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

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

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
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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. Huddler
Region 2: Sara J. Tazoe
Region 3: Miriam H. Babin
Region 4: Veronica J. Fenton
Region 5: Keith A. Minott
Region 6: Walter A. Costello Jr., Stephen L. Wollman
Region 7: Kevin G. Diamond, Lee J. Gartenberg, Patricia A. Mertz
Region 8: Robert W. Hanafi, Julio R. Hernandez
Region 9: Anthony J. Benedetti, Alice B. Braunstein, Denise M. 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.

For advertising opportunities contact Mark Schultz.
(617) 896-5323 or e-mail mschultz@thewarrengroup.com
MBA participates in ABA Day in Washington, D.C.

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.


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

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

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.

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.

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The Probate and Family Court Department announces the implementation of Standing Order 1-10 requiring a pilot program in the Hampshire Division involving children. The order will require attorneys, parents, and caregivers in divorce, separate support, custody/visitation, modification, guardianship, and termination proceedings involving children. The order will restructure a limited assistance representation (LAR) program 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/probate-and-family-court. 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 a 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 excess costs. Representation by LAR will enable the court to better allocate resources to the most pressing legal issues, including representation for pro se litigants who otherwise cannot afford the services of counsel.”

The Probate and Family Court Department subsequently introduced LAR across the state. Limited assistance representation is one of the four pilot 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.

**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 and members of 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 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 tele-conferences.

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.
• Middlesex Division — Motions may be scheduled on Monday, Thursday, and Friday mornings beginning May 3. Motions may be scheduled on Wednesday 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.

The Probate and Family Court, in consultation with the Barnstable, Bristol, and Middlesex Divisions of the Probate and Family Court, has determined that the following divisions of the Probate and Family Court may adopt motion scheduling practices different from those described above:

• Barnstable Division — Motion dates may be scheduled on Tuesday, Wednesday, and Friday mornings beginning May 3.
• Middlesex Division — Motion dates may be scheduled on Tuesday and Friday mornings beginning May 3.

**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 courtrooms and courthouses. The new policy is intended to complement the existing security policy on clothing, cameras and cell phones introduced Jan. 9, 2006.

Jailers 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.
**LEGAL NEWS**

**ACCESS TO JUSTICE**

Continued from page 1

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.

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Available Where</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited English - Staff Who Can Speak and Read Other Languages</td>
<td>66% (N = 1,422)</td>
<td>≥60%</td>
</tr>
<tr>
<td>General Services - Convenient Parking</td>
<td>64% (N = 1,327)</td>
<td>≥60%</td>
</tr>
<tr>
<td>General Services - Convenient Public Transportation</td>
<td>58% (N = 1,122)</td>
<td>≥55%</td>
</tr>
<tr>
<td>General Services - Law Library</td>
<td>58% (N = 1,122)</td>
<td>≥55%</td>
</tr>
<tr>
<td>ADR - Court Connected Programs</td>
<td>57% (N = 1,287)</td>
<td>≥55%</td>
</tr>
<tr>
<td>Technology - MassCourts Public Access Terminals</td>
<td>56% (N = 1,268)</td>
<td>≥55%</td>
</tr>
<tr>
<td>Limited English - Court Forms in Other Languages</td>
<td>55% (N = 1,245)</td>
<td>≥55%</td>
</tr>
<tr>
<td>Technology - Court Forms that can be completed on the internet</td>
<td>55% (N = 1,245)</td>
<td>≥55%</td>
</tr>
<tr>
<td>Self-Represented Litigants - Self-Help Written Materials</td>
<td>54% (N = 1,221)</td>
<td>≥50%</td>
</tr>
<tr>
<td>ADR - Community and/or Bar programs</td>
<td>53% (N = 1,215)</td>
<td>≥50%</td>
</tr>
<tr>
<td>Collaborations - Educational Institutions</td>
<td>52% (N = 1,207)</td>
<td>≥50%</td>
</tr>
<tr>
<td>Limited English - Signs in Other Languages</td>
<td>48% (N = 1,080)</td>
<td>≥50%</td>
</tr>
<tr>
<td>Collaborations - Non-Profit</td>
<td>48% (N = 1,080)</td>
<td>≥50%</td>
</tr>
<tr>
<td>Limited English - Instruction Materials in Other Languages</td>
<td>45% (N = 990)</td>
<td>≥45%</td>
</tr>
<tr>
<td>Technology - Teleconferencing</td>
<td>45% (N = 990)</td>
<td>≥45%</td>
</tr>
<tr>
<td>Advocates - Limited Assistance Representation</td>
<td>43% (N = 903)</td>
<td>≥40%</td>
</tr>
<tr>
<td>Advocates - NonLawyer Advocates</td>
<td>42% (N = 873)</td>
<td>≥40%</td>
</tr>
<tr>
<td>Collaborations - Executive Branch Agencies</td>
<td>42% (N = 873)</td>
<td>≥40%</td>
</tr>
<tr>
<td>Self-Represented Litigants - Customer Service Center</td>
<td>41% (N = 852)</td>
<td>≥40%</td>
</tr>
<tr>
<td>Technology - Wireless Access in the Courthouse</td>
<td>41% (N = 852)</td>
<td>≥40%</td>
</tr>
<tr>
<td>Collaborations - Other</td>
<td>39% (N = 780)</td>
<td>≥35%</td>
</tr>
<tr>
<td>Self-Represented Litigants - Pro Se / Family Law Coordinator</td>
<td>39% (N = 780)</td>
<td>≥35%</td>
</tr>
<tr>
<td>Collaborations - Other</td>
<td>38% (N = 771)</td>
<td>≥35%</td>
</tr>
<tr>
<td>Self-Represented Litigants - Self-Help Audio/Visual Materials</td>
<td>38% (N = 771)</td>
<td>≥35%</td>
</tr>
<tr>
<td>General Services - Child Care Center</td>
<td>38% (N = 771)</td>
<td>≥35%</td>
</tr>
<tr>
<td>A NEW ASSIGNMENT: THE ACCESS TO JUSTICE INITIATIVE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fein, who was 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. Lundey, 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 Lundey, 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 adopt 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 the enthusiasm of 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 include opening daycare centers at courthouses so poor, working parents can make court appointments more easily came as a bit of a surprise, Lundey 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.
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.)

SJCC 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, Berg, Schapiro, Englander, Chiccone 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.

“Don’t let any single corporate entity dictate what the business will present to their claims and achieve results,” 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 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 disaster-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 leisure 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 Boston Children’s and Blue Shield of Massachusetts Inc. could help the courts find grants and make the case for adequate court funding to legislatures.

“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.”

<table>
<thead>
<tr>
<th>% of Respondents replying by Category – All Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tech - Court Forms that can be completed on the internet</td>
</tr>
<tr>
<td>Tech - Wireless Access in the Courthouse</td>
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<tr>
<td>Limited English - Staff Who Can Speak and Read Other Languages</td>
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<tr>
<td>Limited English - Court Forms in Other Languages</td>
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<tr>
<td>General Services - Child Care Center</td>
</tr>
<tr>
<td>Technology - MassCourts Public Access Terminals</td>
</tr>
<tr>
<td>Collaborations - Educational Institutions</td>
</tr>
<tr>
<td>Advocates - Lawyer for the Day</td>
</tr>
<tr>
<td>General Services - Convenient Public Transportation</td>
</tr>
<tr>
<td>Limited English - Signage in Other Languages</td>
</tr>
<tr>
<td>ADR - Bar Association</td>
</tr>
<tr>
<td>Advocates - Limited Assistance Representation</td>
</tr>
<tr>
<td>Collaborations - Non-Profits</td>
</tr>
<tr>
<td>General Services - Low Library</td>
</tr>
<tr>
<td>Self-Represented Litigants - Self-Help Audio/Visual Materials</td>
</tr>
<tr>
<td>Advocates - Victim / Witness Advocates</td>
</tr>
<tr>
<td>Technology - Teleconferencing</td>
</tr>
<tr>
<td>Collaborations - Executive Branch Agencies</td>
</tr>
<tr>
<td>Advocates - Non-Lawyer Advocates</td>
</tr>
<tr>
<td>Advocates - Limited Assistance Representation</td>
</tr>
<tr>
<td>2% (N = 45)</td>
</tr>
</tbody>
</table>

Figure 2

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

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 in 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 cases.

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 na-
tionals],” Yellen said. “I love being able to spend more time with this team.”

Attorney calls event ‘incredibly insightful’

Continued from page 1

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.

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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 for the first time. The case involved a parent who lost a daughter’s college fund

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Continued from page 1

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“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, defend-
ants and witnesses in hypothetical cas-
es. 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.
31st Annual Labor & Employment Law Spring Conference

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District of Massachusetts

OPEN SECTION MEETINGS FEATURE STATE GOVERNMENT GUEST SPEAKERS

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.

Section Spotlight

TAX PRACTICE GROUPS
SPONSOR DEFANCISCO 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 Officers, 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.

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17-year-old Neil Bornstein caused by a 16-year-old Trista Zinck and injury of shares direct liability with the host. Guest not only remains liable to persons in common law — which extends legal responsibility for the consumption of alcohol safely and responsibly. For MBA Vice President Richard P. Campbell, it all began in the early 1980s when he was asked to represent a Roman Catholic nun, who sought to enhance my ability to help people, there are so many more people who need help,” Kerwin said. "Through his work with this meaningful project, Kerwin is reminded 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."

"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’s our goal to increase involvement in this project statewide because there are so many more people who need help," Kerwin said. "Throughout his work with this meaningful project, Kerwin is reminded 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 skerwin@bbr-law.com. ■

Richard Campbell drives home social hosts’ responsibility

BY DENNIS GARRIGAN

"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 being kind,'” 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 those 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. ■

"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 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.”

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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. Yarasus visited his firm to discuss the importance of community service.

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 had just left an unsupervised house party. Since that time, Campbell has gotting 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.”

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**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 LeBeau, a business etiquette consultant for Pardon Me Inc. and director of Career Services at New England Law | Boston; 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.

**Upcoming affiliated bar association events**

**Wednesday, May 5**

Norfolk County Bar 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

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**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.

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Submit articles or proposals to Periodicals Manager Bill Archambeault at barch@massbar.org. For more information, visit www.massbar.org/submissions.
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: Andrew Marc Bunin of InfoScitec Corp., Kiera Slye of Bookman & Marayati, Nathan Harris of Lando & Anastasi LLP, MBA Young Lawyer 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: Bobbie King Jr. of the Deval Patrick Campaign and MBA Secretary Jeffrey N. Catalano.


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

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**MASSACHUSETTS LAWYERS JOURNAL | MAY 2010**
Calendar of Events

Monday, May 3
The Anatomy of Enforceable Ante-Nuptial 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
6:30 a.m.–3:30 p.m.
Beacon 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

Thursday, 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 6
The ABCs of Social Security Disability Cases
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
2–5 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
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:

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Signature

Billing Address (Must be provided)

If, after a payment by credit card, you later dispute the charges, unless prohibited by law, you agree not to cancel, reverse, 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.

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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.affiniscape.com for more information.

WARNING: Any attempt to do business with any company other than those listed in this section is at your risk. It is the responsibility of each lawyer to verify the information provided by the featured members.

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. Tracey Griffitts 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 waved 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.


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FIGURE 1

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.

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 your 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.

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 Griffitts’ 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):

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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 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 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 employer 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 propriety 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, employers and employees 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.

**FOR YOUR PRACTICE SOCIAL NETWORKING**

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 Hirsh, Roberts, Weinstein LLP.

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