

Appellate Advocacy 2019

A Continuing Legal Education Program



Wednesday, October 30, 2019

Supporting Members of the Legal Profession & Their Service to the Public and Justice System.

Copyright 2019© New Hampshire Bar Association
All rights reserved.

No use except the use of forms is permitted which will infringe
on the copyright without the express written consent of the
New Hampshire Bar Association.

NOTE: The New Hampshire Bar Association Continuing Legal Education publications and programs are intended to assist New Hampshire lawyers. Publications are distributed and programs presented with the understanding The New Hampshire Bar Association, its committees, authors and speakers do not hereby render legal advice. The material is presented as research information to be used by lawyers in conjunction with other research deemed necessary, in the exercise of their independent professional judgment. Original and fully current sources of authority should be researched.

The original New Hampshire Appellate Advocacy Handbook was produced in 1984 with the intent that it would be regularly revised and updated for the benefit of future appellate practitioners. The letter of the original committee responsible for the 1984 Appellate Advocacy Handbook is included within this volume.

The Handbook has been previously revised in 1990, 1996, 1998, 2002, 2005, 2011 and 2015 in connection with CLEs on appellate advocacy presented by the New Hampshire Bar Association. We have again revised the Handbook to reflect changes in appellate practice since the last revision in 2015. In producing this 2019 version of the Handbook, we acknowledge the significant contributions of both the original drafters and the members of other faculty from our prior appellate advocacy programs. We also hope that the members of the New Hampshire Bench and Bar who use this Handbook will offer their own comments and suggestions to be incorporated into future versions of the Handbook.

As with prior volumes, thanks are due to the staff of the Supreme Court and the Bar Association for their efforts in the production process.

Concord, NH
October, 2019

Doreen F. Connor
Eileen Fox
Timothy A. Gudas
Stephanie C. Hausman
Christopher M. Johnson
Theodore M. Lothstein
Daniel E. Will

This Handbook had its genesis outside New Hampshire. The National Appellate Handbook Project was formed in 1976 by the Appellate Judges Conference of the American Bar Association's Judicial Administration Division. It was a response to perceived criticism of the appellate ability of lawyers. Its stated purpose was to encourage the development of handbooks in all states to assist in appellate court practice and procedure. The success rate was limited. Following more criticism, the Project was rededicated in February, 1983, and the Project adopted a goal of 50 handbooks by the end of 1984. The New Hampshire efforts started in January 1984.


The members of the New Hampshire Bar should be proud of the book they have produced in just under one year, and grateful to those members listed elsewhere, who directly contributed. I am thankful for this opportunity to single out a few people for special praise.

Supreme Court Justice David Brock and William Batchelder brought Paul Ulrich of Phoenix, Arizona, to New Hampshire for our Project's original inspiration. Mr. Ulrich was a co-chair of the Arizona appellate handbook project and guiding force behind the national efforts, and graciously made available the Appendix on managing an appellate practice. The Supreme Court's embrace of this Project helped immeasurably in drafting participants, organizing the production schedule, and providing clerical and financial assistance.

A special citation is due those original participants -- Justices Batchelder and Brock, Anne Clark, James Duggan, Martha Gordon, Martin Gross, James Kazan, Leslie Nixon, Lee Nyquist, Betsy Westgate, and Michael Winograd -- who sacrificed the best ski day of 1984 to attend our first meeting. A note of appreciation should also go to the Bar Association Board of Governors and the CLE Committee, who had faith in the Handbook and adopted it as a CLE project. The staff of the Supreme Court and the Bar Association gave invaluable assistance in organizing, producing, and presenting the Handbook. Finally, Elizabeth Cazden and Betsy Westgate deserve commendations for their work editing this volume.

It is my hope that other members of the Bar will feel the Project has produced a useful tool. I believe that the Handbook warrants updating on a regular, frequent basis. Even if that should not come to pass, I am thankful for this opportunity to once again state my delight in working with other New Hampshire lawyers on a worthwhile project, and my pleasure and amazement at their uniform willingness to contribute to such efforts.

Concord, New Hampshire
December 12, 1984



William C. Saturley

Members of the Appellate Handbook Project:

Paul Barbadoro
Justice William F. Batchelder, co-chair
Justice David A. Brock
Elizabeth Cazden
William L. Chapman
Anne R. Clarke
James E. Duggan
Wilbur A. Glahn, III
Martha V. Gordon
Joanne Green
John P. Griffith
Martin L. Gross
David L. Harrigan

James B. Kazan
Susan F. Keller
Steven J. McAuliffe
Richard B. McNamara
Leslie C. Nixon
Stephanie T. Nute
Lee C. Nyquist
William C. Saturley, co-chair
Edward E. Shumaker, III
Robert E. Murphy, Jr.
Betsy S. Westgate
Michael I. Winograd



Appellate Advocacy 2019

Wednesday, October 30, 2019

NH Bar Association Seminar Room, Concord

NH Supreme Court

Hon. Gary E. Hicks
Senior Associate Justice

Hon James P. Bassett
Associate Justice

Hon. Anna Barbara Hantz Marconi
Associate Justice

Hon. Patrick E. Donovan
Associate Justice

Hon. Robert J. Lynn
Chief Justice (Retired)

Program Chairs

Doreen F. Connor
Primmer Piper Eggleston & Cramer
900 Elm Street, 19th Floor
PO Box 3600
Manchester, NH 03105
603-626-3300
Fax: 603-626-0997
dconnor@primmer.com

Theodore M. Lothstein
CLE Committee Member
Lothstein Guerriero, PLLC
5 Green Street
Concord, NH 03301
603-513-1919
Fax: 603-218-6503
ted@nhdefender.com

Faculty

Seth Aframe
US Attorney's Office, District of NH
53 Pleasant Street, 4th Floor
Concord, NH 03301
603-225-1552
Fax: 603-225-1552
seth.aframe@usdoj.gov

Eileen Fox
NH Supreme Court
1 Charles Doe Drive
Concord, NH 03301-6160
603-271-2646
Fax: 603-271-6630
efox@courts.state.nh.us

Timothy A. Gudas
NH Supreme Court
1 Charles Doe Drive
Concord, NH 03301-6160
603-271-2646
Fax: 603-271-6630
tgudas@courts.state.nh.us

Stephanie C. Hausman
NH Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301
603-224-1236
Fax: 603-226-4299
shausman@nhpd.org

Christopher M. Johnson
NH Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301
603-224-1236
Fax: 603-226-4299
cjohnson@nhpd.org

Sean R. Locke
NH Attorney General's Office
Department of Justice
33 Capitol Street
Concord, NH 03301
603-271-3658
Fax: 603-271-2110
sean.locke@doj.nh.gov

Daniel E. Will
NH Attorney General's Office
Department of Justice
33 Capitol Street
Concord, NH 03301
603-271-3658
Fax: 603-271-2110
daniel.will@doj.nh.gov



Appellate Advocacy 2019

Wednesday, October 30, 2019

Faculty

Hon. Gary E. Hicks is the senior associate justice of the New Hampshire Supreme Court. Prior to this appointment, he served as a trial judge with the superior court. He earned his A.B. in mathematics from Bucknell University in 1975, his J.D. from Boston University School of Law in 1978, and an honorary B.F.A. from the New Hampshire Institute of Art in 2000. Before becoming a judge, Justice Hicks was a director/shareholder at Wiggin & Nourie, PA in Manchester where he focused on commercial litigation, alternative dispute resolution, personal injury litigation, real estate litigation and product liability. He served as vice president and program co-chair of the Daniel Webster Inns of Court from 2004 to 2005. Justice Hicks was also a trustee of the American Inns of Court (AIC) from 2007 to 2012. He is the former chair of the American Inns of Court Leadership Council which is comprised of former AIC trustees who remain actively engaged with the American Inns of Court and its mission to foster excellence in professionalism, ethics, civility and legal skills. In 2015, Justice Hicks was named a life fellow of the American Bar Foundation for his exemplary dedication to the profession and for his support of the ideals and objectives of the American Bar Association. That same year, he also received the Manchester Bar Association's Distinguished Service Award. Justice Hicks has presented at numerous CLEs and other conferences on various topics.

Hon. James P. Bassett was appointed associate justice of the New Hampshire Supreme Court in 2012. Prior to his appointment, Justice Bassett spent 27 years as a trial and appellate lawyer at Orr & Reno, PA in Concord, concentrating his practice on complex commercial civil litigation, medical malpractice defense, First Amendment and Right-to-Know issues, and land use matters. He is a graduate of Dartmouth College (1978) and the University of Virginia School of Law (1982), and served as a law clerk for Andrew Caffrey, the chief judge of the Federal District Court in Boston. After several years of practice at the firm of Hale and Dorr in Boston, Justice Bassett moved to New Hampshire and became a member of the New Hampshire Bar Association in 1985. He is the chair of the Committee on the Judiciary and the Media, and also of the Supreme Court Commission on the Judicial Branch Workplace Environment. He is a member of the Supreme Court's Access to Justice Commission, the Judicial Council, and sits on the Board of the Bar Foundation. In 2016, Justice Bassett was appointed by Chief Justice Roberts to serve as a member of the federal Advisory Committee on Rules of Evidence, and he was recently reappointed to another three-year term. Prior to serving on the bench, Justice Bassett had an active role in many non-profit organizations, including as chair of the 2008-09 Merrimack County United Way Campaign, and as a member of boards of New Hampshire Public Radio, the Friends of the Norris Cotton Cancer Center, and Canterbury Shaker Village. He also served on the Campaign Leadership Council for the NH Campaign for Legal Services. For more than twenty five years, Justice Bassett was active in town government in Canterbury, sitting on many town commissions and committees, and serving on the Board of Selectmen and the Planning Board, including several terms as chair of each board.

Hon. Anna Barbara “Bobbie” Hantz Marconi became the 108th Justice on the New Hampshire Supreme Court on August 8, 2017. She is the third woman to sit on the state’s highest court. Justice Hantz Marconi joined the court from private practice as a shareholder with the Manchester law firm Sheehan, Phinney, Bass & Green. There, her concentration included appellate litigation, business litigation, land use, mediation, probate and family law. Justice Hantz Marconi’s work on key cases set new legal standards for zoning appeals and established privacy standards for internet information. She graduated from the University of New Hampshire, and earned her J.D. from Chicago-Kent College of Law at Illinois Institute of Technology. Following law school, she clerked for the Maine Supreme Judicial Court and was admitted to practice in NH, MA and ME.

Hon. Patrick E. Donovan was appointed associate justice of the New Hampshire Supreme Court in 2018. Prior to his appointment, Justice Donovan was a partner at the Law Office of Patrick E. Donovan, PLLC. He was house counsel at the NH House of Representatives from 2004-2006 and a partner with Hatem & Donovan, PLLC from 2000-2008. Justice Donovan was an assistant and senior assistant attorney general at the NH Department of Justice from 1994-2000. He is a graduate of Dartmouth College (1986) and Boston College Law School (1990). Upon graduation from law school Justice Donovan was a judicial clerk at the NH Supreme Court from 1990-1991.

Hon. Robert J. Lynn, who retired from judicial service on August 23, 2019, served as chief justice of the New Hampshire Supreme Court from April 2018 through August 2019, and was an associate justice of the Supreme Court from 2010 through 2018. He was the chief justice of the Superior Court from 2004 through 2010, and was an associate justice of the Superior Court from 1992 through 2004 after a career that took him across New England, New York and Pennsylvania. Justice Lynn earned his B.S. from the University of New Haven, CT in 1971 and his J.D. from the University of Connecticut School of Law in 1975. Prior to his judicial appointment, he was a special agent with the U.S. Drug Enforcement Administration; law clerk for the Hon. J. William Ditter, Jr. at the U.S. District Court, Eastern District of Pennsylvania; special attorney for the Organized Crime Strike Force in the Eastern District of NY; assistant U.S. attorney (and later first assistant) for the District of NH; associate and partner at Cleveland, Waters & Bass, PA; of counsel and director at McSwiney, Jones, Semple & Douglas; assistant U.S. attorney for the Special Prosecutions Unit in the District of CT; assistant U.S. attorney in the District of MA; and chief and New England Coordinator for the Organized Crime Drug Enforcement Task Force. Justice Lynn was an adjunct faculty member for the Massachusetts School of Law until 2004, and prior to that was an instructor at the Attorney General’s Advocacy Institute in Washington, DC. Since 2011 he has been the chair of the Supreme Court’s Advisory Committee on Rules. Justice Lynn is a past member of many bar committees, including the Continuing Legal Education Committee. He is the author of numerous published works and the recipient of many academic awards.

Doreen F. Connor, Program Co-Chair is a shareholder at Primmer Piper Eggleston & Cramer, PC in Manchester, NH. Forty percent of her practice is devoted to appellate work in the areas of insurance, tort, commercial litigation and domestic relations. She has handled in excess of 190 Supreme Court appeals and presented more than 70 oral arguments to the court. Doreen also has an active insurance coverage and defense trial practice. She earned her B.A. at Bates College in 1983 and her J.D. at the University of Maine School of Law in 1986. Doreen was admitted to the American Academy of Appellate Lawyers in 2006 and the American College of Coverage and Extracontractual Counsel in 2016. She is chair of the NH Supreme Court Society and a member of the NHBA’s Insurance Law and Family Law Sections. Doreen has been a member of the New Hampshire Board of Bar Examiners for 25 years. She is licensed in New Hampshire, Maine and Vermont. Doreen’s community service includes work as the chair of the Henniker Zoning Board of Adjustment, treasurer of the White Mt. Regional Pony Club and past treasurer of the Pats Peak Educational Foundation Board.

Theodore M. Lothstein, Program Co-Chair/CLE Committee Member is a partner at Lothstein Guerriero, PLLC in Concord, NH where he focuses on criminal litigation in state and federal court, DWI and motor vehicle

defense, and appellate litigation. Ted earned his bachelor's degree from Duke University in 1989 and his J.D. at the University of Connecticut School of Law in 1993. He then clerked for Associate Justice Robert Berdon of the Connecticut Supreme Court. From 1994 to 2008, Ted worked as a staff attorney, litigation support attorney and assistant appellate defender for the New Hampshire Public Defender and Appellate Defender. Over the past two decades, he has taught CLE presentations on various aspects of criminal defense, DWI defense and appellate advocacy before hundreds of criminal defense lawyers and prosecutors. Ted has briefed or argued many cases in the NH Supreme Court and First Circuit Court of Appeals, including over 40 published decisions. He is a member of the NHBA's Federal Practice and Criminal Justice Sections, the National College of DUI Defense, the National Association Criminal Defense Lawyers, the NH Association of Criminal Defense Lawyers and the NH Association for Justice.

Seth R. Aframe has been an assistant U.S. attorney for the District of New Hampshire in Concord, NH since June 2007. He has argued approximately 85 appeals in the First Circuit (and 1 in the New Hampshire Supreme Court) and has tried about 20 cases. Prior to joining the U.S. Attorney's Office, Seth clerked for Judge Jeffrey Howard of the US Court of Appeals for the First Circuit; practiced law at the Boston law firm of Choate, Hall & Stewart; and clerked for Justice Judith A. Cowin of the Massachusetts Supreme Judicial Court. He currently teaches First Amendment law at University of NH Franklin Pierce Law School. Seth graduated from Georgetown Law School in 1999.

Eileen Fox is the clerk of the New Hampshire Supreme Court in Concord, NH. As clerk, Eileen has primary responsibility for the administrative operation of the court. She earned her B.A. from Loyola University of Maryland in 1976 and her J.D. from the University of Cincinnati in 1982. After law school, Eileen served as a law clerk at the New Hampshire Supreme Court for Chief Justice John W. King. She practiced law in Manchester for ten years, before returning to the court in 1994 to work as a staff attorney and then as the court's legal counsel. She was appointed clerk of court in 2001. Eileen is a member of the NHBA's Committee on Cooperation with the Courts. She is also an active member of the National Conference of Appellate Court Clerks, and recently completed a term on the NCACC's Executive Committee.

Timothy A. Gudas became the deputy clerk of court for the NH Supreme Court in Concord, NH in 2011. Prior to that, he practiced civil and appellate litigation at Sulloway & Hollis, PLLC in Concord from 1997-2011. From 1996-97, Tim was a law clerk to the late Associate Justice Sherman D. Horton, Jr. of the NH Supreme Court. He earned his B.A. from Dartmouth College in 1989 and his J.D. from Boston College Law School in 1994. Tim is a member of the National Conference of Appellate Court Clerks.

Stephanie C. Hausman is the deputy chief appellate defender at the NH Appellate Defender Program in Concord, NH. She represents indigent defendants on appeals through the NH Supreme Court. Stephanie earned her B.A. from the University of NH in 1994 and her J.D. from the University of Michigan in 2002. She worked at the NH Public Defender for six years, before moving to the Appellate Defender in 2008. Stephanie is a member of the Hearings Committee of the Professional Conduct Committee and the NHBA's Committee on Cooperation with the Courts. She conducts regular trainings for the NH Public Defender. Stephanie is also the co-author of A Guide to Appellate Advocacy in NH with attorney Lisa Wolford. It was designed for attorneys who have not done appellate work, or appear infrequently at the NH Supreme Court, as well as for pro se litigants, and is available on the NHBA website.

Christopher M. Johnson is the chief appellate defender of the NH Public Defender's Office. He earned his B.A. from Carleton College in 1989 and his J.D. from Harvard Law School in 1994. Between 2001 and 2012, Chris held a joint appointment as a professor at Franklin Pierce Law Center, and with the Public Defender in his current position. Since 2012, he has been working only with the Public Defender. Between 1995 and 2001, Chris was a staff attorney at the Southern Center for Human Rights in Atlanta. From 1994-1995, he was a law clerk at the New Jersey Supreme Court. Chris is a member of the NH Association of Criminal Defense Lawyers. He has regularly presented at CLE trainings on criminal law.

Sean R. Locke is an assistant attorney general in the appellate unit of the New Hampshire Attorney General's Criminal Justice Bureau. He joined the unit in May 2015. Sean graduated from Tufts University in 2008 and Boston University School of Law in 2013. He began his career as a legal assistance attorney representing clients facing disability discrimination before relocating to New Hampshire to serve as a law clerk for senior associate justice Gary E. Hicks of the New Hampshire Supreme Court. Since joining the Attorney General's Office, Sean has filed briefs in nearly eighty cases and argued nearly fifty cases before the New Hampshire Supreme Court.

Daniel E. Will serves as New Hampshire's first solicitor general at the New Hampshire Department of Justice in Concord, NH. In that position, among other things, he is responsible for, and oversees, all appeals involving the state of New Hampshire. Prior to becoming solicitor general, Dan spent 21 years at Devine, Millimet & Branch, where he enjoyed a commercial litigation practice and tried cases in state and federal court and administrative agencies, and handled appeals at the New Hampshire Supreme Court, the Massachusetts Supreme Judicial Court, the Massachusetts Appeals Court, and the United States Court of Appeals for the First Circuit. Prior to joining Devine Millimet, Dan spent a year clerking for the honorable Morton A. Brody of the United States District Court for the District of Maine, and for the Honorable Norman H. Stahl of the United States Court of Appeals for the First Circuit. He is currently president elect of the New Hampshire Bar Association and a fellow of the NH Bar Foundation. Dan graduated from the University of Pennsylvania in 1989 and from Boston College Law School in 1995.

Appellate Advocacy 2019

NH Bar Association Seminar Room, Concord, NH
October 30, 2019

Table of Contents

1. THE SUPREME COURT OF NEW HAMPSHIRE	
1.1 ROLE AND FUNCTION OF THE SUPREME COURT	1
1.11 Establishment and Composition of the Supreme Court	1
1.12 Role and Jurisdiction of Supreme Court.....	2
1.13 Quorum Requirement	2
1.14 Disqualification of Justices.....	3
1.2 APPELLATE PROCESS.....	5
1.21 Types of Appeals	5
1.22 Filing of Appeals.....	8
1.23 Screening Procedure.....	9
1.24 Mediation and Prehearing Evaluation Conferences.....	12
1.25 Transcripts	13
1.26 Briefing.....	14
1.27 Tracking – Oral Argument Versus Submission on Briefs	15
1.28 Oral Argument.....	16
1.29 Decision-making Process.....	17
1.3 SUPREME COURT TIME STANDARDS	18
1.4 SUPREME COURT ORGANIZATION.....	19
1.41 Legal Staff.....	19
1.5 ADMINISTRATIVE STRUCTURE.....	20
1.51 Constitutional Role and Historical Background	20
1.52 Court Committees.....	21
1.53 The Administrative Council	23
1.54 Administrative Office of the Courts.....	24
ATTACHMENT 1 – NH Supreme Court Disqualification Policy	25
ATTACHMENT 2 – Court Performance Standards.....	28
2. CIVIL APPEALS	
2.1 SCOPE OF THIS CHAPTER.....	29
2.2 TYPES OF APPEALS.....	29
2.21 Appeal from Superior Court.....	29
2.22 Appeals from District Court	29
2.23 Appeals from Probate Court.....	30
2.24 Questions Certified from Federal Court	33
2.25 Extraordinary Writs	36
2.3 THE SCOPE OF APPEAL.....	39
2.31 The Privilege of Appeal	39
2.32 Scope of Review	43
2.4 PLANNING THE APPEAL	48
2.41 Parties.....	48
2.42 Appealable Orders (Final and Interlocutory)	51
2.43 Preserving Issues for Review	53

2.44	Evaluating Whether to Take an Appeal	56
2.5	COMMENCING THE APPEAL	58
2.51	Notice of Appeal (Rule 7)	58
2.52	Interlocutory Appeals	65
2.53	Cross-Appeals	67
2.6	THE RECORD ON APPEAL	68
2.61	Transcripts	68
2.62	Exhibits and Pleadings	70
2.7	EFFECT OF TAKING APPEAL	70
2.71	Effect on Order Appealed From	70
2.72	Stays	71
2.73	Trial Court Jurisdiction.....	71
2.74	Settlement.....	72
2.8	POST-DECISION PRACTICE	74
2.81	The Order.....	74
2.82	Motion for Rehearing or Reconsideration	74
2.83	Taxation of Costs	75
2.84	Attorneys' Fees	75
2.85	Federal Review	75
3.	CRIMINAL APPEALS	
3.1	SCOPE OF THIS CHAPTER.....	77
3.2	WHAT IS A MANDATORY APPEAL VERSUS A DISCRETIONARY APPEAL?	77
3.3	AVENUES OF REVIEW IN CRIMINAL CASES	78
3.31	Direct Appeal by the Defendant from Criminal Conviction	78
3.32	Interlocutory Appeals by the Prosecution	81
3.33	Interlocutory Appeals by Criminal Defendant.....	83
3.34	Appeals from Juvenile Delinquency Adjudications.....	84
3.35	Appeal from Parole Board or Probation Revocation Proceedings.....	86
3.36	Appeals of Pretrial Bail Orders.....	87
3.37	Appeal from Sentence Review.....	87
3.38	Certiorari Review.....	89
3.39	Writs of Coram Nobis and Habeas Corpus	89
3.4	AVAILABILITY OF BAIL PENDING APPEAL	90
3.5	PRESERVATION OF ISSUES FOR APPELLATE REVIEW	92
3.51	Manner of Preservation of Issues – Specific Types of Issues Addressed.....	95
3.52	The Plain Error Rule.....	106
3.53	Supervisory Jurisdiction	112
3.54	Note on Advisory Opinions.....	113
3.6	ROLE OF COUNSEL FOR THE DEFENDANT ON APPEAL	113
3.61	Non-Meritorious Appeals.....	117
3.62	Obligations of Counsel After Losing Appeal	119
3.7	RIGHT TO COURT APPOINTED COUNSEL AND ROLE OF COURT APPOINTED COUNSEL	120
3.8	CRIMINAL APPEALS – ACTUAL PRACTICE OF LITGATING THE APPEAL	122
3.81	Notice of Appeal	122
3.82	Procedures and Deadlines in Criminal Appeals.....	123
3.83	Issues Raised in Notice of Appeal.....	125

4.	APPEALS FROM ADMINISTRATIVE AGENCIES	
4.1	SCOPE OF THIS CHAPTER.....	126
4.2	AVENUES OF REVIEW OF ADMINISTRATIVE AGENCY DECISIONS: STATUTORY AND NON-STATUTORY.....	126
4.21	RSA Chapter 541: Rehearings and Appeals in Certain Cases	126
4.22	Special Appeal Mechanisms from Specific Administrative Agencies.....	128
4.23	Writ of Certiorari: A Non-Statutory Remedy	129
4.24	Other Extraordinary Relief	130
4.3	PREREQUISITES TO APPEAL: EXHAUSTION OF ADMINISTRATIVE REMEDIES	130
4.31	RSA Chapter 541 Appeals.....	130
4.32	Certiorari Appeal	133
4.4	TIME TO COMMENCE APPEAL TO SUPREME COURT	134
4.41	RSA Chapter 541 Appeal.....	134
4.42	Certiorari Review.....	134
4.5	PROCEDURE TO COMMENCE APPEAL	135
4.51	Commencement of RSA Chapter 541 Appeal: The Appeal Petition	135
4.52	Commencement of Review by Certiorari.....	139
4.53	Parties to the Appeal.....	143
4.6	SCOPE OF REVIEW	144
4.61	RSA Chapter 541 Appeal.....	144
4.62	Certiorari Petition	148
4.7	EFFECT OF APPEAL ON ADMINISTRATIVE ORDER OR DECISION	149
4.71	RSA Chapter 541 Appeals.....	149
4.72	Decisions Reviewed by Petition for Certiorari	152
4.73	Specific Statutory Provisions.....	153
4.74	Effect of Failure to Appeal.....	153
4.8	COSTS, INTEREST AND ATTORNEY’S FEES IN ADMINISTRATIVE APPEALS.....	154
4.81	Costs.....	154
4.82	Interest.....	155
4.83	Attorney’s Fees	155
4.9	EXTRAORDINARY WRITS AS MEANS TO REVIEW ADMINISTRATIVE PROCEEDINGS ...	157
4.91	Use of Extraordinary Writs.....	157
4.92	Writ of Mandamus.....	158
4.93	Writ of Prohibition.....	159
4.94	Petition for Declaratory Judgment.....	160
4.95	Petition for Injunctive Relief	161
4.10	SPECIAL STATUTORY ADMINISTRATIVE APPEAL MECHANISMS.....	162
4.101	Department of Labor	162
4.102	Department of Employment Security	163
4.103	Department of Revenue Administration and Local Tax Officials.....	163
4.104	Ballot Law Commission	164
4.105	Zoning Boards of Adjustment	164
4.106	Department of Safety	164
4.11	JUDICIAL REVIEW OF STATE AGENCY RULEMAKING: ADMINISTRATIVE PROCEDURE ACT, RSA CHAPTER 541-A.....	165
4.111	Validity of Rules	165
4.112	Challenges to Rules	165

5. MOTION PRACTICE IN THE NEW HAMPSHIRE SUPREME COURT	167
5.1 INTRODUCTION AND OVERVIEW	167
5.2 MOTIONS FILED WITH APPEAL DOCUMENT	173
5.3 MOTIONS RESPONDING TO APPEAL DOCUMENT	177
5.4 MOTIONS AFTER ACCEPTANCE OF APPEAL.....	181
5.5 MOTIONS FOLLOWING SUPREME COURT DECISIONS	188
6. FORMS, MOTIONS, AND ORDERS	
Index to Forms.....	191
1. Rule 7 Notice of Mandatory Appeal (Form)	192
2. Instructions for Filing a Rule 7 Mandatory Appeal	196
3. Rule 7 Notice of Discretionary Appeal (Form)	199
4. Instructions for Filing a Rule 7 Discretionary Appeal	203
5. Rule 8 Interlocutory Appeal Statement (Sample)	207
6. Rule 9 Interlocutory Transfer Statement (Sample).....	213
7. Rule 10 Appeal Petition (Sample).....	218
8. Administrative Motion for Rehearing Pursuant to RSA 541:3 (Sample)	225
9. Rule 11 Petition for Writ of Certiorari (Sample).....	231
10. Rule 34 Order of Certification from Federal Court (Sample).....	242
11. Motion to Waive Filing Fee (Form)	252
12. Affidavit of Assets and Liabilities (Form).....	253
13. Financial Affidavit & Application for Court Appointed Counsel (Form).....	256
14. Motion for Authorization to Obtain Services Other Than Counsel (Form).....	260
15. Transcript Order Form (Samples)	261
16. Rule 7-A (1) Motion to Stay (Sample)	263
17. Rule 25 Motion for Summary Affirmance (Sample)	266
18. Briefing Schedule (Sample)	274
19. Brief Cover Page with Table of Contents and Table of Authorities (Sample).....	275
20. Memorandum of Law in Lieu of Brief (Sample).....	281
21. Rule 22 Motion for Reconsideration (Sample).....	287
22. Attorney’s Statement (Form)	298
23. Docket Sheet Request (Form)	300
24. Appellate Mediation Agreement (Form)	301

See Booklet, *A Guide to Appellate Advocacy in New Hampshire*

(Available online at <https://www.nhbar.org/wp-content/uploads/2019/10/Advocacy-Guide-2019-10-22-19.pdf>

or go to <https://www.nhbar.org/helpful-links-for-nh-attorneys/> and click on “Appellate Advocacy Guide”)