

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Emily Gray Rice

2. **Position**: State the position for which you have been nominated.

United States Attorney for the District of New Hampshire

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office:

Bernstein, Shur, Sawyer and Nelson
Jefferson Mill Building
670 North Commercial Street
Suite 108
PO Box 1120
Manchester, New Hampshire 03105

Residence:

Concord, New Hampshire

4. **Birthplace**: State date and place of birth.

1955; Boston, Massachusetts

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Northeastern University Law School, September 1981 – May 1984, J.D., May 1984

Boston University, Graduate School of Arts and Sciences, September 1977 – May 1978, M.A., Political Science, January 1979

Boston University, College of Liberal Arts, September 1973 – May 1977, B.A., Philosophy and Political Science, *cum laude*, May 1977

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Employment

All positions paid unless otherwise indicated.

Bernstein, Shur, Sawyer & Nelson, P.A.

Shareholder

670 North Commercial Street

Suite 108

PO Box 1120

Manchester, New Hampshire 03105

August 2012 – Present

Orr & Reno, P.A.

Shareholder

45 South Main Street

Concord, New Hampshire 03302

February 2001 – August 2012

Dean, Rice & Kane, P.A. (Disbanded)

Associate and Shareholder

Concord and Manchester, New Hampshire 03301

February 1993 – February 2001

New Hampshire Attorney General's Office

Law Clerk, Attorney, Assistant Attorney General, Senior Assistant Attorney General

33 Capitol Street

Concord, New Hampshire 03301

September 1984 – February 1993

Greater Boston Legal Services

Law Clerk

197 Friend Street

Boston, Massachusetts 02114

March 1984 – June 1984

Craig and Macauley (Disbanded)

(l/k/a) 600 Atlantic Avenue

Law Clerk

Boston, Massachusetts 02210

September 1983 – December 1983

Burns and Levinson
Law Clerk
125 Summer Street
Boston, Massachusetts 02110
March – June 1983

Shavelle, Shavelle and Gittes (Disbanded)
Law Clerk
(l/k/a) 294 Washington Street
Boston, Massachusetts 02114
Summer 1983

Office of the Bar Counsel
Massachusetts Board of Bar Overseers
Law Clerk
99 High Street
Boston, Massachusetts 02110
September – December 1982

Professor Daniel J. Givelber (Retired)
Northeastern University School of Law
Center for Applied Social Research
Research Assistant
416 Huntington Avenue
Boston, Massachusetts 02115
September 1981 – May 1982, Summer 1982, September – December 1982

United Way of the St. Paul Area n/k/a Greater Twin Cities United Way
404 South 8th Street
Minneapolis, Minnesota 55404
Associate Campaign Director, January 1980 – June 1981
Special Projects Director, June 1979 – December 1979
Planning Associate, January 1979 – June 1979

United Way of America n/k/a United Way Worldwide
W.K. Kellogg Foundation Fellow, United Way of America Internship Program
Alexandria, Virginia
June 1978 – May 1979

Spokane County United Way
Campaign Associate
920 North Washington Street
Spokane, Washington 99210
June 1978 – December 1978

Boston University Office of Residence Life
Resident Assistant, Myles Standish Hall
25 Buick Street
Boston, Massachusetts 02215
September 1977 – May 1978

Massachusetts Social and Economic Opportunity Council (Disbanded)
Research Assistant
294 Washington Street
Boston, Massachusetts 02114
May 1977 – August 1977

Non-Profit Affiliations

All positions were unpaid.

New Hampshire Campaign for Legal Services
Chair, Campaign Steering Committee
117 North State Street
Concord, New Hampshire 03301
August 2014 – Present

City Year New Hampshire
Member, Board of Directors
848 Elm Street
Manchester, New Hampshire 03101
June 2014 – Present

Capital Region Food Program
Trustee
c/o Susan M. Leahy, Esq.
McLane Middleton
11 South Main Street
Concord, New Hampshire 03301
2005 – Present (Precise start date unknown)

New Hampshire Campaign for Legal Services
Founding Co-Chair
117 North State Street
Concord, New Hampshire 03301
2001 – 2004 (Precise dates unknown)

New Hampshire Bar Foundation
Board Chair and Member
2 Pillsbury Street
Concord, New Hampshire 03301
1999 – 2005 (Precise dates unknown)

Red River Theatres, LLC
Board Chair and Member
11 South Main Street
Concord, New Hampshire 03301
1999 – 2009 (Precise dates unknown)

Monkey Around Playground (Disbanded)
Member
Concord, New Hampshire 03301
1991 – 1993 (Precise dates unknown)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Honorary Fellow, New Hampshire Bar Foundation (2013)

E. Donald Dufresne Award for Outstanding Professionalism, New Hampshire Bar Association (2006)

Marilla Ricker Award, New Hampshire Women's Bar Association (2003)

In addition to this recognition, I have earned favorable ratings from numerous professional reviewers, including an AV rating by Martindale-Hubbell and recognition in *Chambers USA: America's Leading Business Lawyers, Benchmark, The Best Lawyers in America*, and other publications.

Teaching Assistant, Legal Practice, Northeastern University Law School (1982)

Teaching Assistant, Sociology Department, Boston University (1976 – 1977)

Community Service Award, Boston University (1976)

Robert F. Kennedy Memorial Youth Fellow (1973 – 1974)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

New Hampshire Bar Association

Federal Practice Section

Alternative Dispute Resolution Section

Labor and Employment Law Section

CLE Committee

Former Member, New Hampshire Rule 53 Mandatory CLE Committee

American Bar Association

Alternative Dispute Resolution Section

Litigation Section

Media Law Section

New Hampshire Women's Bar Association

I have attended the Judicial Conference of the First Circuit Court of Appeals on several occasions over the last twenty-five years.

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Hampshire, 1985

No membership lapses.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of New Hampshire, 1985

United States Court of Appeals for the First Circuit, 1986

No membership lapses.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

New Hampshire Supreme Court Access to Justice Commission
(September 1, 2015 – Present)

Former Member, City of Concord Chamber of Commerce, Government Relations
Committee
(2010 – 2012)

Former Member, Concord Creative Economy Task Force
(2008)

Former Member, New Hampshire Judicial Branch Committee on Alternative
Dispute Resolution Services
(Approximately 2006 – 2008)

Defense Research Institute (DRI)
(Approximately 2000 – Present)

Professional Liability Underwriting Society (PLUS)
(Approximately 2000 – 2009)

Member, Advisory Committee of Rules, New Hampshire Supreme Court
(Approximately 1995 – Present)

Magistrate Judge Selection Panel, United States District Court for the District of
New Hampshire
(1995)

Former Member and Chair, Advisory Committee on Rules, United States Court of
Appeals for the First Circuit
(Approximately 1993 – 2004)

Former Member, Civil Justice Reform Act Advisory Panel, United States District
Court for the District of New Hampshire
(Approximately 1990 – 1994)

Former Member, Federal Court Advisory Committee, United States District Court for the District of New Hampshire
(I do not recall the timeframe.)

Member, Subcommittee on Local Rules of the Federal Court Advisory Committee, United States District Court for the District of New Hampshire
(I do not recall the timeframe, but I am still a member of the subcommittee.)

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the above organizations currently discriminate or formerly discriminated.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all books, articles, reports, letters to the editor, editorials and other published material, including a thorough review of my personal files and searches of publicly-available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember.

Portman giving support to Campaign for Legal Services, Letter to the Editor of the Concord Monitor, February 18, 2015. Copy supplied.

Things Your Mother Taught You: Common Courtesy and Common Sense in the Everyday Practice of Law, New Hampshire Bar Journal, June 1, 1999. Copy supplied.

I may have authored letters to the editor in conjunction with my initial term as co-chair of the Campaign for Legal Services in the 2000 – 2002 timeframe, with reference to the Red River Theatres project between 2005 and 2007, or with regard to the Monkey Around Playground in the early 1990s, but I have been unable to locate any such letters.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify any reports, memoranda, or policy statements, including a thorough review of my personal files and searches of publicly-available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember.

From time-to-time during my tenure as chair of the New Hampshire Bar Foundation, and as co-chair or chair of the Campaign for Legal Services, I have written letters or other materials for periodic reports sent to donors or to the membership.

New Hampshire Campaign for Legal Services, 2014 Annual Report, Letter from the Campaign Leadership Council Chair. Copy supplied.

New Hampshire Bar Foundation 2003 Annual Report, Letter from the Chair. Copy supplied.

Bar News, New Hampshire Bar Association, December 14, 2001, Letter, "Make Justice the Focus of Your Philanthropy." Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

It is likely that I participated in legislative and policy efforts while serving as a member of the State of New Hampshire Office of the Attorney General, where all of my clients were, by definition, public entities and officials. As part of my duties, I was responsible for issuing and for participating in the issuance of formal and informal opinions of the Attorney General, which are listed below. Copies supplied for all.

Allocation of Responsibility Between the State Board of Education, the Commissioner and the Department of Education, August 14, 1991.

Requirements Imposed Upon School Districts by 1988 N.H. Laws, Ch. 278, June 27, 1988.

Whether the Five-Day Period Established in Part II, Article 44 of the N.H. Constitution Excludes Floating Holidays, April 12, 1988.

Authority of the Board of Trust Company Incorporation to Promulgate N.H. Code Admin. R. Tru 203.01(a), July 8, 1987.

Board of Accountancy Residency Requirement, May 27, 1987.

The Applicability of Ch. 568:11 N.H. Laws of 1981 to a Van Purchased by the Division of Records Management and Archives, October 17, 1986.

The Effect of Part I, Article 28-a Upon Proposed Minimum Standards for New Hampshire Public Elementary School Approval, August 18, 1986.

The Effect of Ch. 125 N.H. Laws of 1986 on the Authority of the State Board of Education to Dissolve SAUs, July 15, 1986.

What Procedures the New Hampshire Post-Secondary Education Commission Should Utilize in Granting Funds Under RSA 188-D:29, *et seq.*, December 11, 1985.

Whether the State Board of Education Is Required to Hold an RSA 189:14-b Hearing Concerning the Non-Renewal of a Teacher, September 6, 1985.

School District Liability for R.M., July 8, 1985.

Need for Written Release from Clients as to Liability on Catastrophic Cases, June 25, 1985.

Transfer of RSA 263:52 Driver Training Funds to the Department of Education from the Department of Safety, June 19, 1985.

Waiver of Jurisdiction by the Energy Facility Evaluation Committee, May 31, 1985.

Whitefield Power and Light Associates: Jurisdiction Under RSA 162-H, May 28, 1985.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks, including a thorough review of personal files and searches of publicly-available

electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember.

I frequently appear as a panelist for continuing legal education (CLE) programs sponsored by the New Hampshire Bar Association and other providers. I have probably done so more than a hundred times. The following is a list of the programs with respect to which I have served as a panelist or faculty member in the last few years. I have attached any materials that I authored for these programs that I was able to locate.

New Hampshire Women's Bar Association, The Path to the Bench, Concord, New Hampshire, June 9, 2015. Copy unavailable.

New Hampshire Bar Association (NHBA), Evidence 2015, Concord, New Hampshire, May 21, 2015. Copy supplied.

NHBA, Business Split-Ups, Concord, New Hampshire, May 14, 2015. Copy supplied.

NHBA Federal Practice Section, Understanding the District of New Hampshire Local Rules, Concord, New Hampshire, May 8, 2015. Copy unavailable.

Massachusetts Continuing Legal Education, Jury Voir Dire Skills: The Civil Trial, Boston, Massachusetts, April 23, 2015. Copy unavailable.

United States District Court for the District of New Hampshire, 8th Federal Practice Institute, Issues for the Newer Practitioner, Concord, New Hampshire, November 7, 2014. Copy supplied.

New Hampshire Association for Justice, Inside the Jury's Mind: Opening Statements, Manchester, New Hampshire, October 24, 2014. Copy supplied.

United States District Court for the District of New Hampshire, 7th Federal Practice Institute, Concord, New Hampshire, October 2012. Copy unavailable.

NHBA, Evidence 2012, Concord, New Hampshire, May 16, 2012. Copy unavailable.

New Hampshire Association for Justice, Trial Academy, Concord, New Hampshire, April 9, 2012. Copy unavailable.

New Hampshire Women's Bar Association, Women in the Judiciary, May 6, 2011. Copy unavailable.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including a thorough review of my personal files and publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

“As public funds shrink, legal aid programs increasingly looking to private donations,” Concord Monitor, August 29, 2015. Copy supplied.

“Appeal likely in \$1.75 million medical malpractice lawsuit,” Concord Monitor, March 10, 2008. Copy supplied.

“Downtown theater meets first challenge,” Concord Monitor, March 23, 2006. Copy supplied.

“Slow going for fundraisers,” Concord Monitor, February 7, 2006. Copy supplied.

“Pierce Law’s Adjunct Faculty: Bringing Real-Life Experience into the Classroom,” PierceLaw Magazine, Winter 2004. Copy supplied.

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Assistant Attorney General, State of New Hampshire
Appointed by Governor John Sununu on June 23, 1986
Appointed by Governor Judd Gregg on September 27, 1989

Member, State of New Hampshire Ballot Law Commission
Appointed by Governor Stephen E. Merrill in 1993 or 1994 (Precise date not known)
Appointed by Governor Jeanne Shaheen in 1997 (Precise date not known)

Co-Chair, Governor’s Judicial Selection Commission
Appointed by Governor John Lynch in 2008 (Precise date not known)
Appointed by Governor Margaret Wood Hassan in 2013 (Precise date not known)

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a judicial law clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Bernstein, Shur, Sawyer & Nelson, P.A.
Shareholder
670 North Commercial Street
Suite 108
PO Box 1120
Manchester, New Hampshire 03105
August 2012 – Present

Orr & Reno, P.A.
Shareholder
45 South Main Street
Concord, New Hampshire 03302
February 2001 – August 2012

Dean, Rice & Kane, P.A. (Disbanded)
Associate and Shareholder
Concord and Manchester, New Hampshire 03301
February 1993 – February 2001

New Hampshire Attorney General's Office
Law Clerk, Attorney, Assistant Attorney General, Senior Assistant
Attorney General
33 Capitol Street
Concord, New Hampshire 03301
September 1984 – February 1993

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have frequently served as a mediator since approximately 1996, but I have not retained records of these proceedings as I have changed law firms. I have served as a mediator on a volunteer basis in both the State of New Hampshire Superior Court and the New Hampshire Commission on Human Rights. I have also maintained a private mediation practice focusing on employment and commercial matters. In this capacity, I am a member of the mediation panel maintained by the United States District Court for the District of New Hampshire.

I can recall numerous disputes that I have mediated between employers and employees. In 2015, I mediated three employment disputes, one of which involved an employment discrimination claim against a private employer in the service sector, another of which involved a complaint of lack of professionalism between two fellow employees, and another of which involved a complaint against a private school by a former employee.

In 2014, in addition to mediating employment disputes, I mediated a contract dispute between a commercial insurance company and its former employee.

I would estimate that, in the last fifteen years, I have served as a mediator in approximately forty employment-related matters, and twenty other matters. I am not in a position to provide more specific information about the matters that I have mediated because to do so would implicate privacy concerns for the parties involved.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I have spent my entire career as a civil trial lawyer.

As a member of the New Hampshire Attorney General's office, I represented the state before federal and state trial and appellate courts, and administrative tribunals. I counseled state agency clients and state officials and prepared written opinions. I drafted legislation and legislative testimony, and administrative rules and decisions. From December 1989 until I left the office in February 1993, I served as a Senior Assistant Attorney General and chief of the Bureau of Civil Law, responsible for the management of the Bureau's operations and staff, which included approximately fifteen attorneys and paralegals and six clerical staff. In this capacity, I also participated in the management of the office.

Since entering private practice in 1993, my focus has remained civil trial work before courts and administrative agencies, primarily in professional liability, commercial and employment matters. I have handled health care matters, but this is less a part of my practice than it was fifteen years ago. I have also continued to provide legal counsel to clients across a range of issues as a regular part of my practice. In addition, I have served as a mediator and as a workplace misconduct investigator. I have also represented clients on a *pro bono* basis, primarily in divorce and parenting cases.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While at the New Hampshire Attorney General's office, all of my clients were state agencies and officials. Since entering private practice, although I have represented such interests from time to time, my clients are private individuals and entities. These clients include persons with professional licenses involved in professional disciplinary and malpractice matters; for-profit and non-profit organizations and individuals needing employment counsel; media companies which are involved in litigation or which are seeking access to public information; businesses involved in commercial or employment litigation; persons and entities in need of alternative dispute resolution services; and entities needing the services of a workplace misconduct investigator.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I appear in court on a frequent basis.

- i. Indicate the percentage of your practice in:
 - 1. federal courts;
Approximately 40%

2. state courts of record;
Approximately 45%
3. other courts;
None
4. administrative agencies
Approximately 15%

ii. Indicate the percentage of your practice in:

1. civil proceedings;
Approximately 99%
2. criminal proceedings,
Approximately 1%

My practice has focused almost exclusively on civil cases. While at the Attorney General's Office, I was responsible for election law enforcement and some environmental enforcement, and I assisted in prosecuting a homicide case that was resolved when the defendant pleaded guilty.

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:

1. jury;
2. non-jury.

I have not kept comprehensive records, but I have done my best to identify transcripts or recordings of all speeches or talks, including a thorough review of personal files and searches of publicly-available electronic databases.

Over the course of my career, I have tried 25-30 civil jury cases, approximately eighty-five percent of which went to verdict. I would estimate that in seventy percent of these cases, I was either sole counsel or chief counsel. Some of these were settled after verdict.

In addition, I have been responsible for numerous cases decided on dispositive motions, and for many cases slated for jury trials that did not reach a disposition by the court. I would estimate that about half of my cases have been jury cases. I have also tried numerous cases to the court, usually as sole or lead counsel.

Early in my tenure at the New Hampshire Attorney General's Office, in addition to representing the state in civil litigation, I was responsible for defending habeas corpus petitions in state and federal court, handling involuntary commitments to

the New Hampshire Hospital before the Merrimack County Probate Court, prosecuting child support violations in the New Hampshire Superior Court, trying cases before the State of New Hampshire Board of Claims and handling matters before the Personnel Appeals Board. These activities, alone, would account for hundreds of bench trials and evidentiary hearings before judicial officers and administrative bodies.

Based upon the above, I would estimate that with respect the number of cases that I have tried to juries, court and administrative agencies, approximately twenty percent have been jury trials, and eighty percent have been non-jury matters.

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Sandra Garrity, et al. v. John H. Sununu, et al., USDC-NH, (Docket No. 78-116-D). (The court's initial opinion is a reported case, but that opinion was issued before I began working on the case).

The Honorable Shane Devine, Senior Judge, United States District Court for the District of New Hampshire (Deceased)

Dates of Representation: Approximately 1986 – 1991

Co-Counsel: Claire L. Gregory, Esq. (Deceased)

Opposing Counsel: John MacIntosh, Esq.
24 Montgomery Street
Concord, New Hampshire 03301
(603) 225-1188

This landmark civil rights case was filed on behalf of the residents of Laconia State School which was a large, state-operated residential facility housing hundreds of developmentally-disabled persons at the commencement of the litigation in 1978. The litigation ultimately led to the creation of community services and the closing of the facility in 1991. The Laconia State School was one of my clients as a member of the Attorney General's Office. During my tenure, the State's operation of the facility was subject to expert monitoring and reporting. I was the final member of the Attorney General's office responsible for this case immediately prior to the closing of the facility. As such, I participated in all litigation involving court and expert supervision, including court proceedings, negotiations and monitoring visits.

James O., Kelly E. and William B., et al. v. Charles Marston, et al., USDC-NH,
(Docket No. 86-6-S).

The Honorable Norman Stahl, District Judge, United States District Court for the District of New Hampshire, now Senior Judge, United States Court of Appeals for the First Circuit

Date of Representation: Approximately 1986 – 1991.

Co-Counsel: Claire L. Gregory, Esq. (Deceased)

Opposing Counsel: Ronald K. Lospennato, Esq.
The Advocacy Center
8325 Oak Street
New Orleans, Louisiana 70118
(504) 522-2337

The named plaintiffs were representatives of a class of New Hampshire students who were or may have been educationally disabled and who were placed in residential placements pursuant to New Hampshire Revised Statutes Annotated Chapters 169-B (juvenile delinquency, 169-C (abuse and neglect, and 169-D (Children in Need of Services). The plaintiffs sued the New Hampshire Departments of Education and Health and Human Services alleging that the defendants had violated their right to a free appropriate public education under the Education for All Handicapped Children Act (EAHCA), and the Individuals with Disabilities Education Act (IDEA). The plaintiffs also alleged that the defendants had violated their rights under 42 U.S.C. Sec. 1983 by denying them their Fourteenth Amendment rights due process and the equal protection of the laws. I was primarily responsible for defending the case which was litigated over a period of five years until the parties entered a consent decree in 1991. I was responsible for negotiating the consent decree.

Russell F. Tilton, et al. v. John D. Dougherty, et al., Merrimack County Superior Court, (Docket Nos. 80-C-354 and 80-C-355).

The Honorable George Manias, Merrimack County Superior Court (Retired)

Dates of Representation: Approximately 1986 – 1988

Co-Counsel for the State Defendants: Stephen J. Judge, Esq.
The Wadleigh Law Firm
95 Market Street
Manchester, New Hampshire 03101
(603) 669-4140

Co-Counsel for the Defendant Allergan Pharmaceuticals: Marc Scheer, Esq.
The Wadleigh Law Firm
95 Market Street
Manchester, New Hampshire 03101
(603) 669-4140

Opposing Counsel: Richard B. Couser, Esq. (Deceased)

The plaintiff was a National Guard pilot who alleged that he suffered both an injury to one of his eyes and psychological injuries as a result of the defendants' negligence in conducting his annual flight physical. During the physical, an alcohol-based solution used for testing stool samples was placed into plaintiff's left eye instead of the ophthalmic solution that the flight surgeon typically used to perform a glaucoma test on the eye. As a result of his injuries, the plaintiff was not able to return to being a pilot. The case was tried to a defendants' verdict.

Black v. Laconia Developmental Services, et al., Belknap County Superior Court, (Docket No. Unknown).

The Honorable James Barry, Belknap County Superior Court (Retired)

Dates of Representation: Approximately 1989 – 1992

The plaintiff's decedent was an elderly man who had been a volunteer at the former Laconia State School where he worked with persons with developmental disabilities. The plaintiff alleged that her decedent was inadequately informed and supervised and, consequently, he was injured when scratched by a resident that he was working with. The plaintiff alleged that the neurological disease which killed the decedent resulted from the scratch. The case was tried to a defense verdict in 1992.

Co-Counsel for the Defendants: Charles Putnam, Esq.
Clinical Professor of Justice Studies
University of New Hampshire
208 Huddleston Hall
73 Main Street
Durham, New Hampshire 03824
(603) 862-7041

Opposing Counsel: Bruce Felmly, Esq.
McLane Middleton
900 Elm Street
Manchester, New Hampshire 03101
(603) 625-6464

Arthur Ellison v. United States Surgical, et al., Merrimack County Superior Court,
(Docket No. Unknown).

The Honorable George Manias, Merrimack County Superior Court (Retired)

Dates of Representation: Approximately 1993 – 1995

Co-Counsel: The Honorable Diane M. Nicolosi
300 Chestnut Avenue
Manchester, New Hampshire 03101
(855) 212-1234

Opposing Counsel: Ernest T. Smith, III, Esq. (Retired), Gary B. Richardson, Esq.
Upton and Hatfield
10 Centre Street
Concord, New Hampshire 03301
(603) 224-7791

Mr. Ellison's late wife died in the aftermath of hysterectomy surgery, as a result of which she contracted HIV and died. The physician who performed the surgery utilized a surgical stapler manufactured by the defendant, United States Surgical. The plaintiff alleged that the negligent performance of the surgery and the defective surgical instrument caused excessive bleeding which required a blood transfusion, resulting in the HIV infection which caused her premature death. The case was tried to a jury and then settled before the verdict.

Paul J. Harper, M.D. v. Healthsource New Hampshire, Merrimack County Superior Court, (Docket No. Unknown).

The Honorable Kathleen A. McGuire, Merrimack County Superior Court (Retired)

Dates of Representation: Approximately 1996 – 1998

Co-Counsel: Eric A. Kane, Esq.
United States District Court for the District of New Hampshire
55 Pleasant Street
Concord, New Hampshire 03301
(603) 225-1423

Mark W. Dean, Esq.
13 Samuel Drive
Concord, New Hampshire 03301
(603) 715-5367

Opposing Counsel: Stanton E. Tefft, Esq. (Deceased)

I tried this case to a jury after the trial court's grant of plaintiff's motion to dismiss was reversed by the New Hampshire Supreme Court. Dr. Harper was a board-certified surgeon who was a participating physician with Healthsource, a New Hampshire health maintenance organization. In 1989, Healthsource re-enrolled Dr. Harper as a primary care physician but did not re-enroll him as a surgeon. He later complained that Healthsource had manipulated some of his patient records. After notifying Healthsource of these allegations, the company responded that its credentialing committee had found no evidence of a quality of care problem, but recommended that his provider contract be terminated because he had not satisfied Healthsource's re-credentialing criteria.

After exhausting all of the internal appeal mechanisms, Dr. Harper brought an equitable petition alleging several causes of action related to the termination of his contract. The trial court granted Healthsource's motion to dismiss, and Dr. Harper appealed. The Supreme Court, 674 A.2d 962 (N.H. 1996), found that the trial court had erred in dismissing his claim that Healthsource's termination of him without cause as made in bad faith or violated public policy. The case was then tried to a jury in approximately 1998, and settled before the verdict.

Summit Packaging Systems, Inc. v. Kenyon & Kenyon, 273 F. 3d 9 (1st Cir. 2001).
The reported trial court decision was reached before I entered the case.

The Honorable Michael Boudin, (Retired), Juan Torruella and Norman Stahl (Senior Judge), United States Court of Appeals for the First Circuit

Dates of Representation: Approximately 2000 – 2004

I appeared as defense counsel in this case after the trial court denied the defendant's motion to stay the proceedings in favor of arbitration. Summit, a New Hampshire Corporation and the former client of Kenyon & Kenyon, one of the world's leading intellectual property law firms, sued the firm for legal malpractice after losing a significant patent infringement case involving spray can technology. The key issue was whether the plaintiff was bound by an arbitration clause included in the law firm's engagement letter. The First Circuit upheld the arbitration clause and the case was later

resolved without further court involvement.

Co-Counsel: Pamela Phelan, Esq.
Deputy Clerk
United States District Court for the District of New Hampshire
55 Pleasant Street
Concord, New Hampshire 03301
(603) 225-4123

Opposing Counsel: Jack Middleton, Esq.
McLane Middleton
900 Elm Street
Manchester, New Hampshire 03101
(603) 625-6464

Bono v. Muzak, LLC, et al., Rockingham County Superior Court, (Docket No. 01-C-0171).

Dates of Representation: Approximately 2002 – 2004

The Honorable Robert Morrill, Rockingham County Superior Court (Retired)

Ms. Bono, a very successful former Muzak salesperson, brought an action for wrongful termination, breach of contract and sexual harassment against her former employer and managers. She alleged that, had she not been terminated, she would have succeeded in signing the McDonald's Corporation to Muzak contracts worth millions of dollars. I believe that the case was tried in February 2004. I was responsible for handling the Title VII issues in the case. The plaintiff did not prevail in her breach of contract claim, but prevailed on her claims of sexual harassment and battery and was awarded a verdict of over a million dollars.

Co-Counsel: Richard B. Couser, Esq. (Deceased)

Opposing Counsel: Kathleen Peahl, Esq.
The Wadleigh Law Firm
95 Market Street
Manchester, New Hampshire 03101
(603) 669-4140

Kelleher v. Marvin Lumber, Hillsborough County Superior Court, 152 N.H. 813 (2005).

The Honorable Arthur Brennan, Hillsborough County Superior Court (Retired)

Dates of Representation: Approximately 2004 – 2007

I represented Marvin Lumber (Marvin) in this matter through two jury trials, an appeal to the New Hampshire Supreme Court and a mediation. The plaintiff alleged that the wooden Marvin windows installed in his house had rotted and were defective and that Marvin had thus breached its warranty in violation of the Magnusson-Moss Warranty Act. Marvin alleged that PPG, the manufacturer of the preservative applied to the windows during the manufacturing process, was at fault because, unbeknownst to Marvin at the time, the preservative was defective.

Opposing Counsel: John Harrington, Esq.
Suloway & Hollis
9 Capitol Street
Concord, New Hampshire 03301
(603) 224-2341

Milliken v. Dartmouth-Hitchcock Clinic, et al., Grafton County Superior Court, 154 N.H. 662 (2006).

The Honorable Steven Houran, Grafton County Superior Court

Dates of Representation: Approximately 2003 – 2006

The Millikens sued the defendants asserting that their son, Justin, was injured as a result of the defendants' medical negligence, either prior to or during his delivery by caesarean section at 31 and 6/7 weeks gestation. The timing of Justin's neurological injuries was the key issue in the case, which encompassed the opinions of ten medical experts and several treating physicians. I served as second chair to my colleague, Attorney Ronald L. Snow. The case was tried to a defendants' verdict and the plaintiffs appealed. I wrote the brief which was then argued by Attorney Snow. The New Hampshire Supreme Court affirmed the jury's verdict.

Co-Counsel: Ronald L. Snow, Esq. (Deceased)

Plaintiffs' Counsel: Robin C. Curtiss, Esq.
Van Dorn & Curtiss, PLLC
PO Box 263
Orford, New Hampshire 03777
(603) 353-4000

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities I have pursued outside the courtroom fall into several categories: client counseling; investigations; mediation; and professional disciplinary work before licensing boards.

My client counseling practice encompasses three primary areas: (1) providing advice to employers, and drafting policies and contracts; (2) advising highly-compensated employees and employees with professional licenses in employment and non-competition disputes; and (3) providing pre-publication review and advice on public access issues to media clients.

My investigative work has focused on workplace misconduct, including sexual harassment. I may be retained for this purpose either by the entity seeking an investigation, or by the entity's law firm. It is my practice to provide the client with a comprehensive report of the investigation.

I regularly participate in mediations both as a mediator, and as counsel. I have described my practice as a mediator in response to Question 14 above. Many of my cases are resolved at mediation.

Finally, I represent a wide range of licensed professionals in proceedings before professional boards. My clients have included physicians, lawyers, nurses, chiropractors and speech pathologists. This work is generally very challenging, but a good result brings a great deal of satisfaction.

I do not recall having been retained as a lobbyist, but I cannot rule out the possibility that I may have testified before the legislature as a member of the New Hampshire Attorney General's Office. (Please see the answer to Question 12. c., above). I may have been registered as a lobbyist for the New Hampshire Electric Cooperative for a very brief period, sometime between 1993 and 2001, but I have no specific recollection of having done so, nor do I have any recollection of the subject matter. I am certain that I have not been retained as a lobbyist since joining Orr & Reno in February 2001.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have been a member of the adjunct faculty at the University of New Hampshire School of Law (formerly the Franklin Pierce School of Law), since approximately 1997. My primary responsibility has been teaching trial advocacy. Since approximately 2006, I have served as an adjunct professor of law in the Daniel Webster Scholars' (DWS) program, which is the law school's honors program. For the first few years, I taught the trial advocacy course during the spring semester. In or about 2011, I began teaching the pretrial advocacy course in the fall, in addition to the spring semester trial advocacy course. During the fall of 2002, I taught a legal malpractice law course at the University of New Hampshire School of Law.

Attached please find the 2002 legal malpractice syllabus; the 2004, 2007, 2009, 2010, 2012, 2013, 2014 and 2015 trial advocacy syllabus; and the 2013, 2014, and 2015 pretrial advocacy syllabus.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not anticipate any receipts based on previous relationships.

I have not made any arrangements to be compensated in the future.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See my SF-278 as provided by the Office of Government Ethics.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflict of interest

will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with ethics officials in the Department of Justice.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since entering private practice in 1993, I have regularly represented *pro bono* clients in divorce and parenting cases in state court. Most of my clients are single parents who also face many other great challenges: unemployment, poverty, foreclosure, domestic violence, mental illness, disabling physical illness, involvement with the criminal justice system and drug addiction. I would estimate that, over the last decade, I have spent an average of over 100 hours per year providing legal services in these cases. In September 2015, I tried a two-day *pro bono* parenting case in the Family Division of the Circuit Court.

While working at Orr & Reno, I defended a member of the New Hampshire Attorney General's office in a professional conduct matter during which I provided approximately \$30,000 in *pro bono* legal services.

Since joining my current firm in 2012, I have served as *pro bono* counsel to the New Hampshire Community Loan Fund, a non-profit organization which assists mobile home park residents in purchasing the parks in which they reside. I provide employment counsel on a regular basis. I would estimate that I spend 40-50 hours each year providing these services.

In addition to providing direct legal representation to indigent clients, I also played a leadership role in establishing the New Hampshire Campaign for Legal Services. The Campaign was founded by the New Hampshire Bar Foundation and the legal services organizations in New Hampshire during my tenure as President of the New Hampshire Bar Foundation. Last year, I returned to serve as the Chair of the Campaign's steering committee to lead the Campaign's effort to raise \$350,000 in private funds to support New Hampshire Legal Assistance and the New Hampshire Legal Advice and Referral Center.