



# 2020 Webinar Series



## Reengineering Your Employment Procedures in Light of Recent Court Decisions

Presented by

Mark T. Broth

Anna B. Cole

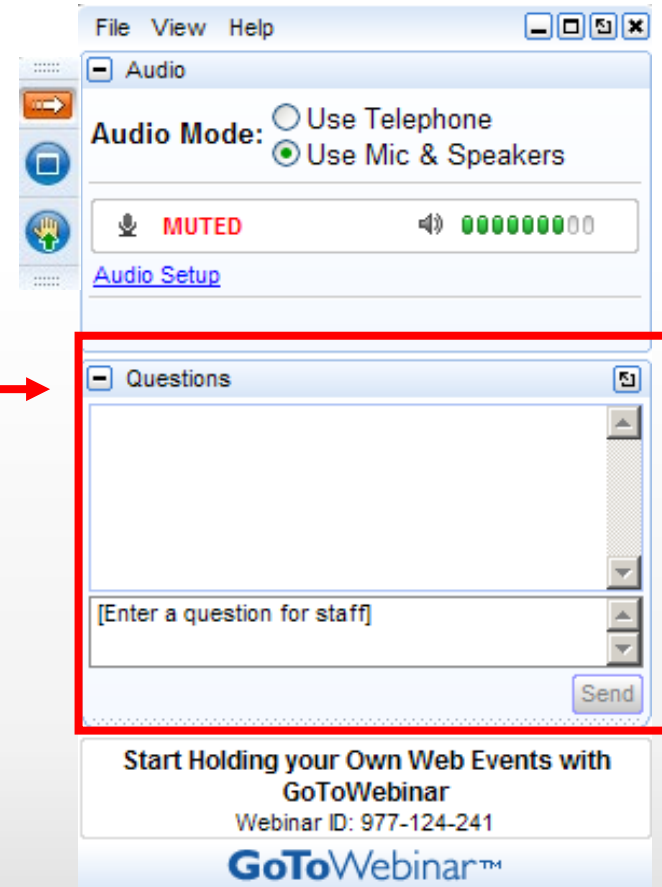
HariNarayan (Huddy) Grandy

July 29, 2020

[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org) / [603.224.7447](tel:603.224.7447) / [www.nhmunicipal.org](http://www.nhmunicipal.org)

# How to Participate Today

- Open and close your panel
- Submit text questions
- Q&A addressed during the webinar session



[legalservices@nhmunicipal.org](mailto:legalservices@nhmunicipal.org) / 800.852.3358 / [www.nhmunicipal.org](http://www.nhmunicipal.org)

# Our Presenters



*Mark T. Broth*  
*Attorney*



*Huddy Grandy*  
*Attorney*



*Anna B. Cole*  
*Attorney*

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# US Supreme Court Decisions

Establishing that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination against individuals on the basis of their status as transgender or their sexual orientation

- *Bostock v. Clayton County*
- *R.G. & G.R. Funeral Homes v. E.E.O.C.*
- *Altitude Express v. Zarda*

# New Hampshire Supreme Court Decisions

Expanding public access to personnel-related governmental records

- *Seacoast Newspapers v. City of Portsmouth*
- *Union Leader Corp. v. Town of Salem*

# RSA 275:56

*“ [E]very employer shall provide a reasonable opportunity for any employee who so requests to inspect such employee's personnel file and further, upon request, provide such employee with a copy of all or part of such file. An employer may only charge the employee a fee reasonably related to the cost of supplying the requested documents.”*

# RSA 91-A – Internal Personnel Practices

- *Union Leader Corp. v. Fenniman* (1993)
  - Establishing categorical exemption from RSA 91-A's disclosure obligations for documents compiled during an internal employee investigation
- *Hounsell v. North Conway Water Precinct* (2006)
  - Upheld *Fenniman* despite the fact that investigation was prepared for the employer by an outside investigator
- *Reid v. N.H. Attorney General* (2016)
  - Applying *Fenniman* decision and holding that investigation performed outside the employment context was subject to disclosure

# Impact of *Seacoast Newspapers* and *Town of Salem* Decisions

- *Seacoast Newspapers v. City of Portsmouth*
  - Held that “internal personnel practices” exemption excludes only “records pertaining to the internal rules and practices governing an agency’s operations and employee relations” from disclosure, **not** information concerning the performance or conduct of a particular employee.
- *Union Leader Corp. v. Town of Salem*
  - Overturned *Fenniman*’s blanket exemption for “internal personnel practices” records and adopted “balancing test” applied to other RSA 91-A:5 exemptions



# RSA 91-A:5 Balancing Test

In order to determine whether a record can be withheld, a public entity must:

- Evaluate whether there is a privacy interest at stake that would be invaded by the disclosure.
- Assess the public's interest in disclosure.
- Balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure.

# Practical Application

Following *Seacoast Newspapers* and *Town of Salem*, can a municipality refuse to disclose an employee's personnel file under RSA 91-A?

# Practical Application

Following *Seacoast Newspapers* and *Town of Salem*, can a municipality refuse to disclose documentation related to an ongoing employee investigation under RSA 91-A?

# Practical Application

Following *Seacoast Newspapers* and *Town of Salem*, can a municipality refuse to disclose documentation related to an employee investigation in which the allegations were determined to be unfounded or unsubstantiated under RSA 91-A?

# Practical Application

Following *Seacoast Newspapers* and *Town of Salem*, can a municipality refuse to disclose documentation related to an employee investigation in which the allegations were determined to be founded or substantiated under RSA 91-A?

# Recommendations

- Review, updated, and centralize RSA 91-A policies
- Train employees and supervisors on change in the law to adjust expectations

# SAVE THESE DATES

for the following **VIRTUAL**

## RIGHT-TO-KNOW LAW WORKSHOPS



### PUBLIC MEETINGS

6:00 pm—8:00 pm  
Thursday September 10, 2020  
\$40.00



### GOVERNMENT RECORDS

1:30 pm - 3:30 pm  
Tuesday, October 6, 2020  
\$40.00



### LAW ENFORCEMENT

9:00 am - 12:00 pm  
Thursday, October 15, 2020  
\$65.00



Ashley Methot, Events Coordinator  
25 Triangle Park Drive  
Concord, NH 03301  
603.230.3340

[amethot@nhmunicipal.org](mailto:amethot@nhmunicipal.org)  
[www.nhmunicipal.org](http://www.nhmunicipal.org)



[legalservices@nhmunicipal.org](mailto:legalservices@nhmunicipal.org) / [800.852.3358](tel:800.852.3358) / [www.nhmunicipal.org](http://www.nhmunicipal.org)



# SAVE THE DATE

## THURSDAY, SEPTEMBER 24

### 2020 Budget & Finance Virtual Workshop

NHMA will be holding its annual Budget & Finance Workshop on Thursday, September 24th as a virtual workshop to ensure the safety of attendees as COVID-19 remains a serious public health threat.

We have restructured this annual event in order to deliver professional training and education to our members on timely and relevant financial issues.

Please visit [www.nhmunicipal.org](http://www.nhmunicipal.org) for the latest event information and registration details.

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# SAVE THE DATE

# 2020

## **VIRTUAL** **LAND USE LAW** **CONFERENCE**

(formerly known as the Municipal Law Lecture Series)

**WHEN**

**Tentative**

**October 31, 2020**  
**9:00 am—3:00 pm**

**WHAT**

Full day **virtual conference** for municipal land use officials including members of planning and zoning boards, planners, land use administrators, select boards, town and city councilors, building inspectors, code enforcement officers and public works personnel. Presentations will focus on the legal authority and procedures these land use boards must understand with content structured to be beneficial to both novice and experienced municipal officials.

### **CONTACT INFO**

**Ashley Methot**  
**Events Coordinator**  
**25 Triangle Park Drive**  
**Concord, NH 03301**  
**603.230.3340**  
**amethot@nhmunicipal.org**

**FOR ADDITIONAL**  
**DETAILS VISIT**  
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**REGISTRATION**  
**OPENS IN SEPTEMBER**



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# 79<sup>th</sup> Annual Conference and Exhibition

*NHMA is Going Virtual in 2020!*



Wednesday, November 18, 2020 — Friday, November 20, 2020



Join us for 3 days of engaging interaction to help your municipality adjust to the new normal.

Registration to open soon.

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# *THANK YOU for attending our webinar TODAY!*

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



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