



# JUSTICE can't wait

## State renews access to justice effort, promises 'demonstrable results'

BY BILL ARCHAMBEAULT

Court funding may be slashed again this year, and employees and resources are already stretched thin at overcrowded courthouses, but an intensive effort is underway to improve access to justice in Massachusetts.

The courts' commitment is reflected in a two-pronged approach, with the creation of the Access to Justice Initiative last year and the recent expansion of the Access to Justice Commission.

"I really feel that we are poised at an important moment, to make real progress in this area, thanks to the commitment of the leadership within the judiciary and the bar," said the Hon. Dina E. Fein, who was appointed special advisor to the Trial Court on Access to Justice Initiatives.

The two groups hope to play complementary roles as they determine what needs to be done to ensure better access to justice in Massachusetts, particularly for people of limited means, and then delivering measurable results.

The renewed effort comes in the midst of a perfect storm: funding for the courts continues to drop, legal services are forced to turn > 6



## MBA Mock Trial marks silver anniversary

### Event inspires change in veteran attorney's courtroom demeanor

BY JENNIFER ROSINSKI

Despite 20 years of experience in securities litigation, it took two high school Mock Trial competitions for Kevin J. Diamond to realize he needed to reevaluate his approach in the courtroom.

"I found that my style should be tempered. That was probably the greatest lesson," said Diamond, a member of the Massachusetts Bar Association's Executive Management Board. "What I learned is subtleness is > 9



PHOTO BY JEFF THIEBAUTH

The Winsor School's co-captains, Amy Bridge, Maggie Yellen and Sanjana Sharma accept a \$2,500 check from the Massachusetts Bar Foundation to defray the cost of travel to the nationals competition in Philadelphia. Standing with them are, from left to right: Hon. Peter W. Agnes Jr., 2010 Mock Trial Committee Chair Mary E. Bassett, Hon. Barbara Savitt Pearson, Hon. John D. Casey and MBF President Joseph P.J. Vrabel Jr.

### Boston all-girls high school wins state championship

BY BILL ARCHAMBEAULT

The Winsor School, an all-girls high school in Boston, won the Massachusetts Bar Association's 2010 Mock Trial State Championship, advancing to the national competition in Philadelphia May 6-9.

On the twenty-fifth anniversary of the competition, the Winsor School team bested Pioneer Valley Performing Arts Charter Public School of South Hadley by a 2-1 vote after a two-hour mock trial on March 26.

The competition was held before hundreds of supporters and spectators in the Great Hall in Boston's > 8

#### REGIONAL DELEGATES

A listing of the 2010-11 nominees. > 2

#### EXCELLENCE IN THE LAW

Globe reporter will be honored at May 20 event. > 11



#### SOCIAL NETWORKING

Avoiding social network risks in the workplace. > 19



SEE PAGE 2 FOR A COMPLETE LISTING OF THIS ISSUE'S CONTENTS.

## CORRECTIONS

### Correction to regional delegates nominee list

The list of regional delegate nominees for the Massachusetts Bar Association's House of Delegates reported in the March 11 e-Journal and April issue of *Lawyers Journal* included an error. The correct list of regional delegates included as part of the MBA's 2010-11 Nominating Committee Report is:

#### REGIONAL DELEGATES:

**Region 1:** Susan A. Huettner

**Region 2:** Sara J. Trezise

**Region 3:** Miriam H. Babin

**Region 4:** Veronica J. Fenton

**Region 5:** Keith A. Minoff

**Region 6:** Walter A. Costello Jr., Stephen L. Wollman

**Region 7:** Kevin G. Diamond, Lee J. Gartenberg, Patricia A. Metzger

**Region 8:** Robert W. Harnais, Julio R. Hernando

**Region 9:** Anthony J. Benedetti, Alice B. Braunstein, Denise I. Murphy, Stephen Y. Chow

**Region 10:** Margaret J. Hurley, James G. Reardon Jr.

For information about MBA officer positions, refer to Article VI of the MBA's Bylaws. For information on committees and boards, refer to Article VII of the MBA's Bylaws. ■

## HOD meeting corrections

In the April issue, the "HOD meeting" story on page 14 (second paragraph), should have said that students in the Tiered Community Mentoring Program from Roxbury Community College and Suffolk University Law School were in attendance.

In the April issue, the "HOD meeting" story jump on page 19 (fourth paragraph from the end), the Real Estate Bar Association's representative delegate should have been identified as Edward Smith. ■

## About the MBA

### Experience the Value

Founded in 1910, the Massachusetts Bar Association is a non-profit organization that serves the legal profession and the public by promoting the administration of justice, legal education, professional excellence and respect for the law. The MBA represents a diverse group of attorneys, judges and legal professionals across the commonwealth.

## INSIDE THIS ISSUE

### JUSTICE CAN'T WAIT

State renews access to justice effort, promises "demonstrable" results  
➤ 1

### MBA MOCK TRIAL

- Boston all-girls high school wins state championship
- Event inspires change in veteran attorney's courtroom demeanor

 ➤ 1

### LEGAL NEWS

MBA PARTICIPATES IN ABA DAY IN WASHINGTON, D.C.  
➤ 3

NEWS FROM THE COURTS  
➤ 5

SJC APPOINTS 22 MEMBERS TO EXPANDED ACCESS TO JUSTICE COMMISSION  
➤ 7

### BAR NEWS

MOCK TRIAL COMMITTEE THANKS SPONSORS, VOLUNTEERS  
➤ 9

SECTION SPOTLIGHT  
➤ 10

### VOLUNTEER SPOTLIGHT

Kerwin's work on pro bono project helps those in financial distress  
➤ 11

EVENT TO HONOR LONGTIME *GLOBE* REPORTER ELEMMENT  
➤ 11

RICHARD CAMPBELL DRIVES HOME SOCIAL HOSTS' RESPONSIBILITY  
➤ 11

BAR BULLETIN BOARD  
➤ 12

MBA HOSTS NETWORKING EVENT AT KINGS BOWLING AND BILLIARDS  
➤ 13

UPCOMING VOLUNTEER OPPORTUNITIES  
➤ 13

CALENDAR OF EVENTS  
➤ 15

### FOR YOUR PRACTICE

#### MIND YOUR OWN BUSINESS

Should lawyers take credit cards?  
➤ 16

AVOIDING SOCIAL NETWORK RISKS IN THE WORKPLACE  
➤ 19

MASSACHUSETTS  
**LAWYERS JOURNAL**

MASSACHUSETTS  
**LAWYERS JOURNAL**

Volume 17 / No. 8 / May 2010

**EDITOR:** Bill Archambeault

**CONTRIBUTING WRITERS:** Jennifer Rosinski, Kelsey Sadoff

**SENIOR DESIGN MANAGER:** N. Elyse Lindahl

**DIRECTOR OF MEDIA AND COMMUNICATIONS:** Tricia M. Oliver

**ACTING EXECUTIVE DIRECTOR:** Martin W. Healy, Esq.

**GENERAL COUNSEL AND LEGAL EDITOR:** Martin W. Healy, Esq.

**PRESIDENT:** Valerie A. Yarashus, Esq.

**PRESIDENT-ELECT:** Denise Squillante, Esq.

**VICE PRESIDENT:** Richard P. Campbell, Esq.

**VICE PRESIDENT:** Douglas K. Sheff, Esq.

**TREASURER:** Robert L. Holloway Jr., Esq.

**SECRETARY:** Jeffrey N. Catalano, Esq.

© 2010 Massachusetts Bar Association

Materials may not be reproduced without permission.

*Lawyers Journal* (ISSN 1524-1823) is published 12 times a year, by the Massachusetts Bar Association, 20 West St, Boston, MA 02111-1204. Periodicals postage paid at Boston, MA 02205. Postmaster: send address changes to *Lawyers Journal*, 20 West St., Boston, MA 02111-1204.

Subscription rate for members is \$20, which is included in the dues. U.S. subscription rate to non-members is \$30. Single copies are \$3.

Telephone numbers: editorial (617) 338-0676; general MBA (617) 338-0500.

Email address: lawjournal@massbar.org.

Readers are invited to express their opinions as letters to the editor and op-ed commentaries. All submissions are subject to editing for length and content. Submit letters and commentaries to: Editor, *Lawyers Journal*, at the address given above or via e-mail to lawjournal@massbar.org, or fax to (617) 542-7947.



A publication of the Massachusetts Bar Association

**THE WARREN GROUP**  
Real Estate & Financial Information Since 1872

**TIMOTHY M. WARREN**, Chairman

**TIMOTHY M. WARREN JR.**, CEO and Publisher

**DAVID B. LOVINS**, President and COO

**VINCENT MICHAEL VALVO**, Group Publisher & Editor-in-Chief

#### CUSTOM PUBLICATIONS

**EDITOR:** Christina P. O'Neill

**ASSOCIATE EDITOR:** Cassidy Norton

#### CREATIVE SERVICES

**CREATIVE DIRECTOR:** John Bottini

**SENIOR GRAPHIC DESIGNER:** Scott Ellison

**GRAPHIC DESIGNER:** Will Samatis

**GRAPHIC DESIGNER:** Marcy Mahoney

**GRAPHIC DESIGNER:** Nate Silva

**DESIGN INTERN:** Patrick Feger

#### PUBLISHING GROUP SALES & MARKETING

**PUBLICATIONS GROUP SALES MANAGER:** George Chateaufort

#### NEWSPAPERS

**ADVERTISING ACCOUNT MANAGER:** Mark J. Schultz

**ADVERTISING, MARKETING & EVENTS COORDINATOR:**

Emily Torres

#### EVENTS

**EVENTS MANAGER:** Sarah Cunningham

**TELEPHONE NUMBERS:**

**ADVERTISING** (617) 896-5344

**EDITORIAL** (617) 896-5353

**EVENTS** (617) 338-5314

For **advertising opportunities** contact Mark Schultz.

(617) 896-5323 or e-mail  
mschultz@thewarrengroup.com



**LEGAL NEWS**

**MBA participates in ABA Day in Washington, D.C.**



PHOTO BY LEE CONSTANTINE

From left to right: BBA President Jack Regan, ABA Board of Governors member Lauren Stiller Rikleen, BBA President-elect Don Federico, U.S. Rep. James McGovern (D-MA), U.S. Rep. William Delahunt (D-MA) and MBA President-elect Denise Squillante.



PHOTO COURTESY OF THE BBA

From left to right: Boston Bar Association President-elect Don Federico, American Bar Association Board of Governors member Lauren Stiller Rikleen, BBA President Jack Regan, U.S. Senator Scott Brown (R-MA) and MBA President-elect Denise Squillante.

Massachusetts Bar Association President-elect Denise Squillante, along with Jack Regan and Don Federico from the Boston Bar Association, and Lauren Stiller Rikleen from the American Bar Association Board of Governors, participated in American Bar Association Day in Washington, D.C. on April 22.

The ABA hosts the annual gathering, which attracts bar associations throughout the country to advocate on issues of common interest. This year's focus was funding and reauthorization for the Legal Services Corp., the Paycheck Fairness Act and the Civil Rights Tax Relief Act. ■



PHOTO BY LEE CONSTANTINE

From left to right: U.S. Rep. Richard Neal (D-MA), MBA President-elect Denise Squillante, ABA Board of Governors member Lauren Stiller Rikleen, BBA President-elect Don Federico and BBA President Jack Regan.



PHOTO COURTESY OF DENISE SQUILLANTE

From left to right: MBA President-elect Denise Squillante with U.S. Rep. John Lewis (D-GA) at the ABA Day Welcome Dinner held at the Canadian Embassy on April 20. Lewis, a noted civil rights leader, was one of four honored with an ABA Congressional Award for his efforts to improve the American justice system.

**NORTH vs. SOUTH**



**WE COULD HAVE SETTLED IT!**

DENNIS J. CALCAGNO, ESQ.  
617.328.8888



WWW.NORTHEASTMEDIATION.COM  
Case Evaluation | Full Neutral Panel

ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION •

# FORECLOSURE SPECIALIST

WE SERVE ANYTHING,  
ANYWHERE

STATEWIDE • NATIONWIDE • WORLDWIDE

# 1-800 PROCESS

**"If we don't serve it,  
you don't pay"<sup>®</sup>**  
Only in the U.S.A.

(800) 672-1952 Fax: (800) 236-2092

[www.served.com](http://www.served.com)/email:info@served.com

## INTERNATIONAL

**Call for cost 1-800-PROCESS**

**ANY STATE • ANY NATION • ANYWHERE**

ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION •

ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION • ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION • ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION •

ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION • ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION • ANY STATE • ANY NATION • ANY WHERE • ANY STATE • ANY NATION •

**LEGALNEWS**

# News from the Courts

**To review Massachusetts court guidelines and reports, go to [mass.gov/courts](http://mass.gov/courts)**

## Probate and Family Court announces special procedures for cases involving children in Hampshire Division

The Probate and Family Court Department announces the implementation of Standing Order 1-10 regarding a pilot program in the Hampshire Division involving children. The order will require attorneys, parents and caregivers in divorce, separate support, paternity, support/custody/visitation, modification, contempt, guardianship and termination of parental rights cases in the Hampshire Division to participate in a child-focused resolution process.

The full text of Standing Order 1-10 is available online at [www.mass.gov/courts/courtsandjudges/courts/probate-andfamilycourt](http://www.mass.gov/courts/courtsandjudges/courts/probate-andfamilycourt). The standing order is effective May 5. ■

## Boston Municipal Court to offer limited assistance representation

Chief Justice for Administration & Management Robert A. Mulligan has approved a Standing Order requested by the Boston Municipal Court to introduce limited assistance representation (LAR) for civil matters. Notice of the standing order will become effective May 3.

“Expansion of limited assistance representation into a new court department represents significant progress and it reflects the value of launching a focused Trial Court initiative on access to justice,” said Mulligan. “I commend the Boston Municipal Court and I expect that the momentum will continue to grow through ongoing collaboration and coordination between the Access to Justice Commission and the Trial Court Access to Justice Initiative.”

Boston Municipal Court Chief Justice Charles Johnson said, “The Boston Municipal Court Department is pleased to positively respond to the increasing number of self-represented litigants appearing in our various courts. LAR enhances access to justice by providing litigants with the opportunity for selected representation without the burden of excessive expense and by releasing lawyers from obligatory lawyer-client relationships when clients no longer desire or can afford their services.”

In May 2009, based on the success of the LAR pilot project in the Probate and Family Court Department, the Supreme Judicial Court issued an order approving the use of LAR in other court departments. The Probate and Family Court Department subsequently introduced

LAR across the state.

Limited assistance representation is one of the four priority projects identified in the Interim Report on Access to Justice Initiatives in the Trial Court issued in January. LAR permits an attorney, either for payment or pro bono, to assist a litigant on a limited basis without undertaking full representation of the client on all issues and events related to the client’s case. Protocols and procedures for the use of LAR are established by each court department. ■

.....  
**For more information on the state’s access to justice efforts, see story on page 1.**

## Probate and Family Court adopts Scheduling Practices and Procedures

The Probate and Family Court Scheduling Practices and Procedures, which were approved by Chief Justice Paula M. Carey, became effective in all divisions of the Probate and Family Court on April 15, the court’s Administrative Office announced.

These practices and procedures were developed by Carey based on a report from the Probate and Family Court Scheduling Task Force. In response to concerns expressed by the legal community about certain aspects of case scheduling and, more particularly, about the lack of uniformity in the manner in which cases, motions, etc., are scheduled in the various divisions within the Probate and Family Court Department, Carey created a task force to review such matters and to provide her with recommendations for suggested changes.

The task force convened a total of five regional meetings across the state to meet with members of the bar and others to listen to their concerns and hear their ideas as to how scheduling matters in the Probate and Family Court might be improved. The practices and procedures, which shall supersede any local rules, practices or promulgated procedures where there is a conflict, include the following:

- Re-statement of the Standing Order 1-06 requirement to review domestic relations and equity cases for service of process;
- Re-statement of the Standing Order 1-06 requirement of mandatory next event scheduling;
- Choosing of motion dates by the parties, not the court, unless general session limits are requested by the first justice and approved by the chief justice. An individual session limitation may also be approved by the first justice;
- Scheduling pre-trial conferences at staggered times;
- Procedure for continuances, including emphasis on a limit of one administrative allowance of a joint request to continue, unless good cause is shown;
- Scheduling hearings on agreements

or uncontested matters where final judgment is sought within 30 days of filing; and

- Encouragement of the use of teleconferences.

Modifications to Probate and Family Court Scheduling Practices and Procedures were made for the Barnstable, Bristol and Middlesex divisions of the Probate and Family Court effective April 15.

At the request of certain first justices, Carey has determined that the following divisions of the Probate and Family Court will be permitted to modify their motion practice:

- Bristol Division (New Bedford) — Scheduled motions in New Bedford shall be limited to 55 per motion session. Attorneys and parties shall be permitted to mail in or hand deliver their motion and chose their own dates, on a motion day of the assigned case judge, rather than the court choosing a motion date. If the date fills, the parties or counsel will be notified and they will be required to choose another date for their hearing. This exemption was granted to ensure that no fire code is violated in New Bedford.
- Barnstable Division — Motions may be scheduled on Monday, Thursday and Friday mornings beginning May 3. Motions may be scheduled on Wednesdays only if the parties have a scheduled pre-trial conference that day. There will be no limit to the number of motions scheduled on a particular day, except in the event of vacation or other anomaly circumstance. Attorneys and parties may send their motions in to the court, with proper notice, without having to call the court in advance.
- Middlesex Division — Scheduled motions shall be limited to 55 per motion session. Attorneys and parties shall be permitted to mail in or hand deliver their motion and chose their own dates, on a motion day of the assigned case judge, rather than the court choosing a motion date. If the date fills, the parties or counsel will be notified and they will be required to choose another date for their hearing. This exemption was granted in light of the significant shortage of probation officers in Middlesex County, the fact that four days a week two motion sessions are

running, and at times three court locations operate on one day. ■

## Mass. Trial Court issues policy on juror use of personal communication devices

Chief Justice for Administration & Management Robert A. Mulligan issued a policy on March 25 regarding the use of cell phones and other personal communication devices by jurors in court-houses and courtrooms. The new policy is intended to complement the existing security policy on clothing, cameras and cell phones introduced Jan. 9, 2006.

Judges shall instruct jurors selected to serve on a jury that, until their jury service is concluded, that they shall not:

- discuss the case with others, including other jurors, except as otherwise authorized by the court;
- read or listen to any news reports about the case;
- use a computer, cellular phone or other electronic device with communication capabilities, including access to the Internet, while in attendance at trial or during jury deliberations. These devices may be used during lunch breaks, but may not be used to obtain or disclose information about, or relevant to, the case;
- use a computer, cellular phone or other electronic device with communication capabilities, including access to the Internet, or any other methods to obtain or disclose information about, or relevant to, the case when they are not in court.

Departmental chief justices may impose a more restrictive policy, including the collection of cell phones and other communication devices while the jury is deliberating. However, for a variety of reasons, cell phones and other communication devices shall not be collected and stored by associate court officers working at the front door screening station.

The judge who greets the jurors in the pool each morning pursuant to G.L. c. 234A, sec. 65, shall inform them about this policy.

Departmental chief justices shall work to develop and promulgate whatever procedures are necessary to ensure compliance in their department. ■

**MBA ON DEMAND**  
 An innovative approach to Continuing Legal Education and other association offerings

Unable to attend an MBA conference, seminar or roundtable? Watch a recorded MBA CLE presentation from the comfort of your home or office. Real-time webcasts coming soon.

**MBA**  
 Your Partner in Profession

**FEATURED AT WWW.MASSBAR.ORG**

## LEGAL NEWS ACCESS TO JUSTICE



HON. DINA E. FEIN



SANDRA E. LUNDY



HON. RALPH D. GANTS

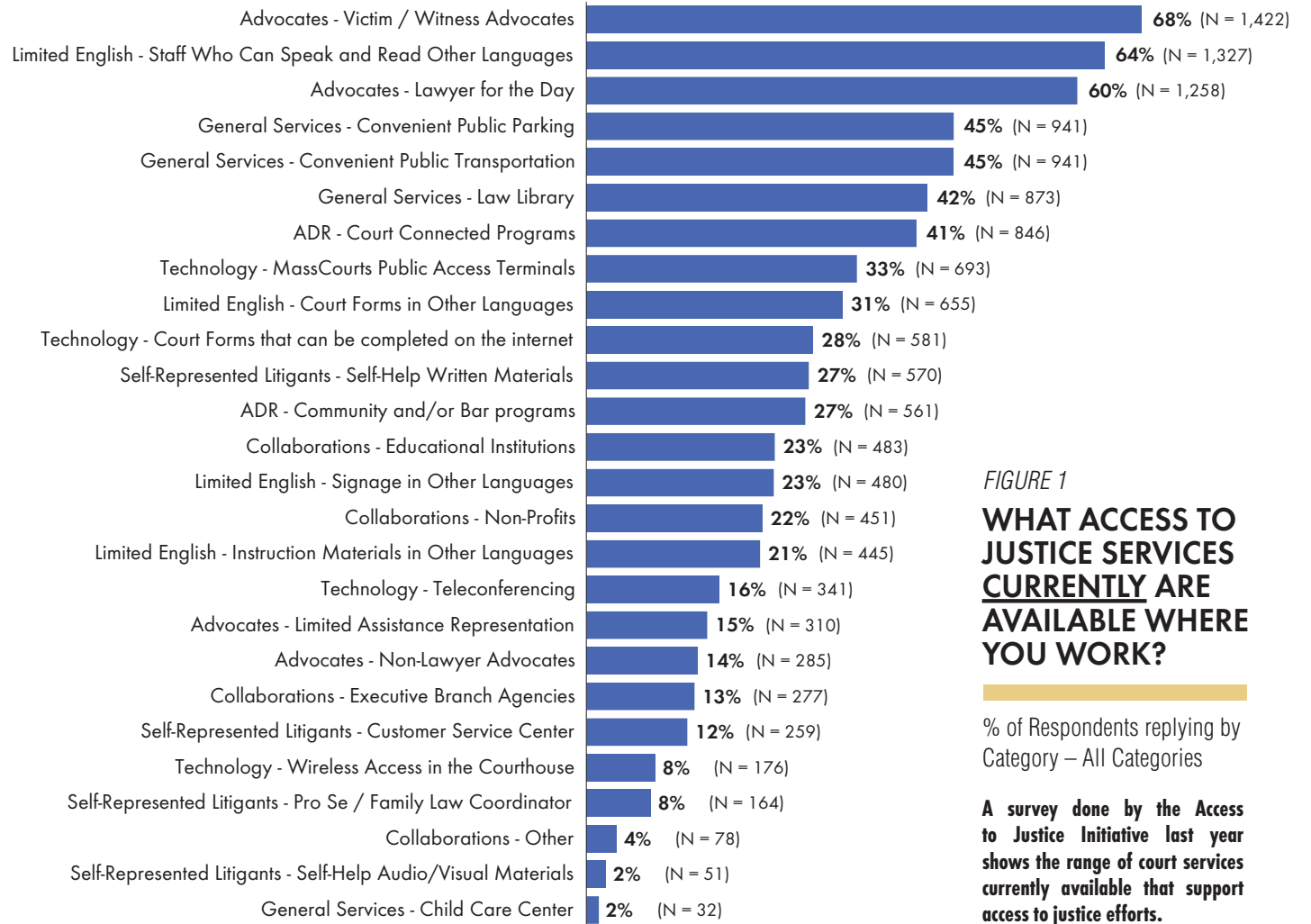


FIGURE 1

### WHAT ACCESS TO JUSTICE SERVICES CURRENTLY ARE AVAILABLE WHERE YOU WORK?

% of Respondents replying by Category – All Categories

A survey done by the Access to Justice Initiative last year shows the range of court services currently available that support access to justice efforts.

#### ACCESS TO JUSTICE

Continued from page 1

away more people than ever, and people bruised by the recession are increasingly turning to the courts for help securing restraining orders, fighting for unemploy-

ment benefits and staving off foreclosure or eviction.

“The reality is that our system of justice has not been fully accessible, historically, to certain segments of our population, including those of modest means, the disabled and people with limited English language proficiency,” Fein said. “The goal and purpose of the Trial Court’s Access to Justice Initiative is to enhance access for those underserved groups.”

#### A NEW ASSIGNMENT: THE ACCESS TO JUSTICE INITIATIVE

Fein, who also sits on the Access to Justice Commission and is first justice of the Western Division Housing Court in Springfield, said the Access to Justice Initiative was created last year to improve access efforts across the Trial Courts.

Its first large undertaking was surveying Trial Court Department judges and staff last year, which yielded more than 2,000 responses that was the basis for an interim report that the Access to Justice Initiative presented to SJC Chief Justice Margaret H. Marshall and Chief Justice for Administration and Management Robert A. Mulligan earlier this year.

Sandra E. Lundy, the deputy advisor for the Access to Justice Initiative, said the data “helped us figure out where to go from here.”

The survey responses indicate the wide range of services that court employees feel are lacking, from technology improvements to multilingual staff and documents to child care centers and ample parking at courthouses. It also tracked what services are currently available in which courts.

“The whole purpose of the Initiative is to bring about results, demonstrable results,” said Lundy, who is also an SJC senior administrative attorney. “There are a lot of good programs in the Trial Court, but not a lot of people know what’s happening in other departments.”

For example, one court may have developed multilingual forms that would be useful for other courts to adapt and adopt, she said. Some of the fixes, like expanding Limited Assistance Representation programs and providing simpler documents in multiple languages will be relatively easy and inexpensive.

“Real improvements can be achieved, even given the challenging fiscal circumstances of the courts,” Fein said. “Of course, with additional resources, certain initiatives would be more readily available. If we had additional resources in our Office of Interpreter Services, for example, we might be able to accomplish more quickly our goal of creating multilingual forms for frequently used languages. Our lack of resources may affect the pace at which we’re able to achieve certain milestones, but it won’t keep us from moving forward. I am certain that we will achieve real improvements in short order, because of enormous support from people within the courts and outside the system, and because our leadership is committed to making these advances.”

Other low-cost options being discussed include using college students to help with translation services and training staff how to provide basic help in filling out forms without crossing the line and providing legal advice.

Other wish-list items like opening daycare centers at courthouses so poor, working parents can make court appointments more easily came as a bit of a surprise, Lundy said, and illustrates the various ways that Massachusetts citizens find the justice system difficult to use.

“There’s so much work to be done that we don’t know what the outer limits of it are,” she said. “People should be able to go to court and not feel that the process is a mystery; they should be able to feel that they were well-served and that there wasn’t an artificial barrier placed in their way.”

It’s been made clear that the Initiative is meant to be more than just a fact-finding survey, regardless

## SARAH E. WORLEY, CONFLICT RESOLUTION, P.C.



Sarah E. Worley

### Where Conflict Meets Resolution

14 Beacon Street, Suite 610  
Boston,  
Massachusetts 02108

45 Bristol Drive  
South Easton,  
Massachusetts 02375

617-933-1355

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

**ACCESS TO JUSTICE**

*Continued from page 6*

of whether money is available to make substantial investments or not.

“Chief Justice Mulligan was very clear about that: he wants results and he wants solid results,” Lundy said, noting that he and the individual Trial Court chief justices are all invested in the effort. “They have all expressed a real interest to get something going.”

**BUSINESS, COMMUNITY LEADERS ADDED TO ACCESS TO JUSTICE COMMISSION**

On a broader spectrum, the newly appointed Access to Justice Commission has added members from the business community and nonprofit organizations to help ensure that its mission isn’t limited to just advocates from the courts. (For a complete list of Access to Justice Commission members, see sidebar.)

SJC Associate Justice Ralph D. Gants is co-chairing the commission with attorney David W. Rosenberg, of Rosenberg, Schapiro, Englander, Chicoine and Leggett PC. The first meeting was held in March, and a second meeting is being held this month, when six working groups will present their two- to three-year game plan and goals.

“We should not shy away from doing what needs to be done to get people help,” Gants said. “Within five years, we want there to be concrete accomplishments.”

Those results will be measured, for example, by whether a single mother who speaks little English can get a restraining order quickly, or whether a poor family can get help navigating the court system as it fights foreclosure proceedings.

“Whether people are better able to present their claims and achieve results will be the measure of our success,” said Gants, who likened the mission of improving access to justice to providing triage because people need varying levels of aid. Some won’t get a fair chance without full legal counsel, he said; some might need only some legal assistance, and still others would have their needs served if the state could provide better access to information.

“We’re looking to strengthen all three

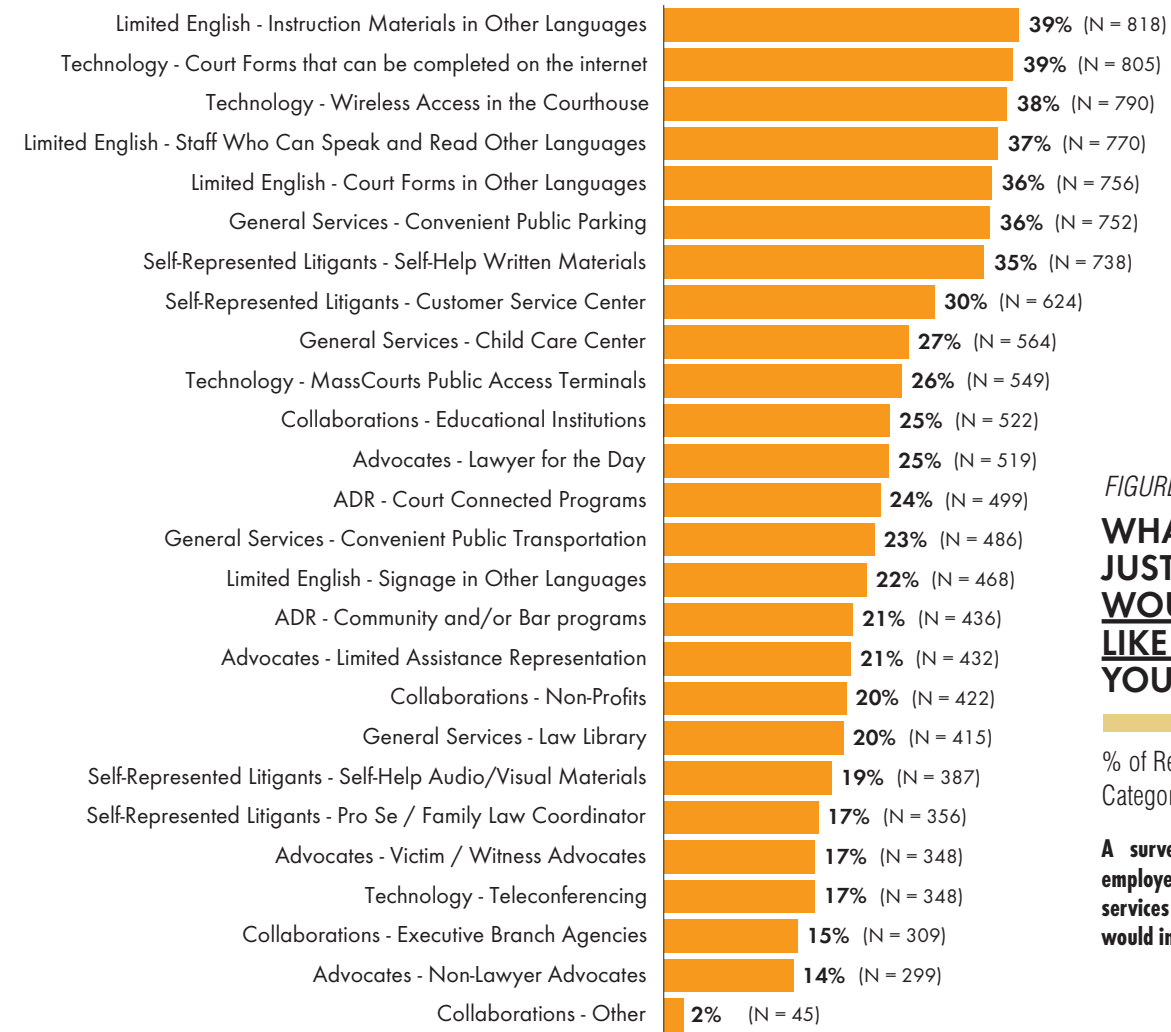


FIGURE 2

**WHAT ACCESS TO JUSTICE SERVICES WOULD YOU MOST LIKE TO SEE WHERE YOU WORK?**

% of Respondents replying by Category – All Categories

A survey of nearly 2,000 court employees indicates the types of services that court employees say would improve access to justice.

prongs. If we can do that, we’ll be helping a lot of people.”

While the Access to Justice Initiative has a more direct line to court employees, the commission can appeal more directly to members of the bar, public and Legislature, Gants said, noting that there may occasionally be overlap between the two groups. “But this is not a contest. We’re all working together. We’re all trying to get to the same finish line.”

Gants said the courts need to improve their Web sites, for example, expand pro bono and “low bono” services, and tap into law students as a resource. The commission is also looking at building partnerships with businesses and community groups. For example, Sue Marsh, the executive director at Rosie’s Place, a Boston shelter for homeless and dis-

advantaged women, could provide legal information onsite to help its clients get the legal process started.

“Obviously, money helps, but we can’t wait for there to be money. Nor can we reasonably expect IOLTA funds to recover,” he said. “Folks who need us don’t have the luxury of waiting until we’re in better times.”

The Massachusetts Bar Association, which is represented on the commission by James T. Van Buren, the MBA’s Access to Justice Section Council co-chair, has an ongoing commitment to access to justice initiatives.

“In Massachusetts, we are fortunate to have such distinguished judges and attorneys leading this critical effort. Through their superb work, they are providing us with innovative solutions for

the future,” said MBA President Valerie A. Yarashus.

Including members on the commission like Brent L. Henry, vice president and general counsel for Partners Health Care System, and Sandra L. Jesse, chief legal officer and executive vice president of Blue Cross and Blue Shield of Massachusetts Inc. could help the courts find grants and make the case for adequate court funding to legislators.

“The need is great. It’s daunting, but we’ve got great people, and we’ve made tremendous strides. The commitment’s there,” Gants said, noting that Massachusetts courts are probably doing a better job addressing access to justice issues than most states because of the support of the judiciary and the bar. “But we still have miles to go.” ■

**SJC appoints 22 members to expanded Access to Justice Commission**

The Supreme Judicial Court announced the appointment of 22 members to the Access to Justice Commission, having reconstituted the commission following its initial five-year term. The commission is co-chaired by the Hon. Ralph D. Gants, associate justice of the Supreme Judicial Court, and attorney David W. Rosenberg, of Rosenberg, Schapiro, Englander, Chicoine and Leggett PC. Its first meeting was held in late March.

The former commission was chaired by retired Supreme Judicial Court Chief Justice Herbert P. Wilkins.

Chief Justice Margaret H. Marshall said, “The Access to Justice Commission will provide leadership, vision and coordination to all entities involved in providing and expanding access to justice, especially to those unable to afford counsel. Both the legal community and the community at large have a responsibility to achieve equal justice for all persons in the commonwealth. The membership on the commission is therefore being expanded to include members of the business, medical and technological communities, and the executive branch. Other members will

represent the judiciary, law schools, bar associations and bar foundations, and legal services and clients.”

In addition to Gants and Rosenberg, the members appointed to serve three-year terms on a staggered basis are:

**Navjeet K. Bal, Esq.**, commissioner, Massachusetts Department of Revenue, and former chair of the Legal Advocacy and Resource Center;

**Jacquelynne J. Bowman, Esq.**, deputy director, Greater Boston Legal Services Inc., Eastern Legal Services Region representative and a member of the former commission;

**Hon. Cynthia J. Cohen**, associate justice, Appeals Court, and chair of the former SJC Steering Committee on Self-Represented Litigants;

**Hon. Pamela M. Dashiell**, justice of Boston Municipal Court;

**Anthony M. Doniger, Esq.**, Sugarman, Rogers, Barshak & Cohen PC, Boston, former president of the Boston Bar Association, representative of the Boston Bar Association/Boston Bar Foundation, and a member of the former commission;

**Russell Engler, Esq.**, professor of law and director of Clinical Programs, New England School of Law;

**Hon. Dina E. Fein**, special advisor to the Trial Court on Access to Justice Initiatives, first justice of the Western Division Housing Court, Springfield, and a member of the former commission;

**Joel H. Feldman, Esq.**, Heisler, Feldman, McCormick & Garrow PC, Springfield, Central/Western Legal Services Region representative;

**Robert B. Foster, Esq.**, Rackemann, Sawyer & Brewster PC, Boston, representative of Massachusetts Legal Assistance Corp., and a member of the former commission;

**Hon. Kathryn E. Hand**, justice, Region 1, Southeast, District Court Department;

**Brent L. Henry, Esq.**, vice president and general counsel, Partners Health Care System;

**Sandra L. Jesse, Esq.**, chief legal officer and executive vice president, Blue Cross and Blue Shield of Massachusetts Inc., former president, Boston Bar Foundation;

**Ann Bailey Leavenworth**, office administrator, Holy Family Catholic Church, Springfield, client representative to the commission, and former commission member;

**Sue Marsh**, executive director of Rosie’s Place and a member of the former commission;

**Richard McMahon, Esq.**, executive director, South Coastal Counties Legal Services Inc., Southeast Legal Services Region representative, and a member of the former commission;

**Hon. Angela M. Ordoñez**, associate justice, Probate and Family Court, Norfolk Division, Canton;

**Hon. Steven D. Pierce**, chief justice, Housing Court Department;

**Allan G. Rodgers, Esq.**, executive director, Massachusetts Law Reform Institute;

**Jay T. Thiel, Esq.**, Northeast Legal Services Region representative;

**James T. Van Buren, Esq.**, representative of the Massachusetts Bar Association/Massachusetts Bar Foundation, and a member of the former commission. ■

**BARNEWS** 2010 MOCK TRIAL STATE CHAMPIONSHIP

# Winsor School advances to national contest



PHOTOS BY JEFF THIEBAUTH

The Winsor School's Maggie Yellen questions a witness at the Mock Trial state championship competition on March 26 in Faneuil Hall's Great Hall.

## MOCK TRIAL STATE CHAMPIONSHIP

Continued from page 1

Faneuil Hall, with three Massachusetts judges presiding over the trial and selecting the champion.

"The voting was close, about as close as it can get," said Massachusetts Superior Court Judge Peter W. Agnes Jr., the presiding judge.

Massachusetts District Court Judge Barbara Savitt Pearson, a scoring judge, praised both teams, which advanced past the more than 100 other schools that competed this year.

"If in my courtroom every day I had the pleasure of having lawyers as good as you, my job would be a lot easier," she said. "This is one of my favorite activities of the year. Your performances really were stellar. This really was a very difficult case."

This year's case involved a parent who had filed a civil suit after losing thousands of dollars investing in an aggressive hedge fund to pay for her child's college. The plaintiff argued that she had been manipulated by her financial advisor into choosing an extremely risky hedge fund, while the financial advisor and her brokerage firm claimed the parent had demanded high returns quickly despite being warned of the risk.

In Mock Trial competition, schools must be prepared to try both sides. At the state championship, Winsor represented the plaintiff and Pioneer Valley represented the defendant. In addition to announcing which school had performed the best, the judges also said that



The Winsor School's Maggie Yellen, left, and Amy Bridge listen to Pioneer Valley's team examine a witness.

they would have issued a mixed verdict for the plaintiff.

Massachusetts Probate and Family Court Judge John D. Casey, a scoring judge, agreed that the teams' performances were particularly impressive given the complexity of the case.

"We were all so impressed with the detail and how you handled yourselves," he said. "This takes a lot of courage, to stand up in front of your peers and families and strangers, to think on your feet, to think of objections. The reason you're the best of the best is your preparation."

Casey also praised the students for

deftly answering questions that Agnes posed to them during their closing arguments, then picking up where they had left off.

"Both sides did an excellent job handling it," Casey said.

Before announcing the winner, Agnes noted how pleased he was by the professional decorum maintained by both teams, even under aggressive cross examinations and objections. He said he was dismayed when President Barack Obama was interrupted by Rep. Joseph Wilson shout of "You lie!" during Obama's speech on health care to Con-

gress in September.

"So it's wonderful to see the professionalism you exhibited here today," Agnes said. He also picked up on Pearson's comments about the complexity of the background case material the students had to learn.

"I don't think I've ever seen a Mock Trial where student lawyers knew their material better than they did in this case," he said. "The student lawyers in this competition did an excellent job."

Students who fluidly handled case facts relating to investments and returns during the trial admitted afterward that this year's material had not been the easiest to master.

Pioneer Valley senior Joseph Kendrick said that while this year's case didn't involve as much human interest as others during his four years on the team, this case was the most interesting legally.

"There was a lot of extra research done [this year because of the material], more than we usually do," he said.

Pioneer Valley junior Kimaya Diggs said, "This case was harder to understand than I expected, but the intensity level [of the competition] was what I expected."

While Pioneer Valley has reached the state finals before, this was Winsor's first appearance.

"Every year, it's your hope to get this far," said Amy Bridge, a Winsor senior and co-captain.

Bridge said she was excited to get a completely new case to learn for



**MOCK TRIAL STATE CHAMPIONSHIP**

*Continued from page 8*

the national competition.

“At the beginning of every year, there’s so much information you have to know,” she said. “It’s a whole year of practice, and everyone gets more comfortable with it.”

Winsor co-captain Sanjana Sharma, also a senior, pointed out that this year’s team included eight freshmen. Though many of them didn’t perform during the competition, “I don’t think it can be overstated how much they help,” she said. “They help us see [the competition] with new eyes.”

Maggie Yellen, also a Winsor co-captain and senior, said she too was looking forward to getting the new case. While team members are expected to start preparing by reviewing the rules of evidence, she said that excitement gets the best of them and they skip ahead to read the case’s affidavits.

“I’m thrilled [about advancing to nationals],” Yellen said. “I love being able to spend more time with this team.”

Winsor attorney-coach Joshua McGuire, a Mock Trial Committee member and a former student champion, said it’s “a terrific accomplishment” to be the first championship won by a private all-girl’s school.

“They were just a fantastic, dedicated group,” he said. “I’m particularly pleased for the seniors, who wanted to break through and advance.”

Having so many underclassmen on this year’s team “is a very good sign for the future of the program,” he said.

Before presenting a \$2,500 check from the Massachusetts Bar Foundation to the Winsor School to help cover their



**Pioneer Valley Performing Arts Charter Public School presenting its case.**

travel costs for the national competition, MBF President Joseph P.J. Vrabel Jr. told both teams that his college students had nothing on them.

“I can’t tell you how proud I am, and I hope all of you go to law school,” he said.

MBA President Valerie A. Yarashus told the students that the MBA hopes they had found the competition a rewarding opportunity, “something that

has brought about a greater appreciation of yourselves, your teammates, the law, court proceedings and the American judicial system,” she said. “I’m confident that this experience will serve you well as you plan your futures in college and as adult citizens in our great democracy.”

The Mock Trial Program is administered by the MBA, and made possible by the international law firm of Brown Rudnick through its Center for the Pub-

lic Interest in Boston, which has contributed \$25,000 to the program every year since 1998.

“We are indebted to the generosity of Brown Rudnick, who have committed unwavering, substantial financial support over the years to the MBA’s Mock Trial Program,” Yarashus said. ■

.....  
**Jennifer Rosinski and Chelsea Hildreth contributed to this story.**

**Mock Trial Committee thanks sponsors, volunteers**

**The MBA and Mock Trial Committee thank Brown Rudnick’s Center for the Public Interest, the Massachusetts Bar Foundation and the Administrative Office of the Trial Court for their continued support. The Mock Trial Committee would especially like to thank the attorneys and judges who volunteered as judges and attorney coaches in the 2010 Statewide High School Mock Trial Program. Now in its twentieth year, the program was again a success due to the dedication of the members listed below. Thank you.**

- Alan H. Aaron
- Norman G. Abrahamson
- Gary Abrams
- Hon. Peter W. Agnes Jr.
- Kristen L. Almquist
- Susan G. Anderson
- James E. Angell
- Christine D. Anthony
- Lori A. Atkins
- Martha R. Bagley
- David G. Baker
- Nancy J. Baratta
- James H. Barnhill
- Paul David Barry
- Mary E. Bassett
- Steven E. Bauman
- Megan Bayer
- Christopher T. Beck
- Ilene B. Belinsky
- John Brenna Bjorlie
- Sheryl M. Bourbeau
- Robert H. Bowen
- Elizabeth Brady-Murillo
- James Breslauer
- Robert James Brickley
- Michael D. Broderick
- Karen Buckley
- Jesse Burch
- John F. Burke Jr.
- John Burke
- Nathan A. Byrnes
- Angelo A. Calagione
- Arthur J. Carakatsane
- Robert H. Carp
- Thomas C. Carrigan
- Hon. John D. Casey
- Daniel F. Cashman
- Tierney M. Chadwick
- Jason Y. Chan
- Gabriel Cheong

- Barry Collins
- Aaron E. Connor
- Brian Aldo Consigli
- Timothy Patrick Corcoran
- Devon McKenzie Cormier
- Matthew J. Costa
- Michael L. Coyne
- Leslie A. Curley
- Michael F. Darche
- N. Lee Darst
- Adam S. Dash
- Christine G. DeBernardis
- Peter G. DeGelleke
- Diane M. DeGiacomo
- Kevin P. DeMello
- Kevin G. Diamond
- Herbert Clifford Dike
- Valeriano Diviacchi
- Stephen M. Dodd
- Joseph L. Doherty
- Michael P. Doherty
- Mark Edward Draper
- Elizabeth L. Duffy
- Stephen A. Engel
- Elizabeth M. Fahey
- Matthew R. Fisher
- Michele Fitzgerald
- Patrick G. Fitzgerald
- Benjamin Flam
- Patricia C. Fraizer
- Patrick Francomano
- James Frederick
- David Fredette
- Lisa Anne Galas
- Kerry E. Gallagher
- David T. Gay
- Donald L. Gibson
- Robert M. Gilligan
- Brian S. Glenny
- George L. Goodridge III

- David M. Gould
- William Gramer
- Michael D. Greenberg
- Pamela Greene
- Mitchell I. Greenwald
- Jason G. Happel
- Albert G. Hayeck
- Deborah W. Hemdal
- William C. Henchy
- William J. Hernon III
- John J. Hightower
- Thomas M. Hoffer Jr.
- John L. Holgerson
- Linda C. Holland
- Susan A. Huettner
- Pamela L. Hunt
- Patricia R. Hurley
- Michael S. Hussey
- Lisa Hynes
- Carol E. Kamm
- Victoria R. Kelleher
- Jean M. Kelley
- Mary Jo Kennedy
- Hon. Janet Kenton-Walker
- David D. Kerman
- Steven Michael Key
- Michael F. Kilkelly
- Kimberly Klimczuk
- John P. Knight
- Theodore J. Koban
- James B. Krasnoo
- John J. Lalikos
- Duane P. Landreth
- Keith G. Langer
- John F. Leahy Jr.
- Michael D. Leedberg
- Howard B. Lenow
- Madeline K. Leone
- Beth R. Levenson
- Roger S. Lewenberg

- Avi L. Liss
- Elliott M. Loew
- Hon. John T. Lu
- David R. Lucas
- Sandra Ellen Lundy
- Michael W. Luongo
- Keith A. MacDonald
- Carolyn Kelly MacWilliam
- Lawrence William Madden
- Joseph Anthony Maker
- Steven L. Manchel
- Laura Ann Mann
- Sharon B. Marchbanks
- Hon. Mark D. Mason
- Arthur J. McCabe II
- Matthew McDonough
- Joshua Allen McGuire
- Dennis E. McHugh
- Edward W. McIntyre
- Alan E. McKenna
- Richard M. McLeod
- Natalie R. Megaloudis
- Jennifer Smith Miguel
- John Olin Mitchell
- Marguerite Marie Mitchell
- Andrea Mobilia
- Elizabeth W. Morse
- Sean M. Muldowney
- Thomas R. Murphy
- Brendan P. Murray
- Mary Ellen Niles Howard
- Richard M. Novitch
- Francis M. O’Boy
- Mark C. O’Connor
- Paul P. O’Connor
- Louis J. Oggiani
- Martha Rush O’Mara
- John E. Page
- Stephen Pagnotta
- Hon. Barbara S. Pearson
- Nancy Frankel Pelletier
- Steven P. Perlmutter
- Joseph P. Pessolano
- Ted Petine
- Bradley W. Phipps
- Demetra Pontisakos
- John O. Postl
- Andrew P. Quigley Jr.
- Edward Rabinovitz
- Jonathan S. Rankin
- Stuart W. Rapp

- Kathleen E. Reardon
- R. Matthew Rickman
- Michael B. Rosen
- Stuart I. Rosnick
- Mark E. Russell
- Soraya Sadeghi
- Jonathan S. Sales
- Daniel Geller Saltzman
- Sanjay K. Sankaran
- Joseph M. Sano
- Katherine M. Santelli
- Erik D. Scheinfeldt
- Paul A. Schneiders
- Eric Schutzbank
- Michael Schwartz
- J. Drew Segadelli
- J. Michael Shanley
- David P. Shapiro
- David P. Sorrenti
- Geoffrey Spofford
- John F. St. Cyr
- Lisa Steele
- Paul M. Stein
- David Sullivan
- Gregory V. Sullivan
- Jacqueline J. Sullivan
- Michael E. Swain
- Victoria L. Swana
- James V. Tabner
- Frank Talty
- Michael Talty
- Phil A. Taylor
- Joseph Terranova
- James Thoen
- Gary D. Thomas
- Lauren E. Travis
- Michael L. Tumposky
- Christina M. Turgeon
- Benjamin Bray Tymann
- Richard C. Van Nostrand
- Sarah B. Vitelli
- Jeffrey S. Weisser
- Andrea Weltman
- Jeremy Y. Weltman
- Joshua D. Werner
- Kathleen Whalen-Giannandrea
- Jonathan A. White
- Stephen M. Winnick
- Richard A. Wise
- Veronica Zolina
- James B. Zuckernik

**Attorney calls event ‘incredibly insightful’**

**COURTROOM DEMEANOR**

*Continued from page 1*

probably heard better.”

A CPA and attorney, Diamond was serving as a volunteer judge for the MBA’s 2010 Mock Trial Program when he had the revelation. Diamond saw himself in the high school student who acted very aggressively as plaintiff’s counsel.

“I found it distasteful,” said Diamond, of Shea & Diamond LLP in Holliston. “It was incredibly insightful.”

This year’s civil case could have been pulled from Diamond’s own case files, and was one of the reasons he decided to serve as a volunteer judge for the first time. The case involved a parent who lost a daughter’s college fund after investing with a brokerage firm’s financial advisor.

Diamond said the experience was so rewarding that he plans to continue serving as a volunteer judge for the program, which will begin its twenty-sixth year this fall.

“I got more from this than the kids did. I loved it,” said Diamond, who also practices in the area of probate litigation. “I got to see what one of my cases looked like from the bench. I got to see both the defense and plaintiff’s side.”

The competition places high school teams from 16 regions across the state in simulated courtroom situations where they assume the roles of lawyers, defendants and witnesses in hypothetical cases. More than 100 high schools across the state participate in the program, which culminated in the Winsor School’s triumph over Pioneer Valley Performing Arts Charter Public School on March 26 in Faneuil Hall’s Great Hall. ■

## BAR NEWS

# Section Spotlight

### TAX PRACTICE GROUPS SPONSOR DEFRANCISCO AT OPEN MEETING

Thursday, May 6, 5 - 6:30 p.m.  
MBA, 20 West St., Boston

The Taxation Law Section's Municipal Tax Practice Group and State Tax Practice Group will host a joint open meeting on Tuesday, May 6. The business meeting will begin at 5 p.m. and the guest speaker at 5:30 p.m. will be Mark DeFrancisco, chief counsel to the Appellate Tax Board's legal department.

DeFrancisco advises the board on legal, evidentiary and related issues; reviews and advises on motions heard before the board; and drafts, edits and approves the board's findings of fact and reports. With experience in state and local taxation, in both the public and private sector, DeFrancisco has spoken frequently on matters relating to Massachusetts taxation at conferences sponsored by MCLE, Massachusetts Association of Assessing Offices, county assessors associations, Lincoln Institute of Land Policy and the MBA and Boston Bar Association's taxation committees.

This meeting is free. To R.S.V.P., contact Jean Stevens at (617) 338-0641 or [jstevens@massbar.org](mailto:jstevens@massbar.org). ■



### OPEN SECTION MEETINGS FEATURE STATE GOVERNMENT GUEST SPEAKERS

Photos by Tricia Oliver

Massachusetts Senate Counsel Alice Moore (**above**) and state Administration and Finance Counsel David Sullivan were featured speakers at the Public Law Section Council open meeting in March. Both answered questions and provided information and pointers regarding working with the legislative and executive branches.

The featured speaker at the Criminal Justice Section Council open meeting in March was Roger Michel Jr. Michel (**left**), the newest of the seven-member Massachusetts Parole Board, described the ins and outs of the Parole Board process and offered advice to enhance the lawyers' role leading up to and during parole hearings.

"The work is really rewarding," said Michel, who left the Massachusetts Appeals Court for the Parole Board several months ago. Michel handles between 15 and 25 hearings per day and told the group that the full board handles as many as 10,000 hearings annually. Also on hand was Timothy Dooling, the board's deputy chief legal counsel. ■

# 31<sup>st</sup> Annual Labor & Employment Law Spring Conference

Tuesday, May 11, 9 a.m.–5 p.m.

The Colonnade Hotel, 120 Huntington Ave., Boston

*Sponsored by the Labor & Employment Law Section Council*

Featuring:

STUART J. ISHIMARU, ESQ.  
*Acting Chairman  
U.S. Equal Employment  
Opportunity Commission  
Washington D.C.*



STUART J.  
ISHIMARU

and

THE HON. WILLIAM G. YOUNG  
*Chief Judge  
U.S. District Court for the  
District of Massachusetts*



HON. WILLIAM G.  
YOUNG

Register at [www.MassBar.org/CLE](http://www.MassBar.org/CLE)  
or call (617) 338-0530.



## BAR NEWS

## Volunteer Spotlight

## Kerwin's work on pro bono project helps those in financial distress

BY CHELSEA HILDRETH

Robert J. Kerwin, a former Massachusetts Bar Association Business Law Section chair and past president of the City Solicitor Town Counsel Association, devotes a considerable amount of time and energy to pro bono efforts. Having worked for Tarlow, Breed, Hart & Rodgers PC as a business litigator for 15 years, Kerwin uses his resources to help those in need.

He is urging others throughout the state to join him.

Kerwin helped initiate the MBA Bankruptcy Pro Bono Assistance Project to connect lawyers with indigent clients in need of workout and bankruptcy assistance. "If this initiative can get lawyers throughout the state to help where they can, then so many more lives will be made easier," he said.

Kerwin's original inspiration for this important project came last year when MBA President Valerie A. Yarashus visited his firm to discuss the importance of community service.

"Working through these pro bono Chapter 7 cases gives me a deeper appreciation of how the recent financial crisis severely affects people," said Kerwin, primarily a creditors' rights attorney. "It makes me realize that we are all a few steps away from a serious medical crisis or job loss that could put us in an extreme financial situation."

Kerwin and firm colleague Michael Dominick recently took a pro bono case that highlights the tremendous needs of such clients. Hounded by credit collectors and with numerous unpaid medical bills, a client needs to file for a Chapter 7 bankruptcy.



ROBERT J. KERWIN

"Filing for bankruptcy will allow her to focus on getting her life back together," said Kerwin, who notes that there are many other MBA lawyers who are contributing significantly in this area. "Mostly every lawyer I know is doing something formally or informally," he said.

The MBA Bankruptcy Pro Bono Assistance Project began in 2009 when Leslie Storm, the Boston pro se clerk for the U.S. Bankruptcy Court, expressed her need for assistance with those filing for Chapter 7 Bankruptcy. Storm was put in contact with the MBA's Business Law Section Council to discuss setting up this program. Storm met with Kerwin and current Business Law Section Co-Chair Francis Morrissey to begin developing a network of attorneys throughout the state to whom Storm could refer pro se clients.

Now, with the encouragement of Susan Prosnitz, director of the Rappaport Center for Law and Public Service at Suffolk University Law School, Kerwin hopes the MBA will soon offer pro bono training programs through the center.

"It's our goal to increase involvement in this project statewide because there are so many more people who need help," Kerwin said.

Through his work with this meaningful project, Kerwin is reminded often of why he went to law school: "I went to enhance my ability to help people, and there is nothing better than helping someone get their life back."

Attorneys interested in participating in the MBA Pro Bono Assistance Project should contact Kerwin at rkerwin@tbhr-law.com. ■

## 2010 EXCELLENCE IN THE LAW



Veteran *Boston Globe* reporter John Richardson Ellement will be honored with the Excellence in Legal Journalism Award on May 20 at Excellence in the Law.

Event to honor longtime *Globe* reporter Ellement

*Massachusetts Lawyers Weekly* and the Massachusetts Bar Association will salute a star-studded roster of legal professionals at the annual Excellence in the Law celebration at the Boston Marriott Copley Place on May 20 beginning at 5:30 p.m. A cocktail reception will precede the awards ceremony.



In addition to the Diversity Heroes and Up & Coming Lawyers selected by *Massachusetts Lawyers Weekly* to be honored at the event, the Excellence in the Legal Journalism Award will be

presented to John Richardson Ellement, a reporter for *The Boston Globe*.

Ellement has been covering legal issues and breaking news for the *Globe* since 1986. During his long-standing journalism career, he has covered the Boston police, ran the *Globe's* Suffolk County Court Bureau and more recently served as reporter/editor for the *Globe's* Web site, boston.com. Ellement has covered thousands of arraignments and hundreds of trials and has developed a keen knowledge of the Massachusetts legal system.

For more information about the event, visit [events.lawyersweekly.com/ExcellenceintheLaw/index.cfm](http://events.lawyersweekly.com/ExcellenceintheLaw/index.cfm). ■

## Richard Campbell drives home social hosts' responsibility

BY DENNIS GARRIGAN

For MBA Vice President Richard P. Campbell, it all began in the early 1980s when he was asked to represent a Roman Catholic nun, Ruth Langemann, who sustained catastrophic injuries when she was struck by an impaired teenage driver who had just left an unsupervised house party.

The expansion of liability in this case and others like it helped Campbell and his firm to establish social host liability in common law — which extends legal responsibility for the consumption of alcohol beyond the person who consumes it to those who furnish it. The intoxicated guest not only remains liable to persons injured as a result of his actions, but now shares direct liability with the host.

Following the death in 2003 of 16-year-old Trista Zinck and injury of 17-year-old Neil Bornstein caused by a teenager who was driving drunk, Campbell was asked to make a presentation to help the Newburyport community deal



RICHARD P. CAMPBELL

with the tragedy, which involved a social host. Since that time, Campbell has made close to 150 presentations on behalf of legal, school, parent and civic groups across the region to emphasize that anyone — however well-intentioned — who enables an impaired driver to get behind the wheel of a car becomes just as liable as the driver.

"In the 1960s and '70s, people from all walks of life would routinely consume alcohol and never think twice about getting behind the wheel of a car," said Campbell, founder of Campbell, Campbell, Edwards & Conroy in Boston. "Today there is no hesitation to punish individuals who drive under the influence of alcohol and ultimately injure or kill someone."

Twice last month, North Andover police charged parents with allowing illegal underage drinking on their properties.

When addressing community groups, Campbell tells audiences that we are in the watershed stages of punishing social hosts who allow their guests to drink and drive. In fact, social hosts may also be liable for injuries suffered by the intoxicated guest. Imposing liability on the host reflects the modern view that the provider of alcohol has an obligation to the public to reduce risky behavior by furnishing alcohol safely and responsibly.

Using high-profile cases in which

parents, adults and friends in Massachusetts have furnished alcohol that led to injury or death, Campbell illustrates the stark reality surrounding the decisions made by social hosts.

"As a society, we are becoming less and less tolerant of the kind of behavior where parents and friends say, 'I thought I was doing them a favor, I thought I was trying to protect them,' I didn't know they were going to do this," said Campbell. "We as a society are saying that's not good enough. If someone gets hurt or killed in these circumstances, we are ever more willing to hold these people responsible."

In the Massachusetts criminal statute, underage persons are now held criminally responsible if they allow their friends or other underage individuals to possess alcohol under their control. Campbell tells community groups that everyone needs to consider the serious ramifications of decisions made concerning people under their charge. ■

## BAR NEWS

# Bar Bulletin Board

### AALAM hosts "What Not to Wear" event at Boston tailor shop

The Asian-American Lawyers Association of Massachusetts attracted nearly 30 people to an event on March 24 called "What Not to Wear — How to Make a Good Impression in Today's Legal Market."

A panel of speakers gave advice what not to wear and what not to do in professional situations. Attendees networked and were fitted by experts at 9tailors LLC studios, a Boston-based "design-it-yourself" custom clothing company where the event was held.

Panelists included Mandi Araujo Le-Beau, a business etiquette consultant for Pardon Me Inc. and director of Career Services at New England Law | Bos-

ton; Samantha Shih, founder, 9tailors LLC; Brion Bickerton, a legal recruiter with Major Lindsey & Africa | Boston; and Katie Thatcher, career advisor at Northeastern University School of Law and formerly director of recruiting at Hinckley, Allen & Snyder LLP and legal recruitment manager at Ropes & Gray LLP.

AALAM founders Marian Tse of Goodwin Procter LLP and Diane Young-Spitzer of the Massachusetts Securities Division also attended. ■

.....  
**Lawyers Journal publicizes the recent and upcoming events of its affiliated bar associations. Submit items for publication to MBA Bar Services by e-mailing Liaison Patricia O. Plasse at pplasse@massbar.org.**

### Upcoming affiliated bar association events

#### Wednesday, May 5

**Norfolk County Bar Association Annual Dinner**  
 Dedham Hilton, Dedham  
 5:30 p.m. cocktails, 7 p.m. dinner

#### Friday, May 7

**Massachusetts Lesbian & Gay Bar Association 25th Anniversary Gala Dinner**  
 Westin Copley Place, Boston  
 5:30 p.m. cocktails, 7 p.m. dinner

#### Saturday, May 8

**Massachusetts Defense Lawyers Association Annual Meeting**  
 Boston Harbor Hotel, Boston

#### Wednesday, May 12

**Bristol County Bar Association Annual Dinner Meeting**  
 Venus de Milo  
 75 Grand Army Highway, Swansea  
 5:30 p.m. cocktails, 6:30 p.m. dinner

**Berkshire County Bar Association Annual Meeting**  
 Berkshire Hills Country Club, Pittsfield

**Women's Bar Foundation Stand Up Event**  
 Omni Parker House  
 60 School St., Boston, 6 p.m.

#### Thursday, May 20

**Hampden County Bar Association Annual Golf Outing**  
 The Ranch Golf Club, Southwick

#### Friday, May 21

**Hampshire County Bar Association The 4th Annual Wine Tasting Fundraiser**  
 Historic Northampton, Bridge Street, Northampton, 5 p.m.

#### Tuesday, May 25

**Boston Bar Association Law Day Dinner**  
 Westin Copley Place Hotel, 5 p.m.

#### Thursday, June 10

**Massachusetts Association of Women Lawyers, Annual Business Meeting and Banquet**  
 5 p.m. cocktails, 7 p.m. dinner  
 University of Massachusetts Club, Boston

#### June 24-27

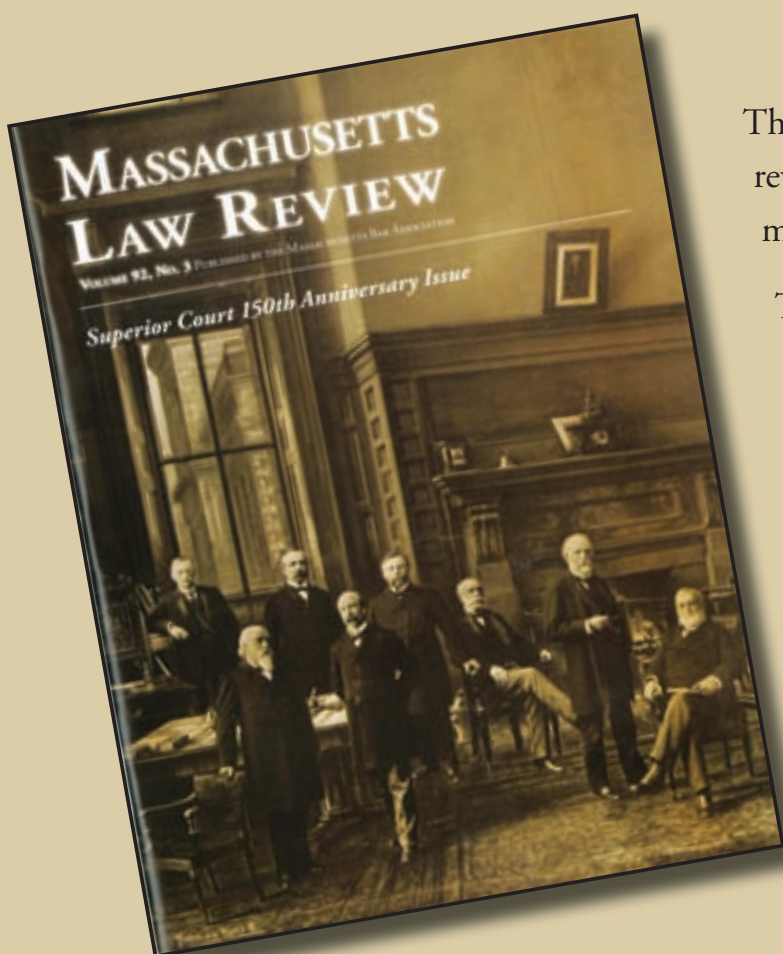
**North American South Asian Bar Association, Seventh Annual NASABA Convention**  
 InterContinental Boston Hotel,  
 510 Atlantic Ave., Boston

# YOUR AD NEEDS TO BE HERE.

For **advertising opportunities** contact Mark Schultz.

(617) 896-5323 or  
 e-mail mschultz@  
 thewarrengroup.com

## MASSACHUSETTS LAW REVIEW SEEKS SUBMISSIONS



The *Massachusetts Law Review*, the longest continually run law review in the country, is always looking for submissions from members of the bar.

The *Law Review* is circulated around the world and contains comprehensive analyses of Massachusetts law, commentary on groundbreaking cases and legislation, and reviews of books of interest to practitioners.

Submit articles or proposals to Periodicals Manager Bill Archambeault at [barch@massbar.org](mailto:barch@massbar.org). For more information, visit [www.massbar.org/submissions](http://www.massbar.org/submissions).

 **MBA**  
[www.MassBar.org](http://www.MassBar.org)

**BAR NEWS**

# MBA hosts networking event at Kings Bowling and Billiards

Friends and members of the legal community joined the MBA on April 8 to play pool and bowl at a free networking event at Kings in Boston.



From left to right: Young Lawyers Division Middlesex County Director Daniel B. Croker and YLD Chair-elect Kyle Guelcher.



From left to right: Christopher B. Coughlin, Kathleen Marren, Leonard E. Milligan III and Candace L. Hodge of Milligan Coughlin LLC.



From left to right: Andrew Marc Bunin of InfoScitex Corp., Kiera Slye of Bookman & Al-Marayati, Nathan Harris of Lando & Anastasi LLP, MBA Young Lawyers Division Chair Chair-Elect Kyle Guelcher, Michelle Newton of Robert K. Rainer PC, Sheri Mason and YLD's Middlesex County Director Daniel Crocker.



From left to right: Jolene Bettencourt, Jenna Marshall and Kristen McLaughlin of the Law Office of Judith A. Wayne and Associates.



From left to right: Bobbie King Jr. of the Deval Patrick Campaign and MBA Secretary Jeffrey N. Catalano.

**I need expert accountants who can help make my case.**

If you need Business Valuation, Forensic Accounting, Fraud Investigation or Litigation Support, turn to Kostin, Ruffkess & Company. Our Legal Services Team can provide the reports and expert testimony you need to develop a strong argument on your client's behalf. So when you need accounting support, count on us.

To learn more, go to [kostin.com](http://kostin.com).  
Or call us at 413.233.2300.

SPRINGFIELD, MA  
FARMINGTON, CT  
NEW LONDON, CT  
**KOSTIN.COM**



Certified Public Accountants and Business Advisors

## UPCOMING VOLUNTEER OPPORTUNITIES:

**MONTHLY DIAL-A-LAWYER**

Wednesday, May 5, 5:30-7:30 p.m., MBA offices, Boston

**WMASS DIAL-A-LAWYER**

Wednesday, May 26, 3:30-7:30 p.m., Western New England College, Springfield

**MONTHLY DIAL-A-LAWYER**

Wednesday, June 2, 5:30-7:30 p.m., MBA offices, Boston

**VETERANS VISITING LAWYER PROGRAM**

Thursday, June 17, 2-5 p.m., Holyoke Soldier's Home, 110 Cherry St., Holyoke

# EXPERTS & RESOURCES

## MASSACHUSETTS LAWYERS JOURNAL

LAWYER ASSISTANCE



**Your law practice advisor.**

Assisting Massachusetts attorneys in establishing and institutionalizing professional office practices and procedures to increase their ability to deliver high-quality legal services, strengthen client relationships, and enhance their quality of life.

**Rodney S. Dowell, Esq.**  
DIRECTOR, LOMAP

FREE ■ CONFIDENTIAL ■ PRACTICAL SOLUTIONS



**Law Office Management Assistance Program**

888.545.6627 | 31 MILK STREET, SUITE 815, BOSTON, MA 02109  
INFO@MASSLOMAP.ORG | WWW.MASSLOMAP.ORG  
FUNDED BY LAWYERS CONCERNED FOR LAWYERS, INC.

ADR



**Fair and effective dispute resolution for your clients**



MDRS:  
A professional panel of 35 skillful and experienced mediators and arbitrators.

Hearings throughout Massachusetts

**Attorney Brian R. Jerome**  
Founder

**800-536-5520**  
[www.mdrs.com](http://www.mdrs.com)

ADR

**Where conflict meets resolution.**

**Sarah E. Worley, Conflict Resolution, P.C.**




**Sarah E. Worley**

14 Beacon Street, Suite 610, Boston, Mass., 02108 | 45 Bristol Drive, South Easton, Mass., 02375

**617-933-1355**  
[www.worleyconflictresolution.com](http://www.worleyconflictresolution.com)

LAWYER ASSISTANCE

**NEVER AGAIN WILL A LAWYER HAVE TO SAY THERE WAS NOWHERE TO TURN.**



FOR THE ISSUES OF LIFE IN LAW

ADR

**“Choose the Best Alternative”<sup>SM</sup> in mediation.**

Visit our website for more information:  
[www.fitzgeraldresolution.com](http://www.fitzgeraldresolution.com)




*Fitzgerald*  
DISPUTE RESOLUTION LLC

Warren Fitzgerald  
TEL: 617.241.4299  
[wf@fitzgeraldresolution.com](mailto:wf@fitzgeraldresolution.com)

ADR

**HON. BEVERLY W. BOORSTEIN (RET.)**  
DISPUTE RESOLUTION



Justice Boorstein brings 45 years as an accomplished attorney and respected judge to the table.

Mediation, Arbitration, and Case Evaluation with integrity, intelligence and good common sense.


**“Let’s Reason Together”**

**TEL (617) 964-8744**  
[www.beverlyboorstein.com](http://www.beverlyboorstein.com)

MEDICAL

**David M. Benjamin, Ph.D.**  
Experienced Forensic Toxicologist

Analysis of Results of Blood, Urine & Hair Drug Tests;  
Cocaine/Narcotics Issues:  
Possession vs. Personal Use  
Dram Shop & Vehicular Homicide  
*References Available*




Medical & Law School Teaching Experience  
- Excellent Communicator

**617-969-1393**  
Email: [medlaw@doctorbenjamin.com](mailto:medlaw@doctorbenjamin.com)  
Website: [www.doctorbenjamin.com](http://www.doctorbenjamin.com)

AVIATION LAW

**AVIATION LAW**



**ANTHONY TARRICONE,** concentrating in cases involving serious personal injuries and wrongful death resulting from the operation, design, and maintenance of all types of aircraft. Twenty-five years experience in aviation cases including airline, commercial and general aviation.

**Kreindler & Kreindler LLP**  
277 Dartmouth St.  
Boston, MA 02116  
Tel (617) 424-9100  
Fax (617) 424-9120  
E-mail: [atarricone@kreindler.com](mailto:atarricone@kreindler.com)  
[www.kreindler.com](http://www.kreindler.com)

**YOUR AD NEEDS TO BE HERE.**

For all your **advertising needs** in the *Massachusetts Lawyers Journal*, contact Mark Schultz.

**(617) 896-5323**  
[mshultz@thearrengroup.com](mailto:mshultz@thearrengroup.com)

## BAR NEWS

# Calendar of Events

### Monday, May 3

**The Anatomy of Enforceable Antenuptial and Post-Nuptial Agreements**  
4-7 p.m.  
MBA, 20 West St., Boston

### Tuesday, May 4

**Veterans Benefits: Aid & Attendance Eligibility and the Application**  
4-7 p.m.  
MBA, 20 West St., Boston

**Detours & OnRamps**  
8:30 a.m.-3:30 p.m.  
Bentley College, 175 Forest St., Waltham

### Wednesday, May 5

**Alternative Careers in Development: Planned Giving, Major Gifts, Corporations and Foundations Luncheon Roundtable**  
11:30 a.m.-1 p.m.  
MBA, 20 West St., Boston

**Representing the OUI Client**  
4-7 p.m.  
Massachusetts School of Law, 500 Federal St., Andover

**How to Use the Mortgage Discharge Statute to Improve Your Real Estate Practice**  
4-7 p.m.  
Registry of Deeds, 90 Front St., Worcester

**MBA Monthly Dial-A-Lawyer Program**  
5:30-7:30 p.m.  
Statewide dial-in # (617) 338-0610

### Thursday, May 6

**Intellectual Property Basics for the Non-Specialist**  
4-7 p.m.  
MBA, 20 West St., Boston

### Tuesday, May 11

**31st Annual Labor & Employment Law Spring Conference**  
9 a.m.-5 p.m.  
The Colonnade Hotel, 120 Huntington Ave., Boston

### Wednesday, May 12

**From Criminal to Immigration Court: Immigration Consequences of Criminal Conduct**  
4-7 p.m.  
MBA, 20 West St., Boston

### Thursday, May 13

**Landlord/Tenant Basics and Beyond**  
4-7 p.m.  
MBA, 20 West St., Boston

### Monday, May 17

**Financial Implications of Unemployment: Managing Debt and Investments Luncheon Roundtable**  
11:30 a.m.-1 p.m.  
MBA, 20 West St., Boston

**Same-Sex Marriage: New Protections and New Planning Challenges**  
4-7 p.m.  
MBA, 20 West St., Boston

### Tuesday, May 18

**Forming a Business Entity**  
4-7 p.m.  
Holiday Inn, 700 Myles Standish Blvd., Taunton

### Monday, May 24

**Complex Issues and Emerging Trends in Class Action Litigation**  
4-7 p.m.  
MBA, 20 West St., Boston

### Tuesday, May 25

**Innovative Trial Techniques**  
4:30-6:30 p.m.  
MBA, 20 West St., Boston

### Wednesday, May 26

**Western Massachusetts Dial-A-Lawyer**  
3:30-7:30 p.m.  
Statewide dial-in #: (413) 782-1659

### Wednesday, June 2

**Fourth Annual Public Law Conference**  
9 a.m.-2 p.m.  
MBA, 20 West St., Boston

**MBA Monthly Dial-A-Lawyer Program**  
5:30-7:30 p.m.  
Statewide dial-in #: (617) 338-0610

### Thursday, June 5

**The ABCs of Social Security Disability Cases**  
4-7 p.m.  
MBA, 20 West St., Boston

### Tuesday, June 8

**Uniform Probate Code Article V Update**  
4-7 p.m.  
MBA, 20 West St., Boston

### Monday, June 7

**Staying Professional in the Practice**  
4-7 p.m.  
MBA, 20 West St., Boston

### Wednesday, June 9

**Second Annual Health Law Conference**  
9 a.m.-1 p.m.  
MBA, 20 West St., Boston

### Tuesday, June 15

**Criminal Justice Conference – Doing Time: Effective Advocacy at Sentencing and in the Parole Process**  
2-6 p.m.  
MBA, 20 West St., Boston

**Shakespeare and the Law: Henry V**  
5 p.m.  
Cutler Majestic Theatre, 219 Tremont St., Boston

### Wednesday, June 16

**Basics of Massachusetts Construction Law**  
4-7 p.m.  
MBA, 20 West St., Boston

### Thursday, June 17

**Veterans Visiting Lawyer Program**  
2-5 p.m.  
Holyoke, Soldier's Home, 110 Cherry St., Holyoke

### Wednesday, June 23

**Workers' Compensation – The Seminar You Can't Miss**  
3-7 p.m.  
MBA, 20 West St., Boston

#### SURETY BONDS

**A.A.DORITY**

**SURETY BONDS**

Since 1899

Office: 617-523-2935  
Fax: 617-523-1707

www.aadurity.com

A.A. DORITY  
COMPANY, INC.  
262 Washington St. • Suite 99  
Boston, MA 02108

#### TAX ATTORNEY

Looking for an Experienced...  
**STATE TAX ATTORNEY**  
FOR YOUR CLIENTS?



Planning • Audits • Appeals • Litigation

- Corporate Income/Excise Tax
- Sales & Use Tax
- Sole Practitioner – Flexible Fee Structure

**Richard M. Stone, Esq.**

Chair—MA Bar Assn. State Tax Practice Group  
Serving MBA members and their clients

617.848.9360 • 888.483.5884  
www.rickstonelaw.com  
rick@rickstonelaw.com

#### OFFICE SPACE

**FOR LEASE**

4,500 - 25,000 sf



LOCATION LOCATION LOCATION

- Minutes to Downtown Boston
- Parking Available
- Steps to JFK/UMass T Stop
- Views of the City and Boston Harbor
- Access to the HarborWalk Trail

**CORCORAN  
JENNISON**  
Management LLC

For more information please call Richard Fullam  
617-822-7357 | rfullam@corcoranjennison.com

## FOR YOUR PRACTICE MIND YOUR OWN BUSINESS

# Should lawyers take credit cards?

BY ANDREA GOLDMAN, ESQ., AND JOHN MARSHALL, ESQ.

Many of us have been debating whether we should take credit cards for quite some time. On the one hand, there's a stigma attached to accepting credit cards. For lawyers, it does not feel entirely professional or dignified to reduce one's payment to such an obvious process.

Most of us do not like asking for money. It's more comfortable to work on retainer or send out a bill with the hope of getting paid. There's also the issue of ethics. How does one handle credit card payments when processing them through IOLTA and/or operating accounts? What is the proper procedure? How does one avoid running afoul of ethics rules?

While it is natural to want to avoid the distasteful notion of commercializing the profession, it is time to realize that the world has changed. We do not blink an eye when the doctor's office expects our co-pay before treatment, and yet, as attorneys, many of us still end up working without getting paid. The longer I practice, the tougher I get about money. It took the experience of reviewing my books and realizing that my receivables had skyrocketed before I started taking a

stand with clients and making sure that they paid their bills.

It is hard to get used to getting the money up front, but in this economy, it is quite possible that the amount you collect at the beginning of a matter may be all the money that is ever collected. Even though my engagement letter includes an Evergreen retainer and the clients agree to replenish once the retainer drops below a certain amount, the truth is, they rarely do. They frequently just start paying their bills as they arrive, and most clients do not rush to get the check in the mail. Shame on me.

When the ABA Techshow came to Boston, Jim Calloway, a noted law practice management advisor, said he believes that *all* lawyers should start taking credit cards. He felt that in this economy that is the only way to ensure that one



would get paid. After suing my first client for fees, I now agree. As they say on the ABA's Solosez, "you get more value from cleaning your own toilet than from working for free."

For some reason, clients do not view legal services as a commodity for which they should pay. It is our job to provide clients with detailed bills and clear explanations that reflect the value that we are providing. Despite the fact that I know that none of my clients would steal a turkey from the supermarket, many do not hesitate to "steal" my time. It is important to manage expectations, ask for big enough retainers, and include a credit card provision in your engagement letter. If payment is not forthcoming, you have the right to run the credit card for the amount due.

### CAN LAWYERS TAKE RETAINERS ON CREDIT CARDS?

Here is the viewpoint from the Board of Bar Overseers: Credit cards are here to stay and it is generally considered acceptable to take payment of earned fees by credit card. But can a lawyer take a retainer — an advance against unearned fees — on a credit card? Ethics opinions across the country are divided on this question and neither the Massachusetts Rules of Professional Conduct nor any decisions by the Board of Bar Overseers or the Supreme Judicial Court provide a direct answer. The Office of Bar Counsel strongly discourages accepting payment of retainers by credit card for the following reason:

In Massachusetts, unearned ➤



*Designed for Lawyers  
by Lawyers*

*With claims against practitioners on the rise, rest assured with a customized and competitive malpractice insurance policy.*

*MBA Insurance offers one of the broadest malpractice coverages in Massachusetts.*

*MBA prices and policies are tailored to meet your specific needs without compromising the appropriate levels of coverage and protection.*

*Contact us for quality insurance products and unparalleled customer service.*



[www.MassBarInsurance.org](http://www.MassBarInsurance.org)

Boston (617) 338-0581 • Springfield (413) 788-7878

E-mail: [Insurance@MassBar.org](mailto:Insurance@MassBar.org)



**CREDIT CARDS**

Continued from page 16

retainers must go into an IOLTA or other trust account until earned. Credit card agreements generally permit the issuer to “charge back” any payments subsequently disputed by the cardholder and require that the issuer’s chargeback rights attach to the account where the funds were deposited.

Assume you accept a retainer on a credit card, which is deposited to your IOLTA account. You do the work and pay yourself from the retainer. Your client then contests your charges and the issuer withdraws from your IOLTA account the disputed charges. Since you have already paid yourself, this chargeback will draw upon funds of other clients held in the account — funds that you are required to safeguard.

The best and possibly only foolproof solution to this problem would be to limit the issuer’s chargeback rights to your operating account. While some ethics opinions from other states suggest taking credit card retainers into an operating account and transferring the unearned portion to a trust account, or holding earned portions of a retainer in a trust account until the issuer’s dispute period has ended, these would not be in compliance with the current Massachusetts trust account rules.

There also exist other regulatory, bookkeeping and confidentiality problems with credit card payments of fees. See Vecchione, “No Easy Credit,” [www.mass.gov/obcbbbo/credit.htm](http://www.mass.gov/obcbbbo/credit.htm), on the bar counsel’s Web site. Lawyers taking credit card payments should also be familiar with federal and state consumer credit, truth in lending and consumer protection laws that may apply.

**WHAT TO DO IF YOU DECIDE TO USE CREDIT CARDS**

If you are now persuaded that taking credit cards is necessary, what are the best options for attorneys? There have been numerous conversations about taking credit cards on Solosez, and the one service that is touted by all is Lawcharge.com. This is not meant to be an advertisement for Law Charge, but as it says on Tracy Griffin’s Web site, the product is “designed by an attorney for attorneys.”

These are the types of fees associated with maintaining a credit card account (from the Law Charge Web site):

- **Discount fee:** This is a percentage of the transaction amount. It covers the costs of moving the money from the cardholder’s account to your merchant account through the Federal Reserve’s Automated Clearing House (ACH). The fee is determined upon the type of processing you choose.
- **Transaction fee:** This is the fee charged for obtaining the authorization to deposit the funds to your account. It is usually between 15 and 75 cents per transaction, depending on the type of processing you utilize.

FIGURE 1

**PAYMENT BY CREDIT CARD**  
 All clients may pay their bills via credit card. The X Law Office accepts Visa or MasterCard. If you choose to pay by credit card, please complete the form below:

I authorize the X Law Office, to charge the amount of \$ \_\_\_\_\_ on my credit card.

Credit Card Type	Credit Card Number	Verification Code
Signature	Expiration Date	
Billing Address (Must be provided)		
Client	Date	

If, after a payment by credit card, you later dispute the charges, unless prohibited by law, you agree not to cancel, revoke, charge back or dispute any previously entered charge on your credit card. If you do so, and it is later determined that the charge was properly authorized, you agree to pay all out-of-pocket fees and costs incurred by the X Law Office as a result of the improper cancellation, revocation, charge back or dispute.

- **Set-up fees and equipment:** Dependent upon the type of processing you choose, you may be charged a set-up fee or be required to purchase or lease equipment or software. Law Charge does not require you to purchase software and highly discourages the leasing of equipment as it is not cost effective.
- **Junk fees:** These fees are where the banks and processors make money off you. You may be charged a monthly fee whether you process or not, a statement fee, or a service call fee. Law Charge does not charge any of these junk fees.

The first step in setting up credit card processing is to open a merchant account. This is usually your business operating account. Once your account is established, you can start receiving payments. You do not want the fees and other charges to go through your IOLTA account because this would violate IOLTA rules. One could buy or lease a point of sale terminal, but most attorneys process their payments through the Internet.

Some companies will require you to purchase software and others have online service. At Law Charge, you log into their secured Web site, and depending on the username and password you enter, the funds will be deposited to that account. You will have the option of depositing to either your trust/IOLTA account or your operating account. Regardless of which account you deposit to, all fees will be debited from your operating account.

What will it cost? This article is not intended to be a review of all of the various services out there, but at Lawcharge.com, the initial set-up fee is \$200 for a virtual terminal to one’s IOLTA and operating accounts. This includes a link for clients to go to the attorney’s Web site to make payments. Electronic check conversion from the check writer’s account is also included (automatic debit from the

client’s bank account). There is a \$150 set-up fee just for a virtual terminal. The set-up fee is payable over time with no interest. There is no monthly minimum payment. If there is activity in a given month, the monthly rate is \$10. Finally, the discount fee is currently 2.7 percent for the virtual terminal plus a 19-cent transaction fee. There is encryption for data privacy.

If clients dispute a bill, they can call Law Charge and ask for a retrieval request. Rather than issue a chargeback to the lawyer’s operating account, Law Charge requests that the client and lawyer submit documentation to resolve the dispute. Law Charge has had one chargeback in 10 years. The company also supplies

language to insert in one’s fee agreement. The cardholder agrees that disputes will be settled through arbitration or the judicial process rather than issuing an automatic chargeback.

A Solosez member uses the language shown on **FIGURE 1** in her engagement letter.

**OTHER OPTIONS**


Paypal.com has a rate of 2.9 percent plus 30 cents per transaction, but it is not clear whether there is a monthly minimum. Tracy Griffin suggests that one use Paypal for operating account payments only. The reason for this is that the payment goes first to Paypal and then to the attorney’s account. IOLTA rules state that trust money has to go straight to a trust account which is an approved trust account depository. There is no set-up charge or monthly fee. The merchant rate requires a one-time application, qualifying monthly sales volume, and account in good standing.

Costco has an Internet processing rate of 1.99 percent plus 27 cents per transaction. There is a one-time \$25 application fee and a \$4.95 monthly statement fee, both of which are waived for executive members. A monthly minimum charge applies when qualified transaction fees and per-item charges are less than \$20 per month.

Given the current economic situation, it is time for all lawyers to seriously consider taking credit cards. After all, you deserve to be paid. ■

.....  
**Andrea Goldman is the principal of Law Office of Andrea Goldman and co-chair of the Law Practice Management Council. John Marshall is a member of both the Office of the Bar Counsel and the Law Practice Management Council.**

# A Sixty Year Tradition of Representing the Seriously Injured



**TEAM APPROACH  
CUTTING EDGE ADVOCACY  
SUPERIOR RESULTS**

**SHEFF LAW OFFICES, P.C.**

Ten Tremont Street, Boston, MA 02108  
**617-227-7000 [www.shefflaw.com](http://www.shefflaw.com)**

*Integrity • Compassion • Excellence*

**FEATURED MEMBER BENEFIT:**

## Affiniscap Merchant Solutions



Designed for the client-attorney transaction, a Law Firm Merchant Account safeguards and separates client funds into trust and operating accounts. Credit cards attract clients, win business, improve cash flow and reduce collections.

If you are considering accepting credit cards or want to confirm that you are processing credit card transactions correctly, call (866) 376-0950 or visit [massbar.affiniscap.com](http://massbar.affiniscap.com) for more information. ■



## Member Benefits Have Never Been Better!

**lexis.com®:** Receive a 5 percent discount on a subscription to the online legal research services. Call 866-836-8116 and mention offer 203367.

**Research Value Packages:** Receive a member benefit discount on all available packages on the *lexisONE*® service. Select from One-Day, One-Week or One-Month subscription periods. Visit [www.lexisone.com/barassociations](http://www.lexisone.com/barassociations)

**LexisNexis® Store:** Save 10 percent every day when you shop at the LexisNexis Store. Visit [www.lexisnexis.com/store/promotions/promolanding.jsp?couponId=BAR10](http://www.lexisnexis.com/store/promotions/promolanding.jsp?couponId=BAR10)

**LexisNexis® Law Firm Launch Packages:** Bundled solutions designed for new and transitioning attorneys who plan to open a new practice. Packages include essentials like books, online legal research, client development, and practice management solutions. Call 866-281-1801 and mention code 132741 or visit [www.lexisnexis.com/LLP](http://www.lexisnexis.com/LLP)

**Learn about LexisNexis® Total Practice Solutions at [www.lexisnexis.com/bars](http://www.lexisnexis.com/bars)**



**FOR YOUR PRACTICE** SOCIAL NETWORKING

# Avoiding social network risks in the workplace

BY MICHELLE TESSIER, ESQ.

As social networking continues to play an increasingly larger role in our society, it comes as no great surprise that these networks are beginning to pose a threat to both employers and employees. Although these sites, such as Facebook, Twitter and MySpace, provide an excellent chance for employers and employees to cast out information to a wider audience than before, this benefit also comes with a price.

Because social networking sites have so quickly infused themselves in our society, it is unlikely that these benefits and dangers will be leaving us anytime soon. Instead, it is essential that both employers and employees become well-versed in the challenges caused by these programs, so that the workplace may embrace these changes rather than suffer any potential negative consequences.

## HOW DOES SOCIAL NETWORKING HAVE AN IMPACT IN THE EMPLOYMENT ARENA?

Although there are a large number of new challenges and questions posed by the growth of social networking, it is helpful for both employers and employees to be aware of the “key dangers” associated with social networking in and out of the workplace. Some of the more prominent themes presented by social networking that should be kept in mind are:

### 1. Obtaining information the employer does not want to know

Although one of the main benefits of social networking is the ability to market oneself by infusing personal information into the Web, information that is sensitive or protected may lead to a responsibility



PHOTO BY CHELSEA HILDRETH

The MBA hosted a seminar on “The Impact of Social Networking on Employment Law” on March 31 that discussed the power, benefits and problems of social networking for lawyers and their clients.

FROM LEFT TO RIGHT, the panelists were: Damian R. LaPlaca of Donovan Hatem LLP; program chair and moderator Michelle Tessier of Kenney & Sams PC; Michael J. Duffy of Ruberto, Israel & Weiner PC; and David Wilson of Hirsch, Roberts, Weinstein LLP.

by the employer to handle this information properly. Because of the large number of federal acts associated with discrimination, accessing information on a potential employee’s sexual orientation, handicaps and other protected information may lead to an employee claiming discrimination further on down the road. An employer would be wise to revisit its policy regarding obtaining information about an employee or prospective employee to address whether it has the appropriate safeguards in place to avoid liability.

### 2. Privacy issues

Searching social networks can invariably lead to an employer discovering information that may be considered private. Because most employees think that what they do at home on the computer is their private business, it is possible that discovering and/or acting on this information may lead to a claim of invasion of privacy. Although there is discussion regarding whether or not information posted on a publicly available site comes with an expectation of privacy, the fact is that acting on this information may lead to a potential claim.

### 3. Employers monitoring employees use at work

There are many issues that arise from employees using social networking sites during work time. Issues include, but are not limited to: employer liability for employee’s conduct on these sites; policies related to proprietary issues; and reading and acting on negative comments about their work. These issues pose new questions to employers and employees about computer use in the workplace.

## WHAT CAN EMPLOYERS AND EMPLOYEES DO TO MINIMIZE RISK?

Although it is quite clear that the emerging popularity and impact of social networking sites lead to some potentially difficult legal problems for those on both sides of the workplace relationship, there are a number of things that employers and employees can do to maximize the benefit of these new tools, while minimizing risk.

### 1. Employer use policies

One of the most effective ways of

avoiding legal entanglement is for employers to develop and distribute employer use policies that clearly state the rules and expectations of employees at work. Whether these policies are printed in employee handbooks or employment agreements, these policies should clearly state that employees have no expectation of privacy in anything they create, store, send or receive using company computers, in addition to laying out any other policy that the employer may deem appropriate.

### 2. Employees should use careful discretion before posting

Because employees may possibly face negative consequences by posting remarks about supervisors, co-workers or sensitive business information, it is wise for employees to be extremely discriminatory in what they post. This means obtaining permission from partners or clients before posting content about them, as well as obtaining permission before posting any copyright material.

### 3. Assume anything posted will eventually reach the person the claim is about

In today’s highly connected world, it is a mistake for employees to believe that anything they post on social networking sites will remain obscure. To avoid liability, it is important for employees and employers to assume that their posted content will both be discovered and have consequences, even when using a site that is presumably safe via privacy setting and password protection.

## CONCLUSION

Because of the tremendous power associated with social networking sites, it is a mistake for both employers and employees to assume that this dramatic shift in the way people communicate will not affect their workplace. Instead, employees and employers should embrace these tools as a way to expand their businesses, while understanding the underlying dangers associated with these sites. ■

Tessier is an associate at Kenney & Sams PC in Southborough, where she focuses on labor and employment matters.

## Free Networking Events



Join us at a **FREE** networking event open to both members and non-members.

**Thursday, May 27, 5:30 p.m.**  
**King’s, 600 Legacy Place, Dedham**

Bowling, appetizers and soft drinks included.  
 Cash bar available.

R.S.V.P. at [www.MassBar.org/Networking](http://www.MassBar.org/Networking) or call (617) 338-0530.





**KEEPS YOU  
FROM LOSING  
VALUABLE LEGAL  
RESEARCH. NOT TO  
MENTION SLEEP.**

## WestlawNext™

**Introducing a new Westlaw.® Legal research goes human.** The only thing harder than finding the right legal document is losing it and trying to quickly find it again. With WestlawNext™ the information you find remains found — and organized. Effortlessly drag and drop key cases and documents into desktop folders. Easily highlight and annotate articles to capture essential ideas while adding your own. Your research. Where you want it. When you need it. Rest. Assured. That's knowledge to act. **Discover more at [WestlawNext.com](http://WestlawNext.com)**

