



# Tri-State Defense Lawyers Association

## 14th Annual Meeting

**September 22 & 23, 2022**

Sheraton Portsmouth Harborside Hotel  
259 Market Street, Portsmouth, NH

**TDLA Chairperson**

***Matthew V. Burrows***

Jeffrey D. Russell, Maine President

Brendan R. O'Rourke, Maine Vice President

Marrielle B. Van Rossum, New Hampshire Vice President

Margarita Warren, Vermont President

Jennifer E. McDonald, Vermont Vice President

### Thank You to our Sponsors

**Exponent**<sup>®</sup>



Technologies Incorporated

**SCIENCE EXPLAINED**

[www.cedtechnologies.com](http://www.cedtechnologies.com)





# 14<sup>th</sup> ANNUAL MEETING September 22 & 23, 2022 AGENDA

## THURSDAY, SEPTEMBER 22, 2022

**Sheraton Portsmouth Harborside Hotel**  
250 Market Street, Portsmouth, NH

- 6:00 p.m. **Reception with Cash Bar**  
*(your first drink is on us!)* **HARBOR'S EDGE ROOM**
- 7:00 p.m. **Dinner**
- 7:45 p.m. **Welcome and Introductions**  
Matthew V. Burrows, TDLA Chair, Gallagher, Callahan & Gartrell, P.C. (Concord, NH)
- 8:00 p.m. - 9:00 p.m. **Ethics Trivia Challenge**  
Michael Kennedy, Esq., Bar Counsel, The Vermont Judiciary  
*The 7 C's of legal ethics and the Rules of Professional Conduct*

## FRIDAY, SEPTEMBER 23, 2022

- 7:00 a.m. - 8:00 a.m. **Breakfast Buffet**
- 8:10 a.m. - 8:30 a.m. **Opening Remarks and TDLA Business Meeting**  
Matthew V. Burrows, TDLA Chair, Gallagher, Callahan & Gartrell, P.C. (Concord, NH)
- 8:30 a.m. - 9:30 a.m. **Ethical Issues Specific to Defense Counsel**  
*A lawyer's responsibilities that arise at trial, including issues associated with 'The Golden Rule,' the duty of competence as applied in the tripartite relationship*  
Michael Kennedy, Esq., Bar Counsel, The Vermont Judiciary
- 9:30 a.m. - 10:15 a.m. **Training Associates: Succession Planning and Training for New Roles**  
*Ensuring institutional clients' future success by preparing newer attorneys coming up the ranks for continuity and confidence*  
David Herzer, Vice President, Claims, Medical Mutual Company (Portland, ME)  
Matthew R. Johnson, Devine Millimet (Manchester, NH)  
Moderated by Marrielle B. Van Rossum, Devine Millimet (Manchester, NH)
- 10:15 a.m. - 10:25 a.m. **Break**
- 10:25 a.m. - 11:15 a.m. **Preparing for Trial: Tricks & Tips**  
*Preparing clients and witnesses for trial, preparing to cross-examine witnesses at trial, and demonstrative aides*  
Twain Braden, Thompson Bowie & Hatch LLC (Portland, ME)  
Elizabeth A. Germani, Drummond Woodsum (Portland, ME)  
David W. Johnston, Sulloway & Hollis P.L.L.C. (Concord, NH)  
Moderated by Brendan O'Rourke, Thompson Bowie & Hatch LLC (Portland, ME) and Jeffrey D. Russell, Verrill Dana LLP (Portland, ME)
- 11:15 a.m. - Noon **Trial Strategy in the Moment: A Practitioner's View**  
*Decisions made in the moment at trial; when to call witnesses and how and when to use documents and information learned during trial, or not; jury observations; closing remarks, and more.*  
Walter E. Judge, Downs Rachlin Martin PLLC (Burlington, VT)  
Daniel A. Rapaport, Preti Flaherty (Portland, ME)  
Moderated by Matthew V. Burrows, Gallagher, Callahan & Gartrell, P.C. (Concord, NH) and Jennifer E. McDonald, Downs Rachlin Martin PLLC (Burlington, VT)

# ABOUT THE PRESENTERS

## 14<sup>th</sup> Annual TDLA Meeting - Friday, September 23, 2022

**TWAIN BRADEN** is a partner with Thompson Bowie Hatch L.L.C. in Portland, Maine. Twain's practice focuses on maritime and admiralty litigation including, vessel collisions, Jones Act coverage, salvage, charter disputes, maritime liens and insurance coverage. Twain's clients appreciate the decades of personal experience Twain has on the water when evaluating the most complex of maritime issues. In addition, Twain's partnership with local maritime businesses enhances legal compliance today to build effective long term strategies for tomorrow.



Twain is a graduate of the Charleston School of Law, *cum laude*, in Charleston, S.C., where he was a founding member of the school's Maritime Law Institute. Prior to his legal career Twain served as Managing Editor of Ocean Navigator and Maritime Casualties Editor of

Professional Mariner. In 2002, he co-founded Portland Schooner Co. by bringing the 1924 wooden schooner Bagheera from San Francisco to Portland for a daysail and charter business. He maintains a current captain's license.

Twain is the author of three books: In Peril (with co-author Skip Strong); Ghosts of the Pioneers; and The Complete Guide to Sailing & Seamanship. He serves on the Board of Governors of the Portland Chapter of the Propeller Club of the United States and the Casco Bay Lines Board of Directors.

**MATTHEW V. BURROWS** of Gallagher, Callahan Gartrell, P.C. in Concord, New Hampshire, is a member of the firm's litigation team. His practice focuses on municipal defense in civil rights litigation, business and commercial disputes, and property disputes. Matt has successfully represented clients in litigation before every New Hampshire state court (Supreme, Superior, and District), the United States District Court for the District of New Hampshire, the United States District Court for the District of Massachusetts, and the First Circuit Court of Appeals. Based on his experience, Matt understands the complexities of the litigation process, and he works with clients to achieve their intended goals.



Matt has been selected as a top-rated civil litigation defense attorney in Concord, NH, by Super Lawyers® with a Rising Stars designation for 2017, 2018, 2019, and 2020. Matt is a member of the Defense Research Institute and presently serves as Chair of the Tri-State Defense Lawyers Association, before which he was President of the New Hampshire leadership team. He also belongs to the Webster-Batchelder American Inn of Court. Matt is committed to the New Hampshire community, having served on the steering committee of the Associated Builders and Contractors of NH/VT Young

Professionals Group, and he currently serves on the board for the Stephen Cmar ROTC Scholarship Fund.

While practicing full-time, Matt has also served as an adjunct professor at the UNH Franklin Pierce School of Law for two semesters, where he taught the Fundamentals of Lawyering to first-year law students. Prior to joining Gallagher, Callahan & Gartrell, Matt clerked for two years in the New Hampshire Superior Court, serving as the senior law clerk in his final year of the clerkship. As a law clerk for both the Superior Court's regular docket and the Business and Commercial Dispute Docket, Matt assisted the judges in handling a wide variety of cases, including business and commercial disputes, appeals from planning board and zoning board of adjustment decisions, and civil rights litigation.

Matt graduated *cum laude* from the University of New Hampshire School of Law and earned his bachelor of arts, *magna cum laude*, from Ithaca College. He was editor-in-chief of the University of New Hampshire Law Review, as well as a Daniel Webster Scholar. While in law school, Matt interned with the Honorable Robert Lynn of the New Hampshire Supreme Court.

# ABOUT THE PRESENTERS

## 14<sup>th</sup> Annual TDLA Meeting - Friday, September 23, 2022

**ELIZABETH A. GERMANI** of Dummond Woodsum in Portland, Maine, has more than 30 years of litigation experience in Maine and New Hampshire. She specializes in civil trial work, representing both plaintiffs and defendants in a wide variety of matters, including insurance defense, insurance coverage, products liability, personal injury, attorney malpractice, fire losses, construction litigation, medical malpractice defense, business litigation and contract disputes. She practices in all the state and federal courts in Maine and New Hampshire, and before the state boards in Maine. Liz also has a busy mediation practice, serving as a mediator and as an arbitrator in more than 700 civil cases.



In addition, Liz has handled a number of appeals before the Supreme Judicial Court of Maine, sitting as the Law Court, the United States Court of Appeals for the First Circuit, and the Supreme Court of New Hampshire.

Liz has been given a Martindale-Hubbell Preeminent Rating of AV, and scored a 5 out of a possible 5 in peer review ratings for litigation, personal injury and alternative dispute resolution, based on ratings given by a number of attorneys and judges who have worked with Liz over the years. Benchmark Litigation has named Liz one of the top 250 women in litigation in the United States. Liz was 1 of only 4 Maine attorneys so recognized. Every year since 2007, Liz has been selected for inclusion in the New England Super Lawyers magazine. Super Lawyers is the only legal publisher that uses a multi-step evaluation process that incorporates peer recognition and professional achievement. Through a system of nominations, peer evaluation and internal research the legal publisher selects only the very best of New England attorneys in a variety of practice areas.

Liz is member of the International Society of Barristers, and the National Association of Distinguished Neutrals. Both of these organizations require nominations from peers, and an evaluation process that includes input from others in the legal community and a review of the member's professional achievements. Liz is a former Board Member and Officer, and a current member of the Maine Trial Lawyers Association, a member of the Defense Research Institute, and a member of the Tri-State Defense Lawyers Association.

Liz was appointed by the Maine Supreme Judicial Court as Chair of the Advisory Committee on the Maine Rules of Civil Procedure, and served in that role for many years until the end of 2015. Over her years of practice, she has also volunteered her services to the Campaign for Justice, Maine Equal Justice Partners, the Justice Action Group, and a committee formed by the Chief Justice of the Maine Supreme Judicial Court to propose changes to the way in which civil cases proceed through the Maine state court system. Liz has also presented at numerous seminars over the years – primarily those sponsored by the Maine State Bar Association and the Maine Trial Lawyers Association. She is a former adjunct faculty member of the University of Maine School of Law, teaching Trial Practice.

**DAVID HERZER** joined Medical Mutual in Portland, Maine in March of 2021. He is Vice President, Claims. For 28 years, he practiced law at Norman, Hanson & DeTroy, one of Medical Mutual's defense firms in Maine and where he first met Mary Elizabeth Knox in the early 1990's. As a practicing attorney, he handled insurance coverage disputes and got to know the Claims Department staff defending malpractice lawsuits for Medical Mutual's member-insureds. In 2019, Dave seized a new opportunity by accepting a general counsel position at a startup financial technology and software company founded by an entrepreneurial friend. When he learned that Mary Elizabeth was retiring, Dave reached out to reconnect with Medical Mutual and bring his extensive experience as a litigation and insurance attorney to the Vice President position.



Dave has committed many years of voluntary service to the Maine Judicial Branch and the Board of Bar Overseers and has served as a member of the Boards of Directors for various local nonprofit organizations. Born and raised in the Cleveland, Ohio, area, Dave attended the University of Pennsylvania and graduated with a Bachelor of Arts degree in 1989. He later earned a Juris Doctorate at the University of Maine School of Law.



# ABOUT THE PRESENTERS

## 14<sup>th</sup> Annual TDLA Meeting - Friday, September 23, 2022

**MATTHEW R. JOHNSON** of Devine Millimet in Manchester, New Hampshire, works with clients in all phases of real estate projects. He negotiates construction contracts and resolves disputes when they arise. Once building construction is complete, he represents real estate agents, buyers, and sellers in the purchase, sale, and leasing of residential and commercial properties.



Matt is counsel to the New Hampshire Realtors Association and advises the organization and its members on risk management issues and current legal issues. His experience also involves loan workouts, foreclosures, and bankruptcies.

Believing strongly in being an active member of the community, Matthew is chair of the Manchester City Library Foundation and serves on the Board of the Associated Builders and Contractors NH/VT Chapter.

He received a J.D. from William & Mary Law School and a B.A. from Middlebury College.

**DAVID W. JOHNSTON** joined Sulloway & Hollis in Concord, New Hampshire in 2014. He has over 25 years of civil litigation experience trying cases before judges in state and federal courts. Dave also has extensive appellate experience, having briefed and argued numerous cases before the New Hampshire Supreme Court.



He represents both individuals and institutional clients in matters involving insurance defense and coverage, personal injuries, product liability claims, construction defects, timber trespass and property disputes, landlord and tenant litigation, and claims made under the Federal Employers Liability Act (FELA).

In recognition of his skills, Dave has repeatedly achieved an AV Preeminent rating for Legal Abilities and Ethical Standards from Martindale-Hubbell, the highest overall rating attainable from the legal profession's foremost independent legal review organization. Dave has also been selected by his peers for inclusion in *The Best Lawyers in America* since 2018. He is a member of the Defense Research Institute, a member of the Tri-State Defense Lawyers Association, a member of the Transportation Lawyers Association, and a member of the National Association of Railroad Trial Counsel. Dave has practiced law in New Hampshire since graduating from Boston College Law School, *cum laude*, in 1992, and in Massachusetts since 2001. Prior to becoming a lawyer, he served as a Surface Warfare Officer in the United States Navy.

**WALTER E. JUDGE** of Downs Rachlin Martin LLC in Burlington, Vermont, has been successfully trying liability cases for almost three decades. He protects the intellectual property of businesses and defends a wide range of clients, from property owners to automobile manufacturers, against negligence and personal injury claims. He conducts trials and appeals in both state and federal courts, as well as mediations and arbitrations. He has also presided over numerous contested cases as an acting Small Claims judge in the Vermont court system. In 2019, Walter obtained a \$3.6 million jury verdict in federal court on behalf of an aviation company against a competitor. In 2018 he obtained a \$2.5 million settlement for his client after several days of trial.



Walter is a member of several prestigious legal and trial organizations, such as ABOTA, FDCC, IADC, and DRI, in addition to serving as the Chair of DRM's Food & Beverage Law Group. Walter holds a J.D. from Boston College Law School, an M.A. from Columbia University, and a B.A. from Colby College. He is a founding member of the Tri-State Defense Lawyers Association.

# ABOUT THE PRESENTERS

## 14<sup>th</sup> Annual TDLA Meeting - Friday, September 23, 2022

**MICHAEL KENNEDY** was appointed Vermont's Bar Counsel in 2012 after working for several years as Assistant Attorney General, then as Disciplinary counsel in 2000. As Bar Counsel for Vermont's Professional Responsibility Program, Michael advises attorneys on issues related to legal ethics and Vermont's Rules of Professional Conduct. He also screens disciplinary complaints and administers the program for resolving complaints via nondisciplinary dispute resolution methods. He is the former President of the Vermont Bar Association and currently chairs the association's Pro Bono Committee and previously served on its Governance Committee. He is also a member of the Vermont Commission on the Well-Being of the Legal Profession.



He is a graduate of the University of Vermont and the George Washington University Law School.

He was most recently selected to receive the 2022 American Inns Court Professional Award for the Second Circuit, which will be presented to him later this fall. The annual award recognizes a lawyer or judge in Connecticut, New York, or Vermont whose life and practice displays sterling character, integrity, and ongoing dedication to the highest standards of the legal profession and rule of law.

**JENNIFER E. MCDONALD** is an experienced trial lawyer and litigator with Downs Rachlin Martin in Burlington, Vermont. She solves complex legal problems in commercial disputes and other matters, including healthcare litigation, construction disputes, breach of contract, federal preemption, white collar investigations, municipal litigations, wrongful death, and other tort claims. When trial is inevitable, Jennifer is experienced at handling complex cases and evidentiary matters before a jury. Her results include multi-million dollar commercial jury verdicts in federal court, high-stakes appellate practice, and defense verdicts. Recognized by Super Lawyers® as a top-rated civil litigation attorney, Jennifer McDonald provides strategic legal solutions for her clients.



Jennifer has served as a Hearing Panel Chair for the Vermont Professional Responsibility Program for Attorney Conduct, a member of the Federal Court Advisory Committee for the District of Vermont, and is a former board member of the Vermont Family Network. She currently serves as Vermont Vice President

for the Tri-State Defense Lawyers Association.

She earned a J.D. from Vermont Law School where served as Editor-in-Chief for the Vermont Journal of Environmental Law and earned a B.A. at the University of Vermont.

**BRENDAN R. O'ROURKE** is a partner with Thompson Bowie & Hatch LLC in Portland, Maine. He practices in the areas of professional liability, civil rights and municipal liability and property and casualty defense. Brendan has defended design professionals, contractors, and subcontractors in construction disputes in both state and federal court. He also serves as defense counsel to healthcare professionals throughout Maine, in both malpractice actions and claims brought against them pursuant to 42 U.S.C. § 1983. In addition to defending clients in their professional capacities, Brendan also represents individuals and businesses against property and casualty claims. Prior to private practice, Brendan completed a judicial clerkship with the Honorable Joseph M. Jabar, Associate Justice of the Maine Supreme Judicial Court.



Brendan holds a B.S. from Northeastern University in Boston. While attending Northeastern, Brendan worked as a legal assistant in the litigation departments of two Boston-area law firms. He earned his J.D. from the University of Maine School of Law. During law school, Brendan assisted first-year law students as a teaching assistant and then as a legal writing instructor. He also served as the Executive Editor for the Ocean and Coastal Law Journal and as a student attorney for the Cumberland Legal Aid Clinic. Brendan is the Maine Vice President for the Tri-State Defense Lawyers Association.

# ABOUT THE PRESENTERS

## 14<sup>th</sup> Annual TDLA Meeting - Friday, September 23, 2022

**JEFFREY RUSSELL** is a partner with Verrill Dana LLP in Portland, Maine. He has extensive skills in several areas of civil litigation and represents clients ranging from large national companies to individuals. He has tried cases in state court, federal district court, and before federal administrative tribunals. In addition to his litigation expertise, Jeff also represents businesses and individuals in various non-litigation contexts, including contracts, general business advice, and other matters of businesses in Maine and beyond.



Jeff has held leadership positions in legal professional organizations on a statewide, regional, and national basis. In 2020, he was inducted as a Fellow of the Litigation Counsel of America. He has been selected by his colleagues as a Super Lawyer Rising Star every year since 2012. He constantly seeks to use innovative strategies, from technology to social psychology, to improve his own practice and the experience, lives, and work of his clients.

Jeff is a graduate of Johns Hopkins University and Boston University School of Law. During his tenure at Boston University School of Law, he served as an Executive Editor for the *Review of Banking and Financial Law*, and worked at the Washington D.C. administrative headquarters of the Financial Industry Regulatory Authority in the Office of General Counsel assisting the litigation group in preparing for hearings and depositions in FINRA member disputes. He is currently the Maine President of the Tri-State Defense Lawyers Association.

**DANIEL RAPAPORT** with Preti Flaherty in Portland, Maine, is the Chair of the firm's Litigation Group and focuses his practice on personal injury, medical malpractice defense and insurance defense. He is an experienced trial lawyer, having tried more than 100 cases and jury trials in Maine, Massachusetts, and New Hampshire on a range of issues. Dan is also a highly skilled mediator having mediated more than 500 civil disputes in his career. He was named Lawyer of the Year for Mediation in 2015 by *Best Lawyers in America*.



Dan has been on the faculty of the Maine Trial Lawyers Association's Maine College of Trial Advocates and frequently presents on litigation and medical malpractice topics. He is a member of the International Association of Defense Counsel and has served on the faculty of that organization's Trial Academy at the Stanford Law School. He graduated Phi Beta Kappa from Colby College. At Colby, he was captain of the baseball team and sports editor of the *Colby Echo*. He earned his law degree at Cornell University in 1978 and joined Preti Flaherty the same year.

**MARRIELLE VAN ROSSUM** is an associate with Devine Millimet in Manchester and Portsmouth, New Hampshire. She defends healthcare providers, hospitals, and practices in medical negligence lawsuits and before the New Hampshire professional licensure boards. She works with clients in and outside the healthcare system to avoid lawsuits—whether by navigating employment issues, reviewing policies and drafting workplace handbooks, or resolving matters pre-suit. For several years she has aided those petitioning the courts to appoint a guardian over patients, residents, and loved ones, particularly when individuals need a long-term care placement and when families grapple with end of life decisions. Marrielle has represented hospitals of all sizes, including major teaching facilities when she practiced in Philadelphia and small Critical Access Hospitals in the North Country. She has also assisted non-profit and private companies with unemployment claims, anti-harassment training, and claims of workplace discrimination.



She is an Adjunct Professor for the University of New Hampshire Franklin Pierce School of Law, Secretary and Board Member for Hidden Pond Farm Equine Rescue and is a former Alumni Advisory Board Member for Berwick Academy and former Development Committee member for Families First Health and Charles Widger School of Law. She has been a *Super Lawyers—New England Rising Star—Top Rated Medical Malpractice Attorney* since 2018. She's an at-large Board Member for the New Hampshire Women's Bar Association, Wellness Subcommittee Co-Chair for the DRI Young Lawyers Steering Committee, and the New Hampshire President for the Tri-State Defense Lawyers Association. She is a graduate of St. Lawrence University and Villanova University.



# Tri-State Defense Lawyers Association

14<sup>th</sup> Annual Meeting  
September 22 & 23, 2022  
Portsmouth, New Hampshire

## REGISTRATION FORM

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Spouse/Guest Name: \_\_\_\_\_

Check states for which you wish to receive CLE credit: ME  NH  VT

State Bar Number: ME \_\_\_\_\_ NH \_\_\_\_\_ VT \_\_\_\_\_

### MEETING REGISTRATION FEES:

Registration fee includes Thursday night reception and dinner, Friday breakfast and CLE program.

Member of TDLA: \$210 \_\_\_\_\_

New-Member Attorney: \$309 \_\_\_\_\_

*\*Not a member of TDLA? Join today and register at the member rate!*  
(*\$99 individual new member dues plus \$210 member registration rate*)

Non-Member Attorney: \$350 \_\_\_\_\_

Spouse/Guest of Registrant: \$110 \_\_\_\_\_  
(No CLE, includes reception, dinner, and breakfast)

**TOTAL FEES:** \_\_\_\_\_

**TO REGISTER:** Register and pay online by visiting [www.tristatedefenselawyers.org](http://www.tristatedefenselawyers.org) or make a check payable to TDLA and mail with this registration form to:

**Mark Filler, TDLA Treasurer**  
P. O. Box 4177, Portland, ME 04101-0377

### LOCATION:

**Sheraton Portsmouth Harborside Hotel**  
250 Market Street, Portsmouth, New Hampshire  
For reservations, call 603-431-2300

For more information, please contact: Sheri Leahan, Executive Director, TDLA  
Email: [sleahan@tristatedefenselawyers.org](mailto:sleahan@tristatedefenselawyers.org)  
[www.tristatedefenselawyers.org](http://www.tristatedefenselawyers.org)