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VERMONT BAR JOURNAL

239

Fall 2024, Volume 50, No. 3

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VBA Annual Report

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DEPARTMENTS

PRESIDENT'S COLUMN

- 5 — Meet VBA's Board President, Joshua "Josh" Diamond
Interview by Kim S. Velk, Esq.

PURSUIITS OF HAPPINESS

- 8 — Philip Zalinger — Lawyer, Sports Official
Interview by Kim S. Velk, Esq.

WHAT'S NEW

- 14 — VBA Annual Report 2023-2024
Bob Paolini, Esq.
18 — Section Chair Reports
23 — Vermont Notary Continuing Education Program Set for Fall
24 — VBA Upgrade to "vLex Fastcase" Launches on Nov. 5
T.J. Diggins

BE WELL

- 26 — Debt Relief Options to Improve Attorney Financial Wellbeing
Julia Guerrein, Esq.

42 — IN MEMORIAM

41 — CLASSIFIEDS

FEATURES

- 28 — The Expansive Scope of Animal Law
Laura Fox, Esq.
32 — Vermont Attorney's Guide to the Consumer Assistance Program
Kim Velk Esq.
35 — To Expert or Not to Expert
Anthony Roisman, Esq.
37 — Help for Attorneys Who Need Help to Communicate with Challenged Clients
Jen Le Scouezec
38 — Evolving Compensation for Emotional Distress: The Role of Science in Legal Settlements
Gleb Tsipursky, Ph.D.
40 — Why It's Imperative to Maintain a Strong Cybersecurity Posture Even Though It's a Pain
Mark Basingthwaite, Esq.
41 — AI and Cybersecurity: Now Inseparable
Sharon D. Nelson, Esq., John W. Simek, and Michael C. Maschke



Detail from A Couple of Foxhounds with a Terrier, the property of Lord Henry Bentinck by William Barraud ca. 1845, Oil on canvas, Yale Center for British Art, Paul Mellon Collection

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Crossword Puzzle
by Kevin Lumpkin, Esq.
on page 29!

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ADVERTISERS INDEX

ALPS	13
Berman & Simmons.....	10
CAER	25
Caffry Law, PLLC.....	27
Cleary Shahi & Aicher, P.C.....	6
CLIO	9
Dinse	17
Fidelity National Title	12
Heritage Family Credit Union	5
Law Pay	15
Marks Powers LLP	10
National Academy of Distinguished Neutrals.....	7
Northeast Delta Dental	12
O'Connor, First, Joslin.....	19
Pajcic & Pajcic.....	11
Preferred Properties.....	21
Primmer Piper Eggleston & Cramer PC.....	Inside Front Cover
Silverlake Psychological Consultants	8
TCi Technology Consultants, Inc.....	Inside Back Cover
Trust Company of Vermont	Back Cover
Unsworth LaPlante, PLLC	16
Vermont Lawyers Assistance Program	31
VT Private Eye	23

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PRESIDENT'S COLUMN

Meet VBA's Board President, Joshua "Josh" Diamond

KSV: Welcome, Josh, to the presidency of the VBA! By the time this issue of the VBJ gets into people's hands, you will have been handed the gavel at the Annual Meeting at Lake Morey. Lots of our members will know who you are if they made it to the meeting or given your long Vermont career, but we want to introduce you to everyone and let them know about you and your plans for your presidency. Can we start with a little bit about your background. Where did you grow up and where did you go to school?

JD: I grew up in Vermont, having spent time in Brattleboro, Johnson, Montpelier, and Jericho as a kid. I matriculated to the University of Vermont and graduated law school from George Washington University in Washington, DC.

KSV: When did you make up your mind to be an attorney? Why did you choose that road?

JD: The decision to become a lawyer occurred while attending the University of Vermont. I was interested in public service and felt that the best way to contribute was serving as a lawyer. Lawyers have a special role in assisting folks who need to navigate our democratic institutions, and helping people that way seemed like a wonderful lifelong profession.

KSV: Have you always practiced in Vermont?

JD: Yes.

KSV: What law jobs have you had during your career so far?

JD: For the first twenty years or so I practiced law at Diamond & Robinson representing individuals and businesses in a wide variety of areas ranging from public utility and employment law to constitutional and civil rights litigation. Attorney General TJ Donovan asked if I would serve as his Deputy in 2016. I had the honor of serving as Deputy Attorney General from 2017 through 2022. In 2023, I returned to private practice with Dinse.

KSV: Were there other attorneys or judges or others who mentored you or helped you determine your path?

JD: I was also fortunate enough to have important role models and mentors. My father, Jerry Diamond, instilled the importance of giving back with his public career

and community-based private practice. I also had a wonderful Constitutional Law Professor at the University of Vermont, Priscilla Machado. Professor Machado opened my eyes to the constitutional framework that makes our country and state a special place to live. I was also fortunate to have the tutelage of David Putter early in my legal career. David taught me many important lessons including the art of advocacy, the rigor of persuasive writing, and the joy of helping people in times of need.

KSV: What do you find most interesting about your work, currently? What do you find the most challenging?

JD: Practicing law in Vermont provides many opportunities to get involved in one's community and assist others in times of need. I continue to be amazed about how we, as lawyers, can positively assist clients through advocacy and help them navigate our democratic institutions, whether it be administrative agencies, the legislature, or the courts. I feel fortunate to have these opportunities every day, whether it is appearing on behalf of a client in court, helping clients obtain permits for electric generation projects, or appearing before state officials to represent their interests.

The remote nature of our work following the Covid crisis continues to be a challenge. While there are certainly efficiencies that have been created through remote hearings and meetings, I believe the limits on in-person interactions sometimes results in less effective advocacy for our clients. In-person interactions are essential to developing the relationships that allows us to be the most effective as advocates or



Joshua "Josh" Diamond, Esq.

administrators of the justice system in our democracy.

KSV: What's your favorite pastime when you're not working?

JD: Spending time with close friends and family, traveling, and enjoying the great outdoors here in Vermont, be it on skis, in hiking boots, or in a kayak.

KSV: I know you've been active with the Bar for a long time but are there any other community organizations or other things that you're involved in?

JD: Yes, for a number of years early in my legal career, I was very active with ACLU-VT, both as a cooperating attorney and as a board member. I've been fortunate enough

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to serve as a school board member and Justice of the Peace for the Town of Williston. Currently, I serve on the board of directors for the Cochran's Ski Area, which is the nation's first 501c3 ski area that is dedicated to creating affordable opportunities for children from all backgrounds to learn how ski and ski race.

KSV: When did you become interested in serving on the VBA Board?

JD: When I became Deputy Attorney General, a board seat became available for public sector and non-profit attorneys. I thought it would be a wonderful opportunity to provide the perspective of the Vermont Attorney General's Office, as the people's lawyer, to the VBA Board.

KSV: What have you found rewarding about serving on the Board so far?

JD: The lawyers who serve on the board are some of the most talented, thoughtful, and publicly spirited individuals I've had the honor to work with. They are dedicated to helping attorneys throughout our state serve our clients and communities. It has been so rewarding to work with my fellow board members to help advance the profession, enhance equal access to justice, and advocate for the rule of law.

KSV: Has there been a least (or less) satisfying part?

JD: The remote meetings has been my least satisfying part. I'm hoping we can find a better balance by meeting in person more often.

KSV: Sometimes VBA Board presidents have a focus or theme for their year in office. Do you have a particular focus in mind for your upcoming year in office?

JD: I'm looking forward to focusing on the rule of law and exploring how lawyers can be ambassadors for our democratic institutions. In the last few years there is a palpable sense about the fragility of our democratic institutions. We as lawyers have a special ability and obligation to bolster those institutions. This begins with promoting the rule of law and the special nature of our constitutional democracy.

We can do this by helping advance access to justice, so that Vermonters have the ability to access legal services and the courts to peacefully resolve disputes. The VBA's low bono programs provide a wonderful opportunity to expand access to justice for many Vermonters, and I look forward to promoting this wonderful program in the next year.

We can also elevate the rule of law by engaging with our communities and providing civic education. One of the cornerstone projects that the VBA has historically participated in is Law Day. Law Day is

held in May, and it is part of a national project to help understand how law and the legal process protects our liberty, fosters justice, and contributes to the freedoms we all share. In recent years the VBA has organized Law Day forums at various public schools across the state. It is my hope that we can expand efforts to reach all of Vermont's 52 school districts.

KSV: What advice would you give to a young person thinking about law as a profession?

JD: To paraphrase or quote the great Justice Brandeis, the legal profession offers an "unusual opportunity for usefulness" because a lawyer's training "prepares one for the questions which are presented in a democracy." This provides a wonderful opportunity for service in one's community. This service may be in the form of practicing law for a government agency, serving clients as their advocate in court, or helping a non-profit navigate its regulatory obligations. Service to others and our community is the opportunity and obligation that is the foundation of our great profession.

KSV: What would you tell them particularly about practicing law in Vermont?

JD: One piece of advice is to be open to opportunities. There are so many different opportunities as a lawyer to contribute to your community here in Vermont. You may be entering the profession focused on wanting to practice a particular area of the law, let's say criminal law as a prosecutor or defense attorney. But, you may be presented with the opportunity to get involved in impact litigation that involves important questions on education finance, help a survivor of domestic violence, or help a non-profit navigate questions of corporate governance. Be open to different pathways to contribute and make your community a better place to live. With a curious mind and open heart, you may find different avenues to make a difference and have a career that is immensely satisfying here in Vermont.

KSV: Last question: Is there anything I haven't asked you about that you'd like to share with our members as you start your presidential year?

JD: It is an honor to serve as your bar president. I look forward to meeting with you, listening, and learning about how our organization can best serve it members, our clients, and communities in this great State of Vermont. 🇻🇹

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PURSUIT OF HAPPINESS

Philip Zalinger — Lawyer, Sports Official

KSV: Hi Phil. Thanks so much for agreeing to talk with us about your "Pursuit of Happiness." As you know, for this feature, we interview attorneys with interests outside of the practice of law that help keep them balanced or provide fulfillment. You've been a lawyer for nearly 50 years, but you've also had a decades long almost parallel career as a school sports official. We want to hear all about that, but let's start with your origins. Where did you grow up?

PZ: I was born in Englewood, New Jersey and attended school in Tenafly and Pasack Valley High School in Hillsdale.

KSV: Were you an athlete as a kid? Tell me about that.

PZ: As a youth, there was a sport for every season until high school when joining the football and track became defining moments for me. The former created a lifelong bond to team sports and the latter taught me discipline and stamina.

KSV: What brought you to Vermont?

PZ: I spent four years at Villanova followed by a move to Boston, with six months of active duty in Army National Guard and several more years in Boston as a part time graduate student and assistant manager of a club in Harvard Square. I left Boston and resettled in Vermont out of frustration and disillusionment with urban living, the sputtering close of the change the '60s had once promised and the goal of starting over in a more peaceful and less congested location in New England.

KSV: What made you decide to pursue a career in the law?



Phil Zalinger officiating. Photo by Douglas MacPhee, used with permission

PZ: I had few marketable skills and Vermont Law School became accredited in 1974!

KSV: When did you get admitted to the Vermont Bar?

PZ: October 4, 1977.

KSV: Let's talk about your lawyer work history? Where did you start?

PZ: I became an associate at Paterson, Gibson, Noble & Brownell in Montpelier as I obtained an LLM in Taxation from BU Law School in 1978. Over time members

retired and changed direction, and several of us formed Paterson Walke and Pratt which eventually evolved to become Zalinger Cameron & Lambek. We were located at 140 Main Street in Montpelier from 1985 until 2020. At present I am of counsel to Main Street Law LLP in Montpelier, the successor to the former firm.

KSV: You've also lived in Montpelier for about that whole time as well, correct?

PZ: Yes, my partner and spouse, Ann Kennard, and our blended family have lived in Montpelier since 1981. Our children attended boarding school - Northfield Mount Hermon and Westminster - and Essex High School.

KSV: I know your kids' involvement in high school sports has a direct connection to your leap into officiating. Can you tell us how that happened?

PZ: Two of my sons had great experiences playing contact sports at Essex High School and when their football careers ended, I suddenly faced an autumn without 'Friday Night Lights.' Through their former coach, I contacted the commissioner of football officials in Vermont and, at the age of 46, I became a raw rookie on the sidelines with a whistle and a sudden real-

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ization that there was another game within the game I thought I knew.

KSV: Tell me about your early experiences as a football official. Were you nervous?

PZ: Every game brought butterflies and risk/reward from learning in such a public forum. In addition to recognizing and applying rules, every crew of four or five officials has mechanics which dictate where each member is on the field, how they view the play and interact and communicate among themselves, with players and coaches.

KSV: I take it that you quickly decided that you really liked doing it, since that was more than 30 years ago now and you're still doing it.

PZ: It was an absolute thrill, and I was enthralled from the beginning. The players are respectful, the coaches and the fans are mostly supportive and grateful for the time and effort officials contribute to the game. One season led to another, and the elements of officiating continued to attract me: keeping abreast of rule changes and mechanics, working with a crew as a third team on the field, managing athletes, coaches and fans so all of their experiences are as positive as possible. Traveling to high schools throughout the state and meeting folks in every community creates a comradery among those involved in football and each September 1 is a reunion of sorts among coaches, officials and AD's.

KSV: I know you officiate three seasons a year, what came next after football and how did you get into that?

PZ: My youngest daughter played lacrosse and in 2001 when I saw a notice that girl's lacrosse needed officials I stepped up and became a rookie once again. Although I had never played lacrosse, my experience as an official in another sport facilitated my transition. Still, it was ten to 12 years before my grasp of the game became confident. Girls' lacrosse in Vermont is another close-knit community and each spring is a

renewal of coaches, officials and a new collection of enthusiastic players and parents who need three years to learn the rules just as their daughter reaches senior year. The experience surrounding girls' lacrosse could not be more positive and encouraging.

KSV: Great. So that's how you got into officiating football and Lacrosse. I know you also officiate basketball during the winter season. Can you tell me how you got into that and what it involves?

PZ: Ten years after adding lacrosse as a spring sport, fellow officials recruited me to become a basketball official. The classes and test are rigorous; although a rabid hoop fan (Celtics and Villanova) I never played organized ball, and the learning curve was steep. After several years of progress my skills plateaued, and I recognized it was unlikely I would become a varsity official. The lower levels were much more relaxed and after the pandemic I settled into a middle school schedule that is highly rewarding. The players - both girls and boys - are responsive and respectful but aware they are now 'older' and expectations have increased. It is a pleasure to share the court with them as they play risk/ reward before a gym filled with family and friends. The games are wonderful family and community events and despite the recent negative publicity, in more than 12 years of working youth basketball in central Vermont, my experiences have always been positive. I always arrive at home with a smile and a pleasant anecdote. The exercise is also a great antidote during the winter months.

KSV: Do you have a favorite sport to officiate? If so, which one and why?

PZ: All my pastimes possess special qualities. Each asks different commitments from the participants and rewards to them. Football is very dear to me because it has been part of my life since I first played on a fifth-grade school team in 1958. The sport makes extraordinary physical demands,

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requires spending a lot of time on the ground, intentional and purposeful contact with others, relative obscurity other than the number on your back and submission to the reality that if all 11 teammates don't perform you aren't likely to succeed. Finally, the ratio of practice to game time is very, very high. A football season might have 60 practices and but 10 games; the finite number of opportunities raises the stakes of each weekly game, and the focus and tension increase as well. There is nothing like 'Friday night lights.' Even as an observer and tangential participant more than 65 years later it remains a thrill.

KSV: Did your experience working as a lawyer influence your work as a sports official? Or vice versa?

PZ: Attorneys are always advocates but we are also acutely aware of the need for objectivity. We are trained and learn to be aware of the purpose and intent of a law (or rule) and to strive for fair and unbiased application of those laws. These are qualities that translated easily to officiating, as did the realization that lawyers generally act in a representative capacity and officials are themselves actually representatives of those who promulgated the rules. In both arenas, one grows thick skin and practices selective hearing.

KSV: You're still working about half a day all week as an attorney and officiating three sports seasons a year – any plans to slow that down?

PZ: Ha! No. I've kept myself in good shape and I plan to keep going until the wheels fall off!

KSV: Is there anything I didn't ask you about your experience as an attorney and an official that you'd like to share with VBJ readers?

PZ: Officiating has provided me with both a physical and emotional release from the tension that often builds within the practice of law. As attorneys we constantly strive to "get it absolutely right"; that wears on one and pressure can build over time. Interacting with young people engaged in sports throughout Vermont year after year has provided a pressure relief valve that I would never have found on a golf course!

KSV: Thanks, Phil, for sharing your Pursuit of Happiness with us!

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WHAT'S NEW

VBA Annual Report 2023-2024

The VBA Annual Report covers VBA activities during the period Sept. 1, 2023 –Aug. 31, 2024.

Let me begin by acknowledging the outstanding staff that support the membership every day. One of the first things I did in the summer of 2022 when I returned to the Executive Director post at the VBA was to name Lisa Maxfield as Associate Executive Director. Lisa, formerly our CFO, earned that promotion after nearly 30 years of service to the VBA.

Laura Welcome remains our Program Coordinator and has served in that role for about 15 years. Kim Velk, Esq. has been our Director of Education and Communication for almost three years and, working with Laura, has produced great programming for our members. I am constantly impressed by her energy and ability to research current trends in the law and seek out educational opportunities to keep VBA members informed and up to date. Tom Barrett, our Lawyer Referral Coordinator, also with the office for almost three years, has shown great skill in managing that service which benefits not only Vermonters seeking legal help but our members as well. Mary Ashcroft, Esq. our Legal Access Coordinator, who was planning on retiring, has decided to extend her time at the VBA after 16 years of service. We are very grateful that she made that choice. Our newest staff member is Caitlin Janus our Office Administrator, who's been with us for about seven months but who has already gotten into the flow of work and fits in perfectly with the team.

CONTINUING LEGAL EDUCATION

Keeping Vermont lawyers informed about developments in the law, assisting with their licensing requirements, and increasing coping skills within the legal profession is at the heart of the VBA's mission. During the last fiscal year, we sponsored 102 educational programs including the in-person Annual, Mid-Year, and Mid-Winter Thaw meetings hosted by the Young Lawyer's Division and 99 Zoom CLEs.

The total attendance was 5,104 and 139.25 credit hours were available through live programming. First-year licensees are required to take 15 hours of specially approved CLE on Vermont Practice and Procedure. Nine of these credits must be live, in-person programs. (Six hours can be earned

via recordings). Last year we offered 14 qualifying live courses totaling 70.25 qualifying credits.

At the VBA, we rely almost completely on volunteers to teach these CLEs. The success of our CLE program is as is directly correlated to the commitment that our members have to serving the profession and the public, so thanks to all of you who taught and attended our CLEs in 2023-2024.

VBA'S BROWN BAG LAW STUDY PROGRAM HAS COVERED ALL UBE SUBJECTS

Last year we also completed an ambitious effort to offer an overview of each subject tested on the Uniform Bar Exam. Vermont is one of the few states that continues to offer a path to attorney licensing through an apprenticeship program. Vermont's venerable law office study (LOS) program is run by the Vermont Judiciary. Qualified participants study 25 hours a week for four years with a Vermont attorney or a judge and then complete the bar exam. The parameters and requirements of the program are set out in Rule 7 of the Rules of Admission to the Bar of the Vermont Supreme Court. Currently there are 51 students registered in Vermont's LOS program.

In most cases, LOS participants get detailed training in the areas of law in which their sponsor practices. It is unlikely, however, that most will get an introduction to, much less an actual course of study in, those areas in which the sponsor doesn't practice.

To fill this gap, in Feb. 2023, the VBA launched the "Brown Bag Law Program." The sessions, which carried CLE credit and were also open to licensed attorneys looking for a refresher, provided instruction on each of the 12 subject areas covered in the Uniform Bar Exam. The Brown Bag program was not designed to replace law school courses, or even to stand in for bar review courses. Rather, the goal of the program was to provide students with an introduction to the key terminology and concepts in each of the subject areas. Volunteer presenters, all experienced practitioners or faculty members of Vermont Law and Graduate School, offered one or two zoom webinars each month covering all twelve topics tested in the UBE. We completed the topics in April 2024. The sessions were all recorded and are maintained in the VBA digital library to be shared with future LOS students.

LEGISLATIVE UPDATE

The second year of the legislative biennium got underway in January and the VBA was active in offering testimony on housing issues and homelessness, access to justice funding, property law issues, the Vermont Parentage Act, and Uniform Trust Laws.

This is the first time the VBA has led the Access to Justice Coalition in a legislative ask for funding for our Vermont Bar Foundation (VBF) for civil legal needs. The Coalition is made up of not only the VBA and the VBF, but also the Vermont Law and Graduate School (Vermont's only law school), Vermont Legal Aid, Legal Services Vermont, and the Vermont Supreme Court. I provided testimony to both Judiciary Committees as well as both Appropriations Committees and met individually with representatives and senators serving on those committees. The challenge to keeping the focus on civil legal needs was the financial picture the state now faces. Although the House funded the request of the Coalition, it did so in a tax revenue enhancement package the Senate refused to go along with. While the House passed a justice system spending package of just over \$22 million, the Senate's version was only \$8.5 million. What was safe in these discussions, however, is the addition of three new Superior Court Judgeships which are sorely needed. But our access too justice proposal died at the end of the session.

SUCCESSION AND TRANSITION PLANNING

The VBA has provided continuing legal education programming for our members on succession planning and other issues involved in planning retirement or transition out of the practice of law. The VBA also conducted a survey of its membership on succession planning. Almost 400 members took the time to answer the survey and the responses were mixed. Almost 40% of respondents were ages 63+ while the remaining 60% were 20 to 62 years of age. About 50% have been in practice for more than 30 years. Not surprisingly about 79% of respondents have thought about retiring from the practice of law, half of whom have started actively planning their next move. Most would like to begin their transition by working part-time. However, 35% said they were not interested in mentoring a new or young attorney in their area in developing a prac-

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tice, while 30% said they would be and 35% said they were unsure. 62% of respondents were not interested in learning about ways to connect with new or younger attorneys and 73% were not interested in supervising an apprentice in the Law Office Study Program. Only 24% have made plans for succession or passing on their practice. These are just a few of the highlights of our survey results. We can make a copy of the full results available to anyone who would like to see it.

WORKFORCE DEVELOPMENT COMMITTEE

An important initiative for us this year is outreach to the wider community beyond members of the bar, particularly Vermont school students. We want to inspire the next

generation of legal professionals and the pipeline into a legal career begins in school. As part of this initiative, attorneys and other legal professionals throughout the state are engaging with educators to sponsor Law Day events. Law Day is officially May 1, but we have had a full season of "Law Day" events with more to come. A team of volunteers in Washington County led Law Day events on First Amendment issues at U-32 and Montpelier High School. VBA members have sponsored Law Day events at Burlington High School and South Burlington High School, and another group is working with students served by the Burlington Boys and Girls Club to plan an event. The Rutland County Bar held a trial featuring Barbie, Ken, and perhaps Allan, for younger students, and other Law Day events will be held in Bennington County. 🌐

Continuing Legal Education Honor Roll

Our Association relies on members and friends of the VBA who volunteer their time to share their knowledge.

Thank you to all those who presented CLE programs for the VBA in 2023-2024.

Sam Abel-Palmer
Sharon Abrahams
James Accurso
Emily Adams
Ed Adrian
Cora Allison
Samara Anderson
Nicole Andreson
Samuel Angell
Bridget Asay
Mary Ashcroft
Bonnie Badgewick
Becca Balint
Samantha Baltzersen
Amber Barber
Mark Bassingthwaighte
Hon. Ben Battles
Merrill Bent
Zach Berger
Kristina Bergsten
Kathy Beyer
Eileen Blackwood
Kira Botting
David Boyd
Paul Brodowski
Cory Brunner
Catherine Burke
Ian Carleton
Hon. Karen Carroll
Jeremy Carter, II
David Casier
Rich Cassidy

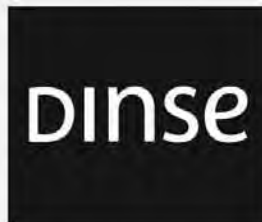
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Linda Cohen
Jeremy Cohen
Joshua Cohen
Caryn Connolly
Kristen Connors
Jared Correia
Teri Corsones
Herb Daroff
Livia DeMarchis
Benjamin Deppman
Josh Diamond
Will Dodge
James Dumont
Peter Dysart
Christopher Earley
Steve Ellis
Jamey Fidel
Laura Fox
Jennifer Gagnon
Matthew Getty
Cassie Gillespie
Gabriel Gilman
Barbara Gislason
Oliver Goodenough
Jeremy Grant
Molly Gray
Neil Groberg
Jon Groveman
Geoffrey Hand
Rik Hecht
Hon. Samuel Hoar, Jr.

Juliana Hoyt
 Elizabeth Hunt
 Laura Ireland
 Glenn Jarrett
 Ryan Kane
 Burton Kelso
 Michael Kennedy
 Andrew Kestner
 Sean King
 Jim Knapp
 Stephanie Kupferman
 Annie Lajoie
 Kyle Landis-Marinello
 Mark Langan
 Mary Kay Lanthier
 Celeste Laramie
 Steven LaRosa
 Alexander LaRosa
 Lauren Layman
 Hannah Lebel
 Samantha Lednicki
 Scott Leigh
 Carl "Ott" Lindstrom
 Andrew Manitsky
 Jill Martin Diaz
 William "Chip" Mason, IV
 Shane McCormack
 David Mears
 Mark Melendy
 Kirsten Merriman Shapiro
 Elena Mihaly
 William Morris III
 Haley Moss
 Hon. Elizabeth Novotny
 Mark Oettinger
 Ralphine O'Rourke
 Bob Paolini
 Jeffrey Polubinski
 Hon. Christina Reiss
 Hon. Daniel Richardson
 Keith Roberts
 Jenny Ronis
 Julie Roth
 Laura Rowntree
 John Serafino
 Mike Servidio
 Alison Sherman
 Bradley Showman
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 Patricia Turley

Pamela Vesilind
 Nathan Virag
 Amber Walsh
 Stephanie Wilbanks
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WHAT'S NEW

Section Chair Reports

ANIMAL LAW SECTION

Chair: *Laura Fox*

The Animal Law Section was formed in March 2024. This Section serves as a resource for practitioners interested in the field, offering a platform for networking, education, and advocacy. It aims to bring together lawyers who are passionate about animal issues, providing them with the tools and knowledge to effectively advocate for animal interests within the legal system. In July, the Section hosted a CLE on "Navigating the Terrain of Animal Custody: Trends, Challenges, and Opportunities." Prior to officially becoming a section, in February members put on a CLE entitled "Advocating for Animals in Vermont: How to Incorporate Animal Law into Your Practice." Both CLEs are available for on-demand viewing. The section provided the article in this issue, "The Expansive Scope of Animal Law." It includes a brief primer on the field of animal law and its relevance to Vermont practitioners.

As a new Section, we encourage all interested members to join us. Those interested in joining the Section should join the Animal Law forum on VBA Connect, where members can post questions, comments, and provide suggestions on CLE seminars and how to increase engagement with this group and other members of the bar.

ATTORNEY WELLNESS SECTION

Co-Chairs: *Samara Anderson, Julia Guerrein*

Throughout 2023 and 2024, the Attorney Wellness Section has offered both in-person and virtual CLEs and has been working behind the scenes to bring new offerings to VBA members and updating the VBA website related to Attorney Wellness. Julia Guerrein joined longtime chair, Samara Anderson, as co-chair in October 2023.

Samara has offered several virtual classes each month through the VBA, both 60-minute CLEs and 30-minute non-CLE mindfulness classes. There have also been in-person wellness offerings – in January Samara taught yoga and a stress-reduction/wellness CLE at the Young Lawyers' Division Thaw in Montreal and she will be teaching a CLE on tools to identify and heal from Burnout at the upcoming VBA Annual Meeting in September.

Samara and Julia have both contribut-

ed to the Vermont Bar Journal by writing "Be Well" articles. Julia wrote about the wellness benefits and drawbacks of working from home or being in the office, and Samara focused on identifying and healing from the effects of professional and personal Burnout.

Julia conducted research on what membership benefits other Bar Associations across the country offer, with the hopes that the VBA can expand wellness-related benefits to VBA members. And in non-related legal, but story worthy news, Attention all Lawyers - Samara is hosting library storytelling events across all public libraries in Vermont, which started in May of this year and will continue for many years to cover 185 libraries. Please reach out to Samara if you have a legal or non-legal story worth sharing with a live audience at a library near you!

BANKRUPTCY SECTION

Co-chairs: *Ryan Long, Greg Fox*

The Bankruptcy Section met again in person for the popular Holiday CLE on Dec. 1, 2023. Presentations included a refresher on emergency sale motions, cramdown plans, zombie mortgages, the ever-popular year-in-review, and a presentation on the 2023 overhaul of the Local Rules which became effective Jan. 1, 2024.

The Bankruptcy Section's focus in 2024 is on attracting new and young lawyers to Vermont and to Bankruptcy practice. To that end in part, both a VBA co-chair and Judge Heather Z. Cooper participated on the American Bankruptcy Institute's Emerging Leaders Committee, and committed a presence to ABI's 2024 Northeast Regional Conference in North Falmouth Massachusetts, July 9-10, 2024. However, as the keystone to the section's overall effort, the Bankruptcy Section has coordinated with Vermont Law and Graduate School to host this year's Holiday CLE at VLGS on Nov. 22, 2024 as well as a post-CLE social event at a time and location to be determined.

This year has also seen something of a changing of the guard, including the transition of 341 meetings to Zoom and the retirement of Jan Sensenich after nearly 33 years of service as Vermont's Chapter 12 and 13 trustee, and the introduction of our new Chapter 13 trustee Andrea Celli based in Albany, New York. The VBA and the Vermont bankruptcy bar wish to thank Jan for

his decades of service.

The next Bankruptcy Bench-Bar Meeting will be held at the Holiday CLE on Nov. 22, 2024 in South Royalton.

BUSINESS LAW SECTION

Chair: *William "Chip" Mason IV*

The Business Law Section had a busy and successful year hosting many continuing legal education seminars. It presented two on the Corporate Transparency Act on December 19, 2023 and at the mid-year meeting on March 29 2024. Chip Mason also co-presented at the mid-winter meeting at a Civility and Professionalism seminar. Finally, the section presented a seminar on Contract Basics for Attorneys on June 24, 2024.

CONFLICT RESOLUTION SECTION

Co-Chairs: *Neil Groberg, Richard Hecht*

"Every great and deep difficulty bears in itself its own solution. It forces us to change our thinking in order to find it." — Niels Bohr. This reflects the idea that conflicts often contain the seeds of their resolution, prompting a necessary shift in perspective. Over the last year, co-chairs Neil Groberg & Rick Hecht continued the Dispute Resolution Section's efforts in reframing conflicts in a more collaborative and less litigious perspective.

The Section continued its well-regarded and well-attended Zoomed "Chewing On Conflict" CLEs, starting 2024 with an informative and unexpectedly hopeful presentation by Congresswoman Becca Balint regarding her interactions with lawmakers of all stripes in both the Vermont State House and in the United States House of Representatives. The series continued in the new fiscal year with Ana Sambold, the immediate past-chair of the ABA Dispute Resolution Section, who presented on Sept. 9, 2024 about her experiences with Artificial Intelligence in the context of mediations. In addition, Vermont arbitrators and mediators presented CLEs at VBA and other association events.

The Section and its co-Chairs, on a pro-bono basis, worked with, mediated at its behest, and assisted the Conflict Assistance Program of the Burlington Community Justice Center. This program seeks to resolve conflict among neighbors in Burl-

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Overall, with over 125 members, the Dispute Resolution Section strives to make mediation, arbitration, and facilitation more utilized, accepted and publicized in Vermont's legal community and the public in general. The Section welcome suggestions from all Bar members, regarding opportunities for the Dispute Resolution Section to enhance its mission.

ELDER LAW SECTION

Chair: Glenn Jarrett

Members of the Section monitored legislative activity this past session.

Two members of the Section presented at the Mid-Winter Meeting discussing elder law topics including special needs trusts.

ENVIRONMENTAL LAW SECTION

Co-Chairs: Alison Stone, David Mears, Hannah Smith

It has been a busy year for the Environmental Section! It took three of us to replace long-time Environmental Section Chair Gerry Tarrant, but we have worked hard to continue the quality programming that Gerry organized for our Section over his years of service in that role. We kicked off 2024 with a CLE titled, "Update on Vermont Land Use and Housing Law" discussing the HOME Act passed in 2023. The panelists included Jim Knapp, Jon Grove-man, Geoff Hand and Alison Stone.

Sticking with the topic of housing and environment, we organized an in-person CLE for the VBA Mid-Year conference titled "Developing Housing on Brownfields: Tips from the Experts" and featuring an interdisciplinary panel consisting of attorneys Matt Chapman and Jeff Polubinski, affordable housing developers Kathy Beyer and Kirsten Merriman, and environmental consultant Steven LaRosa. We followed that CLE with two panels. One panel provided an update on Vermont environmental legislation (and there was a lot to discuss!) by presenters Hannah Smith, Elena Mihaly, Jamey Fidel and Jenny Ronis. The second panel addressed the timely issues of changes and developments relating to the law of standing in environmental cases and featuring Michael Tarrant, Merrill Bent, and James Dumont.

As I write this report, we are looking forward to a busy September in 2024, with a Bench/Bar meeting with the Environmental Division Judges and a reception to honor and acknowledge the contributions of Judge Thomas Durkin to the Court and to Vermont environmental law. We are also looking forward to an in-person CLE at the

VBA Annual Conference on the topic of the significant revisions made to Act 250 by the Vermont General Assembly.

In all, we are grateful to the members of the Environmental Section for participating in these CLE's and events during a busy time for environmental attorneys. We hope that you will continue to participate in the coming year as we create opportunities for Section members to share ideas and advance a system of effective environmental laws. We invite members to use VBA Connect to post questions on important topics of interest to the broader community and to share your suggestions for ways we can better serve the Section.

HEALTH LAW SECTION

Chair: Elizabeth R. Wohl

The Health Law Section coordinated an excellent CLE presentation at the 2023 Annual Meeting on the subject of Vermont's Medical Shield law from a panel made up of Ben Battles, Linda Cohen, Josh Diamond, and Lauren Layman. The section is very grateful to Ms. Cohen for leading the and organizing the panel. It was an honor to have these esteemed colleagues presenting on this important issue.

LANDLORD/TENANT SECTION

Chair: Renee Staudinger Calabro

This is a new Section, created on Sept. 23, 2023. It was designed to include two co-chairs: one who typically represents landlords and a co-chair who typically represents tenants. Current chair, Renee Staudinger Calabro, is the landlord side and the co-chair, John Smith, was appointed Oct. 30, 2023, and represented the tenants' side. We tracked legislation impacting landlord/tenant law, updated VBA Connect Section with known proposed bills and passed legislation. We requested Franklin Superior Court Judge's assistance with Franklin Sheriff's handling of writ of possession service. We provided pro bono opportunities for landlords via VBA Connect. We engaged in discussion with landlords about caselaw and strategy in complex legal issues. John changed jobs and resigned his co-chair position in May, 2024, and the Section anticipates welcoming a new co-chair from the tenants' side very soon. If you're interested in that role please get in touch. We hope to continue to grow and plan to have a more active year in 2025.

PARALEGAL SECTION

Chair: Carie Tarte, RP®, AIC

The Paralegal Section continues to monitor limited legal licensure programs throughout the country. You may have seen us at the VBA Annual Meeting in September last year at our vendor table with a tri-fold display exhibiting the inspiration for our work and inviting attorneys to join our group in bridging the justice gap.

We have created a subcommittee that has begun drafting a limited licensure pilot program for Vermont based upon various programs throughout the country with guidance from Bar Counsel Michael Kennedy and Screening Counsel Andy Strauss. It is the goal of the subcommittee to share its draft pilot program with various stakeholders to include STEPS, Vermont Law Line, Legal Services Vermont, Vermont Legal Aid, Bar Counsel, Board of Bar Examiners, and State Court Administrator Terri Corsones to get feedback in order to submit to the Vermont Supreme Court a robust proposed pilot program for adoption in Vermont.

PRACTICE & PROCEDURE SECTION

Chair: Gregory A. Weimar

I have continued to act as liaison between the committee and the civil rules committee. In that capacity I have been actively involved in revising Rules 26 and 16.3 regarding scheduling orders to reflect current practice and bring more clarity to the format of the rules. In addition, I have substantially revised the scheduling form currently in use to reflect current practice and the revisions to the rules 26 and 16.3. The revised form has been sent to the Civil Oversight Committee for review and comment.

PROBATE AND TRUST LAW SECTION

Chair: Mark Langan

Statutes: The Probate and Trust Law Section was active in the passage of three statutes:


Uniform Power of Attorney Act: The Probate and Trust Law Section convened a joint committee with the Real Property Law Section and the Elder Law Section of the Vermont Bar and the Trust Committee of the Vermont Bankers Association to review the Uniform Power of Attorney Act submitted to the House Judiciary Committee by AARP. Benjamin Deppman represented the Real Property Law Section. Juliana Hoyt represented the Elder Law Section. Matthew Getty and Alison M. W. Sherman represented the Probate and Trust Law Section. After making several changes to

the uniform act for Vermont purposes, Vermont's liaison to the Uniform Laws Commission, Richard T. Cassidy, made substantial contributions which helped its passage. One of the innovations that the joint committee adopted was a short-form power of attorney form for real estate transactions thanks to the input of Benjamin Depman to shorten the form and reduce recording costs.

Uniform Trust Decanting Act: The Probate and Trust Law Section convened a joint committee with the Trust Committee of the Vermont Bankers Association to pass the Uniform Trust Decanting Act (UTDA). Mark Melendy, Livia DeMarchis, and Andrew Kestner represented the Probate and Trust Law Section. Vermont's liaison to the Uniform Laws Commission, Richard T. Cassidy, made substantial contributions during its passage. After a thorough review of the uniform act the joint committee made very few revisions to the act. Most changes were procedural or technical rather than substantive. The statute does not enable decanting. Decanting is possible in any trust in which the trustee has wide discretion with regard to the distribution of principal (save charitable trusts). The theory being that if the settlor has given the trustee wide discretion with regard to principal, then the settlor is also giving the trustee wide discretion with regard to other matters such as the administrative provisions of the trust. The UTDA puts guardrails on the exercise of that power and allocates fiduciary obligations and liabilities regarding the process of decanting.

Uniform Directed Trust Act: The Probate and Trust Law Section convened a joint committee with the Trust Committee of the Vermont Bankers Association to pass the Uniform Directed Trust Act (UDTA). Mark Melendy, Livia DeMarchis, and Andrew Kestner represented the Probate and Trust Law Section. Vermont's liaison to the Uniform Laws Commission, Richard T. Cassidy, made substantial contributions during its passage. After a thorough review of the uniform act the joint committee made very few revisions to the act. The use of trust directors and trust protectors have been around for a while. South Dakota and Delaware separately enacted legislation regarding trust directors. The Uniform Laws Commission under the chair of Professor Robert Sitkoff of Harvard Law took both statutes under consideration and blended concepts from these states and the common law to develop an intelligent and cohesive statute governing trust protectors and trust directors as well as taking into account when co-trustees have been assigned separate powers. The uniform law delineates the fiduciary obligations between trustees and trust directors.

On the agenda for next year is passage


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of a law establishing Statutory Tenants by the Entirety Trusts.

Probate Rules: Members of the Probate and Trust Law Section (Danielle Fogarty, Michael Gawne, Matthew Getty, Amy Menard, C. Justin Sheng, and Norman Smith) were active in passage of various Rules of Probate:

An amendment to Rule 47(e) updates the language regarding production of transcripts for probate proceedings. The amended language conforms to parallel provisions in V.R.C.P. 72(c) and to V.R.A.P. 10(b)(2). Effective January 8, 2024.

An amendment to Rule 40(d)(3) makes the procedure for motions to disqualify a probate judge consistent with that in the civil and criminal divisions, which is to refer the matter to the Chief Superior Judge or designee. Effective January 8, 2024.

An amendment to Rule 12(a) removes the reference to 15 V.S.A. § 432(b), which was repealed in 1995. Effective January 8, 2024.

An amendment to Rule 5.1 amends the service and notice requirements for beneficiaries of a decedent's estate or trust even if they have not entered an appearance in the proceeding. The addition of Rule 5.1(b)(1)(iv) and 5.1(b)(4)(vi) make clear that the fiduciary in an estate or guardianship proceeding must provide the beneficiaries of the estate and the stated interested parties of the guardianship with the details of license to sell as set forth in the Report on License. The amendment also replaces language in the rule referring to "ward" with "person under guardianship." Effective January 8, 2024.

An order amended 2020 V.R.E.F. 3(c) and 12, Rule 5(e) and added Rule 78. These amendments address the need in some probate proceedings for the court to inspect paper documents during consideration of the case. The amendment to 2020 V.R.E.F. 3(c) mandates retention of a paper document by the court when required by statute or other provision of law. The amendment to 2020 V.R.E.F. 12 directs that

the court must retain a paper document even after it has been converted to electronic form if otherwise required by law. Contemporaneous amendment of V.R.P.P. 5(e) and addition of V.R.P.P. 78 delineate testamentary documents and vital records that must be provided on paper subject to retention and return to the parties upon completion of the case. Effective October 2, 2023.

Amendments to Rule 43.1 incorporate lessons learned regarding remote and hybrid proceedings based on the experience of the bar, judges, court staff, and the public.

Amended Rule 43.1(a) provides a default of remote proceedings with hybrid and in-person proceedings permissible with court permission. Most probate proceedings are conducted with relaxed evidentiary rules. Probate proceedings also often involve self-represented parties and individuals from a wide geographic area, including outside Vermont. The experience during the pandemic demonstrated that remote participation provides a good balance between the cost and convenience for the participants and the overall effectiveness of the proceeding, which is consistent with the scope of the Rules, set out in V.R.P.P. 1.

Amended Rule 43.1(b) contains new definitions for hybrid and remote proceedings. Under 43.1(c)(1), the court has discretion to issue standing orders or case-specific orders for hybrid or in-person participation based on a consideration of any relevant factors provided in (g). The parties may also move or stipulate to hybrid or in-person participation under (c)(2). In assessing whether to grant or deny a motion or stipulation, the court is guided by a consideration of the factors in subdivision (g). Because a hybrid or in-person hearing requires the availability of a courtroom and additional court staff, when a motion is granted, the court may need to reschedule the proceeding. The amendments to Rule 43.1(d) pertain to the judge to presiding remotely. The amendments to Rule 43.1(e)

address the required notice to the parties in advance of the hearing. The notice must specify whether the proceeding is in person, remote, or hybrid and describe the process for requesting an alternate means of participation. Subdivision (f) allows exceptions to the notice and timing requirements of the rule. Rule 43.1(g) incorporates the factors from former (c)(6) and (d) (3) and (4) for the court to consider in evaluating whether to have hybrid or in-person proceedings. New 43.1(h) addresses the conduct of the proceedings and allows the court to impose conditions to ensure the fairness of the proceeding, ensure reliability of the evidence, or to protect public health. Finally, former 43.1(e), regarding technical standards, is relabeled (i). Effective October 2, 2023.

The amendments to Rule 66 reflect and clarify current practice regarding inventories and accounts.

Rule 66(b) is new. Rule 66(b)(1) contains a general requirement that, unless waived by the court for good cause, an estate inventory must contain a description and value of the decedent's assets. The rule sets forth specific requirements for the content of inventories in the areas of real property, mobile homes, motor vehicles, high value items, and financial institution accounts. Former Rules 66(b) and (c) are redesignated (c) and (d) without change. New Rule 66(e) provides accounting standards consistent with 14 V.S.A. §§ 1055, 1057. Former Rules 66(d)-(f) are redesignated (f)-(h) without change.

Rule 66(i) is new. It spells out a process that enables a judge to deal with an inadequately prepared or presented inventory or account or other failure to comply with the provisions of Rule 66(a)-(h) by providing for their preparation "by a licensed professional with experience in fiduciary accounting." Effective July 3, 2023.

REAL ESTATE LAW SECTION

Co-chairs: Benj Deppman, Jim Knapp

Education - Co-chairs Benj Deppman and Jim Knapp were active in presenting several CLE programs on real estate topics, including a timely program on the revision to the Transfer Tax that took effect on Aug. 1, and general topics involving real property. Continuing the annual tradition of Real Estate Law Day, the Section, with the help of a number of volunteer presenters, provided a six-part Zoom serial broadcast on our own VBA Zoom network covering topics of special interest to real estate practitioners such as Current Use, Leases, Cases of General Interest, Short Term Rentals, Remote Online Notarial Acts, and Public and Private Road issues. The Real Estate Section collaborated with the Environmen-

tal Law Section to present a program on Act 47, generally known as the 2023 Housing Act. Co-chair Jim Knapp continued to work with the Brown Bag Law Program presenting on Conflicts of Laws and Secured Transactions and presenting the Basic Skills course for newly admitted attorneys.

Legislation - Members of the Section worked on a number of legislative initiatives including restoring the inadvertently repealed process for terminating oil and gas leases, amendments to the recently adopted power of attorney statutes, as well as monitoring other important legislative actions including proposed revisions to the tax sale process. The Real Estate Section is represented on the ACT 106 Working Group addressing a number of questions in the area of Tax Abatements and Tax Sales. The Working Group will be submitting a report to the Legislature in 2024.

Other - The Real Estate Section in the VBA Connect continues to be a vibrant and active community, providing answers to questions posed by new practitioners and those with more experience. Thank you to all the Section members who take the time to answer questions for our colleagues seeking new solutions for clients or confirmation that their own ideas are good.

TAX LAW & ACCOUNTANTS SECTION

Chair: Christopher Leff

The Tax Law & Accountants Section has had a quiet year. The Vermont Secretary of State's office reached out to consult regarding several initiatives, including potential legislation regarding business organizations, planned updates to the Secretary of State's business services website, and the new business beneficial ownership information reporting requirements under the federal Corporate Transparency Act. Separately, another organization consulted regarding a question relating to the Uniform Trust Decanting Act passed by the Vermont legislature earlier this year.

WOMEN'S DIVISION

Chair: Caryn L. Connolly

In 2023, the Women's Division decided to hold a fundraiser and requested donations of gift cards from local businesses in the Burlington Area. The Women's Division held a 50-50 raffle in person at the Annual Meeting and was able to donate \$110 to The Vermont Community Foundation from the proceeds.

On March 29, 2024, at the Mid-Year Meeting, the Women's Division held a Zoom and in-person meeting and elected its board for the coming year. Caryn Connolly, Esq. was elected Chair; Breanna

Weaver, Esq. was elected Vice-Chair; and Amber Barber, Esq. was elected Treasurer. Judith Dillon, Esq., President of the VBA, paid tribute to three women attorneys lost in the past year—Christine Hoyt, V. Louise McCarren, and Kathryn "Kate" Aring Piper.

This year the Women's Division presented three CLEs the week of June 10, 2024. Title Matters Regarding Foreclosures was presented by Annie Lajoie, Esq. on June 10. Vermont Foreclosures: An Overview was presented by Caryn Connolly, Esq. on June 12. Critical Infrastructure Development Overview and Trends in Telecom & Broadband Expansion was presented by Jennille Smith, Esq. on June 13. Jennille Smith has since scheduled a series of CLEs on Critical Infrastructure. The Women's Division looks to continue to showcase women with varied experience and expertise to share their knowledge with the legal community.

Breanna Weaver has spearheaded a discussion on the need for safe and clean places for nursing mothers to pump in our courts and is working with the VBA and the courts to come up with solutions that work not just for attorneys but for all parties.

YOUNG LAWYERS DIVISION

Chair: Justin Brown

The Young Lawyers' Division is having a monumental year by putting on fantastic CLEs, developing closer ties with Vermont Law and Graduate School (VLGS), and hosting both new and familiar events. We began 2024 as we always do in Montreal with our annual Mid-Winter Thaw. We had a great selection of panelists from Vermont and beyond to discuss issues of wellness, diversity, ethics, and more! Planning is currently underway for the 2025 Mid-Winter Thaw on January 17-18, 2025, at Hotel Omni in Montreal. Please mark your calendars!

Next, the YLD passed out cookies to Vermont bar exam applicants after they finished taking the bar exam in July. In August, to build upon the relationship between the YLD and VLGS, the YLD hosted a reception for incoming VLGS students on the lawn of the Vermont Supreme Court building during 1L student orientation. Justices and judges mingled with the incoming students while enjoying delicious gelato and cake in what was truly a memorable event for all! If that was not enough, the YLD is hosting an attorney panel presentation at VLGS on October 22, 2024. Attorneys from diverse practice areas will present their story, describe their practice, and explain why living and working in Vermont is so great. To end the year with a bang, the YLD is most excited about launching the first annual "Race Judicata 5k Run/Walk" in Montpe-

lier on November 2. The goal of "Race Judicata" is to raise money to sponsor current law students to attend the Mid-Winter Thaw free of charge. This event is not to be missed!

Finally, the YLD organized our perennial events that the members of the bar have come to love. We put on trivia nights, mixers at local watering holes, and "Dinner with a Judge/Justice" events across Vermont (St. Johnsbury, Burlington, and Rutland). These events offer excellent networking opportunities for young lawyers as well as opportunities to learn from judges/justices in small gatherings. To help espouse our commitment to wellness, the YLD also entered two marathon teams that capably conquered the Vermont City Marathon.

It has been an incredibly busy and successful year thus far for the YLD as it continues to promote attorney wellness, connectedness, and how wonderful it is to live and practice law in our beautiful state. 🌲

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WHAT'S NEW

Notary Continuing Education Course Set for Fall

Vermont notary public commissions will expire at the end of January 2025. The Office of Professional Regulation of the Secretary of State's Office has mandated that for non-attorney notaries who are not otherwise exempt, a minimum of one hour of relevant continuing education must be completed and documented prior to re-commissioning. See the Administrative Rules here: <https://sos.vermont.gov/media/53jpw31f/notaries-continuing-education-rule.pdf>

If you are unsure whether you are required to complete the continuing education requirement, please contact the Secretary of State's Office.

The Vermont Bar Association has developed a 1.25-hour training that will be offered live via Zoom webinar on three occasions: Oct. 9 from 11AM to 12:15 PM, Oct. 31 from 11 AM to 12:15 PM, and Nov. 14th also from 11AM – 12:15PM.

The program is designed to meet this continuing education requirement. **It will be recorded** and made available shortly after the final live presentation in the digital library on the VBA website. The OPR has confirmed that the program will meet the CE requirement, whether it was taken live or is viewed later online.

Attorneys are required to keep their notary commissions current but are not re-



quired to meet the CE requirement. Therefore, this training is optional for attorneys. If you are an attorney and decide to take the training, however, it will count for 1.25 CLE credits. It is also approved and certified to qualify for Rule 12(a)(1) & Rule 15(c) of the Vermont Rules of Admission for new Vermont lawyers.

The training will be conducted by Jim Knapp, Esq., co-chair of the VBA's Property Law Section. Jim is a popular and experienced presenter. The course is offered for \$35 to all takers, with no requirement for VBA membership.

OPR is requiring notaries to maintain records of their CE certificates of completion. If you are already a VBA member, upon completion of the program, a certificate will be available in your VBA website account portal. If you are not a VBA member, a certificate will be emailed to you within three days of your completion of the course. See the VBA website for more information.

Here's a link to register for any of the three program dates: <https://www.vtbar.org/notary-public-training-non-vba-members/>. A link to the programs and registration steps can also be found on the VBA CLE calendar each of the days of live presentations.

Questions? Contact info@vtbar.org. 🌲



WHAT'S NEW

VBA Upgrade to "vLex Fastcase" Launches on Nov. 5

In coordination with Fastcase, the Vermont Bar Association has offered a free legal research member benefit since 2021, providing access to cases, statutes, and regulations. Last year, Fastcase was significantly upgraded for Vermont attorneys by the addition of a searchable database of Vermont superior court cases. In 2023, Fastcase merged with vLex, a global leader in legal intelligence, raising questions about the future of this essential service. But rest assured: vLex Fastcase remains committed to democratizing the law and enhancing legal research tools. This important member benefit will see substantial upgrades beginning in Vermont in November 2024, with enhanced features, while keeping the service completely free for Vermont Bar members.

What to Expect in November

Beginning on Nov. 5, 2024, when you sign into vLex Fastcase you will see, in addition to the landing page to which you are accustomed, a dialogue box that invites you to try the new vLex Fastcase platform. You can explore that by clicking on the box. If you want to carry on with the former platform you will be able to do so - just close the box. After 30 days (Dec. 5, 2024), the interface at sign-in will be the new vLex Fastcase platform.

The old platform will, however, remain available for some time. You will be able to access it by clicking an icon in the task bar. The phase-out date for the old platform remains to be determined. The main factor being the transition of state bars around the country. As of Oct. 2024, 11 bar associations have been transitioned to the new platform.

Training on the New Platform Is and Will Continue to be Available

In addition to the many training resources available from vLex Fastcase through their website, VBA members are invited and encouraged to attend one of the two VBA CLEs scheduled to coincide with the beginning of the changeover. The training will be offered on Nov. 1 from 10-11 AM (you can register for that here: <https://www.vtbar.org/event-calendar/>) and again on Nov. 8 from 10-11 AM (register here: <https://www.vtbar.org/event-calendar/>). These sessions will be identical. They will



carry one general CLE credit and will be free for VBA members.

Going Forward

VBA members will enjoy free access to a comprehensive legal research platform that includes a vast library of primary legal sources: case law, statutes, regulations, and state-specific legal materials. You can expect seamless access to state court opinions, statutes, Attorney General opinions, and more. Whether you're searching by citation, keyword, or natural language, vLex Fastcase delivers quick and accurate results.

In addition to primary law, the service offers a wealth of secondary materials, including practice guides, legal forms, and treatises on topics ranging from employment law to intellectual property. These resources provide invaluable insights and practical advice, tailored to Vermont's legal professionals.

A key feature of this enhanced service is the Cert citator, which flags negative treatment and other citations to cases. Cert goes beyond Fastcase's previous citation service, Bad Law Bot, by offering editorial oversight, improving accuracy and delivering more comprehensive legal research.

Also included are advanced capabilities from Vincent AI, the award-winning research assistant from vLex. Vermont Bar members will benefit from automated headnotes, case summaries, and Vincent's ability to identify similar legal documents included in their benefit. Premium features, such as 50-state surveys and argument drafting, are available via subscription.

The intuitive interface of vLex Fastcase makes navigating legal research a breeze. With an easy-to-use search bar and smart filters, finding the right documents is quick-

er than ever. Members can also save frequently used documents for future reference and receive alerts on the latest legal updates affecting their practice areas.

Best of all, this cutting-edge service will remain completely free for Vermont Bar members — a resource that costs over \$1,000 annually for non-members. For small and solo practices in Vermont, this provides an incredible opportunity to leverage the same technology used by larger firms, leveling the playing field.

With vLex Fastcase and Vincent AI at your fingertips, attorneys can increase efficiency and competitiveness, keeping costs down while enhancing the quality of service to clients.

Explore the improved vLex Fastcase benefit by visiting the Vermont Bar website. Simply log in with your member credentials and discover the powerful tools available to you starting in November 2024.

Want to find out more right now about what it's all about? Visit vlex.com/vlex-fastcase.

Thomas J. Diggins (T.J.) is a Customer Success Representative with vLex Fastcase. His primary focus is enhancing bar membership engagement, relationship building, and educating users on successfully navigating the vLex Fastcase platform and its products. Mr. Diggins has a background providing legal administrative support, with a focus on business development to various litigation support companies serving clients across the U.S. Graduating from the University of South Carolina in 2015, Mr. Diggins obtained his Bachelor's Degree in Criminal Justice, and was an active member in the American Criminal Justice Association, Lambda Alpha Epsilon.



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BE WELL

Debt Relief Options to Improve Attorney Financial Wellbeing

Many attorneys, particularly those early in their careers, struggle with the burden of student loan debt. It can be extremely limiting to be saddled with extensive and long-term debt, affecting our most basic living needs: where we live, what we eat, and how we spend our free time. A recent report by the American Bar Association found that student loan debt “causes stress and anxiety for most young lawyers who borrowed . . .”¹ Like many other attorneys, I also carry significant student loan debt, primarily from law school. While the anxiety comes in waves, I often feel significant stress about my financial future due to the amount of student loan debt I carry.

When looking at the cost to attend law school and the average amount of student loan debt law school graduates carry, it is unsurprising that young attorneys are stressed about their debt. According to the Law School Admissions Council (LSAC), which owns and operates LawHub, in 2023 law school tuition at private schools was on average \$55,963 per year, \$43,590 for non-resident public schools per year, and \$30,554 for residential public schools per year.² LSAC reported that the average private law school graduate graduated with \$135,183 of student debt while public school attendees graduated with \$93,643 of student debt.³ These amounts do not reflect the final balance borrowers have due to interest accrual during school and repayment. LSAC estimates that for 2023-2024 graduates, for example, a borrower who borrows \$130,000 during law school will owe \$150,110 by the time the first payment is due six months after graduation.⁴ This translates to a \$1,788 monthly payment for a 10-year repayment plan.⁵ A \$1,788 monthly payment is a significant amount for someone, even with an attorney salary, to put towards one item in their monthly budget.

In 2022, approximately 71.2% of law school graduates borrowed money.⁶ Even though student loan debt is a heavy burden to carry, attorneys, like other borrowers, can utilize a variety of programs, including the Vermont Bar Association (VBA) Loan Assistance Repayment Program (LRAP), tax deductions, educational assistance programs, and student loan payments counting towards a retirement matching program, to maximize their financial wellness. Employers can also use some of these programs to draw in potential employees and to retain current employees.

Even though the costs of a legal education are high and those who borrow for their education often feel stressed, borrowers can take advantage of programs designed to boost their financial wellbeing. Hopefully, borrowers who are able to take advantage of these programs can feel better about their financial future.

(1) Apply for assistance through the Vermont Bar Association Loan Repayment Assistance Program

In an effort to support attorneys in Vermont with student loan debt, last year the VBA established LRAP. For the next year of financial awards, the application opened on Sept. 27, 2024, and will close on Nov. 11, 2024. The application and all information can be found on the VBA website. www.vtbar.org.

Applicants must be licensed to practice in the State of Vermont, be a member of the VBA, have an income from legal work below \$78,375, and have more than \$25,000 of student loan debt, which can be a combination of undergraduate and graduate loans. The VBA prioritizes applicants who practice in underserved geographic areas of Vermont, including the Northeast Kingdom, Grand Isle/Franklin, Windham, and Orange counties. Additionally, the VBA prioritizes applicants whose practice focuses on underserved legal areas or areas that serve vulnerable and working people in Vermont, including family law, criminal defense, estate planning, disability, social security, unemployment, workers' compensation, small business, consumer protection, housing, mental health access, and guardianship.

Recipients can receive a maximum award of \$5,000 per year, which is paid twice yearly. The number of awards and the amount of the award is at the discretion of the LRAP Committee. The LRAP award must be used by the recipient to pay for their educational debt.

As past recipients of the LRAP award can attest, this is a powerful way for the VBA and Vermont legal community to help Vermont attorneys afford the high cost of education. The VBA strongly suggests that all attorneys who fit the criteria apply to this program.

(2) Tax deductions for student loan interest

Those who pay student loans can also receive up to \$2,500 in a tax return for interest paid on student loans.⁷ The deduction phases out, starting when filers reach \$75,000 modified adjusted gross income.⁸ Borrowers can take advantage of this tax deduction to help boost their financial wellness.

(3) Employers can assist their employees through establishing an educational assistance program

Employers can pay up to \$5,250 per year towards their employee's student loans through an educational assistance program.⁹ This benefit began in 2020 and will expire at the end of 2025.¹⁰ Essentially, the program allows the employer to use the employee's pre-tax wages to pay up to \$5,250 per year towards the employee's student loans.¹¹ For employees who pay student loans, this has the benefit of using pre-tax dollars, rather than post-tax dollars, towards student loan debt.

(4) Boost retirement savings while paying down student debt

The Secure Act 2.0 created a new program for treating student loan payments as elective deferrals for purposes of matching contributions to retirement.¹² This program began at the beginning of 2024.¹³

Oftentimes, an employee can contribute to their employer sponsored retirement account and receive an employer match up to a percentage of their yearly salary.¹⁴ In that instance, the employee must contribute that amount in order to receive the matching funds from the employer.¹⁵

Secure Act 2.0 creates an option, not a requirement, for employers to treat their employees' payments toward student loans as a “deferred” payment towards retirement.¹⁶ Essentially, the Secure Act 2.0 recognizes that someone who is paying back student loans is less able to prioritize other financial goals, such as saving for retirement. When an employee is less able to put their salary towards retirement savings, they are also potentially missing out on the employer match.

The employee's payments towards the student loans can only count as a deferred payment for the purposes of the matching

funds if the payment is towards a “qualified student loan payment” which is “a payment made by an employee in repayment of a qualified education loan . . . incurred by the employee to pay qualified higher education expenses, but only if the employee certifies to the employer making the matching contribution that such payment has been made on such a loan.”¹⁷ To certify a payment, the employee must provide to the payment sponsor “(1) the amount of the loan payment; (2) the date of the loan payment; (3) that the payment was made by the employee; (4) that the loan being repaid is a qualified education loan and was used to pay for qualified higher education expenses of the employee, the employee’s spouse, or the employee’s dependent; and (5) that the loan was incurred by the employee.”¹⁸

Employees could also use student loan payments as part of their contributions towards their match, rather than the entire contribution towards the match. For example, an employee with a 5% match can contribute 2% towards their match and then use their student loan payments as the other 3%.¹⁹ Rather than leaving money behind by not meeting the employer match, the employee can tailor the program to meet their financial situation. For borrowers with significant student debt, saving for retirement can feel impossible. I have certainly felt like this. With student loan debt so immediate and retirement feeling so far away, it feels like saving for retirement needs to take a back seat. Thankfully, this new program recognizes that and allows borrowers to pay their student loans without forgetting completely about retirement savings.

(5) Retention tool for employers

The IRS promotes the educational assistance program and the retirement deferral program as ways for employers to entice employees to work for the employer and to retain employees.²⁰ Considering the significant number of graduates with student loan debt and the high amount that many borrowers carry, these programs may help employers attract and retain talent.

Therefore, while the burden of student debt can feel very heavy and insurmountable, as I have felt myself, these programs can assist borrowers with meeting their financial goals. Hopefully, these programs can help borrowers improve their financial wellbeing and reduce stress and anxiety with managing student loan debt.

Julia T. Guerrein is an Associate Attorney Cooley, Cooley & Fox, Inc., (formerly Heilmann, Ekman, Cooley & Gagnon, Inc.) in Burlington and co-chair of the VBA Lawyer Well-Being Section.

¹ Survey reveals effects of law student debt, recommends solutions, American Bar Association (Sept. 9, 2024) <https://www.americanbar.org/news/abanews/aba-news-archives/2024/09/survey-reveals-effects-law-student-debt/>; Student Debt, COVID-19 Relief, and Loan Forgiveness: Perspective from Today’s Young Lawyers, American Bar Association (2024) https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2024-student-loan-survey.pdf

² Cost of attendance, LawHub <https://www.lawhub.org/trends/tuition> (last visited Sept. 10, 2024).

³ Law School Debt in the United States, LawHub <https://www.lawhub.org/trends/debt> (last visited Sept. 10, 2024).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Topic No. 456, Student loan interest deduction, Internal Revenue Service <https://www.irs.gov/taxtopics/tc456> (last visited Sept. 10, 2024); Did you know that the Internal Revenue Service (IRS) provides tax benefits for education?, Federal Student Aid <https://studentaid.gov/resources/tax-benefits> (last visited Sept. 10, 2024).

⁸ Publication 970 (2023), Tax Benefits for Education, Internal Revenue Service <https://www.irs.gov/publications/p970#d0e6339> (last visited Sept. 10, 2024).

⁹ Reminder to employers and employees: Educational assistance programs can be used to help pay workers’ student loans; free IRS webinar will offer details, Internal Revenue Service (Aug. 24, 2023) <https://www.irs.gov/newsroom/reminder-to-employers-and-employees-educational-assistance-programs-can-be-used-to-help-pay-workers-student-loans-free-irs-webinar-will-offer-details>

¹⁰ Id.

¹¹ Frequently asked questions about educational assistance programs, Internal Revenue Service (June 2024) <https://www.irs.gov/newsroom/frequently-asked-questions-about-educational-assistance-programs>

¹² Notice 2024-63, Guidance Under Section 110 of the SECURE 2.0 Act with Respect to Matching Contributions Made on Account of Qualified Student Loan Payments, Internal Revenue Service <https://www.irs.gov/pub/irs-drop/n-24-63.pdf> (last visited Sept. 10, 2024).

¹³ IRS issues important interim guidance on employer matching contributions made to retirement plans related to employee student loan payments, Internal Revenue Service (Aug. 19, 2024) <https://www.irs.gov/newsroom/irs-issues-important-interim-guidance-on-employer-matching-contributions-made-to-retirement-plans-related-to-employee-student-loan-payments>

¹⁴ Secure Act 2.0 Student Loan Match: How It Works, Lord Abbett (Feb. 13, 2024) <https://www.lordabbett.com/en-us/financial-advisor/insights/retirement-planning/secure-act-2-0-student-loan-match-how-it-works.html#:~:text=A%20feature%20of%20Secure%20Act,into%20the%20employee%27s%20retirement%20account.&text=Student%20loan%20debt%20precludes%20many%20workers%20from%20saving%20for%20their%20retirement.>

¹⁵ 401(k) plan overview, Internal Revenue Service, <https://www.irs.gov/retirement-plans/plan-sponsor/401k-plan-overview#:~:text=If%20the%20plan%20document%20permits,to%20defer%20under%20the%20plan.> (last visited Sept. 10, 2024).

¹⁶ SECURE 2.0 Act of 2022, Pub. L. No. 117-328, 136 Stat. 4459, Division T, § 110(b)(D).

¹⁷ Id.

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¹⁸ Notice 2024-63, Guidance Under Section 110 of the SECURE 2.0 Act with Respect to Matching Contributions Made on Account of Qualified Student Loan Payments, Internal Revenue Service <https://www.irs.gov/pub/irs-drop/n-24-63.pdf> (last visited Sept. 10, 2024).

¹⁹ Ronda Lee, Here’s how SECURE 2.0 helps student loan borrowers save for retirement, Yahoo Finance (Feb. 26, 2024) https://finance.yahoo.com/news/heres-how-secure-20-helps-student-loan-borrowers-save-for-retirement-170135614.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACpZW0V6CnvfCabdgC8tOq8FBR5qMqczzVY8xwQ76fKhvy-1oRo_wED-FzGH42Kr41cpmOWCOiyGNn_PmRg9q58H-3PylfeQPYxJkrZ3ldn98TTGicL_S8Jrq-WVqDE-W10oyHGzoVltYOo905fUOTR4DDijz_D9PT4x-4iTi4hHmBsz

²⁰ Reminder to employers and employees: Educational assistance programs can be used to help pay workers’ student loans; free IRS webinar will offer details, Internal Revenue Service (Aug. 24, 2023) <https://www.irs.gov/newsroom/reminder-to-employers-and-employees-educational-assistance-programs-can-be-used-to-help-pay-workers-student-loans-free-irs-webinar-will-offer-details> (“Employers who don’t have an educational assistance program may want to consider setting one up. In a tight labor market, worthwhile fringe benefits such as educational assistance programs can help employers attract and retain qualified workers.”) 

The Expansive Scope of Animal Law

In the ever-evolving landscape of legal practice, animal law emerges as a distinctive and increasingly relevant field. This multidisciplinary domain intersects with various areas of law to advance animal interests, ranging from advocating for legal reforms that recognize animal personhood to managing everyday legal tasks such as drafting pet trusts and adoption contracts. As the legal community continues to recognize the significance of animals in our society and our obligations to them, the relevance of animal law grows, touching on issues related to companion animals, wildlife, farmed animals, and captive species. This article endeavors to provide a brief primer on the field of animal law and its relevance to Vermont practitioners.

The Scope of Animal Law

Animal law extends beyond traditional boundaries, intersecting with environmental, criminal, property, and constitutional law, among others. At its core, it seeks to address the complex legal status and treatment of animals in various contexts.¹ The scope of animal law can be expansive or specific, encompassing various legal disciplines aimed at enhancing animal protections. Whether it's a case involving an injury to your beloved companion animal, the welfare of farmed animals, or the preservation of wildlife habitats, animal law advocates use diverse legal tools to protect animal welfare and promote their interests.

Animal law practitioners often collaborate with professionals in other legal fields or must get up to speed quickly on seemingly unrelated areas of law. For example, attorneys focused on strategic impact litigation may utilize securities or consumer protection laws to influence the practices of various animal use industries. Consider a scenario where a meat company makes misleading statements directed towards investors; this could lead to potential securities law violations.² Similarly, if the same company misleads consumers about its products, it might be accused of engaging in unfair and deceptive practices.³ Such legal actions demonstrate the broad applicability of different legal areas in advancing animal law.

Lawyers can also serve animal interests by representing their guardians. For instance, drafting adoption contracts for rescue organizations that ensure the welfare of the animals involved and assisting clients in setting up pet trusts for posthumous animal care are facets of animal law. Attorneys specializing in animal law engage in a variety of other

civil matters, including animal custody disputes,⁴ veterinary malpractice claims, cases involving the wrongful death of a pet, and so much more. These causes of action offer opportunities to advocate for higher damage awards, as they are often limited to the animal's fair market value.⁵ Given that animals are legally considered property, this valuation can be minimal, especially for older pets, those considered less desirable, or those acquired by low adoption fees, making such cases financially challenging to pursue. Lawyers, scholars, and advocates have been pursuing reforms to this property designation through courts, legislatures, and public opinion with varying degrees of success.⁶

Criminal defense and prosecution also encompass key parts of animal law, particularly in cases of animal cruelty and defending charges against animals labeled as dangerous.⁷ These lawyers might also be involved in seeking protective orders for both victims and their pets, recognizing that abusers may harm pets to further distress their victims. Many jurisdictions, including Vermont, have recognized this dynamic and enacted laws allowing pets to be included in protective orders, providing an additional layer of safety and support for affected individuals and their animals.⁸

Animal lawyers actively seek legal reforms and policy changes to elevate the status and rights of animals, advocating for measures like animal personhood and drafting ballot initiatives to eliminate market products derived from cruelty, such as foie gras and battery-cage eggs.⁹ As lobbyists, legislative staff, and lawmakers, these legal professionals push for stronger animal protections, influencing policy and enforcement within federal, state, and local divisions. A new law in Vermont, for instance, prevents hunters from selling bear paws and organs helping to reduce poaching, prevent wildlife trafficking, and protect healthy herds.¹⁰ Lawyers, whether state's attorneys or those representing interveners or amici, are then also needed to defend favorable animal protection laws against inevitable challenges by regulated parties.¹¹

Transactional and corporate lawyers also play a crucial role in animal law. For instance, General Counsels in animal protection organizations ensure compliance with tax exemption requirements and navigate legal issues concerning undercover investigations at animal enterprises, such as slaughter facilities, particularly in jurisdictions with "aggag" laws—legislation aimed at preventing the documentation of activities within ani-

mal enterprises.¹² Moreover, corporate lawyers are integral in crafting company policies that mandate the humane treatment of animals in supply chains, merging ethical considerations with business practices.¹³ This intersection highlights how corporate governance can influence animal welfare. There really is no area of law that animal doesn't intersect.

Why Animals Need Advocates

Animal interests are usually not directly represented in our legal system. This is in part because, as noted above, in most instances animals are considered property.¹⁴ The closest example of laws directly protecting animals are animal cruelty statutes. Though while it's possible such law may have been enacted for the benefit of the animals themselves, they may have also or instead been enacted for the benefit of society and human character.¹⁵ "The Link", so termed by sociologists and others, shows a connection or link between animal abuse and other forms of violence giving an anthropogenic motivation to prevent cruelty to animals.¹⁶ For animals to be represented in our legal system, typically, a human interest must be at play.

In most cases, animals lack legal standing; they require human interests to be implicated in legal actions.¹⁷ This fundamental limitation forms a significant part of animal law discussions and advocacy. A segment of animal law is dedicated to altering this dynamic by advocating for legal personhood for animals.¹⁸ Granting animals legal personhood would enable them to be considered as rights-holders under the law, a shift that moves beyond mere welfare or protection.¹⁹ Advocates of this approach argue that recognizing animals as legal persons could lead to more profound and systemic changes in how they are treated legally, ethically, and socially, providing them with stronger legal safeguards and a more direct voice.

Other practitioners within animal law leverage the existing legal framework to protect animal interests indirectly by asserting human or environmental injuries. For example, challenges to governmental actions that harm wildlife, such as the authorization of methane gas pipelines which cause habitat or ecosystem disturbances, often depend on human interests, like the aesthetic enjoyment of wildlife, to establish legal standing.²⁰ This approach uses human-centric legal arguments to safeguard animal habitats and, by extension, the animals themselves. No matter which approach or legal theories

are at play, our current system necessitates human intervention to advance the interests of nonhuman animals and amplify their voices.

The Role of the Vermont Practitioners in Advancing Animal Law

The Animal Legal Defense Fund (ALDF) ranks states on their animal protection laws, with Vermont currently at 19th.²¹ Vermont's ranking is expected to rise with the passage of a new law that enhances enforcement of animal welfare. This law creates a division within the Vermont Department of Public Safety, led by the Director of Animal Welfare, tasked with developing and manag-

ing a program to enforce state animal welfare laws.²² This includes overseeing animal cruelty investigations and requiring state shelters to submit annual reports to ensure proper animal care. These measures reflect Vermont's commitment to animal welfare and its potential to become a leader in animal law, providing growth opportunities for local attorneys in this field.

Recognizing the importance and growth of this field, the Vermont Bar Association has established a new Animal Law Section.²³ This section serves as a resource for practitioners interested in the field, offering a platform for networking, education, and advocacy. It aims to bring together lawyers who are passionate about animal issues, providing them

with the tools and knowledge to effectively advocate for animal interests within the legal system. Those interested in joining the section should join the Animal Law forum on VBA Connect.²⁴

The Animal Law and Policy Institute (ALPI) at Vermont Law and Graduate School (VLGS) also offers a rich resource for practitioners in Vermont seeking to deepen their understanding and involvement in animal law.²⁵ By aligning its educational offerings with the practical needs of the legal profession, the ALPI ensures that aspiring attorneys and legal professionals have access to cutting-edge knowledge and training in this dynamic field. ALPI's courses and programs, as well as its focus on real-world applicability, makes

CROSSWORD PUZZLE

by Kevin Lumpkin, Esq.

Kevin is back with a new crossword puzzle for this issue. Kevin is a litigation partner at Sheehy Furlong & Behm in Burlington, and in his spare time he enjoys puzzles and trivia of all kinds, especially crossword puzzles.

Note: for those who solve the New York Times crossword puzzle, Kevin rates this one at the Tuesday level on the NYT difficulty scale.

For the summer issue of the VBJ (the previous issue), Kevin made a puzzle in the style of the NYT's "Connections" offering. Here is the solution to that puzzle:

Category #1: Blue, Depressed, Low, Sad (Unhappy)

Category #2: Zodiac, Hollywood, Peace, Dollar (Signs)

Category #3: Ad, Pro, Sui, Res (Latin words in legal phrases)

Category #4: Novo, Rich, War, Bar (Starts of Superior Judge last names)

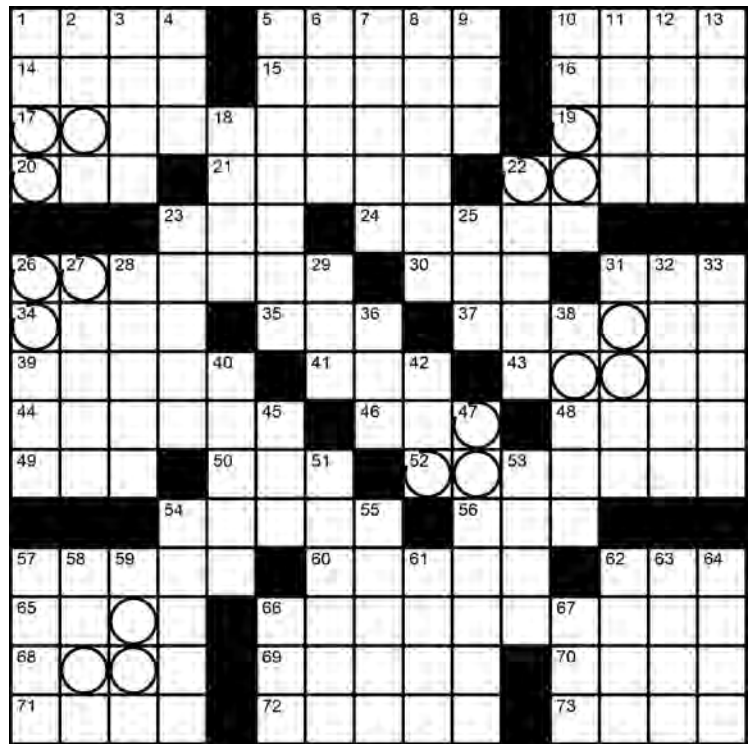
Across

1. "So do I"
5. Colleague of Kagan and Roberts
10. Side benefit
14. Have down
15. Daniel who wrote "Robinson Crusoe"
16. Sunburn soother
17. Successful movant under V.R.C.P. 24
19. Man or Skye, for two
20. Informal no
21. Mispronounced name in Key & Peele's "Substitute Teacher" sketch
22. Taken as a whole
23. Fry's in Futurama is 1077, the price of a cheese pizza and a soda.
24. Loses a pinball game, say
26. Earliest stage of development
30. Storm's center
31. Simple sandwich, for short
34. Former queen of Jordan
35. Not fast
37. Apple variety
39. Duke's quarters?
41. Affirmative homophone of 29-D
43. Cold place?
44. Executor's concern
46. A picture of health, for short?
48. POTUS delivers it
49. Kisses, symbolically

50. Sought office
52. Prison dwellers
54. Silverman, Jessica Parker, or Copeland Hanzas
56. Item in the AG's "Lawyers Fighting Hunger" drive
57. Don't forget to do this with your VBA membership
60. Yellower, say
62. "___ get about it" (punny Vietnamese restaurant name)
65. Parisian pal
66. Subject of V.R.C.P. 65 and the theme of this puzzle
68. Ferret relative
69. Lab containers
70. "Picnic" playwright
71. Mom and pop orgs?
72. "The Tortoise and the Hare," e.g.
73. Informal no

Down

1. Dermatologist's domain
2. Kendrick, Wintour, or Nicole Smith
3. "Like a ___ to a flame"
4. "I wrote a sheep pun just for ___"
5. Part of a book deal
6. Bad look
7. Else
8. Coin you might get at the Mid-Winter Thaw
9. Star-Spangled Banner word
10. Annoyances
11. Disney's Queen of Arendelle
12. Craps turn
13. Hull part
18. Parade spoiler
22. Twosomes
23. Italian city known for its ham and cheese
25. NaOH
26. Middle neighbor?
27. End of a hangman's rope
28. Kids' creations from pillows
29. "Woo-hoo!"
31. Wine grape variety
32. Thug
33. Religious figure
36. Part of Sen. Leahy's former title
38. Galileo, by birth
40. This sucks!
42. Glinda portrayer, to fans
45. Canal locale
47. Anger
51. Aslan's world
53. Antony of antiquity or Anthony of modernity
54. Opposite of hides, in a way
55. It means "curtain" in Arabic
57. Accessible entrance, maybe
58. Give off
59. Totenberg of NPR
61. Tug on
62. ___ colada
63. Takes too much of
64. White Monopoly bills
66. Modern reproductive technique (abbr.)
67. Thanks for waiting?



it an invaluable hub for those looking to advocate more effectively for animal rights and welfare.

Opportunities in Animal Law

Animal law and policy is a dynamic and rapidly expanding field, presenting a variety of career pathways for those passionate about advocating for animal interests. The spectrum of job opportunities in animal law is broad, encompassing roles not only as attorneys but also as lobbyists, legislative staff, consultants, professors, authors, regulators, and even politicians. These professionals work within animal advocacy organizations, nonprofit sectors, government agencies, legislatures, and private legal practices. There are also many part-time opportunities especially for attorneys wanting to contribute their expertise on a pro bono basis, underscoring their commitment to animal welfare.

For those looking to enter or advance in this field, numerous organizations offer vital resources. Animal Advocacy Careers, for example, offers career support and facilitates connections to meaningful opportunities in animal advocacy.²⁶ ALDF and ALPI also post job opportunities in this space.²⁷ Given the enormous impact of animal law, effective altruism groups, which aim to determine the most effective ways to improve the world, like 80,000 Hours, often post relevant animal law jobs on their employment boards.²⁸ Through these services, aspiring and current advocates can find positions that allow them to effectively contribute to this field.

As the challenges facing animals and their legal status become more complex, there is a growing need for skilled legal professionals in the field of animal law. As this area of practice continues to grow and intersect with other legal disciplines, it presents unique opportunities for advocacy and professional development. Vermont's legal community has a pivotal role in advancing these discussions, ensuring that our legal frameworks evolve to meet the ethical considerations of our time. Consider the impacts of your practice on animal welfare and get involved by joining the VBA's Animal Law Section.²⁹ By becoming involved, attorneys can play a crucial role in shaping the future of this important field, ensuring that the legal system recognizes and protects all animals.

Laura Fox is a Litigation Fellow for the Climate Change and Animal Agriculture Initiative and a Research Scholar at Yale Law School. Previously, she directed the Farmed Animal Advocacy Clinic at VLGS, served as a Senior Staff Attorney at HSUS, and was a Visiting Fellow with Harvard's Animal Law Program.

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² See, e.g., Farmed Animal Advocacy Clinic Represents HSUS and CBD in SEC Complaint Against JBS SA and Pilgrim's Pride for Apparent False and Misleading Sustainability Claims, VT. LAW & GRADUATE SCH. (Jul. 17, 2024), <https://www.vermontlaw.edu/blog/farmed-animal-advocacy-clinic-represents-hsus-and-cbd-in-sec-complaint-against-jbs-sa-and-pilgrims-pride-for-apparent-false-and-misleading-sustainability-claims>.

³ See, e.g., People of the State of New York v. JBS USA Food Co., et al., No. 0450682/2024 (filed N.Y. Sup. Ct. Feb. 28, 2024).

⁴ Check out VBA's CLE on Navigating the Terrain of Animal Custody: Trends, Challenges, and Opportunities. CLE Calendar & On-Demand Digital Library Catalogue, VT. BAR ASS'N (Jul. 24, 2024), <https://vtbar.intouchondemand.com/eventreg/eventreg?eventid=36139> (Current Member registration).

⁵ William C. Root, "Man's Best Friend:" Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for their Wrongful Death or Injury, 47 VILL. L. REV. 423 (2002), <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?httpsredir=1&article=1362&context=vlr>.

⁶ See, e.g., David Favre, Living Property: A New Status for Animals Within the Legal Living Property: A New Status for Animals Within the Legal System, 93 MARQ. L. REV. 1021 (2010), <https://scholarship.law.marquette.edu/mulr/vol93/iss3/3>; Geordie Duckler, The Economic Value of Companion Animals: a Legal and Anthropological Argument For Special Valuation, 8 ANIMAL LAW 199 (May 3, 2002), https://www.animallaw.info/sites/default/files/lralvol8_p199.pdf; Nicole Pallotta, Ohio Appeals Court Rules Dogs are Worth More Than "Fair Market Value", ANIMAL LEGAL DEF. FUND (Dec. 13, 2016), <https://aldf.org/article/ohio-appeals-court-rules-dogs-are-worth-more-than-fair-market-value/>.

⁷ Issues with dogs considered to be dangerous are handled at the local town level in Vermont. A recent local example of such a case resulted in a confinement order restricting the dog to a fenced in area. See John Lippman, Dog Deemed 'Vicious,' Ordered Confined To Owner's Property, VALLEY NEWS (Sept. 2024), <https://www.vnews.com/Sharon-orders-vicious-dog-confined-to-owner-s-property-56860940>. This may be a fortunate result considering other jurisdictions have mandatory euthanization provisions for dogs deemed dangerous and who cause serious injury. Charlotte Walden, State Dangerous Dog Laws, MICH. STATE UNIV. COLL. OF LAW (2019), <https://www.animallaw.info/topic/state-dangerous-dog-laws>.

⁸ Rebecca F. Wisch, Domestic Violence and Pets: List of States that Include Pets in Protection Orders, MICH. STATE UNIV. COLL. OF LAW (2024), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders>; 15 V.S.A. § 1103.

⁹ Why Ballot Measures Matter for Animal Welfare, HUMANE SOC'Y OF THE U.S. (Aug. 14, 2023), <https://www.humanesociety.org/blog/why-ballot-measures-matter-animal-welfare>.

¹⁰ 10 V.S.A. § 4783; Act 141, VT S.301 (2024), <https://legislature.vermont.gov/bill/status/2024/S.301>; Emma Cotton, A New Vermont Law Prevents Hunters From Selling Bear Paws and Organs, VT. DIGGER (Aug. 29, 2024), <https://vtdigger.org/2024/08/29/a-new-vermont-law-prevents-hunters-from-selling-bear-paws-and-organs/>.

¹¹ See, e.g., Kitty Block & Sara Amundson, In Significant Win, Court Upholds Massachusetts Farm Animal Protection Law, HUMANE SOC'Y OF THE U.S. (Jul. 24, 2024), <https://www.humanesociety.org/blog/court-upholds-massachusetts-farm-animal-protection-law>.

¹² What Is Ag-Gag Legislation?, AM. SOC'Y FOR THE PREVENTION OF ANIMAL CRUELTY, <https://www.aspc.org/improving-laws-animals/public-policy/what-ag-gag-legislation> (last visited Sept. 3, 2024).

¹³ Monique Janssens, Animal Business: an Ethical Exploration of Corporate Responsibility Towards Animals, FOOD ETHICS (Oct. 30, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8556856/>.

¹⁴ Supra note 6.

¹⁵ David Favre & Vivien Tsang, The Development of the Anti-Cruelty Laws During the 1800's, DET. C.L. REV. 1 (1993), <https://www.animallaw.info/article/development-anti-cruelty-laws-during-1800s>.

¹⁶ Brinda Jegatheesan, et al., Understanding the Link between Animal Cruelty and Family Violence: The Bioecological Systems Model, INT'L J. ENV'T RES PUB. HEALTH (Apr. 30, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7246522/>.

¹⁷ See Cass R. Sunstein, Standing for Animals, UNIV. OF CHI. L. SCH., (Nov. 30, 1999), <http://dx.doi.org/10.2139/ssrn.196212>.

¹⁸ See, e.g., About Us, NONHUMAN RIGHTS PROJECT, <https://www.nonhumanrights.org/about-us/> (last visited Sept. 3, 2024).

¹⁹ See Gary Francione, Animal Rights and Animal Welfare, 48 RUTGERS L. REV. 397 (1995-1996), <https://heionline.org/HOL/LandingPage?handle=hein.journals/rutlr48&div=16&id=&page=>

²⁰ D.C. Circuit Petitioned to Review Certificate Extension for North Carolina Methane Gas Pipeline, CTR. FOR BIOLOGICAL DIVERSITY (Apr. 23, 2024), <https://biologicaldiversity.org/w/news/press-releases/dc-circuit-petitioned-to-review-certificate-extension-for-north-carolina-methane-gas-pipeline-2024-04-23/>.

²¹ Vermont, ANIMAL LEGAL DEF. FUND, <https://aldf.org/state/vermont/> (last visited Sept. 3, 2024).

²² 20 V.S.A. § 3201; Act 167, VT H.626 (2024), <https://legislature.vermont.gov/bill/status/2024/H.626>.

²³ Kim Velk, VBA Establishes Animal Law Section, VT. BAR ASS'N (Apr. 5, 2024), <https://www.vtbar.org/vba-establishes-animal-law-section/>.

²⁴ Communities, VBA CONNECT, <https://vbaconnect.vtbar.org/communities> (last visited Sept. 3, 2024) (click "Join" next to "Animal Law").

²⁵ Animal Law and Policy Inst., VT. LAW & GRADUATE SCH., <https://www.vermontlaw.edu/academics/centers-and-programs/animal-law-policy-institute> (last visited Sept. 3, 2024).

²⁶ Animal Advocacy Jobs, ANIMAL ADVOCACY CAREERS, <https://www.animaladvocacycareers.org/job-board> (last visited Sept. 3, 2024).

²⁷ Employment Opportunities, ANIMAL LEGAL DEF. FUND, <https://aldf.org/about-us/employment-opportunities> (last visited Sept. 3, 2024); Animal Law and Policy Inst., VT. LAW & GRADUATE SCH., <https://www.vermontlaw.edu/academics/centers-and-programs/animal-law-policy-institute> (last visited Sept. 3, 2024) (scroll down to "Current Job Openings").

²⁸ Jobs, 80,000 HOURS, <https://jobs.80000hours.org/> (last visited Sept. 3, 2024) (search by area: "Animal welfare").

²⁹ To learn more about how to incorporate animal law into your practice check out the VBA CLE on Advocating for Animals in Vermont: How to Incorporate Animal Law into Your Practice. CLE Calendar & On-Demand Digital Library Catalogue, VT. BAR ASS'N (Feb. 8, 2024), <https://vtbar.intouchondemand.com/eventreg/eventreg?eventid=35559> (Current Member registration).

¹ Joyce Tischler, The History of Animal Law,

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The Vermont Lawyer's Guide to the Consumer Assistance Program

The Vermont Attorney General represents the state "in all civil and criminal matters as at common law and as allowed by statute." (3 V.S.A. § 152). A big job, and one that has been held by Charity Clark, Vermont's first elected woman AG, since she was sworn in back in January 2023.

In addition to prosecuting crimes, suing entities that have harmed Vermont, and defending the state when it is sued by others, there's an important, longstanding project aimed at solving problems for Vermonters, without litigation, that isn't, perhaps, as well-known. It's the venerable Consumer Assistance Project (CAP), located, literally, in a corner of the University of Vermont campus for 40 years now.

CAP services --their core function is neutral informal "letter mediation" offered to resolve consumer complaints -- are free. CAP is a resource that any Vermonter, including Vermont small businesses, can use. It's also a place that any Vermont attorney who fields questions from clients or potential clients about a product or service gone wrong should know about. The TV that doesn't power up, the replacement windows that leak, the pneumatic lift that won't lift, what have you, these sorts of inquiries, common in many Vermont lawyer's offices, may well and usefully be directed to CAP. Got an inquiry from a client who was the victim of a scam? CAP can help with that too -- depending on the situation they may be able to reverse or freeze a transaction. At a minimum they have lots of information about how consumers can avoid or react to a scam.

"We want people to know what their rights are. We can't stop scammers, but we can educate Vermonters and education is our best tool. I view CAP as the most important constituent arm of our office," Clark said. The program handles between eight and 12 thousand inquiries a year and last year provided extensive mediation services on 1,251 consumer complaints.

In addition to being a key component of constituent service, the program is dear to Clark's heart as an important part of her own history. Clark started in the AG's Office under William Sorrell as an Assistant Attorney General in the Consumer Unit. Later, under Attorney General T.J. Donovan she served as director of CAP as Chief of Staff. "I'm a UVM graduate and I loved being at CAP. I loved being at UVM and I loved working with the students."



The CAP Team at their annual retreat.

Once Clark was elected to lead the office, she tapped Christopher Curtis, an AAG who had joined the office under Donovan, to head up CAP. Clark encouraged Curtis to redesign and reinvigorate some processes to be more responsive to consumers. "We now attempt to resolve matters that come to the program within 90 days. We've come up with a few process changes in the last year or so that have helped us to do better than ever," he said. The program recovered or saved some \$1.89 million dollars last year for Vermonters -- far outpacing its previous best year (\$709,533 in 2019). "We just finished our second quarter this year and have already recovered or saved \$1.5 million," Curtis said. "We hope to continue to improve as we listen to Vermonters' concerns and try to address them in the most efficient manner possible."

With its long track record and increasing success, it's not surprising that the legislature approved a new position for the office 2022 - a home improvement specialist. That job has been filled by Gabriel Taylor-Marsh. Taylor-Marsh focuses exclusively on homeowner assistance with residential contractor complaints. In his first year on the job, he mediated disputes so that

some \$400,000 was returned to consumers. "Home improvement complaints are among the most common," Clark said.

The office also includes a specialist small business advocate. "Small businesses are consumers too," Clark said. The most common complaint category among business consumers was a tie between banking, credit, and finance complaints, often regarding merchant processor agreements, and entertainment, where businesses were concerned about the security of social media accounts. "An autobody repair shop that buys paper towels or coffee for the waiting room and gets something that isn't right and can't get satisfaction from the vendor can reach out to CAP," Clark said. The small business specialist is Emily McDonnell, a former CAP student. Last year, McDonnell helped businesses who had lost money to recover or save about \$800,000.

The Teaching Component

Every state has a consumer assistance program, but Vermont is the only one that incorporates this service-learning feature. UVM offers two courses, known colloquially as "CAP 1" and "CAP 2." In CAP 1, "Consumer Law in Action 1" as per the

course catalog: “[u]nder the supervision of an attorney, students respond to real-world phone, online, and mail requests for consumer information and handle consumer complaints to connect consumers with appropriate and effective resources, professionals, and protections.” There were 16 students in the class last year. Cap 2 (“Consumer Law in Action II”) is a small group symposium – four students last year. It provides, “experience working as an advanced consumer advocate in the Consumer Assistance Program office. Builds on [CAP 1] experience with students addressing more complex consumer complaints and inquiries as well as leading student teams.”

Curtis says the courses attract students with a variety of interests. “Some are interested in law and government, but also public relations and marketing – all kinds of things. We get kids who are interested in the practical application of theory.” The classes are taught by Curtis and CAP assistant director Lisa Jensen. They also bring in guest lecturers, including Attorney General’s Office personnel, community experts, and UVM staff to present in their area of expertise.

CAP 1 meets once a week in a classroom in the stately, columned Waterman Building on the iconic UVM green. The practical part of the course, responding to consumer problems, takes place in the CAP offices, a cozy rabbit warren in the basement on the garden level of an old house, around the corner on Mansfield Avenue.

When I visited the CAP offices in late August, Curtis and I met in a conference room with no windows, but some interesting (and inscrutable) diagrams on the white board, presumably left over from a CAP 2 seminar. A bundt cake sat just beside the receptionist’s desk, missing one slice when I arrived and maybe two more when I left an hour later. The staff, and the students once they arrive, work together in a large room with high, narrow windows (“garden level”). There are computers. There are phones. The atmosphere is congenial.

The UVM and AGO partnership has had swings and roundabouts over the many years of the program but has been present as long ago as the early 1970s. Jay Ashman was the first director of CAP. “When I joined the AG’s office in 1973 the Consumer Protection Division was in downtown Burlington. Although there was funding for attorneys, an investigator, and secretaries, there was never sufficient funding for staff to handle the hundreds of complaints that came in by phone and mail monthly. So, the office relied on part-time interns and volunteers from UVM as well as a student who was there full-time for a year under the University Year for Action program.”

The Program moved to Montpelier for a time in the mid-1970s under Attorney Gen-



Charity Clark

eral Jerry Diamond, with students from UVM and other Vermont colleges enlisted to take on the complaint processing (unwieldy, as things turned out). It came back to UVM in the fall of 1981 and has been there ever since. “At that time there was one half-time attorney, a full-time complaint coordinator and a half-time secretary. I think it’s fair to say the program has grown a bit,” Ashman noted.

How it Works

When a complaint comes in, a CAP staffer or student takes the information. Sometimes there’s an easy fix. Curtis gives the example of someone calling to say that they

Contact: 800-649-2424 or e-mail AGO.CAP@vermont.gov

For four decades, the Vermont Attorney General and UVM have worked together to help Vermont consumers and businesses. The Consumer Assistance Program can help address consumer concerns before, during, and after problems arise. The program provides consumer and consumer business education, a complaint mediation service, and can connect Vermonters with resources to avoid and to resolve consumer disputes.

Vermonters can contact the office to file a consumer complaint, to report a scam and get education on scam prevention and awareness.

Small Businesses are consumers too – and CAP can help when a purchase made by a Vermont small business fails to satisfy.

The Attorney General’s website has lots of information about how to report scams, and how to deal with them once they happen. There is information on towing practices, a link to the Home Improvement Fraud registry, and lots of other consumer information. The website also includes forms for reporting scams and consumer complaints as well as a “small claims court kit” for consumers who might want to try litigating an issue themselves. See: <https://ago.vermont.gov/cap>



have bought an item that isn't working or not wanted, and the seller is refusing to allow a return. "Sometimes with just a simple phone call we can resolve this kind of problem," Curtis said. If things are more complex, the CAP program will write a letter describing the consumer complaint to the seller or service provider. This letter goes out on AG stationery and asks for a response within 10 days. "Letter mediation is the meat and potatoes of what CAP does," Clark noted. "Often times communication has broken down between the consumer and the vendor and our neutral mediation can help."

If CAP mediation doesn't result in a resolution, consumers may take the next step. The AG's Office has a "small claims kit" on its website, to help consumers who might want to take their grievance to court on their own. Sometimes, an attorney will be their next call.

When it comes to scams and robocalls, if a victim has actually lost money and a report is timely made to the CAP, they can try to help stop a transaction. Curtis said this is not the most common scenario. "Usually, people haven't lost money. Of course, most of the online and phone scams originate outside of Vermont or are impossible to trace. About half the calls we get

here are reports of scams. Unless there has been money lost just as the report is being made, we focus on using those calls for prevention and education."

CAP staffers keep track of the complaints that come in. Where there is a pattern of complaints, a referral may be made to an AAG for potential prosecution. For example, CAP received numerous complaints about an unlicensed plumber. After investigation, Curtis filed a complaint and the Court granted judgment in the State's favor enjoining the defendant from engaging in unlicensed activity or advertising "plumbing" services. When a new scam is afoot, CAP monitors it and reports to the central office. If a public alert appears necessary, as it was, for instance, with "flood assistance" being offered around Vermont last summer by scammers, Clark issues a scam alert. Anyone can sign up for the "Vermont Scam Alert System" to receive these via text, email, or a voicemail. The media is also alerted.

CAP is also active in the community, offering trainings with partner organizations, like UVM, AARP, and the fuel industry (to teach about Vermont's special propane requirements).

As with any organization that invites people to call with problems, not every com-

plaint or issue brought to CAP can be addressed by their program. "We're a hotline and we get calls about lots of things that aren't within our mandate," Clark said. "We will try to help, making a referral to another agency or pointing the person to other resources." Once a dispute is being handled by an attorney, that also moves CAP out of the picture. That said, inquiries from attorneys are welcome.

"We got a call from a lawyer's office recently," Curtis said. "Once lawyers are involved things have often moved beyond CAP's informal mediation into a different arena and CAP is unlikely to be involved. This lawyer, however, was representing a client in a matter not related to the consumer complaint. He was just reaching out to our office to help relay the consumer's concern and request a response. It was the kind of issue that we might be able to mediate, and it was a good idea to start with us. I was glad they reached out to us and of course we were happy to discuss the matter and try to assist. I think this was helpful to the attorney as well. Even if the effort is unavailing, more facts may come to light and certainly some time is saved if the attorney ends up deciding to take it on."

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Expert Or No Expert? That Is the Question¹

The use of experts in Vermont state courts is addressed in Rules 702-705 of the Vermont Rules of Evidence. Rule 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Vt. R. Evid. 702 (emphasis added).

However, if the matter on which the expert is to testify is easily understood by the jury without an expert, using an expert is not only unnecessary but adds costs and complexity to the case and often is a barrier to pursuing the case. In addition, although the focus of almost all expert testimony is offering an opinion to help “determine a fact in issue,” the expert may be most useful in “assisting the trier of fact to understand the evidence” and offer no opinion. In many cases it is assumed an expert is required to offer an opinion. These assumptions warrant reexamination.

Do You Need an Expert?

There are many reasons why it is better to not have an expert in a case. Here are a few of the most obvious ones:

1. They are expensive.
2. Their cost may make a viable claim infeasible to pursue leaving the client without a remedy.
3. They can be hard to deal with and take a lot of time and effort.
4. If they are true experts, they will say what they believe, not what you want them to say and will say it their way and not your way.
5. They invite challenges from your opponent which can morph into full-blown satellite trials taking time and money.
6. Even if they are the best expert on the subject, they may not be the best expert on the witness stand and thus may not strengthen your case with the jury.

For these reasons, among others, it is best to be certain you really need an expert. In addition, and even more importantly, if you conclude a case needs an expert to proceed you or your client may decide not to pursue the case because of the anticipated upfront

cost. I have heard from several attorneys that potential clients with serious injuries and viable claims are being rejected because of the economic costs and extra time required to pursue the case where one or more experts are believed to be essential to success. This situation, which seems to be growing, is of great concern, particularly since it increases the discrepancy in justice available to those with limited resources as compared to those with enough resources to pay for their lawyers and expenses. Regrettably, those with such adequate resources are frequently the wrongdoers.

Our duty as lawyers is “to provide legal services to those unable to pay.” See Rule 6.1 of the Vermont Rules of Professional Conduct. Nonetheless, the obligation does not require taking on representation when “representing the client is likely to result in an unreasonable financial burden on the lawyer.” *Id.* Rule 6.2(b). When the lawyer is taking the case on a contingency basis, including advancing the litigation costs, the costs of experts can create an unreasonable financial burden. In addition, even if the client were willing to advance the cost of the experts, it may not be prudent to proceed if those costs are so high that the likelihood of a favorable result cannot produce sufficient recovery to fully reimburse those costs and provide a reasonable recovery. In the end the wrong done to the potential client will not be redressed in the legal system.

Perhaps the worst consequence of the wrong not being addressed by the legal system is the growing possibility the potential client will seek violent redress outside the legal system. “Access to justice supports sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes.”² In nations all over the world people with legitimate complaints do not have lawyers or a legal system to seek to address their complaints and the result is often a resort to violence. Such situations can persist and become widespread, forming the seeds of violent revolution. “In an increasingly polarised world where trust in institutions is weakening across the board, justice systems that allow conflicts to fester and intensify are a liability. If our societies are to reduce violence, tackle corruption, protect the environment, address inequality and repair broken social contracts, they will need revamped justice systems that respond effectively – and cost-effectively – to people’s needs.”³ If the legal option becomes widely unavailable due to financial constraints, stability may suffer. Since the rising cost of expert-based litigation is inhibiting the availability of legal options, we should be looking at ways to miti-

gate those costs and increase opportunities for those with legitimate claims to have their “day in court.”

How To Manage the Expert Expense

The first step in managing expert expenses is to evaluate carefully whether and to what extent an expert is needed. Although it is often assumed the purpose of an expert is to offer an expert opinion on an ultimate fact – e.g. “did the toxin cause plaintiff’s illness or was the doctor medically negligent?” – those may be conclusions the jury, if properly educated, can make on its own.

An opinion from a federal court of appeals provides an interesting example. *Carroll v. Litton Sys., Inc.*, 47 F.3d 1164 (4th Cir. 1995) involved a claim of adverse health impacts from chemicals released from a Litton Systems facility. The chemicals had travelled to the drinking water wells of the plaintiffs. The trial court had excluded plaintiffs’ expert witness opinions regarding when and how much of the chemicals had reached the drinking water wells, and whether the chemicals had caused the plaintiffs’ adverse health effects and granted defendant summary judgment. On appeal, the Fourth Circuit reversed reasoning:

Litton used TCE at its plant from 1967 until about 1974, that the TCE found in the residential wells in 1986 originated at its plant, and that the types of health problems experienced by twenty-one of the twenty-two plaintiffs were known to be caused by TCE [...] a reasonable jury could infer from the fact that Litton last used the TCE in 1974, and the fact that plaintiffs who consumed water from these wells show health problems consistent with TCE exposure, however, that the concentration of Litton’s TCE in these wells was at some point before 1986 considerably higher than the concentrations measured in 1986 and, therefore, that Litton’s TCE did cause substantial injury and actual damage to those plaintiffs who had an ownership or possessory interest in these wells.” *Id.*

In essence, the court concluded that common sense, not an expert opinion, could be used to decide the case and that it was for the jury to apply its common sense to the facts of the case.

This reliance on common sense, and not an expert opinion, is consistent with the underlying intent of Rule 702. When the rule was adopted in 1972 the Reporter’s Notes concluded, “Most of the literature assumes that experts testify only in the form of opin-

ions. The assumption is logically unfounded. The rule accordingly recognizes that an expert on the stand may give a dissertation or exposition of scientific or other principles relevant to the case, leaving the trier of fact to apply them to the facts.” Advisory Committee Notes (1972 Amendments), Fed. R. Evid. 702.

Since it is often the step from the basic scientific principles to the ultimate opinion that is the focus of a challenge to the expert and the most expensive experts are the ones offering opinions on the ultimate facts and not merely laying out the relevant scientific principles, it is worth considering avoiding the opinion step and letting the jury reach its own conclusions once the expert has explained the science, including the methodology that would be used to move from the facts to the conclusion. Obviously, this is a tricky process and the safest course of action may be to offer both the science and the opinion but in a way that the expert opinion and the science underlying the opinion are separable so that even if the opinion is rejected as a result of a Daubert challenge, as adopted by Vermont in *State v. Streich*, 163 Vt. 331 (1995), the scientific principles and the underlying facts are still available to go to the jury and survive the motion for summary judgment.

The use of this approach in Vermont medical malpractice cases may appear problematic because of the application of 12 V.S.A. § 1042(a) which requires a Certificate of Merit to accompany a complaint based on a claim of medical malpractice. The certification attests that, before filing suit, a qualified health care provider has been consulted and concluded it is reasonably probable a standard of care was breached by the defendant and the breach caused plaintiff’s injury. However, it does not follow that the expert who provided the opinion to support the filing of the complaint, need be disclosed or offered as a witness during the trial. But see *White v. Brereton* 23-CV-03438, Washington Unit (9/28/23). Since the information obtained by an attorney to file the Certificate of Merit is attorney work product and the opinion obtained is from a consulting expert not, at least at that point, an expert who will testify at trial, the opinion obtained, or the information relied upon in providing the opinion, is not discoverable. See Rules 26 (b)(4) and (5) VRCR.

Similarly, the general assumption is that expert opinions are needed to prevail in a toxic tort case involving personal injury. Thus, the expert on specific causation – i.e. whether the toxin in question caused the injury the plaintiff has suffered – will discuss: 1) the methodology used to make that determination, 2) the evidence available to determine whether the toxin has been linked to the plaintiff’s kind of injury, 3) the methodology used to determine whether in fact the toxin was a cause of the injury suffered by the

plaintiff and finally 4) whether the plaintiff’s injury was caused or contributed to by exposure to the toxin. In such a case the main defense attack on the expert will usually be on the last point. What if the expert only testified as to the first three points and left it to the jury to decide the fourth question based upon the approach set forth by the expert? The jury would have received evidence that established plaintiff was exposed to the toxin, that the toxin was capable of being a cause or contributing factor to the kind of injury the plaintiff has suffered and seen the medical records and heard the testimony from the plaintiff regarding other possible causes.

Do all complex cases require an expert to offer the final opinion? Do juries defer to the expert opinion on such ultimate questions or do they, in fact, rely on their own judgment after the preliminary evidence is presented to them? Whether such an approach is appropriate should be explored by use of pre-trial jury pool research and, where warranted, it can be offered to the plaintiff as an optional trial strategy. See Rule 1.2(c) of Vermont Rules of Professional Conduct.

A Proposal to Address the Expert Opinion/No Expert Opinion Question

Every day, hundreds of thousands of patients in the United States are asked by their doctors to sign “consent forms” to allow doctors to perform surgery and other medical procedures where there is a risk of harm from the procedure and no guarantee of a favorable outcome. In those cases, doctors believe the potential benefits outweigh those risks. As lawyers, we should consider using similar consent forms to allow our clients to take the risk of litigation where there is a reasonable chance of success without using expert opinions or at least using fewer expert opinions. Of course, use of such a process should only proceed if certain conditions are met. In medical cases, informed consent cannot authorize all medical procedures. The same is true for legal cases and, at a minimum, an “informed consent” case should meet the following criteria:

1. There must be a reasonable possibility the case can proceed past summary judgment without the use of the expert(s).
2. There must be a reasonable possibility a jury can and will render a judgment for the plaintiff without the use of the expert(s).
3. The case cannot proceed due to the anticipated costs of the expert(s) and extensive litigation anticipated to occur around the proposed use of the expert.
4. All measures will be taken to control the cost of the expert(s) by limiting the scope of the expert testimony and thus making the case financially viable for the attorney and/or client

5. The client is fully informed, in a manner the client can understand, of the risks of proceeding as proposed and the consequences of not proceeding.⁴

Conclusion

Engraved on the front of the United States Supreme Court building is this fundamental principle: Equal Justice Under Law. If we do not find a way to address the growing number of people with legitimate and serious injuries – physical, economic and/or emotional – who are not able to seek redress for their injuries in our civilized legal system due solely to economic constraints, the future of our legal system as the appropriate outlet for the redress of wrongs will be in serious danger and the promise of equal justice under law will not be kept. In a court of law an injured person confronts the wealthiest wrongdoer and can obtain redress. If that option is unavailable due to economic constraints, the consequences to our civilized society will be severe.

Numerous studies document the growing disparity between the wealthy and the rest of us.⁵ The results of that disparity include a growing percentage of people living in the United States with inadequate health care, marginal housing, lesser education, poor nutrition, and a lesser quality of life. Adding less justice to that list of disparities is creating the risk of adding gasoline to a smoldering fire. We should do all we can to mitigate that risk.

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¹ Portions of this article were originally included in study materials prepared by the author for an ALI CLE on environmental litigation presented on October 21-22, 2021, in Washington, D.C.

² United States Institute of Peace Press, *Guiding Principles for Stabilization and Reconstruction* (Washington, DC: US Institute of Peace, US Army Peacekeeping and Stability Operations Institute, 2009), 7-86 to 7-92.

³ Hague Institute for Innovation of Law (9/21/22 news release for *Delivering Justice, Rigorously: A guide to People-centered Justice Programming.*)

⁴ To be clear, such a “consent form” cannot and must not be used to justify an attorney failing to provide the client with the best possible legal representation. Rule 1.1 of the Vermont Rules of Professional Conduct. Thus, for example, it would be inappropriate for an attorney to seek a client’s approval to only provide a limited number of hours of work on a contingency case or even a limited number of hours in a fee for services case if it is apparent more work may be needed to see the case to conclusion.

⁵ E.g. <https://inequality.org/facts/income-inequality/>.

Help for Attorneys and Clients with Communication Challenges

The Vermont Communication Support Project (VCSP) assists individuals with disabilities that impact their ability to communicate by assigning Communication Support Specialists (CSS) to provide support in court, administrative proceedings, and/or meetings that may include attorneys, state personnel or providers.

We have been in existence for two decades and, despite eight other countries having similar projects entrenched in their judicial system, we are the only project of its kind in the United States. That makes Vermont a pioneer in this arena and demonstrates Vermont's commitment to ensuring equal access to our system of justice and state services.

The project trains and recruits independent contractors, CSSs, and coordinates with the state and judiciary when a CSS is needed. A CSS is an individual specifically trained to understand the communication needs of people with disabilities.

What do services look like?

We break our services into three parts: a pre-meeting, the meeting or hearing, and the post meeting.

The pre-meeting takes place a half an hour before the hearing. This is often a time when an attorney can meet with their client and having the CSS present is an important support for the client. It can also be helpful for the attorney's communication efforts. During the pre-meeting, with or without the attorney present, the CSS uses a variety of tools designed to focus on what the client understands about the proceeding about to take place, as well as the content and manner of what they would like to communicate. **The CSS will never offer input regarding the case, only support for the client's opportunity to communicate information.**

During the hearing, the role of the CSS is to be supportive and monitor the client's level of understanding and participation. When an attorney is present, it is considered best practice for the CSS to request any necessary accommodations through the attorney, unless an alternative plan has been established. The CSS takes notes during the hearing to refer to during the post-meeting.

The post-meeting takes place directly after the hearing with or without the attorney. The CSS may focus on checking an individual's understanding of the hearing, re-enforce information that was shared, support the client in developing follow up questions, and help organize next steps if that information was shared during the meeting or the hearing.

Outside of the pre and post meeting, we never meet with individuals on our own, to explain paperwork, or go over the case.

VCSP serves individuals participating in civil, family, probate and small claims court as well as administrative proceedings and meetings. VCSP does not serve individuals charged with crimes in criminal court. Most of our work is in family court as there is cross-over in juvenile cases between court hearings and DCF meetings for individuals involved in juvenile cases.

What do we mean by communication?

Communication may include comprehension, ability to express thoughts and feelings, ability to manage behavior in a way that may allow for effective communication, ability to understand written documentation, or many other variables involved with imparting or exchanging information in a setting such as a Court hearing or a DCF meeting.

There is a wide spectrum of disabilities that can and do impact communication. From cognitive disabilities where comprehension and literacy could present the largest obstacle to effective communication to mental health conditions in which comprehension may not be a concern at all, but where managing stress, anxiety and emotion, could significantly impact a person's ability to communicate.

So how does a Communication Support Specialist address some of those challenges?

Lawyers and communication support specialists are trained with a different set of skills but maintain a mutual respect for providing the client with their best opportunity to participate in their process and communicate as effectively as possible. A CSS is not an advocate. The CSS will never give the client advice, as an attorney would, but will work to support the client in being able to discuss and understand the matters being addressed by the lawyer.

Through the VCSP Vermont shows how valuing equal access, empowerment and justice for all individuals, regardless of disability, can save the judiciary and state services time and money by making sure that everyone can participate to the best of their ability with necessary accommodations and support. Through those appropriate accommodations and supports, service recipients move through their court or administrative process more efficiently and effectively, resulting in cost savings to the state system. In

cases where there is potential for settlement, a client who has a better understanding of their case and options will have a better opportunity to efficiently agree to a settlement. A hearing during which the judge or attorney may need to continually check in for comprehension and explain the process to the litigant could be expedited with the involvement of the CSS. A hearing during which a litigant may experience a panic attack, and possibly result in a continuance could potentially be avoided by use of the VCSP. These are just a few examples of how an accommodation of assigning a CSS in the process works better and more efficiently for everyone.

Connecting with us

Like any accommodation, it is up to the individual whether or not they choose to use our services. If your client is interested in our services let us know and we will reach out. Once a motion is filed, the court will notify us of all upcoming hearings.

Attorneys are welcome to request the services of a CSS for their client at attorney meetings either on the day of a proceeding, or at separate meetings. If you would like a communication support specialist present for an attorney meeting, email the VCSP office to get it on our calendar. The VCSP office takes care of the approval and administrative paperwork with the Office of the Defender General for assigned counsel and public defenders. Private attorneys may have a different process.

We have created a short video explaining our services https://vermontcsp.org/vcsp_attorneys/

For any questions or more information please contact the VCSP office csp@disabilityrightsvt.org.

Jen Le Scouezec has worked for Disability Rights Vermont for more than 18 years. In addition to running daily operations for the VCSP, Jen is responsible for training and certifying Communication Support Specialists statewide. Jen sits on the International Intermediary Forum, an international body of organizations that provide accommodations related to communication challenges and barriers in judicial systems worldwide. Jen is also a working Communication Support Specialist and believes passionately in the VCSP mission. For information about the project, becoming a CSS or receiving VCSP support please reach out csp@disabilityrightsvt.org.



Evolving Compensation for Emotional Distress: The Role of Science in Legal Settlements

Imagine a client whose life has been turned upside down by a traumatic event, leaving them not only physically scarred but also emotionally shattered. As lawyers, how can we ensure that their suffering is fairly and accurately represented in the courtroom? In today's legal landscape, where cases of mental anguish and emotional distress are becoming more prevalent, finding a robust and objective method for evaluation is crucial. Traditional methods of assessing emotional distress are fraught with inconsistencies and subjectivity, undermining the pursuit of justice. The Quality-Adjusted Life Year ("QALY") metric offers a scientifically validated, quantifiable measure that can significantly enhance the accuracy and credibility of legal claims.

In the realm of legal practice, evaluating emotional anguish is essential for ensuring justice and fair compensation in a variety of cases. Emotional distress can profoundly impact an individual's quality of life, yet its intangible nature makes it challenging to quantify accurately. For both plaintiffs' attorneys and defense attorneys, effectively assessing and presenting evidence of emotional anguish is crucial in advocating for their clients and achieving equitable outcomes, in areas like employment law, housing discrimination, personal injury and medical malpractice, family law, product liability, and other areas.

Assessing mental anguish and emotional distress in legal cases poses significant challenges, primarily due to the lack of standardized methods. Traditional subjective evaluation methods are inconsistent and vary widely among practitioners, leading to disparities in assessments. These evaluations often lack a robust scientific foundation, relying instead on the clinician's interpretation of the individual's self-reported symptoms, which can be influenced by various biases and factors.¹ Subjective evaluations often depend on the rhetorical skills of lawyers and clinicians to persuade judges and juries, which can result in decisions based more on persuasive arguments than on objective evidence.

Introducing QALY: A Game-Changer for Legal Cases

The QALY is a metric that combines both the quantity and quality of life into a single measure, offering a comprehensive evaluation of an individual's overall well-being. One QALY equates to one year of life in perfect health. For example, 0.5 QALY represents one year of life at 50% quality.

QALY consists of two components: the

length of life, measured in years lived, and the quality of life, assessed using health-related quality of life measures that encompass physical, mental, and social well-being. The formula for QALY is: $QALY = \text{Length of life} \times \text{Quality of life}$.

Developed in the 1960s by health economists to assess the value of medical interventions, QALY has since evolved and been adopted by public health and health economics. It plays a crucial role in policymaking and resource allocation, providing a standardized approach to evaluating health outcomes.

In the United States, the standard QALY value is \$125,000 per QALY. This valuation is based on the typical life valued at \$10,000,000 by the US government and the average US life expectancy of 80 years. The calculation is straightforward: $\$10,000,000 \div 80 \text{ years} = \$125,000 \text{ per QALY}$.

How does QALY apply to emotional anguish? As an example, consider a peer-reviewed study in *Health Quality of Life Outcomes* published in January 2017 by Jia H. and Lubetkin EI. titled "Incremental decreases in quality-adjusted life years (QALY) associated with higher levels of depressive symptoms for U.S. Adults aged 65 years and older."²

Analyzing data from the CDC between 2005 and 2011, researchers examined the association between QALY and depression among 3,680 adults aged 65 and older. The severity of depression was measured using PHQ-9 (Patient Health Questionnaire-9) scores, categorizing depression as none/minimal (PHQ-9 score 0-4), mild (5-9), moderate (10-14), and moderately severe/severe (15+).

The results showed significant QALY loss correlating with the severity of depression. Individuals with none/minimal depression had a QALY of 14.0 years, those with mild depression had 7.8 years, moderate depression resulted in 4.7 years, and moderately severe/severe depression was associated with just 3.3 years of QALY. This quantification highlights the profound impact of emotional distress on overall quality of life. Specifically, major depressive disorder led to a loss of 8.3 QALY (a 65% reduction), while mild depression resulted in a loss of 6.2 QALY (a 44% reduction). These patterns were consistent across various demographics and comorbidities, underscoring the broad applicability of these findings.

Every year of major depressive disorder results in a loss of 65% of QALY, which translates to \$81,250 per year of experiencing the disorder. Such objective measurements pro-

vide clear, quantifiable evidence that can be crucial in legal cases to support claims for compensation due to emotional distress and mental anguish.

Other studies show similar findings.³ For example, consider a peer-reviewed study published in the journal *International Psychogeriatrics* in 2000. The researchers found that "Individuals with clinically significant depressive symptoms at baseline had significantly lower QALYs over the 4-year study period than nondepressed subjects, even after adjusting for differences in age, gender, and the eight other chronic medical conditions. In terms of the entire study population, only arthritis and heart disease were more strongly associated with QALYs than depression." Thus, only two diseases outranked depression in impacting QALY!⁴

QALY in Legal Cases

The use of QALY in legal cases provides objective evidence for legal compensation, demonstrating both clinical importance and statistical significance. This metric helps lawyers support claims for physical injury damages and emotional distress damages, offering an objective measure for mental and emotional harm. Applying QALY findings can enhance the credibility and defensibility of cases, providing a robust foundation for legal arguments.

The Daubert standard, a legal precedent for expert witness testimony, is used by judges to assess the reliability and relevance of such testimony. It sets criteria including testability (whether the theory can be tested), peer review (whether the theory has been peer-reviewed), error rates (known or potential error rates), standards (existing standards for the technique), and acceptance (general acceptance in the academic or expert community).

QALY meets these rigorous criteria effectively. It is a testable metric in health economics and has been extensively reviewed in scientific literature. Standardized methods used in QALY calculations minimize error rates, and there are established guidelines for its calculation. Furthermore, QALY is broadly accepted in the field of health economics, underscoring its credibility and reliability.

In expert witness testimony, QALY plays a crucial role by providing quantifiable health outcomes and a clear framework for assessing emotional distress and physical damage. Its standardized approach ensures consistency, demonstrating rigorous scientific methods

and simplifying complex health evaluations for the court. This makes QALY a potentially invaluable tool in legal contexts, helping to present clear, objective, and scientifically validated evidence. Below are two examples of hypothetical case studies of how both plaintiff's and defense attorneys can use QALY to their advantage.

Hypothetical Case Study: Using QALY by Plaintiff's Attorneys

Jane Doe suffered medical malpractice, leading to a major depressive disorder. Her ensuing lawsuit lasted seven years, exacerbating her condition. During this period, her legal team brought in an expert witness to assess the impact of her emotional distress separately from the physical damage caused by the malpractice.

The expert testified that Ms. Doe's quality of life had been reduced by 65% per year due to her depression, resulting in a 0.65 QALY reduction annually. Over the seven years, this loss amounted to 4.55 QALY. Additionally, the expert estimated that Ms. Doe would lose another 4.55 QALY during her recovery period, as it typically takes as much time to recover from such a disorder as it took to develop. Since Ms. Doe could not begin to recover while the lawsuit was ongoing, the total QALY loss was calculated to be 9.1.

Using the standard value of \$125,000 per QALY, Jane's legal team requested \$1,137,500 in compensation for her emotional distress. Eventually, the court awarded her \$1,100,000, in addition to the damages for the physical harm caused by the malpractice.

This example highlights how the comprehensive use of QALY to quantify emotional distress could enhance credibility in legal cases. By providing a standardized, objective metric, QALY strengthens Ms. Doe's case for compensation and offers clear, defensible evidence in court. This example demonstrates the potential effectiveness of scientific methodologies to determine damages in legal evaluations for emotional distress.

Hypothetical Case Study: Using QALY by Defense Attorneys

John Doe, an African-American employee in the police department, sued the city for discrimination that he experienced over a two-year period since he transferred to a new unit in the department. The discrimination, which included racial harassment and unfair treatment, led to Mr. Doe being diagnosed with major depressive disorder, as documented by medical records. Seeking justice and compensation for her suffering, Mr. Doe sued the city for \$8 million.

This lawsuit was part of a series of similar cases the city had recently faced, with previous losses per case ranging from \$1 to \$5 million. To strengthen their defense in this new

case, the city decided to do something new and brought in an expert witness to quantify the impact of Mr. Doe's major depressive disorder using the QALY metric.

The expert testified that in the most severe cases, a major depressive disorder results in a maximum loss of 65% of QALY per year. Over the two years of ongoing discrimination, this translates to a maximum loss of .65 QALY per year, for a total 1.3 QALY. However, the expert pointed out that depression would take time to fully manifest, suggesting that the actual QALY loss during the period of discrimination would likely be less.

Additionally, once the cause of the disorder – the discrimination – was addressed, the time required for recovery would probably be no more, and likely less, than the time it took for the disorder to develop. Therefore, the maximum possible QALY loss, including the period for both development and recovery, would be 2.6 QALY. With the standard value of \$125,000 per QALY, the maximum possible compensation based on QALY would amount to \$325,000.

Using this objective analysis, the city could argue for a much lower compensation than in previous cases. By providing a scientifically validated, quantifiable measure of the emotional distress Mr. Doe experienced, the city's defense highlighted the precise impact of the discrimination. This approach, if accepted by the jury, would result in an award of \$250,000. The jury could conclude that Mr. Doe would not have experienced the full effect of his depression for all of the two years prior to the lawsuit and would take less than two years to recover. An award of \$250,000 is significantly less than the \$1 to \$5 million payouts in earlier similar cases. This potential outcome demonstrates the power of QALY as a tool in legal evaluations.

Presenting QALY in Court: Strategies for Success

Presenting QALY in court requires a clear and methodical approach. Start by defining QALY and explaining its significance, emphasizing how it combines both the quality and quantity of life into a single measure. Relate QALY calculations directly to the specific case details, using real-life examples to illustrate key points. Visual aids, such as charts and graphs, can effectively depict QALY loss, providing visual comparisons of baseline and impacted QALY to make the data more accessible and compelling.

Simplifying complex health evaluations is crucial for ensuring the court understands the implications of QALY. Simplify medical jargon and use layman's terms wherever possible. Present a clear, step-by-step explanation of how QALY is calculated, walking through the process to highlight the most important findings. Ensuring the main takeaways are clear and memorable can significantly enhance the

impact of your presentation.

To enhance credibility and authority, present QALY as an objective, quantifiable measure, contrasting it with more subjective assessments. Emphasize the standardized nature of QALY, showcasing its consistency across different cases and contexts. Highlight that QALY meets the rigorous criteria of the Daubert standard, demonstrating its broad acceptance and scientific validation in health economics.

Demonstrating scientific rigor is also vital. Reference studies and literature that support the use of QALY, and explain the methodologies used in its calculation. Highlight the reliability and reproducibility of QALY results to underscore their credibility. Expert witnesses can play a crucial role in this process, effectively articulating the scientific basis of QALY and reinforcing its validity as a robust tool for legal evaluations.

Conclusion: Leading the Way to Fairer Legal Settlements

The integration of the QALY metric in legal cases represents a significant advancement in the evaluation of mental anguish and emotional distress. By providing a scientifically validated, objective measure, QALY enhances the precision and credibility of assessments, revolutionizing how these complex issues are addressed in the courtroom, which I have observed myself as an expert witness in court cases. QALY offers a tool that not only supports stronger, more defensible cases but also ensures fairer outcomes.

*Dr. Gleb Tsipursky leverages his expertise in behavioral science, including QALY assessments, to help lawyers persuade the trier of fact to adopt their case theory. Well-versed in the Daubert and Frye standards, Dr. Gleb wrote seven best-selling books, including the global best-seller *The Blindspots Between Us*. Dr. Gleb spent over 15 years in academia as a behavioral scientist.*

¹ Tsipursky, G. (2019). *Never Go With Your Gut: How Pioneering Leaders Make the Best Decisions and Avoid Business Disasters (Avoid Terrible Advice, Cognitive Biases, and Poor Decisions)*. Red Wheel/Weiser.

² Jia, H., & Lubetkin, E. (2017). Incremental decreases in quality-adjusted life years (QALY) associated with higher levels of depressive symptoms for U.S. Adults aged 65 years and older. *Health and Quality of Life Outcomes*, 15.

³ Sivertsen, H., Bjørkløf, G., Engedal, K., Selbæk, G., & Helvik, A. (2015). Depression and Quality of Life in Older Persons: A Review. *Dementia and Geriatric Cognitive Disorders*, 40, 311 - 339.

⁴ Unützer, J., Patrick, D., Diehr, P., Simon, G., Grembowski, D., & Katon, W. (2000). Quality Adjusted Life Years in Older Adults With Depressive Symptoms and Chronic Medical Disorders. *International Psychogeriatrics*, 12, 15 - 33. 🌐

Why It's Imperative to Maintain a Strong Cybersecurity Posture Even Though It's a Pain

My cyber security awareness training never stops; and even though much of it is self-inflicted I often feel like I'm still losing ground. In fact, today I'm thinking that selling everything I have, disconnecting from the wired world, and moving to some remote island where I could live out my life running a small tapas stand near a beach might be the way to go. I suspect more than a few of you feel similarly from time to time.

What got me going today was continuing to read up on the recent MGM Resort ransomware attack, which appears to have been quite sophisticated and yet so frustratingly easy to execute. If you're curious as to how it all went down, it was a cross-tenant impersonation attack. Yes, I know. What the heck is that, am I right? Here's the crazy part, this devastating attack started with a quick call to the company's IT help desk with a password reset request. To pull that off, all the hacker needed to know was an employee name, ID number, and date of birth, all of which were easily obtainable.

Of course, my day was just getting started. While I've been talking about caller ID spoofing for quite some time, today I've learned how widely available services such as SpoofCard actually are. Now, for a fee, anyone can quickly and easily change their caller ID, change the sound of their voice, and even change the background noise of the call. That's certainly not good news; and my learning didn't stop there. Attackers are now using powerful AI tools to clone victim's voices. What about those banks, credit card companies, and corporations that rely on voice-based authentication systems? They've got a new problem to deal with, and so do the rest of us. If you think your bank account or other types of accounts can't be breached or think a member of your staff can't be fooled, think again. All a hacker needs to do is call you or anyone at your office under the guise of being a prospective client, press record and they're well on their way.

As a risk manager, I also take quite a few calls, year after year. Today I wanted to share one that has stuck with me for a while, because it involves a common theme behind a number of the cyberbreach calls I take. Here is the gist of it. Upon arriving at their office one morning, a couple of lawyers discovered their firm had been broken into. Three laptops containing all kinds of client information were on the list of items taken. The first question asked of me was "what should we do now." It was a legitimate question

and one deserving of an answer; but I needed to know more. That was when I learned the laptops were not password protected, were not encrypted, and contained no laptop tracking software. In response, I shared that the only thing that could be done now was to take whatever steps they could to prevent anyone from using the stolen hardware to break into the firm's network. They should also file a claim with their cyber insurance carrier and notify all clients impacted by the theft. Beyond that, everyone was going to have to live with the reality that the data on those laptops was in someone else's hands, and may in fact, eventually fall into the hands of others, none of whom will have the firm's or the firm's clients' best interests at heart.

After that call ended, I just sat there shaking my head wondering why these lawyers never took any steps to try to prevent access to client and firm data should something unexpected, like this break-in, ever occur. Sadly, I have an inkling. Security experts tell me they see this all the time. We live in a crazy cybercrime world, and the crazier it becomes, the more we all look for ways to escape from it, be it dreaming of walking away to sell tapas on the beach, choosing to remain in denial that something bad will ever happen, or ignoring it because there's nothing anyone can do anyway.

While these are all normal responses when something seems overwhelming, they can also lead to serious trouble if any particular response prevents you from taking steps to responsibly deal with the reality of the situation. This is what I believe is behind a failure of a firm to take proactive steps and do all they can to become as cybersecure as they can. In all seriousness, I've seen it in the eyes of too many. We'll be talking about things like the use of encryption, of strong passwords coupled with password managers, or even the necessity of conducting ongoing cyber security awareness training when the willingness and motivation to do something just seems to waft away.

Look, I really do get it. As the Borg, an alien race in the Star Trek Next Generation TV series, used to say: "Resistance is futile." That line hits home for me when I start to think about cyber security because the headlines tell us daily that it's a losing effort so why even try. But try we must. If the lawyers mentioned above had just taken the single and simple step of encrypting the hard drives of those laptops, the difficult and problematic task of notifying all cli-



ents of the breach, not to mention the potential long-term fallout of having their own personal identities stolen, could have been avoided entirely.

If you count yourself as one of the folks who believe it won't ever happen to you, feel that ignorance is bliss, believe there's nothing you can do to prevent it so why bother, or are just counting the days until the dream of getting away can become a reality, all I can say is this. Yes, becoming cyber secure is a pain. Do it anyway. Trust me, the headache that comes with being proactive is going to be far less than the one that comes with being a hacker's next victim. Want proof? The MGM ransomware attack cost the company \$100 million so far, and the law suits are just getting started. Oh, and remember this attack started with a simple request to reset a user password, something that a basic cybersecurity awareness training program could have easily prevented. (mic drop)

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, the nation's largest direct writer of professional liability insurance for lawyers. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1200 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School.

AI and Cybersecurity: Now Inseparable

Have You Noted the Recent Flood of AI and Cybersecurity Articles?

We saw a smattering of articles about AI and Cybersecurity in 2023, but in 2024 we have witnessed a torrent of such articles. If you follow cybersecurity, you undoubtedly know that AI has been a part of providing cybersecurity for some time. So why all the hoopla now?

As everyone knows, AI has been booming. But it has also been bedeviled by problems. Hallucinations have been problematic for many lawyers, some of whom have found themselves in legal trouble. Giving AI access to private case data has also been a problem since we really don't know what happens to that data. And AI has been known to be given false data and therefore it responded to queries with inaccuracies.

AI is in the Doghouse for Many

For all the reasons above, and many more, AI has not entirely lived up to its promises. It is expensive. Employees must be trained to properly use AI, which has proven to be time-consuming and increases the expense. Some AI companies have floundered or gone under.

There are many complaints that AI hasn't lived up to its hype. By some estimates, according to RAND, more than 80 percent of AI projects fail — twice the rate of failure for information technology projects that do not involve AI.

So Why are we Now Laser-focused on AI and Cybersecurity?

As we noted, we have been using AI in cybersecurity for some time, and with generally very good results. Thanks to AI, we

have better data protection by rapidly recognizing patterns, automating processes and sniffing out anomalies.

Using AI can analyze vast amounts of data very quickly, almost instantly detecting possible malware or intrusions. And we note wryly that AI can vastly reduce human error by removing humans from many tasks or processes.

Mind you, AI will never fully replace security professionals — good cybersecurity requires creative human problem-solving and the ability to recognize complex issues that may call for high-level human resolution.

What AI Can Do That Humans Cannot

Prior to the advent of AI, cybersecurity specialists used signature-based detection tools to look for potential cyberthreats. The tools basically compared network traffic to a database which contained known threats of malicious code signatures. Then the system would issue an alert so that the security specialist would block or quarantine the threats.

That worked pretty well with "known" threats. But it wasn't up to the task of dealing with new "Zero Day" threats or other previously unknown threats. Without AI, there were a lot of "false positives" which occupied human time to chase down.

Another problem was that professionals in cybersecurity had to manually investigate security alerts and event logs searching for evidence of a possible breach. This was a tremendous "time suck" which the advent of AI largely resolved.

Cybercriminals Love AI

It may sound very simple, but if cybercriminals can breach our networks with AI, then we need AI to counter the AI-enabled

attacks. AI vs. AI rapidly became standard procedure. The odds that we could protect our data became vastly better.

The cybercriminals keep learning — using attack vectors like polymorphic malware, scripting and "living off the land" forays. The latter kind of attack involves using legitimate and trusted system tools to launch a cyberattack and evade detection. Yes, it's complicated — and every time we turn a calendar page, it seems as though a new attack is at hand — this makes AI an invaluable part of cybersecurity.

AI cybersecurity tools can analyze a huge amount of data — and fast. At lightning speed, they can ferret out anomalies and vulnerabilities. With the same speed, they can automate repetitive processes, freeing up the time of cybersecurity specialists.

Final Thoughts

We're in for far more in the future as we struggle to keep up with new developments by cybercriminals — and nation-states. As computer security specialist Bruce Schneier so aptly phrased it: "If you think technology can solve your security problems, then you don't understand the problems, and you don't understand the technology."

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IN MEMORIAM

Richard S. Smith

Richard S. Smith, age 80, passed away at home on July 20, 2024. He was born on Oct. 14, 1943 to George G. Smith and Virginia P. Smith. Richard was a member of Rutland High School, Class of 1961. He attended Mt. Hermon School for Boys followed by Middlebury College, and then Suffolk University Law School.

Richard served in the US Army in March 1970 until Nov. 1971. He married Ann Rounsefell in 1977 and together they welcomed daughter Erika.

Richard started his legal career at Ryan, Smith and Carbine in November 1972 until he started his own firm, which Fritz Harlow joined. Richard finished his career with Keyser & Crowley.

Richard played in golf tournaments from age 15 to 28. He won the Vermont State Amateur title in 1966 and won the L. D. Pierce tournament several times. He was a recipient of the Rutland Country Club trophy, and president of Rutland Country Club in 1976. He was a member of the Elks, American Legion, Rutland County Bar Association and Vermont Bar Association. He lived in Wallingford, VT for 44 years.

After Ann's death Richard married Patricia Callahan Smith in July 2004 - recently marking their 20th anniversary. Richard is survived by his wife, Patricia, and daughter Erika, his spouse's daughters, Karen Carrara, Debbie McPhee, Kelly Shannon, his brother Pierce Smith and nephews Michael, Scott and Jared Smith. He was predeceased by his parents, his brother Henry "Hank" Smith and his first wife Ann Rounsefell Smith.

E. Patrick Burke, Jr.

E. Patrick Burke Jr. Esq, 80, of Proctor died at home on July 30, 2024, surrounded by family. He was born in Middlebury, VT on March 12, 1944, the son of Edward Patrick Burke Sr. and Miriam (Kilbourn) Burke. He married Laura Emma Yantz at St. Ambrose church in Bristol, VT on June 17, 1967. He attended Bristol High School, the University of Vermont and graduated from Castleton State College with a teaching degree. He was a Life Science teacher in Bristol at Mt. Abraham Union High School for two years before he proudly went to Washington and Lee University Law School where he earned his law degree.

He practiced law in Rutland for over 45 years. He was very active in the bar association and served on many different boards over the years and he was especially proud to serve on the Board of Bar Examiners and Board of Trustees at the College of St. Jo-

seph. He loved traveling all over the world; he especially loved driving in his Volkswagen and sailing his boat on Lake George. He also loved horses and was a skilled artist and painter. He loved to be around his friends and family sharing his adventures.

Survived by his wife of 57 years Laura, and sons E. Patrick Burke III of San Marcos Texas and Christopher Patrick Burke of Sausalito, CA, and daughters Kathleen (Dana) Langlois of Rutland and Meghan E. Burke of Englewood Fl. Grandchildren Brodie Rayn Langlois, Keegan Langlois, Kailei Langlois, Cassidy Langlois of Rutland, and Lilah Jane Burke of California, sisters Marie Page of North Carolina, Sheila Parnell of South Carolina and many nieces and nephews; predeceased by Edward Patrick Burke, Sr. and Miriam Burke, and big brother Michael Edward Burke. He loved all animals but especially his current fur babies Molly, Sadie, Izzy B and Bree Burke.

James A. Pelkey

James A. Pelkey, 71, of St. Albans, passed away peacefully Aug. 26, 2024, in St. Albans with the love of his life Mary, by his side. He was born in St. Albans, June 21, 1953, to Francis and Marion (Berger) Pelkey. Jim married Mary Goulette, June 26, 2004. Jim's family will remember that his heart was as large as his voice. He cared about everyone and loved his family tremendously. Jim served Franklin County as a lawyer for over 25 years. He then served as Franklin County Clerk for over 20 years. He was also a member of the St. Albans City Council as an Alderman for many years. Jim loved to go on cruises and looked forward to planning the next one before the current one was even finished. He also loved to hunt, collecting tigers, bald eagles and Jordan's beer steins. He was a proud fan of the Boston Red Sox, Los Angeles Rams, and the Gonzaga Bull Dogs. He loved going online finding pictures of his family and framing them to hang around his house. He will be remembered for his love of community service. Jim never thought of it as something he had to do, but it was something he loved to do.

He is survived by his wife, Mary Pelkey of St. Albans, his sons Ronald Firkey of Enosburgh, VT, and Jason Firkey and his spouse, Kari Firkey of Highgate Center, VT, his grandchildren, Autumn Glover and spouse Chris, Bradley Isham and spouse Ashley, Stephanie Hresvelg, Elizabeth Firkey, Skyler Gokey, Julianna Firkey, Hayden Firkey, Cheyanne Firkey, Oraya Firkey, his great-grandchildren, Chase, Everett, and Reid, his sisters-in-law Maureen Titemore and spouse Larry Titemore, Patricia Hilliker and spouse Brian Hil-

liker, a special nephew, Jordan Pelkey, and his Best Man, Bruce Muir, as well as many aunts, uncles, nieces, nephews, cousins, and many friends.

James Colvin

James H. Colvin, 77, died suddenly, following a heart attack on Sept. 20 in Bennington. He was born in Bennington, VT on June 21, 1947, the son of the late Vernon E. Colvin and the late Mildred (Lewis) Colvin, the second of five children. He graduated from Bennington High School in 1966 and Central Missouri State University in 1970 with a degree in zoology. Upon his return to Bennington, he was hired to teach science at Mount Anthony Union High School. He completed his master's degree in 1973 while working in the school system in guidance and administration, serving as the principal of Molly Stark School. Jim married the former Lodie Ann Graves on Aug. 23, 1969, in the Old First Church. They made Bennington their home for 55 years of marriage. Together they raised two daughters.

Jim Served on the Town of Bennington's Select Board from 1979-1984, serving as chair for five years before becoming the Town Manager, a position he held for four years. He later served as a town lister and as town moderator. He purchased Bennington Car Wash in 1986 and grew the business with self-service wash bays and added Bennington Express Lube in 2001. He became the plant manager for Catamount Pellet Fuels in Adams, MA, before deciding to serve in the State House as a representative from Bennington. He was appointed Chair of the House Commerce Committee during his tenure from 1999-2002. In 2002 he was appointed to the position of Assistant Judge for Bennington County by then Gov. Howard Dean. He served in that capacity for twenty years, until retiring from the bench in 2023. In his capacity as a side-judge he was a non-lawyer member of the Vermont Bar Association for many years.

Jim is survived by his wife, Lodie, his two daughters; Hope Colvin Owens (and her husband Richard) and Sarah Lynne Bluto (and her husband, Tim). He also leaves his grandchildren: Rocco and Cash Campolungo, Ainsley Owens and Vance and Gigi Bluto. Other survivors include his two sisters: Sandra C. Burkus and Sharon Colvin (and her husband, Don McCullers) and two brothers: Donald Colvin (and his wife, Cindy) and Randall Colvin (and his wife, Cindy). 🕊️

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