

APPLICATION FOR CANDIDATE FOR SUPERIOR COURT JUDGE

Date of application: August 5, 2024

Position/region applied for: North Region of the Superior Court, Northwest Area

GENERAL

1. Name: Laura C. Rowntree

2. Mailing address: [REDACTED]

Business address: Attorney General's Office, 109 State St., Montpelier, VT 05609

Email address: [REDACTED]

3. Date of birth (required): [REDACTED]

4a. Are you a Vermont resident (see 4 V.S.A. § 602(c)(1))? Yes No

4b. Town of primary residence: South Burlington, VT

5. Telephone nos. Home: _____ Business: [REDACTED] Cell: [REDACTED]

6a. Years practicing law (minimum 10 years, per 4 V.S.A. § 602(c)(1)): 14
Years practicing law in Vermont (minimum 5 years, per 4 V.S.A. § 602(c)(1)): 5

6b. Have you practiced law in Vermont for a least five years immediately preceding this application (see 4 V.S.A. § 602(c)(1))? Yes No

6c. If the answer to 6b. above is NO, are you seeking an exception to the requirement that your 5 years of practice in Vermont be contiguous and immediately preceding your application (4 V.S.A. § 602(c)(1))? If so, please explain the basis for seeking this exception. Note: The Board may make exceptions to the "contiguous and immediately preceding" requirement for reasons including family, military, academic, or medical leave.

N/A

EDUCATION

7. List colleges and law schools, dates attended, and degrees or credits received:

Cornell University, 2000-2004, Bachelor of Arts

Fordham University School of Education, 2004-2006, Master of Science in Teaching

Fordham University School of Law, 2006-2009, Juris Doctor

8. Academic honors at the college or law school level, if any:

Cornell University - Dean's List (Fall 2001, Spring 2004)

Fordham Law School - Dean's List (2007-2008); Keith C. Miller Award (one graduating member of Moot Court Board) (2008-2009); Archibald R. Murray Public Service Award (500+ pro bono hours)

9. If you clerked for admission to the bar instead of attending law school, please state the dates and for whom you clerked.

N/A

PROFESSIONAL ADMISSIONS

- 10a. List all courts (including state bar admissions) and administrative bodies having special admission requirements in which you are presently admitted or have previously been admitted to practice, giving the date of admission in each case.

States: Connecticut (November 6, 2009), New York (January 11, 2010), Vermont (February 8, 2019)

Federal courts: Southern District of New York (March 2, 2010), Eastern District of New York (March 2, 2010), District of Connecticut (June 11, 2010), Court of Appeals for the Second Circuit (October 10, 2017), District of Vermont (May 27, 2022)

- 10b. Has your license to practice in any jurisdiction been suspended, revoked, or limited at any time? If so, please provide the date(s) and circumstances that led to such action.

No

EMPLOYMENT HISTORY

11. Please list below, or include an attached resume or curriculum vitae that lists all legal jobs you have held since being admitted to the bar, including name and location of the employing or contracting entity(ies), dates of employment, and title(s).

My resume contains additional details about my employment. I have been practicing law since 2009 and since 2018 in Vermont. After moving to Vermont, I worked for three and a half years as an Assistant Attorney General in the Administrative Law Unit of the Attorney General's Office. In that role, I defended the State against allegations that it had violated employment laws and prosecuted disciplinary cases at the Vermont Labor Relations Board. In April 2022, I was promoted to Chief of the Civil Division, one of five division managers in the AG's Office. In that capacity, I oversee the defense of nearly all civil litigation filed against the State of Vermont, which at any given time includes more than 100 cases, in addition to handling my own cases. Beyond managing litigation, I also provide counsel on an as-needed basis to all branches of government regarding liability and risk management. Prior to moving to Vermont, I worked as an associate at two law firms, Chadbourne & Parke LLP and Morgan, Lewis & Bockius LLP; as a judicial law clerk for a US Magistrate Judge in Manhattan; and as an Assistant Corporation Counsel for New York City's Law Department.

12. Please list below, or include an attached resume or curriculum vitae that lists the name and location of employing or contracting entity(ies), dates of employment, and title(s) held for any other full-time employment since graduation.

Please see my resume submitted with this application.

LEGAL EMPLOYMENT AND EXPERIENCE

13. Please describe your professional experience in each of the following legal arenas: family, civil, criminal, probate, juvenile, municipal, environmental or other. Include a description of any legal specialties you possess.

I am a seasoned civil litigator whose practice has touched on a range of legal claims, from products liability, to probate and commercial litigation, to the myriad claims that members of the public bring against New York City and the State of Vermont. As a litigator for New York City and the State of Vermont, I have personally handled and also supervised a wide variety of civil rights lawsuits. Those suits raise claims alleging excessive force, false arrest, and malicious prosecution claims; as well as alleged violations of due process and First Amendment rights. Many of those suits implicate other areas of practice, including criminal law (e.g., false arrest or malicious prosecution claims), and family and juvenile law (e.g., due process challenges by families who allege they have been aggrieved by the Vermont Department for Children and Families, or the judiciary).

To the extent I have developed any specialty as a civil practitioner, it has been in labor and employment law and the related laws governing equal access to public accommodations. I have handled that work on behalf of New York City, Vermont, and private entities. That interest stems from my representation of aggrieved employees, which I provided as a law firm associate on a pro bono basis, and from drafting decisions on motions seeking to dismiss employment lawsuits as a judicial law clerk. That interest led me to work as an employment lawyer for New York City, handling a large caseload in state and federal court. I continued my employment practice for two years at a private firm, which entailed conducting employment investigations and providing general counseling advice as well as litigating claims filed against large corporations. When I moved to Vermont in 2018, I continued my labor and employment litigation practice with the Attorney General's Office.

I have some additional, discrete experience with criminal law and family law. In 2010, as a pro bono partner to a New York group called Appellate Advocates, I handled an appeal of a criminal conviction and sentence pending before New York State's intermediate appellate court. I reviewed an extensive trial record and drafted an appellate brief, arguing that a guilty verdict was against the weight of the evidence, that the trial court had abused its discretion by admitting certain prejudicial evidence, and that the imposed sentence was excessive. I then argued the appeal. The challenge was unsuccessful but the experience rewarding. As a college student, I spent the summer of 2003 working as a legal assistant at a family law firm in Connecticut, supporting the firm's attorneys in divorce proceedings.

My career has allowed me to practice before a number of administrative boards, state trial courts, and federal trial courts, as well as the New York State appellate courts and the Vermont Supreme Court. This has provided me with a command of the applicable rules of practice, most notably the Vermont and Federal Rules of Civil Procedure and the Vermont and Federal Rules of Evidence.

14. During the past ten years what percentage of your work experience has involved litigation, including motions, hearings, appellate arguments, administrative hearings, trials, and other contested hearings? Please briefly describe the role you played in the litigation.

All of my legal work has involved litigation, though from 2016 to 2018 I also conducted employment investigations and provided general counseling advice in conjunction with my litigation practice. I have personally been lead counsel on dozens of lawsuits. This has required preparing pleadings (complaints, answers, cross- or counterclaims), dispositive motions, evidentiary motions, and discovery requests and responses. It also provided me the chance to develop case theories and themes, value cases for settlement, and provide general counseling advice after identifying ongoing liability risk. I have also taken and defended numerous depositions of a variety of witness types; handled evidentiary hearings; mediated cases; and handled appellate briefing and arguments. As Chief of the AG's Office's Civil Division, I supervise a team of attorneys engaged all those same tasks.

15. During the past ten years what percentage of your work experience has involved each of the following:

a. family matters	<u>0 %</u>
b. juvenile matters	<u>0 %</u>
c. civil matters	<u>70 %</u>
d. criminal matters	<u>0 %</u>
e. probate	<u>0 %</u>
f. administrative	<u>25 %</u>
g. municipal	<u>5 %</u>
h. environmental	<u>0 %</u>
i. other	<u>0 %</u>

16. Please estimate how many evidentiary hearings, including trials, you have participated in and briefly describe your role(s).

I have handled 13 evidentiary hearings, 9 of them as lead counsel. I was lead counsel for one hearing before the New York State Department of Human Rights (3 days); one Article 78 hearing before a Judicial Hearing Officer in New York State (2 days); 7 hearings at the Vermont Labor Relations Board (2+ days). I delivered openings, and direct and cross examinations at each. I delivered closing arguments or drafted post-hearing proposed findings of fact and conclusions of law for each case.

I was co-counsel for one Article 78 proceeding (taking direct witness examinations), two preliminary injunction hearings (making legal argument and offering evidence for admission in one), and a jury trial in Washington County, Vermont. For the jury trial in Vermont, I participated in the jury draw, delivered the opening statement, conducted direct examinations, opposed an evidentiary motion, and handled several arguments concerning the admission of evidence and the substance of legal claims for purposes of the jury instructions.

17. Estimate the percentage of your total court time spent in each of the above courts over the last ten years.

a. criminal	<u>0 %</u>
b. family	<u>0 %</u>
c. civil	<u>50 %</u>
d. probate	<u>0 %</u>
e. federal trial	<u>10 %</u>
f. federal appellate	<u>0 %</u>
g. Vermont Supreme Court	<u>5 %</u>
h. administrative body	<u>35 %</u>
i. environmental court	<u>0 %</u>
j. other court	<u>0 %</u>

18. Please describe your professional experience in each of the following areas:

a. academics, including teaching, presentations, seminars

I taught English Language Arts to high school students from grades 7-12, including students up to age 21, from 2004 to 2006. I have presented at numerous trainings as an attorney, including for the Attorney General's Office and the Vermont Bar Association, on Best Practices in Hiring; Mediation and Negotiations; Attorney-Client Privilege and the Work Product Doctrine; Litigation Holds; and Updates to the Vermont Rules of Civil Procedure and Electronic Procedure.

b. management, including business, law firm, human relations, or other

As Chief of the Attorney General's Office's Civil Division, I manage 9 attorneys and 4 support staff as well as interns. Since 2019, I have been on the AGO's Workforce Committee, which coordinates trainings, engages in recruitment and retention efforts, and encourages professional development. I supervised 4 division interns for the NYC Law Department's Labor & Employment division in 2016. I have provided human resources guidance as a labor and employment lawyer since 2012.

c. mediation, arbitration, or other dispute resolution

I have participated in dozens of mediations personally and negotiated dozens of cases without formal dispute resolution. I observed an arbitration in private practice. In my current role as Chief of the Civil Division at the AG's Office, I have overseen the negotiation of even more resolutions - at least a dozen per year - and was part of the legal team initiating an arbitration against an insurer.

d. writing, including articles, journals, books, etc.

As an associate in private practice, I co-authored several articles related to commercial litigation for the New York Law Journal as well as firm client alerts related to commercial litigation and labor and employment issues. I also prepared updates to several chapters in treatises on commercial litigation for partners at my law firm.

19. If not otherwise described above, please describe why you have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure (see 4 V.S.A. § 602(d)(9)).

I have experience presenting a trial to a jury, and personally handling and supervising matters in all phases of litigation leading up to trial. This includes considering the admissibility of evidence to evaluate cases for settlement and to draft and oppose summary judgment motions. I have briefed and argued two appeals of adverse jury verdicts, both of which challenged rulings on evidentiary matters and on motions for judgment as a matter of law. I have participated in evidentiary hearings before the Vermont Labor Relations Board, which were governed by the Vermont Rules of Evidence.

JUDICIAL EXPERIENCE

20. Have you ever held judicial office? If so, please state your position, the name of the court(s) and dates of your service.

No

21. Have you ever served as an Acting Judge or Acting Magistrate in the Vermont court system? If so, please state the courts to which you have been assigned, approximate dates and the approximate number of assignments you have had.

No

22. Have you ever served as an arbitrator, hearing officer, administrative law judge, or other administrative decision maker? If so, please describe the service and the approximate number of assignments you have had.

No

27. If you have served as an appointed or elected official in any local, county, state, or federal government position, please provide details and dates.

South Burlington School Board, Interim School Board Member (October 2021-March 2022)

28. Please list all Bar associations and professional societies of which you are a member, give the titles and dates of any office which you may have held in such groups, and identify committees in which you were active.

Vermont Bar Association, member (August 2018-present)

Chittenden County Bar Association, member (December 2023-present)

29. List any honors, prizes or awards you have received, including the name of the award, the organization granting it, and the date of the award.

The "Extra Mile Award," for the General Counsel and Administrative Law Division within the Attorney General's Office (December 2021)

30. Please list all other non-profit, community service, or other organizations, of which you have been a board member during the past ten years, including the titles and dates of any offices which you have held in each such organization, and/or any other significant volunteer experience.

Since my tenure on the South Burlington School Board, I have remained an active participant in matters related to education in the school district including recruiting and mentoring other prospective board members, and I actively participate in a variety of PTO initiatives at my children's elementary school.

POTENTIAL CONFLICTS

31. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service to the Court? If so, please explain.

No

32. Do you have any personal or professional relationship(s) which might present conflicts of interest in the position you are seeking? If so, please explain.

As an Assistant Attorney General, I have represented state entities and employees since 2018, and I have become acquainted with many state employees as a result. As a current supervisor for a team of attorneys, and as a statewide resource for general civil litigation or risk management questions, I have come to know many Assistant Attorneys General and other lawyers for the State professionally and personally. Some of these relationships could present conflicts of interest or the appearance of a conflict.

33. Identify the categories of litigation and financial arrangements that are most likely to present potential conflicts of interest if you are appointed to the position for which you are applying. Include any deferred income arrangements, stock options, uncompleted contracts, and other future benefits which you expect to derive from current or prior professional relationships.

I am a member of the Vermont State Employees' Retirement System (VSERS).

34. Explain how you will resolve any potential conflict of interest including those identified in questions 32 and 33 above.

If I became a Superior Court judge and was presented with a potential conflict of interest, I would consult with colleagues and the Chief Administrative Judge as well as the Supreme Court's Judicial Ethics Committee. I expect that I could not preside over any matters in which I served as attorney of record or supervised an attorney of record, or otherwise came to know details of the litigation through my work at the Attorney General's Office. I expect I would recuse myself from any lawsuits involving the pension fund, of which I am a member. Additionally, I would disclose my prior positions with the Attorney General's Office to the parties in any case in which the State was a party.

MISCELLANEOUS

35. Have you ever been convicted by federal, state or other law enforcement authorities for a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations, unless it also included a jail sentence. Do not include expunged or sealed convictions. *Please be advised that the Judicial Nominating Board conducts a criminal background check on every applicant.*

No

36. Have you ever had a civil judgment against you? If so, please provide details about the case and its disposition. Please also state whether you have ever defaulted on a judgment and under what circumstances.

No

37. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, please give particulars, including the amounts paid.

No

38. Have you ever been disciplined for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, professional group, or Professional Conduct or Responsibility Board in any jurisdiction? If so, please provide details.

No

39. Are all your taxes paid? (federal, state and local) current (i.e., filed and paid) as of the date of this application? If not, are you on an approved payment plan?

Yes

40. Has a tax lien or other collection procedure (including receipt of balance due notices) ever been instituted against you by any federal, state, or local tax authority? If so, please explain and describe the outcome.

No

41. Have you ever been the subject of any audit or investigation for federal, state or local taxes? If so, give full details.

No

42. Have you ever declared bankruptcy? If so, give details.

No

JUDICIAL OFFICE QUESTIONS

43. Why do you want to hold the judicial position for which you are applying?

Being a Superior Court judge would be an extension of the career I have built as a lawyer, and a chance to grow professionally. I am a dedicated public servant and love the practice of law. The judiciary performs a critical task in our society, and judges have the potential to bring reason and order to situations so fraught that they have ended in litigation. I believe my skills, experience, and commitment to public service would help further the judiciary's mission.

One of the earliest lessons I learned as a government lawyer was that I served the public. Although lawyers serve clients, whether institutional entities or individual people, every day that I have worked as a lawyer for the State of Vermont or the City of New York has been a day when I felt like I was part of something bigger than me and something intended to help people. The responsibility can be tremendous, but it is deeply rewarding. I have recently been litigating a case with Vermont Legal Aid on the other side. Our positions in the case are adverse, but in every exchange of information or negotiation about the progress of the litigation, a mutual sense that we are all working for a better society has made even the tightest deadlines tolerable. Being a judge offers the opportunity to merge my interest in the law with the mission-driven work of the judiciary.

I enjoy working as an advocate but appreciate that a judge has a unique opportunity to apply the law neutrally with the goal of effectuating justice. I view all my cases as puzzles in which a large number of disconnected pieces - the facts and the law - appear before me, and I get a chance to work methodically through each piece to construct a coherent whole. The end product is satisfying, but I relish the process of doing the work, of learning about the facts of a case and applying them to the law, especially when dealing with a new legal area. It is very appealing to be able to do that without an agenda or advocacy position, but with the goal of achieving the right result under the law.

44. Please describe a legal case or experience that has a special significance in shaping you as a lawyer, as a person, or both, and explain why.

As a junior law firm associate, I worked on a pro bono matter, representing thirteen employees - all undocumented workers - of a Manhattan restaurant who brought claims against their employer in federal court for violations of the federal, state, and city labor laws. That work afforded me my first opportunity to take and defend depositions, draft motion papers in their entirety, and appear at discovery and settlement conferences. Ultimately, plaintiffs prevailed on nearly all grounds of their summary judgment motion, and the matter settled before trial. The case sparked my interest in employment law and reinforced my desire to be a litigator in a courtroom. The case had a David and Goliath dynamic before my team's involvement, and it demonstrated the impact good lawyers have.

45. Please describe a personal experience that you believe will influence your ability to serve as a successful judge and explain why?

As a young lawyer, I clerked for a federal magistrate judge. In the time between graduating from law school and clerking, I had worked as an unpaid lawyer for New York City for three months and spent just about two years at an international law firm. The judge had spent his career in the public service, at the US Attorney's Office and the NAACP, and he cemented my desire to do the same. The judge embodied neutral consideration of the facts and law, and he showed the same courtesy to self-represented litigants as he did to top firms. He knew how to prioritize a docket and prided himself on his ability to settle cases, often quoting President Lincoln's directive to lawyers: "Discourage litigation. Persuade your neighbors to compromise. There will be business enough."

46. Please describe your experiences working with diverse populations.

The majority of my legal career has been focused on employment litigation. Through that work, I came to know - as clients or witnesses - individuals who perform a variety of jobs and make up a diverse socioeconomic cross section of our community, from laborers and tradesmen to business executives and government leaders. Prior to law school, I was a high school teacher in the Bronx, teaching students who were mostly children of color and many immigrants. As a lawyer for New York City, my clients and other parties to litigation represented the diversity of the New York City workforce and citizenry - racially, ethnically, in religion, and otherwise.

47. What do you see as the primary issues facing the judiciary today? What would you propose to address or resolve the issues you've identified?

The judiciary faces an increasing but unmet need for resources, with growing demands on the court system to address a wide variety of societal challenges. There is a pressing need for better technology to streamline docketing, disposition of pending motions, and court proceedings while maintaining access to the courts and due process. Additionally, improvements in staff retention would enable the judiciary to function with greater institutional experience. To address both needs, the judiciary should continue to educate stakeholders - including the public and the other two branches of government - on its systems and potential for greater efficiency. Individual judges can continue to engage with judiciary staff and parties on how to best utilize available technology and can promote employee retention through employee engagement, mentorship, professional development, and building a community among colleagues.

48. Please describe any administrative and managerial experience that would make you a successful Superior Court judge.

I have served as Chief of the Civil Division at the Attorney General's Office for over two years. In that capacity, I supervise 9 attorneys and 4 support staff. I have overseen my team through remote work and two periods of returning to in-office work, post-Covid and after the July 2023 flooding. I assign cases and oversee all the cases in the Civil Division, while providing advice and support to other divisions within the AG's Office about civil practice and risk mitigation. I have updated division processes in response to needs I have identified or needs articulated by clients, those I supervise, or leadership. As a result, I have learned how to delegate and prioritize work, implement directives among staff I supervise, and manage a large portfolio that I do not have exclusive control over.

49. Reflecting on your career to date, which individual has had the most profound impact on your work and why?

Maria Marcus was the advisor to the Fordham Law Moot Court Board. I was a competitor during my second year of law school and the Interschool Competitions Editor during my third year. Professor Marcus selected me for both roles and became a trusted mentor. She was a child when her family fled the Nazis, went on to graduate from Yale Law School (among few women in her class), and had a career in public interest before becoming a professor. She was as encouraging of students as she was demanding. Her methodology for brief writing was famous, promoting clarity and plain language. In oral advocacy, she encouraged "a conversation among intellectual peers" rather than an argument.

50. What makes you well qualified to hold the position you are seeking?

I am a seasoned litigator with a demonstrated commitment to public service. I also have experience as a manager who has supervised employees and handled administrative duties while performing my core work function as an attorney. I am measured and careful in my analysis of the law. However, with the large caseload of a government attorney - especially now as a manager supervising an even larger litigation portfolio - I am decisive when the situation warrants.

Although I am strong in my convictions, I never prejudge facts and remain open to opposing perspectives. As an advocate, my work is always better when I have a strong adversary or a forceful judge to challenge my understanding or application of the law. I am also capable of seeing all sides. For example, as an employment lawyer, I have had to switch my orientation or mindset when moving between work tasks, like prosecuting a disciplinary case against an employee in a labor board proceeding while defending a different employee accused of wrongdoing in a civil court proceeding later in the same day. I think my colleagues and adversaries would say that in performing all my work, I maintain a calm temperament and act with integrity.

51. Please attach a representative writing sample appropriate for the position for which you are applying. (Maximum of 10 pages.)

52. In the space below, please explain why you selected this writing sample.

The writing sample is a response that I filed on behalf of the Vermont Department of Corrections, in opposition to a plaintiff's objection to the admission of evidence that I intended to offer at trial. The plaintiff's objection was served roughly 12 hours before the trial began. This memorandum of law reflects research and writing on an evidentiary issue that I was able to generate in a compressed time period without assistance and while preparing to deliver an opening statement and take witness testimony the following morning.

53. List the names, addresses, e-mail addresses, and phone numbers of four references who know you professionally. Please include at least two professional adversaries. Please describe how each named reference knows you. *Please be advised that Judicial Nominating Board rules permit Board members to contact non-references for additional information about applicants.*

Reference 1

Josh Diamond; [REDACTED]
Josh was the Deputy Attorney General under AG TJ Donovan and AG Susanne Young. He hired me for the AG's Office in August 2018 and was my direct supervisor from April to December 2022.

Reference 2

Kate Gallagher; [REDACTED]
Judge Gallagher was Chief of the Civil Division at the AG's Office and supervised my work on employment cases emanating from her division beginning in late 2019. We were colleagues from 2020 to 2022. I was then her supervisor from 2022 until 2024.

Reference 3

Tim Belcher; [REDACTED]
Tim was the General Counsel of the Vermont State Employees' Association during the years I was handling labor cases for the AG's Office, and we were adversaries. Tim has seen me take and defend depositions, and present at mediation, the Labor Relations Board, and the Vermont Supreme Court.

Reference 4

James G. Levins; [REDACTED];
[REDACTED]. Jim has represented employees of the State of Vermont who filed lawsuits that I defended, alleging workers' compensation retaliation and employment discrimination. We handled cases through discovery, mediation, and dispositive motion practice.

Laura C. Rowntree

AFFIDAVIT

Laura C. Rowntree, being first duly sworn, deposes and says that all of the information I have provided in this Application is true.

Laura C. Rowntree

Signature of Candidate

STATE OF VERMONT

COUNTY, SS

At Chittenden, in said County, Laura C. Rowntree personally appeared and subscribed and swore to the truth of the above before me this 5th day of August, 2024.

[Signature]

Notary Public

My commission expires: 1/31/2025



WAIVER

I hereby waive my right to privacy as it relates to the Judicial Nominating Board for any information I have provided herein, including the right of the Board to freely communicate with any names listed on my reference sheet with the understanding that any information will be held in confidence by the Board. I also understand and agree that if my name is forwarded to the Governor's office it will be accompanied by this full application.

Dated: August 5, 2024

August 5, 2024

[Signature]

Signature of Candidate

EXPERIENCE

VERMONT ATTORNEY GENERAL'S OFFICE, Montpelier, VT

Chief, Civil Division

04/2022-Present

- Manage team of nine attorneys and four support staff that defends the State of Vermont and its agencies, officials, and employees in civil litigation, including supervision of all civil actions handled by the Civil Division.
- Handle cases from initial investigation through pleadings and motions, discovery, trial, and appeal.
- Member of Workforce Committee. Former member of Campaign Finance Committee.

Assistant Attorney General, General Counsel and Administrative Law Division

08/2018-04/2022

- Represented state agencies before the Vermont Labor Relations Board, Vermont Human Rights Commission, and Vermont Courts in labor and employment, and public accommodations matters.
- Conducted and defended depositions and investigative interviews, conducted document discovery, drafted motions and post-hearing briefs, engaged in settlement negotiations, and provided general counseling advice.
- Handled seven evidentiary hearings before VLRB, and an appeal and cross-appeal to Vermont Supreme Court.

MORGAN, LEWIS & BOCKIUS LLP, New York, N.Y.

01/2016-05/2018

Associate

- Represented employers in labor and employment law matters before federal and state courts, administrative agencies, and arbitral tribunals related to discrimination, harassment, retaliation, wage and hour, and ERISA claims.
- Drafted pleadings and motions; handled all phases of discovery; appeared at mediations, arguments, and hearings.
- Conducted investigations; counseled employers on discipline, leave, accommodations, and employee classification.
- Completed four-month secondment to financial services client, providing in-house human resources law support.

NEW YORK CITY LAW DEPARTMENT, New York, N.Y.

Senior Counsel, Labor and Employment Law Division

10/2012-01/2016

- Defended the City of New York and its agencies, officials, and employees against federal, state, and city law claims.
- Formulated litigation strategy; drafted pleadings and motions; handled all phases of discovery, including taking and defending depositions, and conducting electronic discovery; and appeared at conferences, arguments, and mediations.
- Conducted evidentiary hearings at the New York State Division of Human Rights and the Supreme Court of New York.
- Prosecuted disciplinary charges and conducted internal investigations related to Law Department employees.

Public Service Attorney, Special Federal Litigation Division

09/2009-11/2009

- Researched malicious prosecution, false arrest, and excessive force claims. Drafted dispositive motions.

Legal Intern, Affirmative Litigation Division

09/2007-12/2007

- Conducted research and drafted memoranda on tax liabilities of foreign governments and foreign sovereign immunity.

HON. JAMES L. COTT, U.S. MAGISTRATE JUDGE, S.D.N.Y., New York, N.Y.

09/2011-08/2012

Judicial Law Clerk

CHADBOURNE & PARKE LLP, New York, N.Y.

11/2009-08/2011

Litigation Associate

- Performed research and discovery projects; drafted pleadings, discovery documents, motions, and appellate briefs, in commercial and employment litigation, trusts and estates proceedings, and product liability matters.
- Argued before Supreme Court of New York, Commercial Division, and Appellate Division, Second Department.

Summer Associate

05/2008-08/2008

HON. CHRISTOPHER F. DRONEY, U.S. DISTRICT JUDGE, CONN., Hartford, CT

06/2007-08/2007

Legal Extern

HARRY S. TRUMAN HIGH SCHOOL, Bronx, N.Y.

06/2004-08/2006

English Teacher/New York City Teaching Fellow: Developed and executed curriculum. Drafted grant proposals.

EDUCATION

FORDHAM UNIVERSITY SCHOOL OF LAW, New York, N.Y.

Juris Doctor, 05/2009

- *Fordham Moot Court Board*: Interschool Competitions Editor, 2008-09; Interschool Competitor, 2007-08.
- *Fordham International Law Journal*: Associate Editor, 2008-09; Staff Member 2007-08.

FORDHAM UNIVERSITY SCHOOL OF EDUCATION, New York, N.Y.

Master of Science, 05/2006

CORNELL UNIVERSITY, Ithaca, N.Y.

Bachelor of Arts, 05/2004

the termination letter states: “The decision to terminate you is based on the finding that you committed misconduct and gross misconduct as described in the above-referenced November 1, [2016 letter].” *See* Exhibit A. Plaintiff thus overlooks that the November 1, 2016 Loudermill letter, in turn, states: “The below charges [violations of State personnel policy and Department of Corrections Work Rules] are based on your conduct, summarized in an Investigative Report dated October 3, 2016, and all related attachments, prepared by Agency of Human Services Investigations Unit Director Jim Morris. These documents are attached, fully incorporated by reference, and may be consulted for further information regarding the charges summarized below.” *See* Exhibit B.

Plaintiff argues that both the October 3, 2016 investigative report and the November 1, 2016 Loudermill letter would be prejudicial because they “contain allegations of misconduct that the plaintiff was *not* found to have committed, or various regulations and policies that the plaintiff was *not* found to have violated.” This assertion is simply unfounded. As noted, the termination letter and 12-factors memorandum explicitly cite to and incorporate the investigative report and the Loudermill letter. Moreover, on their face, the investigative report and the Loudermill letter describe behavior that is then described in the termination letter and 12 Factors Memorandum. They contain no superfluous allegations. For example, the investigative report’s summary outlines the scope of the allegations against Plaintiff and the resulting investigation:

It is alleged on or about July 14, 2016 Mark Potanas, superintendent at Southern State Correctional Facility (SSCF) coerced a mental health professional into changing their assessment of a Seriously Functionally Impaired (SFI) inmate that had received a Discipline Deport (DR).

Exhibit C.

This conduct is clearly captured in the 12 Factors Memorandum, which provides:

Mr. Potanas' actions resulted in potentially placing an inmate at further risk of harm. His actions were intimidating and coercive to the point where a Qualified Mental Health Professional ultimately felt compelled to change their clinical recommendations, despite feeling strongly that her initial recommendations were accurate and appropriate. Mr. Potanas' actions also put subordinate staff in a position of witnessing his unprofessional and arguably abusive demeanor towards a health services staff person.

Exhibit D. Likewise, the termination letter states:

As the highest-ranking employee at Southern State Correctional Facility, you had the highest level of command for all services and operations at the facility and were responsible for protecting the safety of inmates and the staff. You were expected to model mature and professional conduct for your colleagues, peers, and inmates that promoted an environment that ensured the rehabilitation of inmates, as well as the health and safety of inmates and staff. However, the manner in which you conducted yourself at SSCF undermined these fundamental duties and obligations of the DOC.

Exhibit A. Thus, it is unclear what unfounded, irrelevant, prejudicial, or confusing allegations are included in the two documents Plaintiff seeks to exclude.

Plaintiff cites two Vermont Supreme Court decisions in support of his position that Defendant “should be precluded from presented reasons from those stated” in the termination letter and analysis (even though, as noted, those documents do state that facts described the investigation report was a reason for termination). The two cases are inapplicable. Plaintiff cites to *In re Grievance of Merrill*, 151 Vt. 270 (1988), for its determination that the Vermont Labor Relations Board “acted correctly in refraining from examining reasons other than those stated in the letter of dismissal, or those delineated in a termination meeting.” However, the facts of *Merrill* are plainly distinguishable. There, the employer had offered into evidence discipline (a written reprimand) the grievant-employee had received for *misconduct* in November 1983 even though the grievant-employee had been terminated for *performance* shortcomings during a six-month probationary period that began in April 1984. *Id.* at 270. *See* State of Vermont Personnel

Policy 8.0 (distinguishing between discipline for performance and discipline for misconduct), attached hereto as Exhibit E. In other words, the grievant-employee challenged including evidence related to misconduct when he had been terminated for (poor) performance. *See also In re Grievance of Merrill*, 8 V.L.R.B. 259, 260 (V.L.R.B. Oct. 3, 1985), attached hereto as Exhibit F. The other case Plaintiff cites, *In re McCort*, 162 Vt. 481 (1994), is even less compelling because it deals with the inverse fact pattern of that presented here—a termination letter that contained more allegations (“all the misconduct itemized”) than the basis for termination that the employer proffered in litigation (“for his misconduct on April 30, 1992 at the audit hearing”). *Id.* at 488 (“The Board’s interpretation of the termination letter is supported by the plain meaning of the language; dismissal was imposed ‘[a]s a result of the combined effect of [grievant’s] ... actions described above, and other actions as to which you have been counseled....’”) (citing *Merrill*, 151 Vt. at 276).

In contrast to the caselaw Plaintiff cites, the overwhelming body of caselaw to consider the admissibility of an investigative report underlying an employer’s disciplinary decision finds this evidence admissible. *See Regimbald v. Gen. Elec. Co.*, No. 2:05-CV-161, 2007 WL 128963, at *1 n.1 (D. Vt. Jan. 12, 2007) (“The investigation results are being submitted for the purpose of showing the thought processes of GE supervisors, and not for the truth of the alleged statements by Regimbald’s co-workers. The reports are, therefore, admissible and may be considered.”) (citations omitted); *Vahos v. Gen. Motors Corp.*, No. 06-cv-6783, 2008 WL 2439643, at *4 (E.D.N.Y. June 16, 2008) (investigatory report was admissible to show decision-makers’

legitimate beliefs about the plaintiff's conduct as non-hearsay and providing bases to admit report pursuant to the business records exception to hearsay).¹

Notably, until the night before trial, Plaintiff has not raised any objections to the admission of the investigative report or the Loudermill letter other than hearsay, which it raised during a January 19 meeting to discuss evidence. In response to Plaintiff's query regarding hearsay, Defendant emailed Plaintiff a dozen decisions finding investigative reports admissible as non-hearsay. Despite multiple emails and calls the following day during which counsel for Defendant raised the admissibility of the report, Plaintiff never raised these concerns. (This is to say nothing of the fact that Plaintiff had months to raise this issue before the literal day before trial, such as when Defendant first submitted the investigative report and Loudermill letters by

¹ See also *Cameron v. Community Aid for Retarded Children*, 335 F.3d 60, 65 n. 2 (2d Cir. 2003) (reports regarding employee performance not hearsay where the reports were used to establish the decisionmaker's state of mind); *Fester v. Farmer Bros. Co.*, 49 F. App'x. 785, 789 (10th Cir. 2002) (investigative report not hearsay); *Hardie v. Cotter & Co.*, 849 F.2d 1097, 1101 (8th Cir. 1998) (“[t]he documents to which [plaintiff] objects were not offered to prove the truth of the matter contained within them, but to demonstrate the state of mind of [the employer's] personnel who made the decision to discharge [plaintiff], a factor of crucial importance in wrongful discharge cases”); *Wolf v. Brown*, 128 F.3d 682, 685 (8th Cir. 1997) (“In employment discrimination cases, internal documents relied upon by the employer in making an employment decision are not hearsay as that term is defined in Fed. R. Evid. 801(c)--statements offered to prove the truth of the matters asserted. Rather, such documents are relevant and admissible because they help explain (or may help explain) the employer's conduct.”); *Jones v. Los Angeles Cmty. Coll. Dist.*, 702 F.2d 203, 205 (9th Cir. 1983) (memoranda of unsatisfactory performance admissible because employer “did not offer the documents to prove the truth of the allegations but to show that it had a legitimate basis for believing [plaintiff's] conduct warranted termination”); *Wolf v. Time Warner, Inc.*, No. 09-cv-6549, 2012 WL 4336232, at *7-8 (S.D.N.Y. Sept. 17, 2012) (holding admissible supervisor's pre-departure assessment of plaintiff for the non-hearsay purpose of establishing that supervisor legitimately believed plaintiff had a history of questionable judgment and lacked professionalism); *Barney v. Consol. Edison Co. of New York*, No. 99-cv-823, 2009 WL 6551494, at *14 (E.D.N.Y. Oct. 1, 2009) (admitting defendant's investigative report for non-hearsay purpose of proving that defendant “legitimately believed” employee acted improperly); *Zubrow v. Solvay Pharm.*, No. 03-cv-1929, 2006 WL 288381, at *6-*7 (D. Conn. Feb. 7, 2006) (exhibits containing findings and conclusions of internal and external investigation of employee were not hearsay where exhibits were not offered to prove that the statements contained therein were true, but rather were “indicative of the motivation for the decision to terminate plaintiff's employment.”); *Stevens v. Water Dist. One of Johnson Cty.*, 561 F. Supp. 2d 1224, 1233 (D. Kan. 2008) (investigative report prepared by outside law firm and offered at summary judgment not hearsay); *Carmona v. Resorts Int'l Hotel, Inc.*, 189 N.J. 354, 376-77 (2007) (citations omitted) (investigative report admissible as a non-hearsay statement relevant to show that employer terminated plaintiff's employment for non-pretexual reasons).

filing them on November 7, 2022; when Defendant filed its initial motion in limine on November 14, 2022 that Plaintiff opposed on November 14, 2022; or when Defendant sought Court intervention on January 13, 2023 for an immediate hearing to discuss, among other things, the fact the potential scope of Plaintiff's evidence, which Plaintiff opposed on January 18, 2023 and discussed the same day—all without raising its concerns about relevance, prejudice, confusion, or the like.)

Accordingly, Defendant requests that the Court deny Plaintiff's application that the investigative report and the Loudermill letter be excluded as irrelevant or because its probative value is exceeded by any cited potential prejudice, irrelevance, or confusion. To the contrary, the documents will be referred to by several witnesses already slated to testify (including three Plaintiff intends to call), they are referred to in (and indeed incorporated into) documents already stipulated into evidence, and they provide the full scope of the Defendant's legitimate business reason for terminating Plaintiff.

DATED at Montpelier, Vermont, this 23rd day of January 2023.

STATE OF VERMONT

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