience and easy access for members.

Title	Book #	Price	Total
Business			
NEW – Doing the Deal Right: Navigating Insolvency Issues when Buying or Selling a Practice	23-17	\$35	
NEW – Commercial Law 2023	23-16	\$60	
Collections – Start to Finish	23-03	\$40	
Family			
NEW – Division of Retirement Assets in Divorce	23-19	\$45	
NEW – Analyzing Self-Employment Income for Alimony & Child Support Purposes	23-18	\$50	
Divorce Law for Estate Planners	18-17	\$35	
Law Practice Management			
NEW – What “Will” You Do with Your Law Firm? Succession Planning Best Practices	23-20	\$60	
Preventing & Avoiding Wiring Funds to a Hacker	18-02	\$50	
Practical Skills			
Planning & Administering an Estate 2022	22-01	\$80	
Criminal Law Practice in RI	19-09	\$75	
Civil Law Practice in RI Superior Court	18-04	\$60	
Workers’ Comp Practice in RI	18-01	\$70	
Residential Real Estate Closings in RI	17-02	\$90	
Domestic Relations Practice	16-07	\$85	
Basic Commercial & Real Estate Loan Documentation	12-02	\$65	
Civil Practice in District Court	12-01	\$40	
Probate/Estate Planning/Elder Law			
NEW – Helping Clients & Their Families Navigate Long-Term Care Eligibility	23-23	\$40	
NEW – Supported Decision Making: What It Is & Why We Need It	23-22	\$40	
NEW – Death & Taxes: Understanding the RI Estate Tax & Mechanics of Estate Tax Returns	23-21	\$50	
NEW – RI Tax Updates & Reminders	23-06	\$40	
Preparation of Gift Tax	23-01	\$60	
Guardianship Practice: The Essentials	22-03	\$50	
Real Estate			
NEW – Recent Developments in Land Use Law	23-24	\$40	
UPDATED: RI Title Standards Handbook	TS-23	\$60	
NEW – Evictions in a Post-Pandemic World Handbook	23-09	\$15	
Civil Litigation/Trial Practice			
NEW – Increase Your Chances of Success in Arbitration & Mediation Handbook	23-30	\$20	
NEW – Public Protection Bureau: Public Law for the People of RI	23-27	\$45	
NEW – Inside View of the RI Supreme Court	23-26	\$35	
NEW – Civil Motion Practice in the Superior Court: Dos and Don’ts	23-25	\$40	
NEW – Social Media Use & Other Complex Jury Issues	23-12	\$50	
NEW – Preparing Your Case for Trial	23-10	\$40	
NEW – 2023 DUI Law & Hardship Licenses	23-04	\$50	

Column 1 Sub-Total \$ _____

Title	Book #	Price	Total
Miscellaneous			
NEW – Seeking Justice for Survivors of Sexual Violence in RI’s Legal System	23-29	\$40	
NEW – Medical Malpractice in Rhode Island	23-11	\$55	
NEW – RI Supreme Court Access to Justice	23-05	\$50	
Recent Developments in the Law 2022	RD-22	\$70	
SSI/SSDI Claims & the Federal Court	22-02	\$40	
Safe Zone Training: Competently and Ethically Communicating with LGBTQ+ Clients	19-02	\$20	

Column 1 + 2 Sub-Total \$ _____

7% R.I. Sales Tax \$ _____

Total \$ _____

NAME _____

FIRM or AGENCY _____

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

CITY & STATE _____

ZIP _____ PHONE _____

EMAIL ADDRESS (**REQUIRED**) _____

BAR ID # _____

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

Card No. _____

Exp. Date _____ Security Code _____

Signature _____

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

or email to: cle@ribar.com

Our publications page has been updated! For a full list of available publications, visit our website at ribar.com

OFFICE USE ONLY

Check No. _____ Date Rec'd _____

Amount _____ Date Sent _____

RI Bar Association Continuing Legal Education Seminars

Register online at the Bar's website ribar.com and click on CONTINUING LEGAL EDUCATION on the left-side menu or call 401-421-5740.

All dates and times are subject to change.

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

September 8 **Trauma-Informed Lawyering: Recognize the Role Trauma Plays in the Lawyer-Client Relationship**
Friday
12:30 – 2:30 pm, 2.0 ethics
LIVE WEBINAR ONLY

September 12 **Target Practice: How to Avoid Scams and Prevent Risky Behavior in Your Law Practice**
Tuesday
1:00 – 2:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

September 13 **Food for Thought – A National & Local Perspective on Opioid Litigation**
Wednesday
12:30 – 2:00 pm, 1.5 credits
In-person at the RI Law Center, Cranston (includes lunch)
Also available as a LIVE WEBINAR!

September 19 **Attorneys Are Not Accomplices: How to Avoid Crossing the Line from Counselor to Co-Conspirator**
Tuesday
1:00 – 2:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

September 22 **Legal Compliance for Animal-Based Research**
Friday
12:30 – 2:00 pm, 1.5 credits
LIVE WEBINAR ONLY

September 27 **You're a Lawyer, Not a Fighter**
Wednesday
1:00 – 2:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

September 29 **Recreational Marijuana – What's Next?**
Friday
12:30 – 2:00 pm, 1.0 credit + 0.5 ethics
LIVE WEBINAR ONLY

October 13 **Understanding the PACT Act and Its Implications for Representing Veteran Clients**
Friday
12:30 – 2:00 pm, 1.5 credits
LIVE WEBINAR ONLY

October 17 **Launching Pad: How to Start a Law Firm**
Tuesday
12:00 – 1:00 pm, 1.0 credit
LIVE WEBINAR ONLY

October 19 **Effective Representation & Communication with Domestic Violence Survivors**
Thursday
2:00 – 5:00 pm, 2.5 credits + .5 ethics
In-person at the RI Law Center, Cranston
Also available as a LIVE WEBINAR!

October 20 **Food for Thought – Practice Pointers for Retaining Expert Witnesses in Civil Cases**
Friday
12:30 – 2:00 pm, 1.0 credit + 0.5 ethics
In-person at the RI Law Center, Cranston (includes lunch)
Also available as a LIVE WEBINAR!

October 27 **Food for Thought – Rhode Island State Court E-Filing Current Developments & Future Plans**
Friday
12:00 – 1:30 pm, 1.0 credit + 0.5 ethics
In-person at the RI Law Center, Cranston (includes lunch)
Also available as a LIVE WEBINAR!

October 31 **Can you DIG It? Navigating Dual-Purpose Attorney-Client Communications Post U.S. Supreme Court's DIG Order**
Tuesday
12:30 – 2:00 pm, 0.5 credit + 1.0 ethics
In-person at the RI Law Center, Cranston (includes lunch)
Also available as a LIVE WEBINAR!

November 1 **Neurodiversity in the Practice of Law**
Wednesday
12:30 – 1:30 pm, 1.0 ethics
LIVE WEBINAR ONLY

November 3 **Navigating Responsibility: Understanding Liability as a Social Host**
Friday
12:30 – 1:30 pm, 1.0 credit
In-person at the RI Law Center, Cranston (includes lunch)
Also available as a LIVE WEBINAR!

November 8 **Workers' Compensation: A Practical Skills Seminar**
Wednesday
9:00 am – 2:30 pm, 4.0 credits + 1.0 ethics
In-person at the RI Law Center, Cranston (includes breakfast & lunch)
Also available as a LIVE WEBINAR!

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

Reminder: Bar members may complete six credits through participation in video replay or on demand CLE seminars. To register for an online seminar, go to the Bar's website: ribar.com and click on CONTINUING LEGAL EDUCATION on the left side menu. CLE telephone: 401-421-5740.

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

YOU'RE IN LUCK.

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

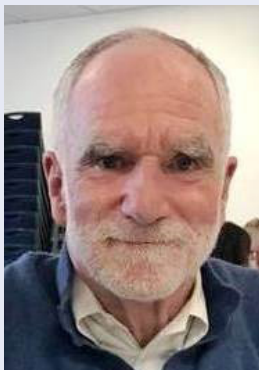


CALL: (617) 398-7181
EMAIL: JARED@REDCAVELEGAL.COM

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

Keep Your Directory Listing Up to Date

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



Arbitrator
■
Investigator
■
Mediator

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

Thanks to Our CLE Speakers

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



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

John A. Comery, Esq.
Fidelity National Financial Family of Companies

Mark Comstock, Esq.
Fidelity National Financial Family of Companies

Kerry Reilley Travers, Esq.
Chief Disciplinary Counsel

Notice of Availability of Attorney David Dumas' Files and Wills

In 2019, I was appointed by the Rhode Island Supreme Court as substitute counsel for Attorney David Dumas, who died in November 2018, leaving no partners or others to take over his practice.

Files that he was working on at the time of his death have largely been resolved, but there remain some original wills that he created that have not been retrieved. Many of such wills may very well have been superseded and nullified by later-created wills. Nonetheless, if you are contacted by someone about a file worked on by Attorney Dumas or a will that was created by him, feel free to contact me:

Matthew J. McGowan, Esquire
Salter McGowan Sylvia & Leonard, Inc.
56 Exchange Terrace, Suite 500
Providence, RI 02903
(401) 274-0300
mmcgowan@smsllaw.com

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

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

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

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

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

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

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

Brian Adae, Esq.	(401) 831-3150
Donna Maria Arciero, Esq.	(561) 441-1679
James G. Atchison, Esq.	(401) 453-1200
Neville J. Bedford, Esq.	(401) 348-6723
Susan Leach DeBlasio, Esq.	(401) 274-7200
Sonja L. Deyoe, Esq.	(401) 864-5877
Kathleen G. Di Muro, Esq.	(401) 944-3110
Mary Cavanagh Dunn, Esq.	(401) 831-8900
Christy B. Durant, Esq.	(401) 272-5300

Cassandra L. Feeney, Esq.	(401) 455-3800
Brian D. Fogarty, Esq.	(401) 821-9945
Merrill J. Friedemann, Esq.	(401) 270-0070
John K. Fulweiler Jr., Esq.	(401) 667-0977
Daniel Jon Holmander, Esq.	(401) 274-7200
Adrianna Hughes, Esq.	(401) 490-3954
Nicholas Trott Long, Esq. (Chairperson)	(401) 351-5070
Patricia A. McLaughlin, Esq.	(401) 996-6618

Henry S. Monti, Esq.	(401) 467-2300
Sarah F. O'Toole, Esq.	(401) 385-3877
Kristin Barkett Pettey, Esq.	(401) 278-2291
Erica S. Pistorino, Esq.	(401) 324-9786
Christopher J. Yagoobian, Esq.	(401) 274-7200
Professionals at CorpCare	(866) 482-8378

Lawyers Helping Lawyers Committee Members Protect Your Privacy

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

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

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

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

SOLACE Helping Bar Members in Times of Need

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

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

Fastcase Tip

Search Within

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

Step One: Run a desired search with chosen filters.

Step Two: On the results page, add any keyword(s) or phrase(s) you desire to search for within your current results set to the immediate right of the initial query in the search bar at the top of the results page.

Step Three: Press Enter.

Step Four: Results set will automatically repopulate with the additional keyword(s) or phrase(s) you desired to search for within the results set of the initial query.

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

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



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



In Memoriam

Dana DeLuca Shechtman, Esq.

Dana DeLuca Shechtman, 70, died on July 19, 2023. Dana was born in Providence. She earned a Bachelor of Arts in Biology from Skidmore College and a law degree from the New England School of Law. Dana purchased Barrington Books in 2008. Dana is survived by her children, Sarah Shechtman and Emma Shechtman, as well as her stepson, Jason Shechtman, and her former husband, Stephen Shechtman. She is also survived by her sister, Debra DeLuca, and brother, Jay DeLuca.

Richard C. Panciera, Esq.

Richard Panciera, 76, of Westerly, died on Tuesday, July 4, 2023. Born in Westerly, he was the son of the late Louis and Grace Panciera. Richard was the husband of Joyce (Cox) Panciera. He was a Lt. Col. in the U.S. Army who had served as a J.A.G. Officer. Richard was a graduate of Cheshire Academy, then the University of Texas, after graduating, he went to the University of Arizona Law School where he earned his J.D. Richard was a member of the NACBA, the RI Bar Association, as well as the New York, Arizona, and Connecticut Bar Associations. He volunteered his time for the Hope Valley Fire District. He was a member of the Board of Directors for the Chamber of Commerce and a Board Member for the Westerly Land Trust. In addition to his wife Joyce, Richard is survived by Jeffrey (Erin) Caster, Gary Caster, Jamie (Laura) Caster, and six grandchildren.

Thomas M. Petronio, Jr., Esq.

Thomas M. Petronio, Jr., 74, died on Tuesday, August 1, 2023. He was the husband of Elaine (Feriole) Petronio. Born in Providence, he was a son of the late Thomas M. and Leonilda (Cortellessa) Petronio. Tom was the owner of Thomas Petronio Law Firm and practiced as an attorney for 43 years before retiring in 2018. He was a Greenville resident for over 20 years before moving to The Villages in Florida in 2018. He was licensed to practice law in RI, MA, and FL. Tom was a member of the Knights of Columbus, the Patriots Club in FL, and the Shakespeare Club. In addition to his wife Elaine, Tom is survived by his daughter, Alicia Petronio of Cranston; stepson, Charles M. Pinto of North Providence; and stepdaughter, Angelina L. McKiernan and her husband Kevin of South Kingstown; his granddaughter; and many nieces and nephews. He was predeceased by his brothers, Dr. Domenico Petronio and Everett Petronio, Esq.

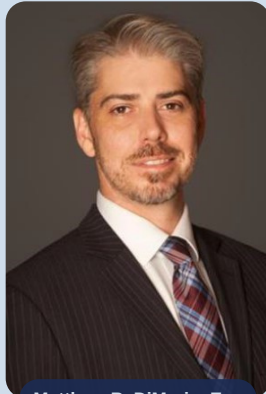
INTRODUCING THE 2023-2024 LEADERSHIP ACADEMY CLASS



Andrew G. Blais, Esq.



Hannah Vitello Colone, Esq.



Matthew B. DiMario, Esq.



Philip W. Gasbarro, Esq.



Daphne Hamilton, Esq.



Christopher Henry, Esq.



Damaris Hernandez, Esq.



Zachary K. Lyons, Esq.



Daniel W. Majcher, Esq.



Daniel J. Marran, Esq.



Adam G. Northup, Esq.



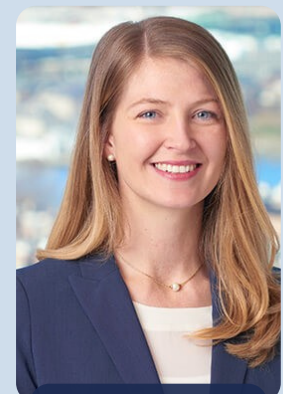
Dana N. Paulhus, Esq.



David M. Revens, Esq.



Tamera N. Rocha, Esq.

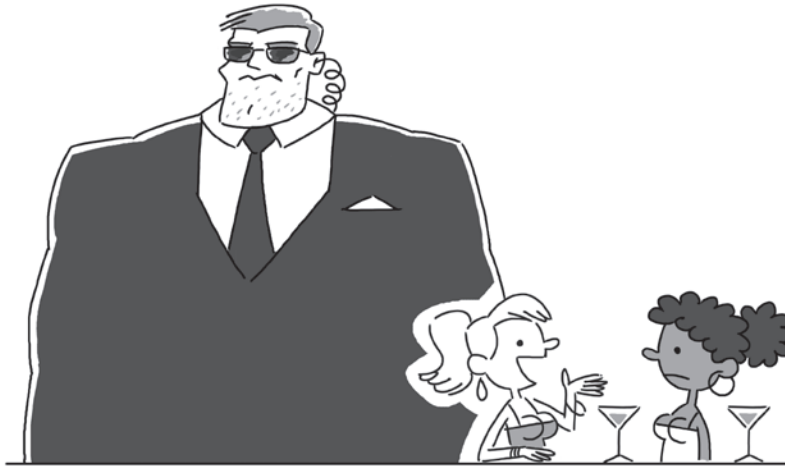


Katherine Savage, Esq.

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

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, 2023.

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

Winning caption for July/August



"I get the house because my
divorce lawyer is better than yours."

SCOTT A. RITCH, ESQ.

Advertiser Index

Alliant Title and Escrow – Florida	26
Arbitrator – Nicholas Trott Long	30
Barrett Valuation Services, Inc.	24
Briden, James – Immigration Law	24
Clio – Legal Practice Management Software	18
Coia & Lepore, Ltd. – John Cascione	19
Coia & Lepore, Ltd. – Mediation	20
Cohn & Dussi, LLC	26
Connecticut Bar Association – Northeast Regional Professional Development Conference for Young Lawyers	20
Connecticut Lawyers – Messier, Massad, Burdick & Assoc. LLC	16,26
Dennis, Stephen – Workers' Compensation	26
Enright Law LLC	17
Goldman, Janet – Office Space for Rent	17,22
Humphrey, Richard – Law Offices	26
Lavoie Law LLC	23
Law Offices of Michael W. Favicchio	18
LawPay	Back Cover
Leone Law, LLC – Anthony R. Leone II	13
Marasco & Nesselbush – Personal Injury Law Firm	22
Mignanelli & Associates, LTD. – Estate Litigation	10
Morowitz, David – Law Firm	14
Norcom Mortgage	11
PAH Professional Services LLC	20
Palumbo, Richard – Condominium Law	10
Palumbo, Richard – Property Damage & Insurance	8
PellCorp Investigative Group, LLC	22
Pfieffer, Mark – Alternate Dispute Resolution	24
Pilgrim Title & Closing Services, LLC	19
Red Cave Legal Consulting	30
Salter McGowan Sylvia & Leonard, Inc.	30
Secure Future Tech Solutions	20
Slip & Fall – Henry S. Monti	13
Soss, Marc – Florida Estates/Probate/ Documents	16
Withum – Forensic & Valuation Services	9
Workers' Compensation – Revens, Revens, & St. Pierre	13
Zoning Handbook, 3rd Edition – Roland Chase	26

Lawyer on the Move

Stephanie DiSarro-Anderson, Esq., has moved her office, **DiSarro Anderson Law, LLC** to 653 Atwood Avenue, Cranston, RI 02920.
401-383-3064 sanderson@darlaw.net darlaw.net

RIBA DEI Committee Call to Action!

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

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

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

Recognizing Grief

grief noun

\ 'grɛf \

Definition of *grief*

- 1 a : deep and poignant distress caused by or as if by bereavement
// his *grief* over his son's death
- b : a cause of such suffering
// life's joys and *griefs*

source: Google

"Acknowledgment and discussion of loss and identifying the feelings associated with that loss helps people function with fewer mental health issues (Wagner, 2022)."

Wagner, M., PhD (2022, June 13). Recognizing the Many Faces of Grief in the Workplace. Spring Health. <https://www.springhealth.com/blog/recognizing-grief-at-work/>

Grief is a natural response to loss and can show itself in many ways, including emotional, mental, and physical changes. It is important to recognize that grief is a unique experience for everyone, and there is no "right" way to grieve; there is also no timeline. Grief can be experienced not only when someone dies, but also when a relationship ends, a job is lost, or a significant change occurs. Losses of all kinds can have a significant impact on our hearts, minds, and bodies. By raising awareness about the impact of grief, we can create a more compassionate and supportive world for those who are experiencing loss.

Grief Awareness Day

Grief Awareness Day is observed on August 30th to raise awareness about the impact of grief on individuals and communities. This day provides an opportunity to acknowledge the pain and suffering that comes with loss, as well as the importance of providing support and understanding to those who are grieving. The acknowledgment of this day is meaningful for both griever and those who support them. There are several ways to get involved this year-- think about what you can do to help.

What You Can Do

Raise Awareness: Encourage participation by telling your coworkers, friends, family, and social media followers about Grief Awareness Day.

Reach Out: Connect with those you know who have suffered a significant loss. Bring a meal by their house or call and talk with them about their loss. Let them know they are not forgotten.

Share Your Story: If you are grieving a loss, tell someone. Share your experience. Shine a light on your loved one by talking about them and the impact they made on you, others, and the community.



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

866.482.8378

CARING • SUPPORTIVE • CONFIDENTIAL

Lawyers Helping Lawyers

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

LAWPAY[®]

AN AFFINIPAY SOLUTION

+ US Armed Forces Legal Services Project



Member
Benefit
Provider

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

– Law Firm in Ohio

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



22% increase in cash flow with online payments



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



62% of bills sent online are paid in 24 hours

**PAYMENT
RECEIVED**



YOUR FIRM LOGO HERE

Trust Payment
IOLTA Deposit

New Case Reference

**** * 9995 ***

TOTAL: \$1,500.00

VISA



AM
EX



POWERED BY
LAWPAY

eCheck

DISCOVER

PAY ATTORNEY

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

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

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