

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 217-2025-CV-00480

Andrew Foley, et al.

v.

State of New Hampshire, et al.

PLAINTIFFS' MOTION FOR JUDICIAL DISCLOSURE
UNDER N.H. SUP. CT. RULE 38, CODE OF JUDICIAL CONDUCT

On September 16, 2025, InDepthNH.org published an article entitled “Ayotte’s Judicial Selection Executive Order Violates Right-to-Know Law: Legal Expert” (*see* <https://indepthnh.org/2025/09/16/ayottes-judicial-selection-executive-order-violates-right-to-know-law-legal-expert-says/> (last visited Sept. 30, 2025)). The article reported on the Governor’s Judicial Selection Committee’s refusal to release the names of any applicants for the New Hampshire Supreme Court who are sitting justices in any of the state’s lower courts, positing that a conflict of interest could arise when a judge who is presiding over a case in which the Governor is a party, or otherwise has “a particular interest,” contemporaneously asks the Governor for promotion to a higher judicial position.

Since publication of that article, undersigned counsel has received questions from several clients and members of the putative class, including all the three class representatives, that undersigned counsel is unable to answer. Most directly, each client has asked, in words to the effect: “is or has Justice St. Hilaire applied for a promotion to the Supreme Court?” While each client has expressed their underlying concerns in their own way, the gist of their concerns in the aggregate can be summarized as follows:

In New Hampshire, the Governor appoints Supreme Court justices. In our class action, Governor Ayotte is a named defendant. More importantly, as Chief Justice Broderick testified, Governor Ayotte was active behind the scenes in the effort to defund the settlement fund and undo the promises made by the State to YDC victims under the former leadership of Senator Bradley and Governor Sununu. Governor Ayotte, accordingly, has a strong interest in having the superior court vindicate her actions in orchestrating changes to the settlement process disfavoring victims.

Therefore, we are concerned that if justice St. Hilaire has harbored an interest in promotion to the Supreme Court—a position of higher status, power, and pay—and had taken any steps toward that end, whether directly or through an intermediary, or intends to do so, his perception of us and our case could have been influenced, consciously or subconsciously, by his personal desire for promotion. That promotion would depend on the favor of the named defendant, Governor Ayotte, who certainly would not be happy if the Judge found that she acted unlawfully in influencing the legislature to breach the State’s promises to the victims of abuse at the YDC.

The concerns of bias expressed by our clients are substantive and must be addressed under the Rules of Judicial Conduct. *See* N.H. Sup. Ct. Rule 38, Canon 2.4. The State Supreme Court has emphasized that a judge has a *sua sponte* duty to disclose any potential conflicts of interest, including if they might give rise to a “mere appearance” of partiality. *Blaisdell v. City of Rochester*, 135 N.H. 589, 593 (1992); *see also* *Achille v. Achille*, 167 N.H. 706, 710 (2015) (recusal required where impartiality “might reasonably be questioned” to avoid “even the appearance” of a conflict).

Here, by happenstance, this class action was filed just as the process for selection of the successors to Justice Bassett and Justice Marconi had begun. The RSA 91-A request referenced above received publicity, and the secretive response of the Governor’s office served to fuel even more speculation among the class of YDC victims. In essence, the concern comes down to whether the honorable Court harbors or harbored a wish to fill the Supreme Court seats of Justice Bassett (September 2025) or Justice Marconi (February 2026) and has taken any steps to be considered,

including by application or by communicating directly or indirectly with the Governor, her office, or the Executive Council or other intermediary means.

Therefore, the Plaintiffs, on behalf of themselves and the proposed class, respectfully request the court to disclose whether, at any time during the pendency of this class action, it has had or continues to have any aspiration to be promoted to fill the Supreme Court seats of Justice Bassett or Justice Marconi, and has taken any steps to seek the Governor's nomination, whether by application to the Judicial Selection Committee, by communication with the Governor, the Governor's office, the Executive Council, or any other intermediary, or by other means.

As with many appointments involving the political process of nominations to higher judicial office, speculation and conjecture are often rife and inaccurate. The undersigned do not purport to know what the Court's intentions and actions are or have been. It is precisely because the attorneys and clients are in the dark, in a rare situation in which the Governor is a named defendant and an interested party in current litigation, that the request for disclosure under N.H. Sup. Ct. Rule 38 must be made¹ and, respectfully, should be answered transparently by the Court to "promote public confidence in the independence, integrity and impartiality of the judiciary." N.H. Sup. Ct. Rule 38, Canon 1.2; *see also id.*, Canon 2.11. Accordingly, the Plaintiffs make the request for disclosure in good faith and confident in the Court's integrity and transparency.

CONCLUSION

Plaintiffs respectfully request the Court make the requested disclosure pursuant to N.H. Sup. Ct. Rule 38, Code of Judicial Conduct.

¹ Counsel did not take this step lightly. Counsel consulted with multiple prominent New Hampshire ethics advisors who concur that this request is proper, if not compulsory, for the benefit of the Plaintiffs and the class they propose to represent.

Plaintiffs' counsel sought Defendants' consent to this motion but counsel for Defendants did not respond.

Dated: October 1, 2025

Respectfully submitted,

**PLAINTIFFS ANDREW FOLEY,
RONALD "CHUCK" MILES, and
JANE DOE #231
(on behalf of themselves and all those
similarly situated)**

By their attorneys,

RILEE & ASSOCIATES, P.L.L.C.

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CERTIFICATE OF SERVICE

I certify that on October 1, 2025, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

/s/ David A. Vicinanza

David A. Vicinanza, Esq.