

# SHEEHAN PHINNEY

## Christopher Cole

Shareholder | Portsmouth, NH

Chris has successfully handled cases involving trade secrets related to: software and software applications; the alleged misuse of company proprietary information and predatory employee hiring; trademark and trade dress infringement in connection with the look and feel of graphical user interfaces and consumer product packaging; and numerous other business, employee and employment related disputes.

In addition, he frequently writes and speaks on the protection of intellectual property and the enforcement of employee non-competition and confidentiality agreements. He is active in shareholder and partnership disputes and commercial disputes and legislation. He also co-chairs Sheehan Phinney's Business Litigation Group.

He has represented clients in litigation in New Hampshire, New York, Texas, Illinois, California, Maine, Vermont and Massachusetts. Chris was an associate at the firm of White & Case in New York City. He has practiced with Sheehan Phinney since 1991.



### Contact Information

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## Key Cases

- With partners John-Mark Turner and Megan Carrier, Chris obtained summary judgment in favor of the Town of Pembroke in the New Hampshire federal district court against a claim by a local church that it was entitled to erect an electronic sign in the Town's historic district based on the Religious Land Use and Institutionalized Persons Act. *Signs for Jesus v. Town of Pembroke*, 230 F.Supp.3d 49 (D.N.H. 2017). The case was affirmed by the First Circuit, which rejected the RLUIPA and federal constitutional claims raised by the church, and held that the Pembroke Sign Ordinance was content-neutral and consistent with the First Amendment. *Signs for Jesus v. Town of Pembroke*, 977 F.3d 93 (1st Cir. 2020).
- With partner John-Mark Turner, Chris obtained dismissal of claims of defamation, false light invasion of privacy and other state law claims against the Maine People's Alliance, its publication the Beacon, and reporter Dan Neumann, brought by the Plaintiffs Epoch Times and one of its founders, Dana Cheng. The Maine federal district court held that the Plaintiffs were public figures for the purpose of the New York anti-SLAPP statute and for federal constitutional purposes, and that they had failed to show that their claims "had a substantial basis in law." *Cheng v. Neumann*, 2022 U.S. Dist. LEXIS 19835 (D. Maine 2022). The First Circuit affirmed, holding that the Plaintiffs had failed to state a cognizable defamation claim under federal constitutional principles. *Cheng v. Neumann*, 2022 U.S. App. LEXIS 29673 (1st Cir. 2022).
- Chris and partner Megan Carrier obtained summary judgment for Sheehan Phinney client, Southern New Hampshire University, on a claim of wrongful termination made by a former professor, who objected to an administrative decision to change the grades of two students and alleged that she was wrongfully terminated in retaliation for opposing the grade changes. Both the Superior Court and the New Hampshire Supreme Court agreed that the Plaintiff had failed to establish that her termination

# SHEEHAN PHINNEY

implicated a public policy. *Donovan v. Southern New Hampshire University*, Supreme Court Case No. 2022-0154 (N.H. November 2, 2022).

- Obtained summary judgment in the Massachusetts Federal District Court in favor of their client, in an action in which the client's former General Counsel sued alleging that the company had failed to pay over \$1,500,000 in severance benefits. *Bukuras v. Mueller Group, LLC*, 2008 WL 3978210 (D. Ma. 2008). The judgment was affirmed after briefing and argument, the judgment was affirmed on appeal by the First Circuit Court of Appeals. *Bukuras v. Mueller Group, LLC*, \_\_\_ F.3d \_\_\_ (1st Cir. 2010), 2010 WL 175085, C.A.1 (Mass.), January 20, 2010.
- The NH Supreme Court affirmed a judgment in favor of two mortgage companies and their principals, who were accused of trade secret misappropriation and misuse of supposed confidential information by a former employer. The court also reversed a very substantial post-trial award of monetary sanctions against Sheehan's clients.
- In a recent case alleging, among many other claims, the misappropriation of trade secrets, Chris and partner Bob Lucic first convinced the Court to dismiss six other common law and statutory claims against our clients. After a six-day jury trial, Chris and Bob received a defendants' verdict from the jury, which found that the our opponent had not proved the existence of a trade secret under the Uniform Trade Secrets Act.
- Successfully defended founders, key employees and a publicly-traded software company in the defense of \$1 billion trade secret, breach of fiduciary duty and contract claims in Chicago.
- Represented a condominium developer in connection with an allegation by an adjoining landowner that certain easements crucial to development of the property were invalid. He obtained summary judgment on behalf of our client, a result confirmed by the New Hampshire Supreme Court in *Cricklewood on the Bellamy Condominium Association v. Bellamy River Village LLC*, 147 N.H. 733 (2002).
- With Sheehan partner Bob Lucic, obtained summary judgment in favor of our client in a case alleging improper interference with a multi-million dollar contract relating to the transfer and sale of natural gas and the misappropriation of trade secrets.
- Obtained summary judgment on numerous counts on behalf of a major credit card processing company in a case in which two former employees had alleged breach of contract, breach of the covenant of good faith and fair dealing, fraud, and negligent misrepresentation. The case was favorably resolved prior to trial.
- Successfully represented a major petroleum distributor in an action alleging violations of the federal Petroleum Marketing Practices Act (PMPA), defeating the complaining dealer's petition for a preliminary injunction, obtaining the dismissal of the PMPA allegations and obtaining a favorable resolution prior to any formal discovery in the case.
- As appellate counsel, obtained an order reversing a local planning authority's attempt to limit a landowner's commercial use of property as a summer camp due to the complaints of neighbors about the camp's increased enrollment.
- With Sheehan partner Peter Cowan, secured an order from the federal district court which held that a multi-million dollar agreement between a developer and a municipality was invalid, a result confirmed by both the New Hampshire Supreme Court, *City of Portsmouth v. Schlesinger*, 140 N.H. 733 (1996), and the United States Court of Appeals for the First Circuit, *City of Portsmouth v. Schlesinger*, 57 F.3d 12 (1st Cir. 1995). Chris argued the case on appeal before both the New Hampshire Supreme Court and the First Circuit Court.
- With Sheehan partner David McGrath, obtained a jury verdict on behalf of a municipality accused of breaching a promise of employment to the plaintiff, who had alleged that her supervisor had promised her a full-time position. The jury determined that the supervisor did not have the authority to promise

# SHEEHAN PHINNEY

the plaintiff such a position.

## Practice Areas

- Business Litigation
- Labor & Employment Litigation
- Mediation & Arbitration
- Intellectual Property Litigation

## Admissions

- State of New Hampshire
- State of New York
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court
- Southern District of New York
- U.S. District Court, District of New Hampshire
- New York Bar Association
- New Hampshire Bar Association
- American Bar Associations

## Education

- J.D., Syracuse University College of Law, *summa cum laude*
- Law clerk to Judge Richard J. Cardamone of the United States Court of Appeals for the Second Circuit (1988 to 1989)
- B.A., University of New Hampshire, *summa cum laude*, (Phi Beta Kappa)

## Civic Involvement

- Board of Trustees, Leadership New Hampshire (2007)
- Former Member of the Board of Directors, Kids Voting New Hampshire
- Hearings Committee, New Hampshire Bar Professional Conduct Committee
- Former Board of Trustees, South Church of Portsmouth

# SHEEHAN PHINNEY

## Awards

- Chambers USA, Commercial Litigation
- 2003 “Smartest Lawyer I Know”, New Hampshire Bar Association and published in New Hampshire Magazine
- Best Lawyers in America® 2022, 2024 Manchester Lawyer of the Year, Employment Law/Individuals
- Best Lawyers in America® 2019 Manchester Lawyer of the Year, Litigation/Intellectual Property
- Best Lawyers in America® 2014 Manchester Lawyer of the Year, Litigation/Land Use & Zoning
- Best Lawyers in America® 2012 Manchester Lawyer of the Year, Litigation/Labor & Employment Law
- Best Lawyers in America®, Labor Law/Management, Litigation/Intellectual Property, Labor & Employment and Land Use & Zoning, Commercial Litigation, Employment Law/Individuals & Management
- New England Super Lawyer®, Business Litigation
- Managing IP, Patent Star and Trademark Star

## Publications

- Recent Case Concerning the Interplay of a Municipal Sign Ordinance and Federal Law Protecting Religious Assemblies from Discriminatory Land Use Rules and Decisions
- Trade Secrets and the COVID-19 Workplace
- Adopting a Proactive Employee Mobility Strategy
- NH Legal Perspective: Overview of New Federal Trade Secrets Statute
- The Elusive Trade Secret Known as a “Customer List”
- Employee Considerations in Mergers and Acquisitions and Post-Merger Enforcement of Non-Competition Agreements
- Can you Keep a Secret? Protecting Trade Secrets in a Digital Age