

# Rhode Island Bar Journal

Rhode Island Bar Association Volume 67, Number 3, November/December 2018



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**Preliminary Examination in the District Court**

**Mediation of Healthcare Disputes—Underused  
and Unappreciated**

**New Department of Veterans Affairs (VA) Rules  
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**Gilbert Stuart Birthplace and Museum, Saunderstown, RI** The Gilbert Stuart Birthplace and Museum is situated on 23 acres in the woods of Saunderstown on a beautiful millpond. It was built in 1750 and has been authentically restored and furnished with a working gristmill, gardens, woodland trails, and art exhibitions of period works. It was the birthplace of renowned artist Gilbert Stuart, who is perhaps best known for his unfinished portrait of George Washington, which appears on the U.S. one-dollar bill.



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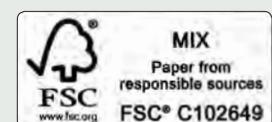
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## Hey, Little Girl



Carolyn R. Barone, Esq.  
President  
Rhode Island Bar Association

**Only days ago, I came upon the results of the American Bar Association's recent survey on the status of women in the law. As I read the results, my initial resistance to having this message focus on issues that may not appeal to all members of the Bar collapsed like a circus tent after the final act.**

Each year, Roger Williams University School of Law presents an event entitled “Women in Robes,” whereat law school students meet and network with members of the Rhode Island Judiciary and celebrate the role of women in the legal community. In the spring of this year, Superior Court Associate Justice Netti Vogel and Michael J. Yelnosky, Dean and Professor of Law at Roger Williams University School of Law, planted the seed for a collaboration between the Law School and the Bar Association to honor the earliest women who were admitted to the Rhode Island Bar, and those who followed their path, so their experiences as trailblazers would be memorialized and shared with others. The Bar Association jumped on this invitation.

All this inspiration results in the Bar Association presenting a series of interviews of RI women lawyers entitled “Rhode Island Women Lawyers: Past, Present and Future.” The first interview is presented in this issue and begins with the professional experiences of Justice Vogel. The *Bar Journal* editors hope to publish an interview in every other issue going forward. Thanks to Justice Vogel and Dean Yelnosky for shining a spotlight on a host of path finders and pioneers of the Rhode Island legal landscape.

I have a confession to make. Initially, I was not a cheerleader for this project. How will these interviews resonate among the male members of the bar, regardless of their age and length of years of practice? By calling attention to this project, am I defeating my goal of reaching out to all members of the bar and not just a select group or an elite few? Am I going to turn off the majority of male lawyers reading this message because its focus is on women trailblazers and pioneers? Understand, not wanting to “turn off” my male colleagues results from spending my formative years in the 1950s. Men were the doctors. Men were the lawyers. Women were housewives. Women were mothers. When I was a freshman in high school, the number one song on the charts was “Wives and Lovers,” and I loved this song. (Heck, I can still sing it, by heart, today. Never do, however.)

Hey! Little girl  
Comb your hair, fix your makeup  
Soon he will open the door  
Don't think because there's a ring  
on your finger  
You needn't try anymore ...

Day after day  
There are girls at the office  
And men will always be men ....<sup>1</sup>

Three years later, I read the *Feminine Mystique*<sup>2</sup> and a year after that, I symbolically burned my bra. That was more than fifty years ago and I never looked back. My gender made me a minority among men majoring in business administration in my undergraduate years. I survived. I continued to be a minority in face of the majority of my male classmates throughout law school. I survived that, too. The number of women graduating from law schools in the 1980s was ever-increasing. With every passing year of law practice, I had more and more women colleagues with whom to form professional relationships. It's good. It's all good, right? *WRONG!*

What is happening at this very moment is quite depressing for women in the legal profession. Only days ago, I came upon the results of the American Bar Association's recent survey on the status of women in the law. As I read the results, my initial resistance to having this message focus on issues that may not appeal to all members of the Bar collapsed like a circus tent after the final act. To every attorney who is reading this message, especially those whose daughters or grand-daughters or sisters are attorneys or who aspire to go to be attorneys, don't leave this page.

On September 6, 2018, the ABA announced its findings of a survey on gender and racial bias in the legal profession. With respect to gender (white women and women of color) and race (both men and women of color), bias was described as “endemic.”<sup>3</sup> A number of findings from this survey were reported on the Forbes website, on October 1, 2018, under the headline, “Female Lawyers Face Widespread Gender Bias According to New Study.” The following are a handful of highlights from the survey:

“Female Lawyers More Likely To Be Interrupted...”

“Female Lawyers Paid Less Than Equally Qualified Colleagues...”

“Female Lawyers Penalized For Motherhood...”

“Female Lawyers Mistaken For Janitors, Administrators Or Court Personnel...”

“Female Lawyers Penalized For Assertive Behavior Required By The Job...”

“Female Lawyers Relegated To Do Office Housework...”<sup>4</sup>

These findings become more disturbing when we compare them to women in the workforce during the 1960s. During that decade, women entered the paid workforce in numbers higher than ever before. At the same time, what they experienced were “...huge gender disparities in pay and advancement and sexual harassment...” in their workplace.<sup>5</sup>

Sound familiar? Is this the landscape on which we envision our daughters, sisters, nay, all women lawyers to practice? To law partners and senior associates, how would your firm rate if your female attorneys were asked the same questions as the recent ABA survey posed?

I invite your attention to the May/June 2018 edition of the *RI Bar Journal*. That edition published a chronological list of known women attorneys to have been admitted to practice law in the state of Rhode Island, beginning with Ada Sawyer in 1920, and ending with the names of 36 women being admitted to practice in 1979. For the first forty years following Attorney Sawyer’s admission to practice, women becoming lawyers were few and far between. The year of 1965 appears to be the “wake up” year for women in the law. That year ushered in an unbroken cycle that continues to this day. From 1965 going forward and continuing to the present time, women have been admitted to the Rhode Island Bar every year. Although the middle to late 1970s saw yearly up-ticks in the number of female attorneys, it was not until the middle to late 1970s that ranks of women lawyers swelled in comparison to all prior decades. The key words in the last sentence are, “in comparison.” Presently, women comprise only 35 percent of the total number of attorneys authorized to practice law in Rhode Island.<sup>6</sup>

Out of curiosity, I “googled” a few names from the earliest of years set forth on the chronological list of RI women lawyers. I had two “hits.” Attorney Helen I. Benning (admitted 1922) was Rhode Island’s representative to the National Association of Women Lawyers, head-

quartered in Georgia. According to Lawyers.com, Norma M. Trifari (admitted in 1942) has been licensed to practice law for over 78 years. Attorney Trifari has no client or peer reviews. A listing of Rhode Island Bar Association presidents begins with the year of 1981. Eighty-three years after the first president, Francis Cowell, served, the first woman president, Beverly Glen Long, served during the 1981-1982 term. Over the last thirty-seven years, only 8 women have served as president.

For the attorneys who have graciously agreed to be a part of this collection of interviews, I look forward to reading your stories. Some may include remembrances of the people who pushed you and guided you while fulfilling your dream. Some stories may tell us how you overcame the negativity of those who voiced strong opposition to your choice of becoming an attorney. I know that all of the interviews to be presented during the coming year will resonate with all women lawyers. I hope that my colleagues who are fathers and brothers will share these interviews with their daughters and sisters, regardless of whatever paths they may choose to follow. For the trailblazers and pioneers who have passed on, I am forever grateful for the guts and grit it took for you to clear a path for me.

#### ENDNOTES

1 *Music by Burt Bacharach, lyrics by Hal David.*

*Published, 1963.*

2 *A book authored by Betty Friedan, published, 1963, W.W. Norton.*

3 See <https://www.americanbar.org/news/labaneews/aba-news-archives/2018/09new-study-finds-gender-and-racial-bias-endemic-in-legal-profession/>.

4 See <https://www.forbes.com/sites/kimelsesser/2018/10/01/female-lawyers-face-widespread-gender-bias-according-to-new-study/#93ac18e4b55e>.

5 The 1960s: A Decade of Change for Women | Civic | US News <https://www.usnews.com/news/articles/.../the-1960s-a-decade-of-change-for-women>.

6 *This percentage is on par with the national rate of 35%, based on statistics from the ABA Commission on Women, “A Current Glance at Women in the Law 2018 (updated March 2018).* ◇

#### Rhode Island Bar Journal

##### Editorial Statement

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

##### Article Selection Criteria

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

Direct inquiries and send articles and author’s photographs for publication consideration to:  
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# Revenge Porn



**Thomas Lonardo, Esq.**  
Associate Professor of Justice  
Studies and Business  
Roger Williams University



**Tricia P. Martland, Esq.**  
Professor of Legal Studies  
Roger Williams University

**The Digital Millennium Copyright Act requires, among other provisions, that particular websites remove any unauthorized use of copyrighted material provided that the owner sends a signed (electronic or physical signature) notice with a link to the unauthorized posting along with a statement that the photos were published without authorization.**

## Introduction

Technology has brought us many benefits in our everyday lives. However, the dark side of this same technology is the ability to widely transmit and disseminate harmful and detrimental information on the internet in the blink of an eye, often times anonymously and without recrimination. Such harmful acts include “revenge porn” which is subject to a number of descriptions and legal definitions (for the record we are not enamored with the accepted and recognized term “revenge porn”). A nationwide study of Nonconsensual Porn Victimization and Perpetration of 3,044 participants from Facebook users was undertaken by the Cyber Civil Rights Initiative for the period of November 2016 through March 2017. When asked “Has anyone ever shared a sexually-explicit image or video of you without your consent?”— 8 percent answered in the affirmative. In an earlier study by the Cyber Civil Rights Initiative from 2015, 23 percent of 1,606 respondents between the ages of 18-30 indicated they were victims of revenge porn.

The newly enacted Rhode Island statute “Unauthorized Dissemination of Indecent Material” (effective 6/4/18), includes dissemination of sexually explicit images “by any means.” Due to the widespread use of the internet in revenge porn cases, for the purposes of this article, we will address revenge porn as compromising photos obtained by individuals who utilize the web to transmit compromising images. Nationwide, many

states attempt to hold offenders of these acts accountable by the passage of a revenge pornography law. In addition, most states also have laws against cyberharassment and cyberbullying that may also be useful. As noted above, Rhode Island recently passed its version of a revenge pornography law titled “Unauthorized Dissemination of Indecent Material,” under R.I. Gen. Laws § 11-64-3. The law criminalizes dissemination of sexually explicit photos of people without their permission. The law contains language that requires proof of the perpetrator’s intent and victim identification if over age 18. While the first act of dissemination is a misdemeanor, a

second offense is punishable as a felony. Also worth noting in section (e) the act of threatening to disclose to gain a “benefit” for non-disclosure and (f) demanding money, property, services or something else in return for removal of the unauthorized disclosed images are felonies. It is not clear what will constitute a “benefit” under section (e). At the time of this writing, authors are not aware of any police department charging under this statute. That said, in the case of Alex, this statute would be an important tool of law enforcement to hold Danny accountable if the required elements of intent, knowledge and the act of dissemination are established.

Not all revenge porn profiles deal with intimate relationships but may also be part of a third party hacking or other such unauthorized appropriation of the images of the victim. One such notorious case was that of **People v. Bollaert**. Here the defendant owned and hosted a website “Ugotposted.” The site was a web sharing site where he would approve postings, usually of sexually explicit images and usually from “former significant others or friends,” along with names, locations, Facebook links, etc. This can be characterized as a revenge porn hosting site. He also had a second website, ChangeMyReputation.com where he would offer to have the photos removed from Ugotposted for a fee. The defendant was convicted of extortion and identity theft.

The genesis of this article came about as a result of being approached by a former female student who was a victim of revenge porn that occurred some two years ago. In assessing legal and technological protocol options, we conferred with colleagues in the Cyber Security and Digital Forensics programs at Roger Williams University that included co-author of this article, Tom Lonardo, as well as Dr. Doug White. Dr. White is a preminent expert and consultant in digital forensics and computer security. There are a number of legal, practical and emotional considerations in addressing these highly emotionally charged and embarrassing transgressions against a potential client. This article will attempt to walk through those steps and strategies in representing clients who have been the victim of revenge porn.

Hypothetical: A potential client, Alex, has just

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told you that a two-year romantic relationship with her “ex,” Danny, ended six weeks earlier at the end of June, and it ended badly. The relationship started in her sophomore year of college. About 12 months into their relationship, certain nude and semi-nude photos were shared with Danny via emails and text messages. These photos were “selfies” (taken by herself with her smartphone). Alex said they were madly in love and talked about marriage. Over time, however, Danny became possessive and verbally abusive. When the relationship ended Danny was infuriated. About three weeks after the breakup, she received an email from a close college friend indicating there were nude and semi-nude photos of Alex on certain websites. In fact, her friend received an email with those photos as attachments with a number of recipients listed on the email. The email was forwarded to Alex by her friend. To her horror, those were the photos she electronically sent to Danny. Alex is devastated, afraid, embarrassed and confused. She would like to know what she can do under these circumstances.

#### Initial Consultation

This can be the most challenging undertaking. Although the victim has had the courage to meet with you to discuss the matter, it becomes an entirely different dynamic when you explain to the victim the practical and legal steps and options available to him/her. He/she may decide to not pursue the matter due to embarrassment in disclosing the situation and, of course, disclosing the compromising photos to total strangers or to her family. The victim may decide not to pursue legal remedies against the ex or other third parties, such as a lawsuit or criminal action, but instead look to technical measures to effect “damage control.” In any event, this must be entirely the victim’s decision.

#### Consideration of Client Safety and Security

Under the circumstances, Alex’s safety may be compromised by Danny or others who have accessed the websites. This is of particular importance if the photos on the websites contain personal identifiers that can be linked to Alex.

- Alex should be advised to contact the appropriate law enforcement agency and in particular the computer crimes unit. Officers in these units usually have a particular level of expertise in addressing computer related issues. If possible, Alex should request a female officer in the crime unit or if there is not a female officer in the unit ask for one to be present. Of course, you can accompany Alex to the law enforcement agency as well to give moral support and to ensure proper attention to the matter.
- Alex should be advised to take protective measures similar to those where domestic abuse or stalking is alleged (i.e. using varying routes to and from school/work, stay with groups as much as possible, travel in well-lighted areas, have 911 on auto dial, change locks, etc.).
- A restraining order may be appropriate if Alex believes her ex poses a physical threat.

#### Emotional Support

- Inquire whether the victim has communicated the situation to her parents, trusted friends or relatives. This may provide insight into the level of support the victim can expect when and if the process proceeds and escalates into a public forum.
- Ask if she has sought professional counseling.

## Preservation of Evidence

Authentication of digital evidence is a matter that can present certain challenges. The newly enacted law, R.I. Gen. Laws § 11-64-3, requires showing that the perpetrator intentionally, and without authorization, disseminated a sexually explicit visual image of another person among other requirements. The challenge is to prove that the defendant was the one who actually posted such images. For example, an email may be tied to a particular IP address but not necessarily identify the actual sender, and once posted, it may be difficult to trace the travel of such posting, if possible at all. This is especially problematic where there are free anonymous routing network services such as Tor. RI Rules of Evidence 901, which deals with authentication of documents such as emails and web postings, requires a low threshold. The proponent of the evidence merely needs to show “it is ‘reasonably probable’ that the evidence is what its offeror [pro]claims it to be” ...and “that there is sufficient evidence that the jury ultimately might do so.” However, in light of what must be proven under the statute, one could rely on circumstantial evidence such as provided for in RI Rules of Evidence 901(b)(4) “Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.” This makes preservation of emails and other electronic communications critical in identifying certain “markers” by the sender compared to other previously sent communications such as style, use of grammar, and selection of text, hopefully linking the sender to the communications in question.

- Obtain electronic digital copies and hard copies of any electronic/digital files including emails, websites, and text messaging that relates to the photos. If the victim has provided hard copies, ask the victim, if possible, to note the precise time and date of the hard copy download. If you download the information include metadata including time and date. This is of particular importance where the digital evidence may have been destroyed, erased or removed from the digital source.
- Obtain all electronic digital copies of emails, text messages and website addresses where the photos appeared.
- Obtain hard and digital copies of all communications between the defendant and the victim.
- Print copies of the photos in PDF. Screenshots and actual photos of the screen are also an option. As with the other digital copies, note the precise time and date of the printout and the source. Another option is to utilize specialized software or hire a certified digital examiner. These options can, however, be costly.

## Removal of Images from Websites

The Digital Millennium Copyright Act (DMCA) allows the owner of copyrighted material, or his/her authorized agents, a mechanism to require an unauthorized user of material to remove such materials. Since the photos were “selfies” it can be argued Alex, in essence, owned those photos. The DMCA provides for a “Take Down Notice.” The DMCA requires, among other provisions, that particular websites remove any unauthorized use of copyrighted material provided that the owner sends a signed (electronic or physical signature) notice with a link to the unauthorized posting along with a statement that the photos were published without authorization. Since many websites are Internet Service Providers (ISPs), they are not liable for copyright

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Attorneys **Harry and Jennifer Hoopis**, a father-daughter attorney team, and both members of the Lawyer Referral Service, enthusiastically support the program. *For over twenty years, we have both participated in the Rhode Island Bar Association Lawyer Referral Service. It has been a pleasure to connect with clients through the assistance of the LRS staff. The reward of participation has been two-fold. First, our client base has expanded and positively impacted our presence in the community. Second, we feel great being part of the LRS which helps people find attorneys when they don't know who to turn to for legal advice and representation.*

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violations as long as they comply with the DMCA “Take Down Notice” and they provide a mechanism to notify them of copyright violations.

Unfortunately, for many victims like Alex, removal of the photos from the websites is a short-lived sigh of relief. Although the photos may no longer be visible on the site, links to the photos remain on the internet and can be found using common search engines. To remove the active links, Alex must contact each individual search engine and request removal.

Complicating matters for Alex is the common “whack-a-mole” problem. Named for the childhood arcade game where a small animal sticks its head out of a hole and the player tries to hit it on the head with a mallet, only to have the animal’s head reappear in another hole – the same problem occurs on the internet. In the case of Alex, users of a site with her photos may download the images and share them on other revenge type websites. Users on these sites often do this in return for site points. The amount of points given depends on the number of images shared. Users may “spend” their points by obtaining new images to download. It is not uncommon for a user to create a large collection of images to earn points in return. In addition, many sites have a practice of marking photos with a hash mark to protect against credit for already uploaded photos. Savvy users will sometimes make a slight modification to photos to avoid the hashtag. For victims like Alex, that means these photos may continue to be shared despite the DMCA. And while those sharing photos in this manner likely do not know the person in the images, the act of sharing continues the victimization for the person in the photo.



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## Other legal remedies

One of the biggest challenges in these cases is that no one remedy seems to be a panacea.

While a revenge pornography criminal statute in Rhode Island is an enormous step in the right direction, there are often other issues for victims that remain unresolved. For example, many victims lose their jobs. Loss of employment may lead to anxiety and depression, as well as fear for one's own physical safety. While an order of protection in the District or Family Court may offer relief to a victim, there may be jurisdictional issues arising from the criminal nature of the act, as well as logistical challenges to serving an offender. The issuance of a protective order may be dependent on whether the court deems the mere posting of the image as creating a fear of imminent harm or whether something more is required, such as actual communication with the victim. Regardless of how the standard is applied by the courts, the potential inability to determine the true identity of the sender of an electronic communication with any degree of certainty could be problematic, making the issuance and serving a protective order difficult. Another legal remedy may include state privacy torts for invasion of privacy, and copyright law may be useful in cases where the victim (like Alex) is also the person who took the photograph or "selfie." But, these options assume that you are able to identify and find the perpetrator. And like the new revenge pornography statute, these legal options may mean that Alex, or another victim, has to take the witness stand and share very personal and detailed information about themselves – including identification of the photos. Victims are often concerned about the media attention

that cases like these may get and the negative impact it will have on their job prospects. Another issue for victims is the very real concern that jurors may hold victims partly or fully accountable for the photos ending up on the internet. The notion that these cases would never happen if the victim did not take or share the photo may be just the amount of victim shaming to excuse a defendant from criminal responsibility. On the upside, the arrest of an individual(s) using R.I. Gen. Laws § 11-64-3 sends the message to others in the online community that Rhode Island will hold offenders accountable for criminal behavior. As this article shares, the path to helping a client in this kind of case is not always clear or easy. For victims of unauthorized dissemination of indecent material, R.I. Gen. Laws § 11-64-3 offers a measure of accountability, criminal consequences, and protections to victims if they wish to come forward.

## Self-Help

Acts of revenge pornography often leave victims feeling helpless and out of control. One way your client can help themselves is to take control of their online reputation. An online guide, such as one found on [brandyourself.com](http://brandyourself.com), offers free advice to help users bury compromising material through search engine optimization. Recommendations help users to fill Google with positive content as a way to control what users see online and to minimize negative content. Following the steps provided will not only help your client to regain control of their online reputation but will also put them in the driver's seat to regaining control over their lives. ◇



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# Preliminary Examination in the District Court

## A Criminal Defendant's Right to an Independent and Neutral Determination that Probable Cause Exists to Support the Police Officer's Decision to Charge a Felony



**John R. Grasso, Esq.**  
Law Office of John R. Grasso  
Providence

**Bianca hadn't committed a crime, yet for 14 months she remained on bail, unable to find suitable employment, and uncertain of her future.**

Charged with two counts of carrying a pistol without a license, Bianca remained on bail for 14 months before anyone took a second look at the arresting police officer's decision that probable cause existed to support the charges. Immediately, as a result of her arrest and felony charge, Bianca, a CNA, lost her credentials and her job. It was an equal amount of time before Bianca's criminal defense attorney was entitled to read the police report. That is what happens in the large majority of felonies charged in Rhode Island. And it doesn't happen by accident; it is intended to be that way.

But for a few exceptions, all felonies are born in the District Court. The District Court arraigns the accused, sets bail, and watches over the case until it finds its way to the Superior Court either by criminal information or indictment. The District Court has no other authority to do anything with a felony but arraign and set and maintain bail. Until the defendant is arraigned in the Superior Court, she has no right to conduct discovery or take any action to free herself of the many restraints on her freedom and other prejudices that being charged with a crime imposes on a person. In other words, the defendant is handcuffed to her case and left in the dark until the state comes around with the key. In most cases, a felony doesn't make its way to Superior Court sooner than eight to ten months after arrest.

It is difficult to imagine that a person arrested, brought to court, charged with a felony, and placed on bail has no right to the police report, no right to know the evidence against her, and no real way to begin to defend herself for almost, and in some instances, more than a year after her arrest. It is equally as difficult to imagine that the same person – as a result of a single police officer's decision – may have been terminated from her job, denied access to the Internet, suffer the many consequences of being the subject of a no-contact order, expelled from school, denied a professional license, and more. As difficult as that might be to reconcile, it is the truth. It is perpetrated by design. And there are likely thousands of Rhode Island defendants charged with felonies and on bail at this very moment wandering around this legal no-man's land waiting for the State to get around to doing what it does to move a felony

from District to Superior Court. These folks and their criminal defense attorneys are almost powerless to make it happen a moment sooner.

Almost powerless. The folks who made the rules were aware of this dangerous and unfair predicament when they crafted Rule 5(c) of the District Court Rules of Criminal Procedure. Rule 5(c) arms the accused with the right to a preliminary examination in the District Court. It requires an evidentiary hearing during which the accused has a right to confront the evidence against her and introduce her own evidence. At the conclusion of the hearing, a District Court judge is called on to decide whether the evidence adduced at that hearing rises to probable cause to believe that an offense has been committed and that the defendant has committed it. If the State fails to satisfy its burden, "the judge shall discharge the defendant."

Rule 5(c) is essential because there is no other mechanism to test the police officer's decision to charge the defendant with a felony until the case makes its way to Superior Court. There is no other mechanism available to the defendant to compel the state to provide her with a glimpse at the evidence. She has no other right to the courthouse. She was arrested, arraigned, bailed, and left to wait for the State to get around to charging her case in the Superior Court before she can avail herself of any of the many rights every person accused of a crime is afforded by law.

If, after a preliminary examination in the District Court, the judge discharges the defendant, that discharge is without prejudice. The State is free to bring the charge again in the Superior Court if it can support the charge with probable cause. Until it does, however, the accused is relieved of the enormous burden of being charged with a felony. With the amount of time it takes the State to do what it does to move a felony from District to Superior Court, Rule 5(c) remains the only procedural safeguard available to those accused by the police of felony crimes.

When the prosecutor, defense lawyer and judge scrutinized the evidence in the case against Bianca, it was discovered that Bianca was residing with her boyfriend at the time of the charge. The police hadn't bothered to ask Bianca if she was a

## Bar's Government Lawyers Committee Offering Two, Free, 1-Credit CLE Programs

The Rhode Island Bar Association's Government Lawyers Committee is sponsoring two, free-to-Bar-members, one-credit Committee CLE seminars in November and December. On **Thursday, November 1st, from 12:45-1:45 pm** at Rhode Island Bar Association headquarters, 41 Sharpe Drive in Cranston, Roger Williams University School of Law Professor Jonathan M. Gutoff will present *Administrative Law Issues in the News*. Participants will receive an overview of Chevron deference to agency interpretations and information regarding the latest perspectives on whether Trump's Supreme Court candidate could lead to overturning Chevron. This program will also provide attendees with an understanding of the appointments clause of the US Constitution and its significance, including whether federal administrative law judges are subject to the appointments clause.

On **Thursday, December 6th, from 12:45-1:45 pm** at Rhode Island Bar Association headquarters, 41 Sharpe Drive in Cranston, Attorney Brian J. Lamoureux of Pannone, Lopes, Devereaux & O'Gara, LLC will present *Social Media: Creating a Policy & Using it Effectively*. This program will help attendees learn about the legalities of social media use in the public sector and understand which social media platforms are most useful for which content. The discussion will generate ideas for using social media strategically and effectively in your city, town, or state agency.

Space for these programs is limited. To register for either program, and for additional information, please contact Government Lawyers Committee Chair Jenna Giguere: [jenna.giguere@dbr.ri.gov](mailto:jenna.giguere@dbr.ri.gov).

resident of the household. As a resident of the household where the police seized her firearms, Bianca had a right to possess those firearms. Although the police charged Bianca with two counts of carrying a pistol without a license, it was determined that Bianca hadn't carried the firearms anywhere. She merely possessed those firearms at the time of her arrest. The police officer wrongly believed that she needed a license to own the two firearms. No such license exists in Rhode Island. Bianca hadn't committed a crime, yet for 14 months she remained on bail, unable to find suitable employment, and uncertain of her future.

It is the criminal defense attorney's obligation to ask for full and fair preliminary examinations in those instances that warrant a second look at the police officer's decision. It is the prosecutor's obligation to establish the facts with the best evidence. It is the court's duty to consider reliable evidence, reject any other kind of evidence, and make its own independent judicial determination that probable cause does or does not exist to support the charge. After all, the weight of a felony charge is heavy. ◊

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

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



**The Honorable Netti C. Vogel**

The decision for the Honorable Netti C. Vogel to attend law school in 1972 was a hard one, but her biggest challenge “was to change the perception that women weren’t equally as serious as men about practicing law.” Years before her appointment to the Rhode Island Superior Court, Justice Vogel attended New England School of Law, where only ten percent of her graduating class of 1975 were women. While attending law school, Justice Vogel confronted the belief shared by many of her classmates that men attended law school to develop a legal career and use their income to support their family, whereas women were merely “dabbling” and would abandon their career to become full-time mothers. By working hard and committing to a career in law, her law school class developed camaraderie and respect, and the perception shifted from a misogynistic view to an equitable one.

As a practicing lawyer, she continued to face the challenge of changing the perception that women were not equal to her male colleagues.

At Gunning & LaFazia, one of the senior partners felt that if clients discovered that a woman was handling their cases, the clients would perceive the firm to be losing its “machismo.” Although her male colleagues were assigned their own cases, she was expected to work on the

partners’ files. Justice Vogel did not let this pass. She raised the issue with Ray LaFazia, who took matters into his own hands, and started assigning her cases directly.

The next hurdle for Justice Vogel to surmount was the discrimination she experienced from other members of the bar and members of the judiciary. “I cannot count how many times I’ve been called, ‘honey,’ or ‘dear.’ I would respond, ‘Excuse me, save those terms of endearment for someone you are intimate with. I am opposing counsel!’” She explained, “They don’t have to like you. You need them to respect you.” She also relied on guidance from others: “I never forgot the advice I received to never call opposing counsel ‘Mister.’ Always call them by their first name, because you need to put yourself on an equal field with them and never in a position where they are above you.”

Opposing counsel were not the only source of discrimination in the courtroom. A judge once told her early in her legal career, “I don’t think women have the constitution to be litigation lawyers in the Superior Court.” Justice Vogel tried her first case in 1976—one year out of law school—and, by 1977, she was the only Rhode Island female attorney trying back-to-back cases in the private sector. “I tried more cases before that Judge, and he always treated me with respect. By showing I was not meek—but by not being abrasive—that Judge’s view changed without him even realizing it. You have to change perception by being there, working hard, being professional, and knowing the law.”

Although the open hostility to women entering the practice of law has softened since she started her career, Justice Vogel thinks there still needs to be a culture change. “The problem is most men don’t think about it. They exclude because it’s part of their culture and background. They need their consciousness raised.” Men need to be allies. “Treat women with the same level of camaraderie as men. These women worked hard to get where they are. If you don’t serve as an ally and if you are not sensitive to inclusion, you are



**Cassandra L. Feeney, Esq.**  
Adler, Cohen, Harvey,  
Wakeman & Guekguezian,  
LLP, Providence



**Etie-Lee Schaub, Esq.**  
Providence City Solicitor’s  
Office

part of the problem. It is discriminatory. You are either inclusive or discriminatory. That’s it.”

Justice Vogel’s message for women attorneys: “If you are a woman and excluded, say something. Also, if men are afraid to socialize with you the way they would socialize with a younger male attorney since the #metoo movement, they are showing a view towards the movement that is insulting. If there is a genuine concern, it should be questioned. If it’s not genuine, then it’s just a reason to discriminate and exclude. Men need to be inclusive in hiring, in introducing young women to clients, in firm outings, and in setting up panels and conferences.”

When faced with inappropriate remarks and behavior, women should be empowered to speak out and seek advice and support from others. For example, if a client calls you “honey,” let the senior partner know what happened. If the culprit is anyone besides a client, be more direct: “Don’t tolerate it. Tell them it is demeaning. Don’t just let things go. You need to be respected. You may say things that make you uncomfortable, but in the long run, it will solidify your place in your office, with the bar, and pave the way for the next woman attorney.”

When prompted for advice, Justice Vogel offered these guidelines: “Work hard; have a good mentor; be courteous; be honorable; remember you are representing the rights of someone else and it is not about you; this is a profession, not a job; as a woman, assert yourself against any perceived discrimination or harassment; as a man, be an ally, speak up, support women, don’t let discrimination and harassment directed towards a woman or yourself pass, and don’t rely on your male privilege; treat everyone with respect; and above all, have integrity.” ♦

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# Mediation of Healthcare Disputes— Underused and Unappreciated



James E. Purcell, Esq.  
Arbitrator & Mediator

**We have seen far too many aggressively litigated disputes in the Rhode Island healthcare arena linger on for years with incredible costs and use of resources, only to settle on the eve of trial at levels that are distressingly similar to what could have been reached with early and effective mediation.**

We know that healthcare is the fastest growing area of the US economy at \$3.3 Trillion and 18% of GDP. It is the largest sector of the Rhode Island economy today. As of 2018, healthcare has become our nation's largest employer, now employing more than either the manufacturing or retail sectors. Consider that the number of Americans over 65 will increase from 16% of the population today to 21% in 2050, and that population experiences three times as many hospital days as the general population.

The complexity and amounts of money at stake in healthcare matters is astounding today, and will accelerate over the next several decades. Where there is great money and complexity, disputes abound. We lawyers know this.

As a result, disputes will proliferate; and for the most part, courts are the last place healthcare participants should want to have their disputes resolved. With some exceptions, judges and juries simply do not have the experience, training, or information needed to understand the complexities and nuances of healthcare disputes, and turning over such matters to them for final resolution is a bit of a gamble.

Supreme Court Justice Sandra Day O'Connor suggests:

"The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried."

We also know several other things about court litigation. Cases take a long time to get to trial, and even if trial proceeds to closure, there are post-trial motions and appeals. It can seem endless, and it will most certainly be extraordinarily expensive. Perhaps even more harmful to the parties is that when they are in major litigation, they are distracted from day-to-day business, and scarce resources are used for trial preparation and PR rather than for healthcare.

Last, healthcare is local, and particularly in Rhode Island, all the larger players in healthcare have ongoing business and personal relationships with each other that are important to maintain. Court litigation places huge stress on such relationships, often to severe business and

interpersonal detriment.

Fully 97% of all court cases settle. Your case will almost certainly settle at some point, sooner or later. But all too many settle later, after hundreds of thousands of dollars have been squandered on legal fees, expert witness retainers, deposition costs, document discovery/retention/production, and the like. In most cases, that is all so unnecessary.

With a mediator who is not only expert in healthcare matters but also is trained to mediate with sensitivity and perception, even the most bitter healthcare dispute can be resolved quickly and far, far less expensively than through court litigation. In the best of all worlds, mediation would be resorted to even before suit were filed. In that way, resolution could be attained even more quickly, less expensively, and confidentially. No top of the *ProJo* fold stuff, which most clients just hate.

The aversion of litigators to mediation is unfortunate, but it exists. Some view a willingness to mediate as a sign of weakness. That simply is not correct. It's a sign of intelligence. It is in the clients' best interests to resolve early and inexpensively.

Nonetheless, lawyers are by nature risk-averse, and don't like to advise clients regarding settlement without knowing ALL the facts. Those of us who have litigated for decades know that even with extensive and expensive discovery, we won't know ALL the facts. There is always some element of the unknown at any pretrial stage of litigation.

But what if there were a crucial fact or document that one side needed to know or see in order to settle intelligently? How can mediation proceed without counsel knowing that fact or seeing that document via expensive discovery?

That can easily be handled within the context of the mediation process itself. It may require that the mediation take a recess in order for a specific, limited, and expedited exchange of documents or facts. The operative words are "limited" and "expedited." E.g., seven days to produce ten specifically described documents or to answer four narrowly drafted interrogatories. This has worked to ease the concerns of counsel and clients more than once in my experience.

So consider that a mediated settlement almost

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always:

- Is incredibly quicker and less expensive
- Is entirely confidential
- Is less damaging of long-term business and personal relationships amongst the parties
- Does not risk *res judicata* or collateral estoppel impacts (most large players in healthcare have form contracts with multiple parties with the same language as might be at issue)
- Allows the players themselves to control the results rather than ceding resolution to a judge or jury that is less expert in the realm of the dispute
- Eliminates any further distraction or use of valuable resources that is caused by such disputes.

We have seen far too many aggressively litigated disputes in the Rhode Island healthcare arena linger on for years with incredible costs and use of resources, only to settle on the eve of trial at levels that are distressingly similar to what could have been reached with early and effective mediation. This is not a good use of scarce resources, and it is not good litigation management.

It also has been the author's experience that otherwise experienced and capable counsel too often arrive at mediations rather unprepared. Preparation is key in terms of impact on the other side and in determining negotiation strategies. In terms of preparation, perhaps nothing is more important than preparing the client for what will unfold. Unprepared clients can derail a mediation quickly. They must know that mediations are not about winning or losing. They are about reaching resolution that in all likelihood will leave all parties slightly disappointed, but relieved that it's over, that the bleeding is done, and that they can turn fully to business matters at hand.

By the same token, good mediators often run "interference" for lawyers with their clients. Up to the time of mediation, counsel likely have been zealously representing their clients. During mediation, counsel might turn down the rhetoric several notches so as to encourage settlement. The mediator can explain to the clients that if their lawyer seems to be acting less aggressively than before and advises settlement, they are not being abandoned. The lawyer is acting in the client's best interests (and rather against his/her potential financial interests) by trying to settle the case early on.

Kristen Sloan Maccini wrote a very good article on mediation in the Jan/Feb 2017 edition of the *RI Bar Journal*. While it doesn't discuss healthcare mediation, its points about mediation are sound and apply to healthcare mediation as well. My only disagreement with the author is that I find it difficult to imagine a case, healthcare or not, where mediation should not be pursued. Ms. Maccini was less opinionated on that point.

In-house counsel should be all over this. Yet, in the author's experience, in-house counsel seem oddly agnostic about mediation. That should change given its potential benefits. Moreover, agreements should contain dispute resolution clauses that mandate mediation (requiring a mediator expert in healthcare issues) before suit is filed. Whether such a clause should mandate arbitration is a more nuanced issue that deserves its own article.

Lastly, pick your mediator with care. Because in the right hands, your matter can be resolved expeditiously, less expensively, confidentially, and quite fairly. And you will have represented your client ably and well. ♦

# New Department Of Veterans Affairs (VA) Rules for Needs-Based Benefits



Marc J. Soss, Esq.  
Practices in Florida

**The new regulations also establish a presumption, absent clear and convincing evidence to the contrary, that asset transfers made during the look-back period were made to establish pension entitlement.**

The Department of Veterans Affairs (VA) pension program, which includes the Veterans Aid & Attendance Pension Benefit and Housebound Special Pension Benefit, was originally enacted to help veterans in financial distress and modest annual incomes or none at all. Eligibility for the VA pension is solely determined by the veteran's financial condition at the time of their application and not intended to preserve the estates of veterans who have the means to support themselves.

In January 2015, the VA proposed new regulations in response to a Government Accountability Office investigation that found veterans and their survivors being enticed into plans intended to hide or reallocate their assets to qualify for VA pensions. At the time the new regulations were proposed, the VA did not penalize veterans for asset transfers prior to filing their application or have a formal "look-back" period. On October 18, 2018, over three (3) years after the VA originally proposed them, the new regulations to qualify for needs-based benefits went into effect. The new regulations contain "net worth" limitations, look-back periods, penalties and definitions for those applying for benefits. The new regulations disregard any asset transfers made prior to October 18, 2018.

**Service Eligibility.** Eligibility for the VA pension program required a veteran (i) to have served on active duty for at least ninety (90) days; (ii) at least one (1) day of which occurred during a period designated as wartime; and (iii) there must have been an honorable discharge. Single surviving spouses of such veterans are also eligible for the pension program.

**Medical Eligibility.** Eligibility for a veteran under age sixty-five (65) requires them to be totally disabled. Eligibility for a veteran age sixty-five (65) and over requires the veteran or spouse to need regular aid and attendance benefits. This includes an inability to dress or undress; feed themselves; keep themselves clean and presentable; or incapacity, physical or mental, which requires care or assistance on a regular basis.

**Assets and Income.** Under the new regulations, a veteran's assets will include their financial assets and income, including those of their spouse. In contrast, their assets will not include the follow-

ing: (i) one primary residence, even if the veteran resides in a nursing home, care facility or home of a family member for health care or custodial care; and (ii) personal effects consistent with a reasonable mode of life, appliances and family transportation vehicles. If the primary residence is sold after the establishment of pension entitlement any net proceeds will not count as an asset if the proceeds are utilized to purchase another residence within the same calendar year.

**Net Worth Limitations.** An eligible veteran must have a net worth equal to or less than the prevailing maximum community spouse resource allowance (CSRA) for Medicaid (\$123,600 in 2018). The net worth amount will increase annually at the same percentage as Social Security. The VA will deny or discontinue pension benefits if the veteran net worth exceeds the net worth limit at any time.

**Look-Back Period and Penalty.** The new regulations establish a thirty-six (36) month look-back period, beginning on the date on which the VA receives either an original or new pension claim after a period of non-entitlement, for the transfer of assets. The regulations include a five (5) year penalty period for assets transferred at less than market value to qualify for a VA pension.

A transfer for less than fair market value is defined as a sale, conveyance, gift, exchanging an asset for an amount less than the fair market value or an asset transfer to or for the purchase of a financial instrument or investment that reduces the veterans net worth to qualify for pension benefits. There are exceptions for transfers made as the result of fraud, misrepresentation or to a trust for a child who is not able to support themselves. The new regulations also establish a presumption, absent clear and convincing evidence to the contrary, that asset transfers made during the look-back period were made to establish pension entitlement.

**Deductible Medical Expense.** The regulations define what the VA considers to be a deductible medical expense for all of its needs-based benefits. The definition includes payments for items or services that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline. This includes care by a health care provider, medications and medical equipment, adaptive

equipment, transportation expenses, health insurance premiums, products to help quit smoking, and institutional forms of care. If unreimbursed, these medical expenses may be deducted from countable income for purposes of eligibility. In contrast, deductible medical expenses will not include assistance with IADLs or meals and lodging in an independent living facility and cap an in-home care attendant's hourly rate.

**Pension Payments.** The new rules leave the \$90 limit on VA pension payments to a Medicaid nursing home benefit recipient in place and provide that a beneficiary is not liable for any pension payments in excess of the \$90 per month by reason of VA's failure to reduce payments, unless the VA pension beneficiary willfully conceals the overpayment from VA. ♦

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# A Chicago Whirlwind

## American Bar Association Delegate Report

### Annual Meeting 2018



**Robert D. Oster, Esq.**  
ABA Delegate and Past Rhode  
Island Bar Association President

The ABA 2018 Annual Meeting in Chicago, August 2-7, was a success by any standard. It was an existential meeting for the ABA as it has decided to reduce dues to \$70 for most members in response to flat membership and an oversized budget. More on that later. The meeting of the House of Delegates was an amalgam of important legal issues of the day, namely, immigration, border control, and unaccompanied minors in custody of ICE. In addition, the continuing problem of sexual harassment and discrimination in the legal environment, and society in general, was addressed as urgent. Gun violence was again addressed and as a member of the Gun Violence Subcommittee of the House of Delegates, I have been very involved in meeting and planning proposed resolutions. The “criminalization of poverty” through impossible-to-pay fines and costs has demanded attention and action from the Chief Justices Conference. Additionally, access to justice and the legal system was addressed by Edward Levi, Executive Director of National Legal Services Corporation. He analogized that if Wrigley Field, Home of the Chicago Cubs, were filled to capacity, currently only 14 attorneys would be able to serve the unmet legal needs of the entire stadium crowd.

The House was addressed by Mayor Rahm Emmanuel, who as of this writing has announced his intention not to seek reelection. The grandson of Romanian immigrants fleeing the Holocaust, he spoke personally about current immigration issues. Not coincidentally, over 50 people were shot in Chicago the weekend we were there. While Chicago is by any metric one of the most dangerous cities in the United States, it is not the only one.

ABA President Hilarie Bass of Florida addressed the House on family separation at the border with Mexico. She visited the detention center in Harlingen, Texas and related the heart-rending story of a 3-year-old who was brought into court without her parents or counsel for a hearing. It is clear the separations were carried out with outstanding casualness. The ABA has instituted training sessions for lawyers who are volunteering their time at the border for these families. Notably, former mayor Angel Taveras volunteered for one such mission.

A second theme resounded throughout the meeting—the continuing problem of the role of

women in the profession, including women of color. Female attorneys are still being mistaken for lower level employees and over 50 percent of women in the profession have reported unwanted sexual advances. In addition, the erroneous perception that women in the legal profession are more focused on their families and not their careers still persists. The alarming problem of women leaving the practice of law before age 50 also has damaged long-term careers for women in the profession.

The continuing problem of attorney wellness was also discussed. Statistics show that 20 percent of all lawyers are problem drinkers, and attorneys are affected by anxiety and depression out of proportion to their numbers in society. Our thanks to immediate past President of the Bar Linda Rekas Sloan for highlighting this important issue during her term.

As mentioned earlier, because of the dramatic dues reduction by the ABA, I would encourage all lawyers who are not members to become members and avail themselves of one of the ABA divisions, sections or interest groups in their practice area. As I have stated before, the ABA, which currently counts roughly a third of all lawyers as members, cannot continue to be the voice of the profession without better membership numbers and concomitantly, a program that is relevant to practices. I am often asked why I see the ABA as a value to my practice. As a solo/small firm practitioner, I have been at the cutting edge of ideas and practices that have added to my law practice. I am an active member of the Solo/Small Firm Caucus, the Gun Violence Subcommittee, and the National Caucus of State Bar Delegates. I have found that the time I have devoted to these endeavors has richly rewarded me in my practice.

I would encourage Rhode Island Bar Association attorneys to forward any comments they have to me as your representative. It is an honor and privilege to serve as your representative to the ABA. ◇

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**November 9** **Startups: Successful Legal Strategies and  
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**November 13** **Cross Examination Techniques:  
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**November 17** **The 2018 Ethy Awards**  
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**November 20** **The Ties That Bind: Avoiding Inappropriate  
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The Truth: The Ethical Imperative for Honesty  
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Today, more than ever, the Foundation faces great challenges in funding its good works, particularly those that help low-income and disadvantaged people achieve justice. Given this, the Foundation needs your support and invites you to complete and mail this form, with your contribution to the Rhode Island Bar Foundation.

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

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*Continued on next page*

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



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### **US Armed Forces Legal Services Project**

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The Bar also thanks the following volunteers for taking cases for the Foreclosure Prevention Project and for participating in Legal Clinic and Ask a Lawyer events during August and September.

### **Foreclosure Prevention Project**

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## A Gracious Opponent

**John Austin Murphy, Esq.**  
Morneau & Murphy, Jamestown

The life of a lawyer who makes his/her living in the courtroom can be demanding. But sometimes, things peripheral to the case make all the difference.

It was the late 1970s, and I had a case on the civil motion calendar in Washington County. I represented the plaintiff, a bank. The defendant was an occasional resident of Watch Hill with a name known world-wide.

My motion was to attach a substantial amount of valuable furniture being stored in a Westerly warehouse. It was to be called “ready hearing.”

The defendant was represented by a senior member of the Bar, well-known statewide, and particularly in Washington County. I would say that I was at least twenty-five years younger than he.

The court’s calendar was extensive, and the judge spent the morning resolving cases other than ours. When the time came for the mid-day break, we were the sole remaining case. The judge instructed us to return after lunch at 2pm, when he would hear our case.

The defendant’s attorney and I had agreed that the court’s ruling on the pending motion to attach would resolve the case. Neither of us would present witnesses, but rather submit the case on affidavits, discovery materials, and the argument of counsel.

At that time, in Washington County, particularly in the winter, which it was, the choices for lunch were few. As we departed the courthouse together, my opponent asked me if I would like to join him for lunch at his home, which he said was not too far away. I accepted the invitation, and together we set off to his home in his car.

As we drove into rural Charlestown, I began wondering a bit about what I was getting myself into. This feeling intensified, as we drove down a long driveway, and arrived at a large home in a dramatic setting, standing alone, with no other houses in sight.

It was a cold day, and we hustled into the house. As we walked through a large living room, the house seemed to me to be closed-up, quite cold, and not in use. But then we entered the kitchen and were greeted by my opponent’s housekeeper. Although the kitchen was quite old, and rather dark, it was warm. We sat at the kitchen table, and ate the delicious shepherd’s pie that the housekeeper had ready for us.

After we got back to court, we began the rather tedious process of presenting the opposing sides of the motion to attach. I do remember the judge commenting, as the presentations droned on, that there was nothing more sleep-inducing than a boring civil case presented as the afternoon sun streamed through the west-facing windows of the Washington County Courthouse, further heating up the already overheated old courtroom.

Perhaps, the judge had opted for a large lunch at the Rathskeller.

I do recollect that my motion was granted, but what I most clearly remember about this case is the remarkable hospitality of my most gracious opponent, Harold B. Soloveitzik.



### **Publish and Prosper in the Rhode Island Bar Journal**

The *Rhode Island Bar Journal* is one of the Bar Association’s **best means of sharing your knowledge and experience with your colleagues**. Every year, attorney authors offer information and wisdom, through scholarly articles, commentaries, book reviews, and profiles, to over 6,500 subscribers in Rhode Island and around the United States. In addition to sharing valuable insights, **authors are recognized by readers as authorities in their field and, in many cases, receive Continuing Legal Education (CLE) credit for their published pieces**. The *Bar Journal*’s Article Selection Criteria appear on page 4 of every *Bar Journal* and on the Bar’s website at [ribar.com](http://ribar.com).

Aspiring authors and previous contributors are encouraged to **contact the Rhode Island Bar Journal’s Editor Kathleen Bridge by telephone: (401) 421-5740 or email: [kbridge@ribar.com](mailto:kbridge@ribar.com)**.

RHODE ISLAND BAR ASSOCIATION'S

# Online Attorney Resources (OAR)

*Exclusively designed to help Bar members receive and offer timely and direct assistance with practice-related questions.*

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

- |                    |                       |
|--------------------|-----------------------|
| Administrative Law | Business Law          |
| Civil Law          | Creditors and Debtors |
| Criminal Law       | Domestic/Family Law   |
| Federal Court      | Probate and Estates   |
| Real Estate        | Workers' Compensation |

**TO CHOOSE YOUR OAR OPTION:**

- Bar members with questions about a particular area of the law.
- Bar members willing to volunteer as information resources.

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## Do You Have a Problem With Alcohol?

Alcohol has been described as “cunning, baffling, and powerful.” For many, its use is fraught with problems that can destroy a profession, a family, or a life.

Unlike some medical problems, there are no exact diagnostic tools that will determine whether someone is “over the line” with their drinking. Often those with an alcohol problem have great difficulty acknowledging it.

The following twenty questions may be helpful in determining whether you or someone close to you may have a problem with alcohol.

1. Have you had problems at work (lateness, missed time, errors, etc.) due to drinking?
2. Is your drinking making your home life unhappy?
3. Do you drink in order to help you feel more comfortable around people?
4. Have you spent money on alcohol that was supposed to be spent on other things, like children's clothes? Rent? Money owed to others?
5. Have you been spending time with people you don't really care for just because of alcohol?
6. Has your alcohol and other drug use led you to take dangerous risks?
7. Do you get cravings for alcohol during a specific time of day?
8. Has your drinking led you to do things you are ashamed of?
9. Have you ever been drunk in the morning?
10. Have you been involved in physical or serious verbal fights when drinking?

11. Do you ever drink in order to escape worries?
12. Is it hard for you to imagine living your life without alcohol?
13. Have you ever thought you should cut back on your drinking?
14. Has anyone ever criticized your drinking?
15. Have you ever been arrested for an alcohol-related incident?
16. Have you ever had trouble remembering what happened as a result of drinking?
17. Have you ever had a health problem because of your drinking?
18. Have you ever lied about your drinking?
19. Have you ever lost interest in things or activities that you used to find enjoyable?
20. Do you feel like your life simply isn't working out?

If your answer to any one of these questions is “yes” you may benefit from discussing your answers with Judith Hoffman or one of her colleagues at the Coastline Employee Assistance Program, a private, non-profit assessment and referral program with which the Bar Association has contracted. Simply call 401-732-9444 or toll-free 1-800-445-1195 and identify yourself as a Bar Association member. Any communication is strictly confidential.

You may also contact, in complete confidence, any member of the Lawyers Helping Lawyers Committee.

## Do you or your family need help with any personal challenges? We provide free, confidential assistance to Bar members and their families.

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

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

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

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

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

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James J. Bagley, Esq.	(401) 490-0220
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Reza Breakstone, Esq.	(617) 723-7676
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Susan Leach DeBlasio, Esq.	(401) 274-7200
Kathleen G. Di Muro, Esq.	(401) 944-3110
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**Lawyers Helping Lawyers Committee Members Protect Your Privacy**

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9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank):  
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a. Total Number of Copies (Net press run)		6850	6850
b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	3650	3686
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 (include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	3069	2991
	(3) Paid Distribution Outside the Mail including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®		
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail®)		
c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))		6719	6677
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541		
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	(3) Free or Nominal Rate Copies Mailed as Other Classes Through the USPS (e.g., First-Class Mail)	67	56
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	25	20
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))		92	76
f. Total Distribution (Sum of 15c and 15e)		6811	6753
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))		39	97
h. Total (Sum of 15f and g)		6850	6850
i. Percent Paid (15c divided by 15f times 100)		98%	98%
16. Electronic Copy Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Paid Electronic Copies		0	0
b. Total Paid Print Copies (Line 15c) + Paid Electronic Copies (Line 16a)			
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# Rhode Island Probate Court Listing and Judicial Communications Survey on Bar's Website

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

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**2018 Aon-Sponsored  
 Free Ethics Program Focused  
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At this year's Aon-sponsored, free ethics program, "Stress, Anxiety, and Depression in the Legal Profession," our speaker was Dan Lukasik, who had a nearly thirty-year career as a litigator and managing partner of his firm before becoming the Director of Workplace Well-Being for the Mental Health Association in Buffalo, New York. His presentation educated fellow lawyers to recognize stress, anxiety, and depression in their own and colleagues' lives, and also addressed some of the changes in the legal profession to help explain why these problems have reached such epidemic proportions.

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

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

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

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

**SOLACE**  
 .....  
**Helping Bar Members  
 in Times of Need**

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

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

## Thanks to Our CLE Speakers

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



Below is a list of the Bar members who have participated in CLE seminars during the months of September and October.

**Veronica Assalone, Esq.**  
Assalone & Associates, LLC

**Carolyn R. Barone, Esq.**  
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**John P. Barylick, Esq.**  
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Rhode Island Legal Services, Inc.

## Updating Your Attorney Directory Photo Is a Snap!

The next time you are visiting the Rhode Island Law Center for a Continuing Legal Education

program or committee meeting, be sure to ask about how easy it is to update your online attorney directory photograph. All you need to do is step into the lawyers' lounge, located at the Law Center, and a staff member will snap your photo, upload it to the directory, and, if you'd like, email you a copy for your own personal use. The directory is available for the convenience of Bar members, clients, and potential clients, so be sure to keep your listing up to date! Attorney Directory contact information may include the Bar member's name, photograph, law office name, postal address, email address, telephone number, and facsimile number. If you would rather send us your own photo, you may do so by emailing it to Erin Bracken at ebracken@ribar.com. Photographs must be provided in a jpg format of at least 300 dpi.

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<b>Administrative Law</b>	<b>Business Law</b>
<b>Civil Law</b>	<b>Creditors and Debtors</b>
<b>Criminal Law</b>	<b>Domestic/Family Law</b>
<b>Federal Court</b>	<b>Probate and Estates</b>
<b>Real Estate</b>	<b>Workers' Compensation</b>

**TO CHOOSE YOUR OAR OPTION:**

- Bar members with questions about a particular area of the law.
- Bar members willing to volunteer as information resources.

Go to the Bar's website at **ribar.com**, login to the **MEMBERS ONLY**, and click on the **OAR** link.

## New Membership Benefit: Virtual Consulting Service

Your Bar Association is pleased to announce a new and valuable member benefit! We have partnered with Red Cave Law Firm Consulting to provide our members with virtual consulting services (telephone/video/email/chat) free of charge. Red Cave Law Firm Consulting is a business management consulting service developed specifically for legal professionals. With over a decade of experience, Red Cave offers practical advice to improve your firm's marketing, accounting, and technology solutions, as well as consistent support and accountability as you push towards your goals.

The experienced consultants at Red Cave Law Firm Consulting offer their clients real solutions that address their specific needs. Whether you need help with billing, client relations, data management, financial management, marketing, office technology, time management, disaster prevention & recovery, or any other area related to managing your practice, Red Cave Law Firm Consulting will provide Rhode Island Bar Association members with unlimited virtual consulting services. Should you decide you desire in-person consulting services, a standard rate will apply according to law firm size.

To get started, visit **ribar.com**, click **Members Only**, and **Law Practice Management**. You will need to login with your bar ID and password.

**Don't forget to check our Law Practice Management page regularly for tips and tricks from Red Cave Consulting!**

## Lawyers on the Move

**Nicholas A. Denice, Esq.** is now an associate at **Hinckley Allen**, 100 Westminister Street, Suite 1500, Providence, RI 02903. 401-457-5434 ndenice@hinckleyallen.com hinckleyallen.com

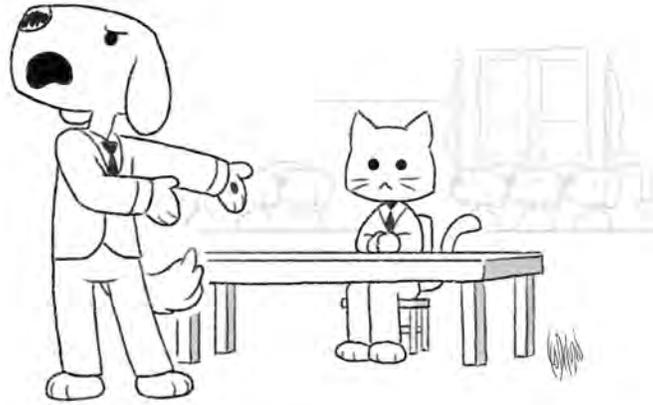
**Alexander L. Friedman, Esq.** is now an associate at **Leone Law LLC**, 1345 Jefferson Boulevard, Warwick, RI 02886. 401-921-6684 afriedman@leonelawllc.com leonelawllc.com

**Amanda A. Garganese, Esq.** is now an associate at **Hinckley Allen**, 00 Westminister Street, Suite 1500, Providence, RI 02903. 401-457-5398 agarganese@hinckleyallen.com hinckleyallen.com

**Joseph M. Proietta, Esq.**, of the **Law Office of Joseph M. Proietta, Esq.**, has moved his office from 155 South Main Street, Suite 101 to 155 South Main Street, Suite 302. 401-353-3752 joe@401elderlaw.com 401elderlaw.com

# Caption This! Contest

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



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

**How to Enter:** Submit the caption you think best fits the scene depicted in the cartoon above by sending an email to [kbridge@ribar.com](mailto:kbridge@ribar.com) with "Caption Contest for November/December" in the subject line.

**Deadline for entry:** Contest entries must be submitted by December 1st, 2018.

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

## Winning caption for September/October



"I've got justice for you in my right hand, but I'm going to need that invoice paid before it can be yours."

JAMES J. BAGLEY, ESQ.

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## In Memoriam

### James Cardono, Esq.

James Cardono passed away on August 31, 2018.

### Joshua M. Gold, Esq.

Joshua M. Gold passed away on July 3, 2018. Joshua was a resident of Rhode Island at the time of his passing. He was general counsel and in-house counsel for a management consulting firm and was a real estate lawyer in Miami Beach, FL. Joshua was a graduate of Moses Brown, McGill University in Montreal, Canada, and NY Law in Manhattan, NY.

### Lee J. Golini, Esq.

Lee J. Golini, 38, passed away on September 3rd, 2018. He was the son of Kathleen (Alves) Golini and Dr. William J. Golini. A lifelong Rhode Island resident, Lee attended the Wheeler School before enrolling at Brown University, where he graduated in 2003 with a Bachelor of Arts. Lee then went on to secure graduate degrees in both business administration and law from Washington University in St. Louis before opening up his law practice in the James-town area. Lee is predeceased by his brother and best friend, Christopher, grandparents Joseph and Della (Landi) Golini, Manuel Steve and Palmera (Massa) Alves. Besides his parents, Lee is survived by his aunt Rosemary Golini, great-aunt Maryann Landi and his godparents, Marybeth Fletcher and Ted Faraone. He is also survived by his girlfriend Leah McCue.

### Claude F. Lefebvre, Esq.

Claude F. Lefebvre died on August 15, 2018 in Fort Pierce, Florida. Born in 1934 in Central Falls, he resided most of his life in Pawtucket then in Seekonk, Massachusetts before retiring to Port Saint Lucie, Florida. Claude was a graduate of Sacred Heart Academy, Providence College, and Suffolk University Law School. Claude was a member of the Rhode Island Bar Association and practiced law for well over 50 years. He was past president of the Pawtucket Bar Association and served a term as an assistant city solicitor for the City of Pawtucket. He was one of the pioneers of legal advertising in Rhode Island when he opened one of the first private legal clinics in the City of Pawtucket which advertised low cost and affordable legal services. As past president of the Le Foyer Club of Pawtucket, Claude maintained an active connection within the local Canadian-French community. He is survived by his loving wife of 55 years, Judith A. Lefebvre, his two sons, attorney Christopher M. Lefebvre and attorney Marc D. Lefebvre, along with their respective wives Elizabeth A. Macek-Lefebvre of North Attleboro, MA and Patricia Lohrer-Lefebvre of Mamaroneck, New York. Claude also leaves behind his sister Renee Liard of Montreal, Quebec Canada as well as his four grandsons, Owen, Myles, Jesse and Riley.



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# 8 Tips to Stay Healthy During Cold & Flu Season



## Get Enough Sleep

Lack of sleep can inhibit your immune system. Get a full night's sleep to keep your body's natural defenses at optimum efficiency.

## Keep Surfaces Clean

Viruses can survive for up to 8 hours on surfaces outside of the human body, so be sure to clean diligently during cold and flu season.

## Get Vaccinated

Getting the flu vaccine is your best defense to keep you from getting sick.

## Avoid Touching Your Face

Viruses can spread after a person touches something that is contaminated with a virus and then touches his or her eyes, nose or mouth.



## Wash Your Hands

Wash your hands with soap and water or use hand sanitizer often to prevent the spread of germs.

## Eat Healthy

Eat a nutritious diet when you're feeling sick, especially avoid sugar which can suppress your immune system for hours after ingestion.

## Exercise Regularly

Exercise lowers stress, stimulates the immune system and promotes restful sleep.

## Take a Sick Day

If you're feeling under the weather, staying home is the best thing for you and your coworkers.

## Lawyers Helping Lawyers

A Rhode Island Bar Association Member Benefit. For more information, visit our website at [ribar.com](http://ribar.com), and the *Do You Need Confidential Help* Quick Link. Also sign up for **WellTrack®**, a free, online self-help program that assists with depression, anxiety, stress, and phobia:

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