

2013-2014 Annual Report

of Section Activity

BUSINESS ASSOCIATION SECTION

A committee of the Business Association Section has been working on proposed legislation to revise the Vermont Limited Liability Company Act. The committee has met monthly for the past year and will have legislation to introduce in the coming session. The revisions modernize the LLC Act in a manner that is consistent with the Revised Uniform Limited Liability Company Act approved by the National Conference of Commissioners on Uniform State Laws.

Another committee of the Business Association Section has worked extensively on revisions to the Vermont Non-Profit Corporations Act. These revisions will probably not be ready in time to introduce in the coming legislative session.

At the VBA Annual Meeting, Business Association Section presentation will feature presentations by Michael Pieciak, Deputy Commissioner of Securities Division of the Vermont Department of Financial Regulation on the recently revised Vermont Small Business Offering Exemption, and by Section Chair Tom Moody on the soon-to-be proposed revisions to the Vermont Limited Liability Company Act.

Tom Moody

COLLABORATIVE LAW SECTION

In September, 2013, members of the Central Vermont Collaborative Law Practice Group – E. Darby Herrington, Esq., Alan Rome, Esq., Phyllis Rubenstein, Esq., and Julia Gresser, LICSW, presented at the annual VBA meeting on the multidisciplinary collaborative process. Darby, Alan and Julia demonstrated how a mental health professional works as a member of the professional team.

In November, 2013, IACP members Karen Levitt and Lynda Robbins presented a training called Tools for Growing Your Collaborative Practice: Getting Clients, Keeping Clients and Teamwork. It was well attended and well received.

There are practice groups and/or professionals practicing collaboratively in several areas which vary in structure and activity, including in Central Vermont, Chittenden County, Northeast Kingdom, Rutland/Bennington/Manchester and the Upper Valley. The practice groups in Central Vermont and Chittenden County meet regularly, have their own web sites and are working on promoting collaborative practice through public education and outreach.

In the Spring of 2012, the Section began working on leadership succession. Amy Klingler has served as co-chairperson with Phyllis Rubenstein since September, 2013. Phyllis is stepping down as co-chairperson as of August 31, 2014.

Phyllis Rubenstein

CONSUMER LAW SECTION

The consumer law section is comprised of practitioners representing both creditors and debtors in secured and unsecured credit transactions. Over the past year, members have participated in CLE seminars at the mid-year meeting, as well as been engaged in rules changes Rules of Small Claims procedures.

Brian Amones

CRIMINAL LAW SECTION

This coming year the Criminal Law Section plans to actively engage its list-serve by soliciting its members as to what changes, additions or deletions to the Vermont Rules of Criminal Procedure would best benefit the effective administration of justice. Section Chair Dan Maguire will forward proposals to the Supreme Court's Criminal Rules Advisory Committee for consideration and adoption.

In the past year numerous proposed changes and amendments to the criminal rules have been initiated to include but not limited to: "Omnibus Amendments to Conform to the Judicial Restructuring Act and Adoption of Gender-Neutral Language; Proposed Amendments to the Rules 6 (Grand Jury); Rule 12 (Pre-Trial Process/Motion Deadlines); Rule 17 (To Expressly Permit Document Subpoenas); Rule 18a (venue for Offenses Charged in Multiple Units that are Subject to Joinder); Rule 30 (Specificity of Objections to Jury Instructions Sufficient to Preserve Appellate Error Claim); Rule 41 and 41 (e)(3), (5) and (6) (Return of Property) and (Permit Filing of Search Warrant Returns and Accompanying Documents by Reliable Electronic Means).

The Criminal Law Section will also be sponsoring additional programs and seminars throughout the year.

Comments are welcome and can be directed to Dan Maguire at Dan@maguirelawvt.com.

Daniel Maguire

DISPUTE RESOLUTION SECTION

The Dispute Resolution Section sponsored or co-sponsored three CLE workshops this past year. On January 30, 2014, we partnered with the Employment Law and Immigration Law Sections in presenting a day-long training entitled, "Resolving Complex Employment Disputes." The seminar was well attended and well received.

At the VBA mid-year meeting in March, we presented two CLE sessions. The first -"Are You Kidding? Apologize? A Lawyer's Guide to the Minefield of Apology"-focused on the question of whether or when an apology may help parties reach resolution of a dispute. The second session- "Impasse is a Fallacy: An

Advanced Legal Negotiation Training” covered the common causes of and tools to overcome impasse in negotiations.

The Section reached out to its members by holding regional small group meetings. We are still looking at this model as a way for members to connect more frequently and in person.

We posted a newsletter informing our members of dispute resolution trainings, near and far.

We had member representation on the Judiciary committee on small claims mediation and we contributed to the Judiciary’s family court divorce video project and the Restorative Justice Initiative.

Ellen Coogan

ELDER LAW SECTION

A representative of the Elder Law Section participated in a panel discussion at a seminar at the VBA Annual Meeting in September, 2013 on the effects of the Windsor decision on Medicaid and Medicare planning.

In March, 2014, a representative of the Elder Law Section presented in a seminar at the VBA Mid-Winter Meeting on the Physician-Assisted Death law passed in 2012 by the Vermont Legislature.

In May, 2014, a representative of the Elder Law Section presented at the annual meeting of the Vermont Society of Certified Public Accountants on planning for long-term care.

Glenn A. Jarrett

ENVIRONMENTAL SECTION

On June 13, 2014, the Environmental Section held its second annual “Energy and the Environment” CLE in Montpelier. The Section broadened its review to include “Telecommunications and the Environment” given the continued transfer of authority from municipal oversight to Public Service Board review under 30 V.S.A. § 248a.

Based on concerns over climate change and the Administration’s focus on renewable energy and facilitating broadband expansion throughout the state, the PSB has seen significant growth in proceedings that deal with environmental issues. As an energy and telecommunications panel it relies on ANR recommendations and permits in its regulatory reviews. In turn, the Agency has seen a significant growth in its permitting requirements as well as its own participation before the PSB and the courts. The Environmental Section presented programs reviewing the ANR permitting process, as well as how the PSB regulates environmental issues regarding energy and telecommunications infrastructure, incorporates ANR permits and considers or defers to ANR and municipal recommendations under sections 248 and 248a of Title 30.

At our June 13th CLE the Section also presented a panel comprised of municipal, transportation and utility lawyers on questions of condemnation relative to transportation, utility and municipal takings. At the upcoming September 19th Annual Meeting the Section will present a panel that will present a Year

End Review of significant decisions by the Environmental Division and Vermont Supreme Court. Judges Durkin and Walsh and the staff of the Environmental Division will join us to discuss the upcoming move to the Costello Courthouse in Burlington and how the court and its staff plan to continue its state-wide operations.

The Environmental Section continues to monitor and review legislative bills and keeps the membership informed of major pieces of environmental legislation.

Gerald Tarrant

FAMILY LAW SECTION

The Family Law Section has been very active this year. The members undertook to revise the Family Law Practice Manual. The last version, prepared by Lindsey Huddle with the help of Jean Murray in 2006, needed considerable revision to keep up with changes in the law. Several of our members worked long hours researching, writing and editing the new version, and it was completed just in time for the basic skills course this September.

Members of the section were also actively involved in working for the passage or modification of bills before the legislature this past spring, most notably, a bill providing special considerations for parental rights of children conceived as a result of sexual assault. The section listserv has been humming. Through it, members have engaged in lively discussions of many issues facing family law practitioners, and it continues to be a valuable practice resource.

On Family Law Day in May, the section presented a day-long CLE with renowned speaker, Larry Rice, and future CLE presentations are in the works.

Patricia Benelli

IMMIGRATION LAW SECTION

In July 2013, the VBA created the Immigration Law Section. We spent time this year on outreach to recruit new members who practice or are interested in Immigration Law, as well as making introductions with respect to our members' areas of interest within the field of immigration law and soliciting ideas on how to make this Section an active one.

On February 12, 2014, this section held its first day-long CLE entitled Resolving Complex Employment Disputes: A case study and analysis at the intersection of employment and immigration law. This CLE was co-presented by the Labor and Employment Law and Dispute Resolution Sections and was very well received by the attendees.

The listserv is a valuable tool for sharing ideas and discussing developing issues within the field of Immigration Law. I would like to see more use of the listserv for this purpose as well as expand outreach to the greater legal and business community. Please contact me at scollier@collierimmigration.com if you have suggestions for programs and activities important to you.

Sidney Collier

INSURANCE LAW SECTION

At the September 2013 Vermont Bar Association Annual Meeting, the Insurance Law Section presented its annual year-in-review program discussing recent developments in Vermont insurance law. The presentation marked a return to the traditional format of a combined presentation by the Worker's Compensation Law and Torts sections.

At this year's meeting, we will continue the traditional year-in-review format. Keith Kasper, the Chair of the Worker's Compensation Section, and Jennifer McDonald, who will present for the Torts section, will be joined by Paul Perkins, the Insurance Law Section Chair.

The Insurance Law presentation will focus on the following Vermont Supreme Court cases decided this year:

1. [Ainsworth v. Chandler](#) (2014 VT 107);
2. [Murphy v. Patriot Insurance Company](#) (2014 VT 96);
3. [Murphy v. Sentry Insurance](#) (2014 VT 25); and
4. [Progressive Casualty Insurance Company v. MMG Insurance Company](#) (2014 VT 70).

The Section seeks to create an electronic repository of insurance coverage-related decisions for members, and to recruit new members to join the Section. The Section is open to those who represent either insurers or insureds, or both in coverage matters.

Please feel free to contact Paul Perkins at PJPerkins@PlanteHanley.Com or (802) 295-3151, ext. 103 about suggestions for upcoming training programs and activities and any other Section-related matter important to you.

Paul Perkins

INTELLECTUAL PROPERTY LAW SECTION

In 2013, the IP Law Section was asked to provide comments on proposed legislation regarding bad faith assertions of patent infringement. The Section conferred, and Section Chair Andrew Manitsky conveyed the Section's comments to two committees. In addition, in 2014, Manitsky was asked to, and did, provide comments to the legislature regarding proposed amendments to the Vermont Trade Secrets Act. Both pieces of legislation were enacted.

Andrew D. Manitsky

INTERNATIONAL LAW & PRACTICE SECTION

ILP has had a year of transition during 2013-14, as after many years as Chair, Bob Grenier has retired. ILP owes Bob a big debt of gratitude for his leadership and commitment over the years. I was asked to

return to the position of Chair that I occupied from ILP's establishment in the early 1990s until Bob took over roughly 10 years ago. The timing for me is particularly apt, in light of my recent return to private practice after 8 years as General Counsel to the Vermont Agency of Education. During that period, I maintained active involvement in pro bono international legal services, teaching and writing.

During the past year, ILP members collaborated with members of the Labor & Employment Law Section to produce a well-attended and critically-acclaimed seminar on the relationship between international law and employment law. The success of this format has already resulted in the initiation of discussion about a future seminar which would involve the collaboration of ILP and the Immigration Law Section. In addition, my recent reappointment to the CJA Panel (assigned federal criminal cases) inclines me toward a seminar focused on the impact of immigration principles on the practice of criminal defense.

My service in a variety of international trade contexts keeps me in regular contact with many state and federal service providers who can be of assistance to VBA members' clients, often at no cost to the client. If you have a client who you think has a need for such services, please feel free to call me, and I can refer you on. ILP members serve as conduits to agencies such as the U.S. Department of Commerce, the U.S. Small Business Administration, the Vermont Economic Development Authority, the U.S. Customs and Immigration Service, and much more.

The Vermont Manufacturing Extension Center is conducting its second ExporTech program, a 3-day program spread over 3 months, the purpose of which is to support Vermont small and medium-sized businesses in increasing sales through expanded exporting. This proven national curriculum, which is new to Vermont, creates high-paying jobs in precisely the types of industry sectors that Vermont wants to attract and retain.

Particular congratulations to ILP member Leslie Holman, who is serving as 2014-2015 President of the 13,000-member American Immigration Lawyers Association!

ILP has a membership of roughly 50. I have written two letters to the group in the past few months, have heard back from several, and have spoken with several others over the phone. I exploring whether we can offer a seminar at the mid-year meeting (March 19 & 20, 2015), and I solicit suggested topics from all VBA members, whether or not you are a member of ILP. In addition, if anyone is interested in publishing articles on international law topics, please let me know, as I may be able to put you in touch with VBA members with whom you could collaborate. Finally, I plan to schedule a meeting of the Section at the mid-year meeting, and would be happy to coordinate an earlier meeting if there is interest.

Mark Oettinger

JUVENILE LAW SECTION

The Juvenile Law Section continued to struggle this year with many people signed up as committee members, but few active participants. If the Section is to make a difference in the community of lawyers practicing in this field, members need to take a more active role.

We discussed pending legislation. Pam Marsh testified in favor of H. 618, with modifications to allow transfer up for listed offenses. We discussed other bills, including the guardianship bill (which

subsequently passed), and bills relating to resumption of parental rights and expungement of arrest records of minors.

In addition, the Juvenile Law Section participated in a panel on family law for new practitioners at the VBA Mid-Year Meeting.

The Juvenile Law Section has continued to use the listserv to circulate articles and other information of interest to juvenile law practitioners.

Pamela Marsh

LABOR AND EMPLOYMENT LAW SECTION

The Labor and Employment Law Section co-sponsored the annual Robert Fuchs Labor Law Conference at Suffolk Law School last October, and we have agreed to sponsor the program again this year. The conference will take place on Thursday, October 23, 2014. Registration materials, when available, will be circulated to our Section's membership.

Our major project over the past year was the CLE we presented last February in collaboration with the Dispute Resolution and Immigration Law Sections. The program, which included participation by in-house counsel, Vermont Department of Labor officials, and Vermont Disciplinary Counsel, was well attended and well received. This year, we will be collaborating with the Workers Compensation Section to present a program that promises to be of interest and benefit to lawyers with all levels of experience in labor, employment, workers compensation, and disability law.

Our Section Chair will also be presenting the Employment Law piece of the Vermont Supreme Court Year in Review at the VBA Annual Meeting.

Stephen Ellis

MUNICIPAL SECTION

The Municipal Section has been creaking back to life in improving member participation on the group's email list serve.

This year, the Section will host a semi-annual meeting on December 3rd, to address current issues in the practice of municipal law. Additionally, the Section is putting together a committee to address possible legislative changes to deal with the aged statutes that govern the fiduciary responsibilities of municipal trustees who hold funds in trust for various public purposes.

Brian Monaghan

PARALEGALS SECTION

Since this was the first year of the Paralegals' Section, we spent the first few months getting acquainted with each other and with the expectations of the VBA. We began holding bi-weekly Section meetings via teleconference on November 5, 2013.

During our first meeting we decided that we wanted to continue to delve into the issue of Limited Legal Licensure which Dan Richardson, Esq. and Marc Mihaly, Esq. presented at mid-year meeting in 2013. As a Section we set two short-term goals: (1) submit a journal article on the topic of limited legal licensure; and (2) hold a social gathering and CLE to continue the discussion of the topic.

We were successful in achieving our first goal and published an article titled "Equal Access to Justice: Paralegals and Limited Legal Licensure" in the Winter edition of the Vermont Bar Journal. We were also successful in planning a social gathering and CLE for April 2014. Unfortunately, it was canceled due to lack of interest. Despite that discouraging turn of events, we pressed on and will be presenting our topic at the 2014 Annual Meeting. Along with our very own Laurie Noyes, RP®, our panel of speakers includes Chief Justice Reiber, Sandra Baird, Esq., Dan Richardson, Esq., and Bridget Asay, Esq.

As we wrap up our first year, we are looking forward to the future and working to assist the Vermont Bar in helping to encourage and create equal access to justice for all Vermonters. We hope to expand the roles of Vermont paralegals while at the same time maintaining high quality work product from educated, experienced and ethical practitioners.

Melissa Young Wilcox

PRACTICE & PROCEDURE COMMITTEE

Over the past year the committee put on a seminar at the mid-year meeting covering the topic of Electrically stored information and discovery issues. Matt Byrne and Jim Knapp joined me on the panel and we had a good audience who actively participated.

In addition I was involved with the Medium Size Case Committee as liaison to the civil rules committee, keeping it informed of the committee's efforts and recruiting Kinvin Wroth to help greatly with the drafting process. Gary Franklin ably led the Medium Case Committee in its efforts to draft civil rules for case with less than one hundred thousand dollars at issue.

Lastly, I participated in Justice Reiber's forum on providing better access to the judicial system in Vermont.

Gregory Weimer

PROBATE AND TRUST LAW SECTION

My role as co-chair has been focused on the law reform project for decedents' probate estates. It has been submitted to two legislators who have agreed to serve as sponsors.

Robert Pratt

This has been a quiet year for the Probate and Trust Section of the Bar.

The Title 14 Subcommittee has completed its work and will be submitting a bill to the legislature which completely revises Title 14.

The Probate Rules Committee meets quarterly and there have been some rule changes that have been made effective. I asked the Secretary of the Committee (Kinvin Wroth) to let me know what rules actually passed within the past year. He puts together an Annual Report every November. I have attached the Annual Report for 2013. It appears from the Judiciary website that amendments to Rules 17(a) (3) and 80.1 of the Vermont Rules of Probate Procedure were promulgated in June, 2014. The Probate Rules Committee has submitted several Proposed Amendments for Rules 3, 4, 5, and 67 of the Vermont Rules of Probate Procedure to the Supreme Court. These rule changes remain open for public comment.

The Probate and Trust Section of the Bar will re-submit H 399 to the House once again.

Mark Langan

PROPERTY LAW/IPR-REALTORS

The Property Law/IPR-Realtors Section remained active throughout the year. The Annual Real Estate Law Day, sponsored by the Vermont Bar Association and Vermont Association of Realtors, was held on November 8, 2013 and was well attended, as usual. This year's Real Estate Law Day is scheduled for November 14, 2014. Real property law updates were presented by Section members at the Vermont Bar Association Meetings.

This year proved very quiet at the Vermont Legislature. A technical amendment to UCIOA was made that clarified foreclosures of Homeowner's liens should be done under the new foreclosure statutes in Title 12, Chapter 172 (see Act 102). The only other legislation generating interest among real estate practitioners is the Shore Lands Protection Act (Act 172).

The Title Standards Sub-Committee continued to meet on a regular basis. A new standard addressing property descriptions was adopted by the committee and will be presented to the Board of Bar Managers at the September, 2014 Annual Meeting for formal adoption.

Finally, the List Serve has been very active. If you would like to follow the dialog but are not currently enrolled, please contact Laura Welcome at the Vermont Bar Association Offices for information on how to subscribe. It is a great way to stay informed of developing issues.

Harland Miller

SOLO & SMALL FIRM SECTION

The Solo-Small Firm section took a hiatus this year from the Office Tech CLE.

We are beginning to plan for next spring's Solo-Small Firm Retreat, which has always been held at Basin Harbor. If anyone has suggested topics, speakers or activities, please contact the section co-chairs: Mike Caccavo and John Thrasher, or Kevin Ryan at the VBA.

We do maintain a list-serve, and periodically we have an interesting discussion, although to date the list is under-used. We would encourage all members to join and participate in discussions or post questions or topics for discussion. The list is not oriented towards a particular area of practice, so feel free to raise any topic or ask any type of question. There are plenty of people on the list willing to help and to share.

Michael D. Caccavo, Esq.

TAX LAW & ACCOUNTANTS SECTION

We were not an active group in the traditional sense during 2013-14; meaning we did not host a seminar or similar event. What we did try to accomplish was to keep members of the group apprised of notable state tax decisions and legislative developments. We are currently coordinating a possible amicus brief in support of a taxpayer's appeal of J. Toor's recent decision in *AIG Insurance Management Services, Inc. v. the Department of Taxes*. The taxpayer was successful on the merits of the case but lost its argument as to the applicability of the statute of limitations. It is a very small issue in the case but an important issue for the bar. In our view, the Department's broad interpretation of the Supreme Court's decision in *T.D. Bank*, 185 Vt. 45 renders the 3-year statute of limitations meaningless in most situations. The AIG case, which the Department is appealing, provides an opportunity for the tax section to voice its opinion on the proper scope of the statute.

Roger Prescott & Allen Webster

WORKER'S COMPENSATION SECTION

This year the VBA WC section held its annual Bench Bar Luncheon Meeting with the Vt Department of Labor on May 30th, 2014 immediately following the Adjuster's Conference at the Hilton Hotel in Burlington Vermont. Discussion focused upon the issues surrounding the pending implementation of the amendments to the Vermont Workers' Compensation Act as enacted by the Legislature in the 2014 session.

We also heard recommendations from the Vermont Department of Labor as to how lawyers can improve their presentation before the Department of Labor at the informal conference stage.

We also continued planning for a celebration of the Centennial Anniversary of the Vermont Workers' Compensation Act in 2015.

We are going to take over the Fall 2015 Vermont Bar Journal with pieces from several of our members. We are also hoping to have a gala dinner and engage the public in educational activities during 2015.

In addition, VBA WC Section Members are forming a Vermont Chapter of Kids Chance, a national charity providing college scholarships to children of injured workers.

Keith Kasper & Joseph Galanes