

## Robert H. Miller

Shareholder | Manchester, NH

Rob serves as Chair of the firm's Litigation Department. His active business litigation practice focuses primarily on complex commercial disputes in the federal courts, including false and deceptive trade practice, false advertising, and consumer labeling claims, commercial fraud claims, products liability, civil RICO, breach of fiduciary duty claims, and intellectual property disputes including trademark, trade dress and copyright. Rob is also one of New Hampshire's most experienced litigators on the scope and application of the New Hampshire Consumer Protection Act, NH RSA 358-A, as applied in both business against business and consumer against business cases in New Hampshire's state and federal courts. Rob is also a seasoned appellate advocate before the New Hampshire Supreme Court.

Rob also handles certain commercial real estate litigation issues, including nuisance claims, franchise disputes, and Constitutional litigation claims under 42 USC 1983, including equal protection, due process and bad faith claims brought against municipalities, boards and elected officials on behalf of developers and other commercial interests attempting to construct or expand operations. Rob chairs the firm's Land Use Litigation Group and is frequently called upon to handle contentious permitting issues before local land use boards, or to take over the litigation of these issues in the state and federal courts.

Rob is an aggressive litigator who is well-versed in electronic discovery, the collection of electronically stored information (ESI), and the latest technologies available to efficiently develop and prepare a case for trial. He has successfully tried cases to juries, judges and administrative tribunals in both the state and federal systems. That said, Rob also appreciates that in many cases, skillfully mediating a dispute prior to trial can produce the optimal business outcome while simultaneously fixing risk, and he has extensive experience preparing cases for mediation and/or arbitration and bringing cases to successful conclusion. Rob brings a creative, multi-disciplinary approach to his practice which has earned him the trusted position of outside general counsel to some of the region's largest privately held companies.

### Key Cases

- Successfully guided New Hampshire Fisher Cats to approval of sale to Diamond Baseball Holdings
- Successfully negotiated terms of new 20-year Management and Operations Agreement between our client, the New Hampshire Fisher Cats Baseball Club (Double-A Affiliate of the Toronto Blue Jays) and the City of Manchester, New Hampshire (March 2016)
- Obtained a federal court judgment of \$12,176,735.22 on behalf a group of Plaintiff-investors against three real estate developers on claims of civil racketeering under the Racketeer Influenced and Corrupt



### Contact Information

Phone: 603.627.8145

Fax: 603.641.2380

Email: [rmiller@sheehan.com](mailto:rmiller@sheehan.com)

# SHEEHAN PHINNEY

Organizations Act (RICO) arising out of the solicitation of investment in, construction of, and operation of a hotel in Cedar Rapids, Iowa. Cedar Rapids Lodge & Suites, LLC, et al. v. JFS Development, Inc. f/k/a JCS Development, Inc., 2012 WL 5269015 (N.D. Iowa 2012)

- Obtained an award of full costs and attorney's fees for the successful prosecution of a civil RICO case against three real estate developers arising out of the solicitation of investment in, construction of, and operation of a hotel in Cedar Rapids, Iowa. Cedar Rapids Lodge & Suites, LLC, et al. v. JFS Development, Inc. f/k/a JCS Development, Inc., Case No. 1:09-cv-0075-CRR (N.D. Iowa January 4, 2013)
- Obtained a judgment of \$978,891.39 against a Minnesota-based hotel management company for mismanagement of a hotel. Cedar Rapids Lodge & Suites, LLC, et al. v. JFS Development, Inc. f/k/a JCS Development, Inc., 2012 WL 718728 (N.D. Iowa 2012)
- Obtained a contempt order and discovery sanction of \$77,928.68 against a corporate executive for failure to comply with electronic discovery requirements in a federal litigation. The contempt order reimbursed our clients for the cost of the court-ordered forensic examination of the executive's home and office computers and electronic equipment following proof of the executive's noncompliance with discovery requests made in the litigation. Cedar Rapids Lodge & Suites, LLC, et al. v. JFS Development, Inc. f/k/a JCS Development, Inc., 2011 WL 4625661 (N.D. Iowa 2011)
- Obtained a significant seven-figure payment of claims from the Trustee in bankruptcy for a debtor-defendant in partial settlement of obligations owed pursuant to a judgment in Cedar Rapids Lodge & Suites, LLC, et al. v. JFS Development, Inc. f/k/a JCS Development, Inc., 2012 WL 5269015 (N.D. Iowa 2012). In re Ted D. Vosburg, Case No. 11-01390 (United States Bankruptcy Court, N.D. Iowa, July 22, 2013)
- Won a defendant's jury verdict in the United States District Court for the District of New Hampshire on behalf of Ambient Pressure Diving, Ltd., the English manufacturer of sophisticated scuba diving equipment known as the Inspiration Rebreather in an internationally monitored wrongful death products liability case. The federal jury rejected allegations by the Plaintiff that a combination of electronic and software failures of the Inspiration's patented redundant control systems caused the rebreather to stop delivering oxygen to her husband underwater, causing him to pass out due to hypoxia and drown.
- Successfully defended a multimillion dollar commercial fraud and unfair trade practices suit in the United States District Court for the District of New Hampshire by a New Hampshire-based company against our Florida-based client arising out of an unsuccessful attempted vertical integration of the two companies by a venture capital firm. The case settled at mediation for less than one percent of the initial demand.
- Successfully defended a federal trademark infringement and Consumer Protection Act case in the United States District Court against a national software company accused of misuse of trademarks and misrepresentation in advertising by settling all claims against the client on favorable terms.
- Successfully represented a well-known New York City literary agency against a major New York City publishing house and a best-selling celebrity author in a contract action for unpaid royalties and rights to subsidiary works.
- Prosecuted federal 42 USC 1983 civil rights and abuse of office claims against the Town of Salisbury, New Hampshire Board of Selectmen and Zoning Board on behalf of a local landowner attempting to build homes on a Class VI Road – obtaining all permits sought by the landowner and a significant reimbursement of attorneys fees and costs from the Town after a mediated settlement.
- Successfully represented a prominent professional sports franchise in an Internet cybersquatting dispute involving domain name misuse and trademark infringement.

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- Successfully managed the termination-for-cause of a national food service vendor and negotiated the deal terms and contract with the Club's new national food and beverage provider

## Practice Areas

- Business Litigation
- Electronic Discovery
- Intellectual Property Litigation
- Mediation & Arbitration
- Real Estate Financing
- Zoning, Planning & Land Use

## Admissions

- State of New Hampshire
- United States District Court for the District of New Hampshire
- United States Courts of Appeals for the First and Eighth Circuits
- New Hampshire Bar Association

## Education

- J.D., University of Pennsylvania Law School
- Clerkship: Chief Judge Paul J. Barbadoro, United States District Court for the District of New Hampshire
- B.A., Yale University, with distinction

## Civic Involvement

- Board of Directors, the Executive Committee, and the Strategic Planning Committee of YMCA Camp Belknap
- Alumni Interviewer, Yale University
- Past President, Yale Club of New Hampshire
- Board of Directors and the Executive Committee, Hopkinton Soccer Club, holds an "E" level coaching license from United States Soccer, and coaches the Boys' 05/06 team in the Club

## Awards

# SHEEHAN PHINNEY

- H. Clayton Louderback Instructor in Legal Writing, University of Pennsylvania Law School
- Committee on Honors and Academic Standing, past Chairman, University of Pennsylvania Law School
- The University of Pennsylvania Law Review, Senior Editor and had his interdisciplinary article Six of One is Not a Dozen of the Other, examining the psychology of jury deliberation, published in the 1998 edition of the Law Review
- Best Lawyers in America® 2019 Manchester Lawyer of the Year, Litigation - Land Use and Zoning
- Best Lawyers in America®, Commercial Litigation, Litigation - Land Use & Zoning
- New England Super Lawyer®, Business Litigation
- Litigation Star, Benchmark
- IP Star, Managing Intellectual Property Magazine - Trademarks
- Forty Under 40, New Hampshire Union Leader
- Leadership New Hampshire (2009)
- Manchester Central High School Hall of Fame in 2016.

## Publications

- Aldermen back plan to split stadium upgrade costs with Fisher Cats
- Fisher Cats look to split cost of stadium upgrades with Manchester
- Shielding Your Business from Unfair Trade Practice/Consumer Protection Claims
- Bankrupt Hotel Developer Must Face Bid For \$15M Payout
- Committee approves city stadium request
- What is a Farm? Zoning Laws Need Updating
- NH Legal Perspective: Things businesses need to know about the Consumer Protection Act
- Businesses can use it as a 'sword' and a 'shield'
- *Law School Confidential*
- *Med School Confidential* are much-beloved best sellers in their respective fields
- *The Syndicate*, tentatively entitled, is a work of fiction expected in 2017.
- His newest book *Backlund: From All-American Boy to Professional Wrestling's World Champion*, chronicles the life of his childhood hero, former World Wrestling Federation Heavyweight Champion and WWE Hall of Famer Bob Backlund. Rob's first work of fiction, tentatively entitled
- *Business School Confidential*, and *Campus Confidential* have been translated into multiple languages.