Filing of the Alimony Reform Act of 2011

The end of this year will mark my 28th year of practicing law in the Probate and Family Court. Family law is one of the most dynamic areas of practice, with major changes in the law seen in the last three decades.

Family law involves some of the most emotional and difficult cases for practitioners to work on, as they involve assisting families in crisis to move forward in their lives. These cases often deal with the sensitive issues of how to share children, how to protect someone from domestic violence and how to have two families come from one and financially survive, often when the family had financial difficulty living under one roof.

Over the years, I have heard many lawyers remark that they were leaving this practice area, as they found it very difficult and mentally draining. I commend each and every lawyer in private practice, those in legal services and Probate and Family Court. Family law involves some of the most emotional and difficult cases for practitioners to work on, as they involve assisting families in crisis to move forward in their lives. These cases often deal with the sensitive issues of how to share children, how to protect someone from domestic violence and how to have two families come from one and financially survive, often when the family had financial difficulty living under one roof.

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New faces, old issues

Pictured left to right at the Jan. 11 New Legislators Reception are MBA President-elect Richard P. Campbell, MBA President Denise Squillante; State Rep. Chris Walsh (D-Framingham), MBA COO and Chief Legal Counsel Martin W. Healy and State Rep. Jerald Parisella (D-Beverly).

Large class of freshman legislators to tackle budget, probation, alimony in 2011-12

The 187th General Court was sworn in on Jan. 5, including an unusually large group of 47 freshman legislators. The coming months will indicate how the turnover of nearly one-quarter of the Legislature will impact the composition of legislative committees. These committees are charged with reviewing the approximately 6,000 bills that will be filed during the 2011-12 session. It is likely that a significant amount of committees will be infused with new blood, which could mean a new start for legislation that has languished for years.

Volunteer Spotlight

Answering the call: Sugarman deploys to Iraq

Clerk-Magistrate Hogan hailed for longtime service, dedication at BMC

BY KELSEY SADOFF

On average, 45,000 people enter the Massachusetts courts each day, starting and ending their court visits in the office of the clerk-magistrate.

For members of the public visiting the Boston Municipal Court, that usually means they will run into Daniel J. Hogan, who has served as the court’s clerk-magistrate for 11 years and manages the largest clerks’ office in the commonwealth.

“The clerk-magistrate is an integral cog in the wheels of justice,” said Hogan. “Every piece of paper in the courthouse begins with a clerk — small claims, search warrants, making determinations of probable cause — we perform every function that a judge does with the exception of saying ‘Guilty.’”

In Massachusetts, clerk-magistrates are judicial officers primarily responsible for the management and administration of the court’s business. Clerk-magistrates also serve as judicial hearing officers on procedural criminal matters, such as show-cause hearings and civil small claims sessions.

Clerk-magistrates in the commonwealth are also gubernatorial appointees and do not need a law degree.

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John McCarthy Roll

Chief judge, U.S. District Court for the District of Arizona

BY RICHARD P. CAMPBELL

“Service terminated on Jan. 8, 2011, Due to death.”

So reads the Biographical Directory of Federal Judges published by the Federal Judicial Center in its description of Judge John McCarthy Roll’s federal judicial service. The capstone to Judge Roll’s service is mindlessly efficient, presumably satisfying some bureaucratic limit on the amount of space that can be used, if this entry were an appellate brief filed in the 9th Circuit.

The premature death of a sitting judge saddens, raises images of importance that could have been done, and causes us to reflect on the frailty of life. Martha Sosman lost her life to cancer at age 56. Imagine the impact that Judge Roll’s murder, not unlike the murder of federal judges John Wood (1970), Richard Daroconco (1988) and Robert Smith Vance (1989), reminds us of the societal peril that flows inexorably from violent attacks like this one. Paraphrasing the theme of the 1996 ABA Annual Meeting, without safe and secure judges and lawyers, freedom, justice and liberty are “just words.”

Chief Justice John G. Roberts made the point in his public statement on the murder: “Judge Roll’s death is a somber reminder of the importance of the rule of law and the sacrifices of those who work to secure it.”

Judge Roll was a native of Pittsburgh. His family moved to Arizona to accommodate his mother’s failing health. When she died, Judge Roll (then 15 years old) changed his middle name to “McCarthy” (his mother’s maiden name) so as to keep alive her memory. By all accounts, Judge Roll was a devout Roman Catholic who attended Mass every day, including the day he was killed. One former law clerk posted this note about him on a website: “Judge Roll displayed literal heroism in his serving of God in his profession and his consistent, daily display of care and courtesy for the value of every person he encountered.”

Justice Pelander of the Arizona Supreme Court told NPR that Judge Roll had a “great intellect and great legal ability” and that he was “a judge’s judge” who was “well respected by his colleagues” on the federal bench, throughout the entire state judiciary and across all members of the bar.

John McCarthy Roll received his undergraduate and law degrees from the University of Arizona and a LL.M. from the University of Virginia School of Law. He served the public as an assistant city attorney, deputy county attorney, assistant U.S. attorney, Superior Court judge, Appeals Court judge and chief judge of the U.S. District Court for the District of Arizona. He leaves his wife Maureen, three children and five grandchildren.

While mourning his loss, his brothers and sisters of the Massachusetts Bar Association and friends of Judge Roll’s public service and recognition of the sacrifice of his public service and his commitment to the rule of law.

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IN MEMORIAM

David Nelson was 58 when illness forced him to take senior status. As Alzheimer’s stripped Judge Nelson of his strength and character, we were robbed of his wisdom, grace and consummate good will.

But with each of these judges, and ordinarily with the passing of most sitting judges, we have time to accept the loss and the ability to measure it against our family and personal experiences. The murder of a sitting judge, or prosecutor or trial lawyer, is altogether different in its impact on us. Judges and lawyers understand and appreciate the full potential that may come about from violent attacks on officers of the court.

We know that our prosperity is founded on three critically important features of day-to-day life: safety, security and predictability in our dealings with businesses, institutions and each other. We fuse these topics into a single phrase: the rule of law.

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While mourning his loss, his brothers and sisters of the Massachusetts Bar Association celebrate his life of public service and his commitment to the rule of law.

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NEW LEGISLATORS
Continued from page 1
This is the first year of the biennial ses-
sion. They will meet formally throughout 2011 and will wrap up in November. The Legislature will begin meeting formally again in January of 2012 with all bills being carried over from 2011. The formal portion of the legislative session will end on July 31, 2012.

BUDGET
With a budget gap estimated at $1.5–$2 billion, the state budget will remain atop the legislative priority list. On Jan. 26, Gov. Deval Patrick released his budget, which calls for a 2 percent reduction in funding for an already straitened judiciary.

Additionally, Patrick’s budget recommends moving the Probation Department and the Parole Board under the auspices of the executive branch and merging them into one agency.

The governor also seeks control over the Committee for Public Counsel Services and wishes to move them within the purview of the executive branch. In a widely criticized move, he recommends the elimi-
nation of private bar advocates in favor of hiring 1,000 new public counsel lawyers within the agency.

The governor also filed a supplement-
al budget for fiscal 2011. Citing the SJC’s Court Reform Study, i.e. “The Monan Com-
mittee Report,” the Patrick proposes install-
ing a professional chief administrator to helm the Trial Court, effectively ending the tenure of Chief Justice for Administration and Management Robert A. Mulligan. The chief administrator would be appointed by the Supreme Judicial Court for a term of five years. The supplemental budget now awaits action by the Legislature.

PROBATION/CRIMINAL JUSTICE
Two of the biggest news stories con-
tinue to be reform of the Probation Depart-
ment and the Parole Board.

Following the report of Supreme Ju-
dicial Court-appointed independent coun-
sel Paul Ware, which found “pervasive”
patronage and hiring practices within the state’s Probation Department, state officials continue to wrestle with ways to reform the department.

There are five different investigative authorities and two appointed commissions continuing to probe hiring practices within the department. The results of those investiga-
tions will undoubtedly result in proposed legislative changes this spring in addition to the current proposal by the governor.

The Patrick administration launched an internal review of the Parole Board fol-
lowing the fatal shooting of Woburn Police Officer John Maguire by violent offender Dominic Cinelli, who was granted parole in 2008. That review resulted in the resigna-
tion of the five members of the parole board who voted in favor of Cinelli’s release, and the Parole Board’s executive director.

The review also resulted in the governor filing a “three strikes and you’re out” law. If passed, this legislation would require habitual offenders to serve the maximum penalty on a third conviction from a list of “serious” crimes.

UPC
In one of the final acts of the 2009–10 legislative session, the effective date for the Uniform Probate Code was pushed to Jan. 2, 2012. The MBA is filing legislation making technical corrections to the UPC.

ALIMONY
The Legislature has tackled the emo-
tionally packed issue of alimony awards. Responding to calls from an outraged pub-
lic frustrated with the widely held percep-
tion that an award of alimony is tantamount to a life sentence of payments, the Legisla-
ture created a working group to explore the complex issue.

In October of 2009, the chairs of the Legislature’s Joint Committee on the Judi-
ciary appointed a task force to review the various alimony bills pending before the committee. The task force included legisla-
tors, Probate and Family Court Chief Jus-
tice Paula M. Carey and representatives of: Massachusetts Alimony Reform, the Mas-
sachusetts Bar Association, the Women’s Bar Association, the Massachusetts Chap-
er of the American Academy of Matrimo-
nial Attorneys and the Boston Bar Associa-
tion. The task force drafted legislation that will be considered during this legislative session.

After 14 months, and hundreds of hours conducting meetings, research and writing, the task force filed legislation in January to reform alimony in Massachusetts. Through this comprehensive legislation, the task force addresses numerous issues, and es-
tablishes parity and clarity regarding alim-
ony in Massachusetts.

MALPRACTICE REFORM
In his January inauguration address, Patrick indicated his desire to push for re-
form in the area of medical malpractice.
At this time, he has not indicated how he wishes to achieve reform.

Freshmen legislators welcomed, urged to support legal services
The Massachusetts Bar Association co-sponsored the New Legislators’ Re-
ception on Jan. 11 at the John Adams Courthouse. The event was held to wel-
come new members of the Massachus-
etts Legislature and to emphasize the importance of their support in ensuring funding for legal services.

“State funding for legal services is one cog in the machine that is legal ser-
vices. . . . Despite the best efforts of the bar, including much pro bono activity, we are still falling short in providing civil legal aid to our most vulnerable citizens,” said MBA President Denise Squillante, a featured speaker.

Squillante was joined at the event by MBA President-elect Richard P. Campbell; Chief Operating Officer and Chief Legal Counsel Martin W. Healy; and Legislative Activities Manager Lee Constantine, right, at a Jan. 11 reception for new legislators.

As a result of the November elec-
tion, 39 new faces will join the House of Representatives and eight will join the Senate.

The event was hosted by the Massa-
cussetts Legal Assistance Corporation and co-sponsored by the Boston Bar Association.

News from the Courts

Duffy confirmed to SJ; MBA praises council’s decision
The Governor’s Council on Jan. 26 confirmed Gov. Deval Patrick’s nomination of Fernande R. Duffy to serve as an associate justice to the Supreme Judi-
cial Court. The appointment is the time an Asian-American will serve on the state’s highest court.

Duffy fills the open seat from the re-
tirement of former Chief Justice Marga-
ret H. Marshall and the elevation of Asso-
ciate Justice Roderick L. Ireland, who was sworn in as chief justice on Dec. 20.

“The Massachusetts Bar Associa-
tion is delighted to congratulate Justice Duffy on her ap-
pointment to the SJC. Her detailed experience as a Probate and Family Court judge makes her well-equipped to grapple with the complex issues facing many families today, including custody and support issues revolving around the
time she served as executive director of the Massachusetts Housing Finance Agency.

Mulligan noted that the Housing Court was the first Trial Court depart-
ment to introduce the full version of the MassCourts computer system in multiple locations, and through its case manage-
ment efforts, has reduced the number of aged cases from over 21,000 at the end of 2006 to 1,741 at the end of 2009.

Probate and Family Court introduces bilingual short form financial statement
In response to the high percentage of bilingual, self-represented litigants in many of its 14 divisions, the Probate and Family Court introduces a Spanish and Portuguese versions of its Short Form Financial Statement (CDF-314a), one of the most widely used Probate and Family Court forms.

Go to www.mass.gov/courts to access the forms. The forms must be printed with black ink on pink paper, pursuant to Uniform Probate Court Practice XXXIII.

The online version is currently available in a “print only” format, while a “fillable” version is being developed for posting in the near future.

Housing Court CJ Steven D. Pierce reappointed
Chief Justice for Administration & Management Robert A. Mulligan has an-
ounced the reappointment of Housing Court Chief Justice Steven D. Pierce for a five-year term. Pierce, who has served on the Housing Court since 2003, was appointed chief justice in 2006. He previ-
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CLERK-MAGISTRATE HOGAN
Continued from page 1

Clerks and bail hearings

Clerks, who are responsible for bail hearings, have taken on a new heat in recent years for the overtime pay they receive when going to after-hours bail hearings. Due to the Massachusetts Supreme Judicial Court ruling that bail hearings must be held within six hours of arrest to avoid constitutional issues, clerks are often called after work hours to set or deny bail, and earn the $40 fee the arrestee pays after being set.

“Taxpayers get an enormous bang for their buck,” Boston Municipal Court Clerk-Magistrate Daniel J. Hogan said about the additional after-hours fees clerks earn. “We may be there for a bail hearing, but we also perform significant constitutional duties for no compensation.”

For Hogan, who was summoned down to the police station in July 2008 to admit someone to bail, was brought to detectives who also needed an arrest warrant. Although Hogan was only at the station to issue bail, he also went through the process of issuing a warrant — at no extra cost to the community for the extra extraneous fees, and for hashing out the legal meaning — and then had a hand in watching the Boston police track down Christian Karl Gerlach, the man who used the alias of Clark Rockefeller.

“I was pleased to be a part of that,” said Hogan, who was on hand to watch the Amber Alert go out for Rockefeller’s daughter, Reigh. “When the system works, it really works.”

“For me, that’s the number one thing,” he added. “People helped me get here.”

“I helped people get there,” he said. “People have helped me along the way. I am very thankful, and I now try to give it back. That is my philosophy.”

INSIDE THE COURTHOUSE

As the BMC’s clerk-magistrate for the better part of the last decade, Hogan knows the inner workings of the court system, and the vital role that clerks play in the administration of justice.

For courthouses to run smoothly — although there is always the inherent conflict between judge and clerk — Hogan believes judges and clerks should understand their roles and not try to over-exert authority.

“From a judge’s perspective, the lines of authority are not clear,” he said. “From my perspective, the lines of authority could not be clearer. What judges should do is get on the bench at 9 a.m. and hear cases. If they would do that, then the system would be better off and clerks would be responsible for internal administration. As much as a courthouse is the lifeblood of the community, the clerk is the lifeblood of the courthouse. If the courthouse moves forward or backward without the clerk’s office.

“There is not a single so-called expert in the courts that knows half as much as Dan Hogan about the system and the intricate nuances of procedural law,” said MBA Chief Operating Officer and Chief Legal Counsel Martin W. Healy. “He is well-respected and a go-to person for legal practitioners throughout the state. He has quietly played a tremendous role in numerous policy and legislative matters.”

Although a large portion of a clerk’s job is focused on administrative tasks, as public servants, elected and appointed clerks are accountable to the public. At the BMC, there is no voicemail or automated phone system, giving the public direct access to office staff and clerks with no call waiting.

“I think from the moment he has been there [at the BMC], he has worked very hard,” Judge Hogan said of his son. “He has made significant improvements … He has done a good job in training employees when they merged the criminal and civil sides. I believe it is quite well known that the BMC is working much better since he took over.”

AN ECONOMIC IMPACT

Hogan believes the recent economic climate has had a major impact on the court system. With an explosion of pro se litigants in the courts, the BMC office has become creative, educating its work force to explain the court processes to the public in layman’s terms. On Wednesdays, the court offers a program where volunteer attorneys come in to work pro se litigants.

“We don’t build cars and widgets here,” Hogan said. “We deal with people. The courts are the last bastion, and personnel have to take extraordinary measures — we have become social workers, mental health workers — we have been asked to wear so many hats.”

Hogan has also found that the economy has created a surge in “crimes of necessity,” where citizens are forced to do things they wouldn’t normally do in order to feed their families or pay certain bills. Hogan refers to these incidents as “state-of-life filings,” that ultimately create a vicious cycle. When individuals are faced with unemployment, and might lose everything, that can lead to depression, abuse and then legal problems.

With lawyers, Hogan sees the downturn in the economy making the practice of law more adversarial.

“For my perspective, the practice of law has become more robotic,” he said. “No one goes outside to come up with a reasonable solution — no one takes time to talk.”

One positive from the economic downturn is that Hogan sees the courts becoming more cognizant of the issues small and single-practitioner faces. At the BMC, his office has started to consider scheduling adjustments to limit practitioners numerous appearances in court, aiding solo and small-firm lawyers whose extra time in the office can positively impact revenue.

While Hogan acknowledges that the court has to adapt to changes in technology and become more user-friendly by allowing people better access to the court, the economy has hampered the process.

“We have made some pretty good strides, but without funding, there is only so much you can do,” said Hogan, who believes that members of the courts have an obligation to effectively advocate for adequate funding to perform constitutional mandates.

“We do a tremendous job,” he said. “But we do it with our hands tied. Our most effective resource is our people and we have lost over 1,000 in the last few years. We can’t keep losing people at that rate.”

A LEADER OF CLERKS

Hogan has been involved in the Association for Magistrates and Assistant Clerks since graduating from law school in 1994, and has been elected each of the last four years as president of the 400-member association.

“Our number one goal is to educate the public and elected officials on what we do, which is sometimes overshadowed,” he said. “These are difficult times and we need to focus on keeping the benefits of this job alive, so it doesn’t continue to get eroded.”

Keith E. McDonough, who has known Hogan for 10 years through the association and is its current vice president, credits him with “professionalizing the association” and increasing its stature.

“I can say that in the past — prior to his becoming president — the clerks’ association may not have been routinely consulted by the (chief justices) with issues involving clerks,” said McDonough.

“That has changed.”

Hogan and McDonough are both members of the Trial Court’s Fiscal Task Force and, as a result, are able to speak on behalf of clerks across the commonwealth. With the likelihood of further fiscal cuts — both men are working to make sure the hard work of clerks is well known.

“We have a goal to try to maintain the present staffing levels in our offices,” said McDonough. “There are different needs for different courts,” said Hogan, who believes the system that clerk-magistrates operate under — a site-based management approach — with each court-magistrate making decisions about what is best for each office, could possibly be a good model for the judiciary as it deals with the aftermath of the Probation Department scandal. “I believe our approach is the best in the judiciary. It is a model that maybe should be looked at.”

In the end, Hogan’s main focus is on helping members of the public and legal community, by managing an efficient facility that meets their needs.

“When they are coming up to my cas ket, if they tell me kids, ‘Your dad was a good man,’ I will feel good. If I can be half the man my father is, I will have been a success” he said. “In the end, that will be good enough for me.”

Hogan with his wife, Deonie, and their daughters Alana and Julie.
Newcomer Mayo A. Shattuck leads MBA's rebirth

After the stock market crash plunged the nation into the Great Depression, the Massachusetts Bar Association fell into a period of apathy. Membership had dwindled, and in 1940, the MBA did not have enough people to hold its annual meeting.

To the rescue came Mayo A. Shattuck, a new member of the MBA, who served as president from 1941-44.

As described in Fiat Justitia, A History of the Massachusetts Bar Association 1910-1985, Shattuck, from Hingham, cut quite the image.

In 1941, Mayo Shattuck, who had been a member less than a month, became the MBA's new president and, armed with a three-year term, completely mobilized the Association that seemed like a drifting boat. "A daring hero saves the day" movie plot. In fact, Shattuck, with his Clark Gablesque mustache, possessed a courage and a fighting spirit to match the movie metaphor.

Shattuck had made a splash — as reported on the front page of the Boston Herald’s Jan. 16, 1941 issue — for enlisting the boos and cheers of hundreds of people at a public debate, to argue that the United States should aid Britain in World War II. (The bombing of Pearl Harbor that December would settle the debate. Those were turbulent times, for the association and the nation.)

Upon taking office, he immediately created a committee to “study the deficiencies or our organization and make recommendations.”

One of the first recommendations was to restart the annual meeting, but adding both a social element and legal education offerings to the standard MBA business, a tradition that carries through to today. Indeed, MBA members had complained about the lack of any formal educational programs since at least 1931. The success of those offerings led to what became continuing legal education in Massachusetts.

Shattuck also oversaw the hiring of the MBA’s first executive secretary, the stage for encouraging greater participation in the Massachusetts Law Quarterly (before it became the Massachusetts Law Review), and the creation of its Junior Bar for younger bar members that would eventually be known as Young Lawyers.

But perhaps his greatest accomplishment was re-energizing the MBA’s membership, which had sunk to as little as 600 members. Shattuck appointed groups in 62 cities and towns across the state to actively recruit other lawyers to join the MBA.

The effort was a success. Hundreds more had joined by the end of Shattuck’s term, and membership continued increasing in the years and decades after him.

MBA CENTENNIAL

THE 1940s

1940: The association is unable to gather enough interested members to hold the annual meeting.

JUNE 1941: Mayo Shattuck, less than one month into his membership in the association, is voted into a three-year term as MBA president. A dramatic orator, he starts shaking the association out of its apathy.

NOV. 1941: Shattuck publishes the recommendations of a subcommittee in a special issue of the Quarterly. Included in the recommendations is the beginning of the association’s focus on continuing education for the state’s attorneys.

NOV. 1941: The MBA moves into new offices on the second floor of 5 Park St.

DEC. 7, 1941: Pearl Harbor is bombed.

MAY 1942: For the first time, the association holds a two-day annual meeting combining education, entertainment and association business. It includes the first daylong annual Massachusetts Law Institute, which later became known as the Swampscott Institutes.

1944: MBA President Edward O. Proctor is elected.

1947-50: Concerns about communism sweep the country. In 1951, the MBA’s executive committee goes on record rejecting the loyalty oath proposed by a special committee of the Legislature, but agrees to exclude all members of the Communist Party from membership in both the association and the bar.

1950: After a decade of activism and recruitment, the MBA has 2,600 members, more than half of the estimated 5,000 members of the bar.

CENTENNIAL TIMELINE

- The McCarthy era left few parts of the country untouched. Government officials had taken turns in "undermining" individuals. Massachusetts lawyers were required to cite a "loyalty pledge" to join or even remain a member of the bar. The MBA staunchly fought against the new oath.

- Eventually, however, under pressure from other bar associations and legislative figures, MBA members voted to exclude Communist Party members from membership in both the MBA and the bar itself. MBA President Samuel P. Sears wanted to take more proactive steps and enlisted on education the proposition about democracy and the law to alert广州 Communist sentiment.

- In the early 20th century, aspiring lawyers qualified for the bar by studying with or shadowing practicing attorneys. These apprenticeships are also employed in the war effort or serving in the armed forces. The vacuum creates great opportunities for women, who are once again, if not welcomed, at least tolerated in the profession.

- 1945: The MBA moves into new offices in Room 622, 53 State St.

- 1946: MBA President Edward O. Proctor is elected.

- 1947-50: Concerns about communism sweep the country. In 1951, the MBA’s executive committee goes on record rejecting the loyalty oath proposed by a special committee of the Legislature, but agrees to exclude all members of the Communist Party from membership in both the association and the bar.

- 1950: After a decade of activism and recruitment, the MBA has 2,600 members, more than half of the estimated 5,000 members of the bar.

Did you know?

- From the 1930s through the early 1970s, MBA presidents usually held three-year terms. The concept was devised to allow each president to engage in long-term planning for the association, rather than to change short-term personal goals. In 1973, members of the annual meeting rejected that and allowed more lawyers an opportunity for MBA leadership. This term should once again be determined by the organization before they assume their leadership positions.

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- In the 1960s, the MBA initiated a force on the frontlines defending and defending the hegemony of the legal profession. It formed the Joint Committee of the Press and Bar, which reminded the public about the roles of the media and the right to a fair trial under the First Amendment, and lawyers' claims to their clients' rights to a fair trial under the Sixth Amendment.

- The Joint Committee issued a "Guide for the Bar and News Media," which helped support Massachusetts newspaper and broader a model for states in other states.

- In 1985, the MBA participated in a joint conference with the Massachusetts Bar Association and the Massachusetts Bar Association to agree on certain courtesies and considerations for meetings both within and without the state.
CIVIL LITIGATION

Minors’ Settlements, Guardianship, Conservatorships and Supplemental Needs Trusts

Tuesday, Feb. 15, 4–7 p.m.
MBA, 20 West St., Boston

Faculty:
Chris A. Minoff, Esq., program chair
Milne Law Offices, Dover
Steven M. Cohen, Esq.
Cohen & Oalican LLP, Boston
Daniel T. S. Heffeman, Esq.
Kolin, Crabtree & Strong, Boston
Mark McSauzon, C.P.A.
McSauzon & Schwartz, C.P.A. LLC, Needham Heights
Melinda Barnes McGinn, C.F.P.
Second vice president, Wealth Management and Financial Planning Specialist, Morgan Stanley Smith Barney, Waltham
Elizabeth N. Mulvey, Esq.
Crowe & Mulvey LLP, Boston
Douglas K. Sheff, Esq.
Sheff Law Offices, Boston

*Additional faculty to be announced.

Sponsoring sections/divisions:
Civil Litigation, Family Law, Probate Law, Taxation, Young Lawyers Division

Fundamentals of Civil Motion Practice

Tuesday, Feb. 15, 4–7 p.m.
Western New England College School of Law
1215 Wilbraham Road, Springfield

Faculty:
Keith A. Minoff, Esq., program chair
Law Offices of Keith A. Minoff, Esq., Springfield
*Additional faculty to be announced.

Sponsoring sections/divisions:
Civil Litigation, General Practice, Solo & Small-Firm, Young Lawyers Division

Co-sponsors:
Western New England College School of Law and the Berkshire, Franklin, Hampden and Hampshire bar associations

FAMILY LAW

Basics of Divorce Practice

Rescheduled from Feb. 1 due to snow.
Wednesday, March 23, 4–7 p.m.
University of Massachusetts School of Law
333 Faunce Corner Road, N. Dartmouth

Faculty:
Deborah M. Faenza, Esq., program co-chair
Ryan & Faenza, Wpjoole
Susan A. Huettner, Esq., program co-chair
Law Office of Susan A. Huettner PC, Sandwich

Sponsoring sections/divisions:
Family Law, General Practice, Solo & Small-Firm, Young Lawyers Division

Co-sponsors:
University of Massachusetts School of Law, Bristol County Bar Association

TAXATION

What Every Practitioner Needs to Know About the New Tax Act

Wednesday, Feb. 16, 4–7 p.m.
MBA, 20 West St., Boston

*Sponsored by the Taxation Section Council

Faculty:
Lisa M. Rico, Esq., program chair
Gilmore, Rees & Carlson PC, Wellesley
Stephen A. Coletta, Esq.
DiCicco, Guilman & Company LLP, Auburndale
Kevin G. Diamond, Esq., C.P.A.
Shea & Diamond LLP, Holston
Joan B. DiCola, Esq.
Law Office of Joan B. Di Cola, Boston

Sponsoring sections:
Probate Law, Taxation

GENERAL PRACTICE

Creative Ways to Use Your Law Degree

Thursday, Feb. 17, 8:30 a.m.–5:30 p.m.
Lombardo’s, 16 Billings St., Randolph
Reception to follow

Faculty:
Ursula Furi-Perry, Esq., Director of Academic Support and Adjunct Professor, Massachusetts School of Law, Andover
Mandie LeBeau, Esq.
Massachusetts School of Law, Andover Academic Support and Adjunct Professor,
Ursula Furi-Perry, Esq., Director of Bar Essay Practice

*Featured faculty:
Ursula Furi-Perry, Esq.

FACULTY SPOTLIGHT

Ursula Furi-Perry, Esq.

Furi-Perry is Director of Academic Support and Director of Bar Essay Writing at the Massachusetts School of Law at Andover. She is also a part-time associate with the law firm of Orlando & Associates in Gloucester.

Furi-Perry is the author of several books, including: 50 Unique Legal Paths: How to Find the Right Job, Your First Year as a Lawyer Revealed: Secrets, Opportunities and Success, and The Legal Assistant’s Complete Desk Reference, and is co-author of Law School Revealed: Secrets, Opportunities and Success.

She has also published numerous articles in national and regional publications, including Law.com, American Lawyer Media, Parenting & Kids Magazine, The National Jurist, LawCrossing.com and many others.

Furi-Perry is a graduate of Brandeis University and received her J.D. magna cum laude at Massachusetts School of Law.

Save the Date

Final Directives: Medical and Legal Perspectives on Death and Dying

COURSE #: HLA11
Thursday, April 7, 3–7 p.m.
MBA, 20 West St., Boston
Sponsored by the Health Law Section Council
President-elect Campbell speaks about social host law

MBA President-elect Richard P. Campbell appeared on the WFXT Fox 25 Morning News on Jan. 18 to discuss the state’s social host law. His appearance followed headlines surrounding underage drinking arrests in Middletown, Mass. — the latest in a series of similar arrests in the state.

Campbell was interviewed by co-host Gene Lavanchy and answered questions about the parameters of the law and offered common sense advice to parents as promoted on www.socialhostliability.org, Campbell’s website on the subject.

“Be a parent, not a pal,” said Campbell, who has been involved in countless speaking engagements on the issue. One such forum included a controversial mandatory parent meeting in Swampscott in January.

In the Massachusetts social host 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.

To watch the interview, visit www.myfoxboston.com/dpp/morning/social-host-law-20110118.

MBF seeks IOLTA grants proposals; plans to award $3 million for legal aid

The Massachusetts Bar Foundation is accepting applications for its 2011-12 IOLTA Grants Program.

The MBF expects to award approximately $3 million to nonprofit organizations for law-related programs that either provide civil legal services to the state’s low-income population, or improve the administration of justice in the commonwealth.

Application materials are available at www.MassBarFoundation.org. The deadline for application submission is Friday, March 4. For additional information, contact the MBF Grants Office at (617) 338-0534 or e-mail foundation@massbar.org.

The Massachusetts Bar Foundation is the commonwealth’s premier legal charity. Founded in 1964, the MBF is the philanthropic partner of the Massachusetts Bar Association, and is one of three charitable entities in Massachusetts that distributes funds through the Massachusetts Supreme Judicial Court’s Interest on Lawyers’ Trust Accounts (IOLTA) Program.

The foundation represents the commitment of the lawyers of Massachusetts to improve the administration of justice, to promote understanding of the law, and to ensure equal access to the legal system for all residents of the commonwealth, particularly those most vulnerable.

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MBF offers grants to law students

APPLY TO 2011 MBF LEGAL INTERN FELLOWSHIP PROGRAM

To assist law students gain practical experience in the public sector, the Massachusetts Bar Foundation will award up to six stipends of $6,000 each to law students who intern during the summer months at nonprofit organizations that provide civil legal services to low-income clients in Massachusetts.

Application materials are available at www.MassBarFoundation.org. The deadline for application submission is Friday, March 4. For additional information, contact Susannah Thomas at (617) 338-0647, or sthomas@massbar.org.

To learn more about the Massachusetts Bar Foundation, visit www.massbarfoundation.org.
Volunteer Spotlight

Answering the call

Army Reservist Sugarman, a longtime DAL volunteer, deploys to Iraq for one year

By Bill Archambault

“...able to practice law for a client I love, at a time of great historical significance in a challenging environment. There are so many other lawyers in transition now that don’t have that kind of opportunity. I’m very fortunate.”

Richard A. Sugarman, Major, U.S. Army Reserves Command Judge Advocate
804th Medical Brigade

The start of the new year was particularly busy for Richard A. Sugarman, a commercial litigation lawyer and longtime volunteer for the Massachusetts Bar Association’s Dial-A-Lawyer and Veterans Dial-A-Lawyer programs.

Sugarman, a U.S. Air Force veteran and a major in the U.S. Army Reserve’s Judge Advocate General’s Corps, deployed late last month for a year in Iraq, where he is assigned to the 804th Medical Brigade. To prepare, he spent a week training with other JAG officers at the Pentagon in Washington, D.C., to learn what to expect, and what will be expected of them.

Then he trained for a week in Texas on the legal healthcare issues he’ll be dealing with as the U.S. military winds down its presence in Iraq. As the senior legal advisor to the brigade commander for all military medical units in Iraq, he’ll be handling an array of legal issues, including: courts martial, implementation of government contracts, ethics issues, senior leader misconduct, detainee medical treatment and military health care issues such as the Health Insurance Portability and Accountability Act, or HIPAA.

“It certainly is daunting. You can’t be an expert in everything, but every lawyer has to know how to find out where the answer is and who to speak with when an issue comes up in an area in which that lawyer has little prior experience,” he said of the responsibilities he’ll share with one or two other JAGs and a couple of paralegals.

“It’s quite a broad area of topics that we’ll be working on. It’s very similar to being an in-house counsel. Any day can bring any type of legal issue. We may deal a little bit with Iraqis; we’ll deal a little bit with contractors. Part of my job would be to interpret contracts and whether they’re being properly implemented.”

The deployment is Sugarman’s first overseas. The position was one that he applied for, but he didn’t learn he’d be spending a year in Iraq until he showed up for his first weekend drill. In addition to the legal and military responsibilities he’ll face in the next year, he’s also preparing for the emotional strain of being away from his wife and two sons, ages 5 and 2.

“I didn’t know the unit was going to be deployed when I applied for it,” he said. “(My wife) was very surprised and not very happy about it.”

She’s had some experience caring for the boys when he’s been away for one or two weeks at a time, but the duration of this trip – he’s due back in late 2011 – presents a different kind of challenge. Her mother lives nearby, and they have friends who are happy to help out while he’s gone.

“It is going to be very hard. I don’t want to be away from my family,” he said, but technology makes serving overseas easier than veterans had in previous wars and conflicts. “We’re fortunate now that we have Skype,” he said, noting that he’s hoping he’ll be able to video-call his family every day.

Sugarman, who said he enjoyed his time as a space and missile operations officer in the Air Force, wanted to continue his service but didn’t want to re-enlist. He decided to become a reservist, but the Air Force’s JAG training program would have required attending school in Alabama, and he’d already joined a firm in Washington, D.C. So, he signed up for the Army Reserve, which allowed him to complete his military law training via correspondence.

And, during his year in Iraq, he’ll be undergoing intensive on-the-job training, which he expects could position him well for when he returns.

Sugarman practices commercial litigation, primarily, but also has experience in employment law, energy law and estate planning. The crash course he’ll be getting in health law during his deployment could position him well for a transition when he returns in early 2012.

“That’s one area I’ve found interesting, and may explore once I’ve returned,” he said.

His reserve status has already been beneficial to his career. He switched law firms in late 2007, but soon after, the new firm dissolved. His practice group joined a new law firm, but the business deal underlying that move resulted in layoffs. The Army offered to put him on active duty right away, providing reliable employment. He’s anticipating a better job environment in early 2012.

“I think the economy is going to be a lot better than it is now,” he said.

“I’m also able to practice law for a client I love, at a time of great historical significance in a challenging environment. There are so many other lawyers in transition now that don’t have that kind of opportunity. I’m very fortunate.”
For Jim McGuire, Mock Trial has always mixed family and business

BY JENNIFER ROSINSKI

Three years after the Massachusetts Bar Association’s Mock Trial Program began in 1985, Jim McGuire somewhat reluctantly agreed to serve as a volunteer coach for his son’s junior high school team.

“He came rushing home from school when he was in the eighth grade and said, ‘Dad, Dad, I made the Mock Trial team,’ and I said ‘congratulations,’ ” McGuire said, remembering the conversation he had with his son, Joshua A. McGuire. “He then said, ‘Not so fast, I volunteered you as the coach.’ ”

That decision began the former Brown Rudnick partner’s more than decade-long love affair with the educational program. His accomplishments comprise coaching five teams — two of which included his son and daughter — to state championshipships, fundraising for a team to attend the national competition and securing the program’s private financing through his former firm.

“Mock Trial was a big part of our family,” said McGuire, whose wife, Claire, a former partner at Ropes & Gray LLP, would accompany him to the national tournament. The younger McGuire, an assistant attorney general, celebrated victory again in March 2010. The team he served as at attorney general, celebrated victory again by the late 1990s and had ballooned to $1.3 million.

“Mock Trial was a bittersweet achievement because the program was struggling to cover the costs of administering the massive program,” McGuire said in a strong voice full of pride. “One year later, Joshua went on to Newton North High School and McGuire’s daughter Julie entered F.A. Day as a seventh-grader. Joshua again petitioned his school to create a Mock Trial team and again volunteered his father as the coach. Julie joined the team her brother had created.

The brother and sister battled against each other in the play-off round, and F.A. Day was victorious, and went on to win the state championship for the second year in a row. The school was the only middle school to win back-to-back championships in the history of the competition.

TO THE ENGLISH

It was 1993 when McGuire was approached by Jerry Howland to coach a team from Boston’s The English High School at the national tournament in Atlanta. Howland was a teacher and Mock Trial coach at the school, at which he had won the 1993 state championship. McGuire agreed. It was 10 days until nationals.

Then McGuire realized it might be impossible for the team to compete. There was no money to cover the cost of the trip. “So I called up my travel agent, ordered 15 round-trip tickets to Atlanta and put it on a credit card,” McGuire said matter-of-factly. “They all had a wonderful time.”

McGuire and his wife then sat down and figured out how to cover that $3,000 charge. “We knew we had to get the word out to Boston law firms,” said McGuire, who believed attorneys would donate to the program if they knew how special it was. An informal fund-raising drive was born and McGuire spearheaded the firm collections, starting first with her own, Ropes & Gray. They more than covered the amount.

BROWN RUDNICK

Mock Trial was wildly successful by the late 1990s and had ballooned to more than 120 participating schools. It was a bittersweet achievement because the MBA was struggling to cover the costs of administering the massive program.

Knowing firsthand how instrumentalm the program was in educating young people not only about the law, but themselves, McGuire approached the policy committee at Brown Rudnick about funding the program. They thought it was a good idea,” McGuire said.

1998 was the first year that Brown Rudnick became the lead financial underwriter of the program. The firm, through its Center for the Public Interest, donates $25,000 each year and has contributed more than $2.5 million dollars to the program.

LEGACY

McGuire has tried to follow the paths of several students who have moved through the Mock Trial Program’s ranks over the years. His informal research and anecdotal evidence proves to him that the program has had a great impact.

Over the past 22 years, I’ve tracked some 20 students,” he said. “For the most part, we’ve graduated two kinds, teachers and lawyers,” he said. “The ripple effect of the program goes beyond helping kids understand the law,” said McGuire, who credits the program with giving his daughter Julie, now a social psychologist, poise and the ability to speak on her feet. “The public speaking skills they gain transfers in any direction they want.”
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Christopher Kenney named DRI regional director

Christopher A. Kenney, the chair of the Massachusetts Bar Association’s Civil Litigation Section Council, has been named to the regional board of directors of DRI – The Voice of the Defense Bar. DRI is the largest international organization representing more than 22,500 attorneys involved in civil defense litigation.

A longtime member of DRI, Kenney is a founding member and managing shareholder of Kenney & Sams PC in Boston, and is a former Massachusetts special assistant attorney general. Kenney was named the regional director for New England at DRI’s annual meeting in late October. He is a member of DRI’s Construction Law, Employment Law, Insurance Law and Trial Tactics Committees. ■

Tania N. Shah receives BU’s Young Lawyer’s Chair award

Tania N. Shah is the 2010 recipient of Boston University School of Law’s Young Lawyer’s Chair award. The honor is given each year to the alumnus or alumna who, within 10 years of graduation, has achieved notable success in the profession.

The recognition is part of BU Law’s annual Silver Shining Alumni Awards, which have been presented since 1967 in recognition of notable contributions to the legal profession, leadership within the community and unfailing service to the School of Law.

Shah earned her juris doctor from BU Law in 2000, and her B.A. and B.S. from the University of California, Berkeley. Shah is the founder of LawTutors LLC, and the managing member of Shah Law LLC, both based in Brookline. She is an adjunct professor at the University of Massachusetts School of Law, and teaches for Emanuel Bar Review, founded by Steven Emanuel. She is the co-author of the Aspen Legal Book Series What Not to Write.

Mandragouras managing partner of Nelson Mullins’ Boston office

Nelson, Mullins, Riley & Scarborough LLP named Amy Baker Mandragouras, an intellectual property lawyer with a focus on the biotechnology, pharmaceuticals and life sciences industries, managing partner of its Boston office in January.

Her appointment follows the recent combination of Nelson Mullins with Boston-based Lahive & Cockfield, a firm where Mandragouras was chair of the executive committee. With the addition of 23 attorneys and patent professionals from Lahive, the Boston office of Nelson Mullins now has 39 attorneys and technical specialists.

“Intellectual property and patent issues are extremely critical to our biotechnology, life sciences and pharmaceuticals clients — both the large, established clients and the start ups — as they search for, or take advantage of, strategic-aliance or acquisition opportunities in the United States and around the world,” she said.

Mandragouras’ experience includes strategic counseling in the biotechnology and pharmaceuticals industries, and she advises clients in the development and implementation of intellectual-property strategies, through all phases — from start-up through maturity, through financing, and in the formation of strategic alliances.

She earned her juris doctor from Northeastern University School of Law in 1992. In 1988, Mandragouras was co-author of the Aspen Legal Book Series Fundamentals of Civil Motion Practice.

Thursday, March 31
First Annual General-Practice, Solo & Small-Firm Symposium
Strategies for Success: 2011
2-p.m. (registration to follow)
MBA, 20 West St., Boston

Wednesday, Feb. 16
What Every Practitioner Needs to Know About the New Tax Act
4-7 p.m.
MBA, 20 West St., Boston

Thursday, Feb. 17
Creative Ways to Use Your Law Degree
8:30 a.m.–5:30 p.m. (registration to follow)
Lombardi’s, 16 Billings St., Randolph

Wednesday, March 2
MBA Monthly Diary-A-Lawyer Program
5:30–7:30 p.m.
Statewide dial-in #: (617) 338-0610

Thursday, March 10
House of Delegates meeting
2-5 p.m.
Hilton Dedham, 25 Allied Drive, Dedham

Wednesday, March 16
Proceed with Caution: Navigating the Perils at the Intersection of Immigration and Family Law
4-7 p.m.
MBA, 20 West St., Boston
**Massachusetts Lawyers Journal**

**February 2011**

**EXPERTS & RESOURCES**

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

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

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**Attorney Brian R. Jerome**

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**LAWYERS JOURNAL**

**CONTINUED ON PAGES 16 AND 21**
"How many bubbles in a bar of soap?" This was one of the test questions asked of African-Americans attempting to register to vote in the county seat of Hattiesburg, Miss., in the years leading up to the early 1960s. They might have also been asked to write a short essay interpreting complicated, obscure sections of the state constitution, such as the section empowering the Legislature to charter corporations, or the section concerning the title and leasing of lands in the Choctaw purchase. When they were, inevitably, told that they failed, the Circuit Clerk Theron Lynd always insisted he didn’t have to tell them which part of the application they got wrong and made up a baseless rule that they’d have to wait six months to try again.

Yet getting to the point where they could even take the test was an effort, since a black applicant might be relentlessly told, dozens of times over a period of months, to come back because the clerk was busy.

On the other hand, a white person merely had to give his name, address and signature and would be registered to vote within minutes without taking any test or filling out an application. The result was that, although the voting age population of Forrest County, Miss., was one-third black, by 1962, 10,000 whites and 14 blacks were registered to vote. In fact, in the preceding three years, 2,400 white people had registered and not a single black had been permitted. The oddity was that, among the African-Americans who failed the test, were clergymen, war heroes, public school principals and teachers, some with masters’ degrees from Ivy League schools.

“How could it be that blacks with college degrees were considered not competent to interpret the Constitution and yet there were whites who had not even graduated high school who were voting?” asked one of the teachers, Eloise Hopson. In his impassioned book, Count Them One by One, retired Massachusetts District Court Judge Gordon A. Martin Jr. recounts this largely forgotten dark chapter in the American experiment and how he, a fledgling lawyer in 1962, traveled to the Deep South as part of the team bringing the Justice Department’s first voting rights case to trial.  

An invaluable scholarly legal volume that reads as a page-turning adventure yarn.
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What would you do if you lost your job? For me, the career change started over. Last year, I was laid off by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC in Boston, where I had spent the first six months of my career. Although the news came as a shock, it had long since become apparent to me that I needed a change. My layoff forced me to confront that need for change, and I did so with enthusiasm and some trepidation.

When the news hit the firm that my job would be eliminated through “economic downsizing,” most of my colleagues looked at me like a car-stuck animal on the side of the road, hoping for a quick and painless death. On the other hand, looked at them the same way.

After all, I was excited about this new opportunity to make a change. It felt both wonderfully liberating and frightening, particularly because my husband had just been laid off only two weeks earlier, and we had two young children depending on us at home. My tenure at my former firm was an overall fulfilling and positive experience. I worked with inspirational colleagues, received invaluable mentoring and training, and grew tremendously as a professional. I loved it there and will never forget it. But I joined the firm during law school and without a real plan as to what I wanted to do, apart from litigate. Now, six years later, I was tasked with the same question all over again: “What do I want to do when I grow up?” Starting over was an obvious answer.

The first thing I did was contemplate leaving the practice of law altogether. I saw this as my opportunity to accomplish something new. After working on endless document productions, scaling mountains of discovery and racking up enough hours on Westlaw to own stock in the company, I decided that I was done with it all.

My second child was only six months old and I was just plain tired. I had been practicing as an intellectual property litigator without any science background whatsoever. Patent law in particular did not come naturally to me and I found it incredibly difficult. I found my place in the section. I knew that it would be difficult for me to bring in IP referrals and foster client relationships. Particularly in light of my changing life-style and family demands, I doubted my continued allegiance to IP, even if I were to practice at another firm.

So, I did what any insane person would do: I began to change things on my bucket list. When my efforts to join a roller derby team didn’t pan out, I volunteered for an unpaid internship at a premier Boston event planning company. My first day consisted of researching bongo music for an upcoming fundraiser. It was fun and easy and a dramatic change from the past six years of my life.

Doris M. Fournier
The economy compelled me to confront the tough professional question of whether to stay at a job for a paycheck or to find professional fulfillment.

A new, exciting workplace was just what I needed. I spent three months there working as an assistant to event planners. Gradually, however, I found myself thinking and acting like a lawyer again. I realized that I enjoyed the strategy and planning that go into event planning, and event planning was not my final destination.

I turned back to the drawing board and created a list of my professional and personal strengths, weaknesses, likes and dislikes. I thought about what I set out to do with my law degree in the first place.

My analysis quickly led me to family law. I had enrolled in law school fully expecting I would become a family lawyer. But in my penultimate year, I reached a crossroads in my studies and decided to take a patent litigation course instead of family law. As the saying goes, the rest is history. Choosing patent litigation opened doors for me and ultimately landed me my big-firm IP job. I never did take that family law course.

Now that my career was in my hands once again, I revisited my original plans. I joined a great family law practice in March 2010. Witmer, Karp, Wunder & Ryan LLP. Today, I am facing the challenges of learning the ways of a small firm while at the same time tackling an entirely new practice area. Not even the courtrooms I enter are the same as before.

Although the transition to my new professional life has been humbling and occasionally frustrating, it has also been exciting to pursue a new challenge. I now realize that the only reason that I had felt ready to be done with “being a lawyer” was because I was unhappy with my career path. It had been almost a year since I started at Witmer, Karp, Wunder & Ryan, and I am finally getting confident enough to call myself a family practitioner.

The economy compelled me to confront the tough professional question of whether to stay at a job for a paycheck or to find professional fulfillment. In the end, I chose to follow through on my original plans of being a family law practitioner, and I have not looked back. It is a decision that I never would have reached had I not been forced to do so. For that, I am tremendously grateful.

Through the process of starting over, I have learned a great deal about myself, what I can accomplish and how I handle stressful times. I have also found my place in the legal world and in my law firm. Where are you? Ask yourself what you want to do. Your strengths and capabilities may surprise you and may lead you to opportunities you never expected.

Doris M. Fournier practices family law and probate litigation at Witmer, Karp, Wunder & Ryan. She has extensive pro bono work assisting victims of rape and domestic violence. Fournier is admitted to practice in Massachusetts and the U.S. District Court for the District of Massachusetts. She serves on the MBA’s Civil Litigation Section Council.

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MANAGEMENT TIP
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Since the advent of word processing suites, the venerable typewriter has served one purpose and one purpose alone: to transform our written text into fields on specialized forms. Fortunately for you (and unfortunately for typewriter manufacturers), Adobe Acrobat Standard’s Typewriter Tool may finally drive the typewriter into extinction.

Used in conjunction with a scanner, Acrobat’s Typewriter Tool (available in versions 7 and above) will enable you to insert typewritten text onto scanned forms right from your computer.

To use the Typewriter Tool, scan the form you wish to fill out and save it as a PDF document. Next, open the document in Adobe Acrobat Standard and go to “Tools”-“typewriter” and select “type writer.”

Place the cursor over the document field into which you would like to insert text and begin typing. Once you have filled in the desired fields, print your document by pressing the print icon. No more messy ink bottles or ink ribbon.

COUNT THEM ONE BY ONE
Continued from page 15

What makes Martin’s book such a powerful tool is that it meticulously combines his encyclopedic knowledge of the legal history of the American civil rights struggle for the right to vote with personal tales of ordinary poor people with everything to lose who, through singular grace and courage, overturn a seemingly omnipotent gothol. Teachers and factory workers risked their jobs and physical safety. It is an invaluable scholarly legal volume that reads as a page-turning adventure.

Whites also showed their mettle. Heck Dunagin, a white shop steward at the local Hercules Powder Company, said that he himself was “no integrationist,” but something about the denial of the right to vote for the black men under him rubbed him the wrong way. “If you want to register … I’ll see that you don’t lose your jobs,” he told his black workers.

Martin, then 27, was not restricted to the confines of a courtroom. He was out in the field, traveling down isolated country dirt roads, tracking down and interviewing witnesses and getting his car tires slashed. Once, at a café on a Friday, he was persuading the menu for a nonmeat dish and the waitess dedicated that he must be Catholic. He left quickly, regretting his possibly reckless act of drawing a sword and risking his life for the cause.

The book’s depiction of the landmark trial of U.S. v. Theron Lynd in the mid-1950’s to address the denial of the right to vote for African Americans is a masterful depiction of a difficult moment in our legal history.

The book’s depiction of the landmark trial of U.S. v. Theron Lynd is riveting, as is its depiction of the openly racist federal judge William Harold Cox, who was appointed to the bench as a favor to segregationist Sen. James Eastland, as he throws every obstacle in the way of the tenacious Justice Department lawyers who must prove a pattern of racial discrimination. The repugnant Cox won’t even let them obtain discovery, such as a routine request for copies of the voting records, making it maddeningly difficult to prepare for trial.

Martin and his cohorts, including their leader, John Doar, the legendary attorney of another generation, and fellow armed with legal expertise and a fierce dedication to justice, not to mention articles such as his, not only a compelling read, but an important one. A group of simple long-forgotten people, combating themselves with quiet, understated dignity and grace, slowly but surely reeled up and triumphantly broke the back of an ugly behemoth of a system.

Peter Elkins is a CNN legal commentator, author, Beacon-based attorney and chair of the Massachusetts Bar Association’s General Practice, Solo and Small Firm Section Council.

Lynd refused to heed the court’s orders and, as a result, was the first southern registrant convicted for civil contempt of court.

This precedent-setting case was the forerunner of all the other voting rights cases that were cited as a strong argument for the Voting Rights Act of 1965. Decades later, Gordon Martin retraces his path and visits many of the key players in this epic moral tale.

As the particular details of many of these significant, but lesser-known struggles of the American Civil Rights movement recede in the public remembrance and are lost to memory and time, a minor masterpiece such as this, is not only a compelling read, but an important one. A group of simple long-forgotten people, combating themselves with quiet, understated dignity and grace, slowly but surely reeled up and triumphantly broke the back of an ugly behemoth of a system.
Chief U.S. District Judge John M. Roll
District of Arizona

The Massachusetts Bar Association
mourns the loss of our esteemed colleague.
The bar supports its brothers and sisters
in Arizona during this difficult time.
The decision in Morrissey v. New England Driscoll, Inc., 458 Mass. 580, 386 N.E.2d 696 (1987), held that a private nuisance claim against a public employer is barred if the complaint fails to comply with the notice provisions of the act before filing. The Superior Court in Morrissey denied the motion to dismiss the private nuisance claim, relying on the earlier Appeals Court holding that private parties had to file a new claim based upon “the issuance, denial, suspension or revocation or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization.” As to “discretionary decisions,” under the act, any claim based upon the exercise or performance or the failure to exercise a discretionary function or duty on the part of a public employee or public employer, acting within the scope of his office or employment, wherein the discretion involved is abused, is also exempt from the waiver of immunity. 1

**POTENTIAL IMPACT ON FUTURE CLAIMS**

While the decision to include nuisance claims under the act is likely to allow the SJC to avoid addressing the question of whether discretionary functions, the exemption is narrow, providing immunity only for discretionary conduct that involves policy making or planning, this decision is likely to allow many private nuisance claims against the government to be barred by the same immunity provision. As the Morrissey decision notes, it is necessary to engage in a case-by-case determination whether a discretionary function as defined by the SJC is a discretionary function section 10 (b) and what is not. In Morrissey, the Commonwealth’s decision to issue a permit was a discretionary function based on policy and planning considerations regarding roadway improvements, and therefore was barred by section 10 (b). Other cases, not brought under “nuisance” theories but involving road design issues, have been found to be functions which involve the implementation and execution of governmental policy or planning would receive governmental immunity. In Paraccia v. Commonwealth, 12 immuity was provided where the design of a highway guardrail and the policy implementing its use were encompassed within the discretionary function exemption of section 10 (b). Similarly, in Drivas v. Barnett, 10 the town was immune where the design of an intersection was encompassed within the discretionary function exemption section 10 (b).

Outside of the road construction area, another case applying the discretionary function exemption is Barnett v. Lyons, 14 where immunity was conferred for the city’s decision not to erect a fence on city property to prevent sledding based on an allocation of limited resources and, as such, was deemed a discretionary function. Another discretionary decision was found exempt in Pina v. Commonwealth where state employees who allegedly were negligent in evaluating and processing a claim for Social Secur- ity disability insurance benefits, resulting in an erroneous determination that a certain recipient of benefits had ceased to be disabled, giving rise to that individual’s physical and emotional distress and economic loss. 5

Conversely, in Barry Stoller & Co., Inc. v. City of Lowell, the SJC held that the fire fighters’ use of discretion whether or not to use a building’s sprinkler system was not involved in policy making and planning considerations and therefore does not receive governmental immunity. 10 Another case noting that the discretionary function exemption is found in Doherty v. Driscoll, 17 where a state trooper was found to have verbally abused...
Pair of Appeals Court Decisions Lead Questions on 93A Damages Analysis

BY DAVID WHITE

INTRODUCTION

Recently, the Massachusetts Appeals Court ruled in favor of plaintiffs in two significant M.G.L. § 93A cases, but followed divergent damages analyses.

In the first case, Gore v. ArbeIIa Mutual Insurance Company, 77 Mass. App. Ct. 518 (2010), the court found a stipulated judgment to have the same weight as a court-entered judgment, and it applied the clear language of M.G.L. § 93A, § 9(3), which provides that “the amount of actual damages to be multiplied by the court shall be the amount of the judgment on all claims arising out of the same and underlying transaction or occurrence, regardless of the existence or nonexistence of insurance coverage available in pay- ment of the claim.”

In the other recent decision, Rhodes v. AIG Dometic Claims, Inc., 78 Mass. App. Ct. 299 (2010), despite the existence of an underlying judgment, the court chose a different method of calculating damages.

GORE V. ARBEIIA

Gore arose out of an automobile accident where the plaintiff (Dattilo) was seriously injured, but the defendant, insured by ArbeIIa Mutual Insurance Company, had insurance limits of only $25,000 per person/40,000 per accident. Despite her significant injuries, Dattilo proposed to settle for the $20,000 policy limit with a full release. ArbeIIa did not respond to the proposal for a full five months, and also failed to communicate the demand to its insured.

Taking the silence as a rejection of the proposal, Dattilo filed suit and sent demands to ArbeIIa pursuant to c. 93A and c. 176D. The personal injury action was resolved by a stipulated judgment of $450,000. Although ArbeIIa paid its $20,000, Dattilo took an assignment of the defendant’s 93A/176D claims against ArbeIIa, and filed suit on both her own 93A/176D claims and those assigned by the defendant.

The rulings by the Superior Court at the jury-waived trial were largely favorable to the plaintiff. The court found that the stipulated judgment was not collusive, that ArbeIIa had violated 93A and 176D with regard to the demands made by Dattilo; that ArbeIIa had violated 93A and 176D when it failed to notify its insured about the settlement demand for the policy limits and to settle within those limits; and that the violations of 93A and 176D by ArbeIIa were willful and knew.

The court awarded damages of over $1 million, which were calculated by adding $40,000 for the amount ArbeIIa delayed offering ($200,000 as compensatory damages for the direct claim, doubled); $430,000 ($450,000 - $20,000) as the insurance limit: as compensatory damages for the assigned claim, not doubled); $200,000 in attorney’s fees; and $23,000 in prejudgment interest, not doubled; plus over $23,000 in costs. Both parties appealed.

The Appeals Court affirmed the lower court in all of its rulings, except its damage award on the assigned claim, where it agreed with the plaintiff that the $200,000 award was subject to multiplica- tion. More specifically, the Appeals Court found that the stipulated judgment reached in the underlying matter was a matter for the judgment for the purposes of G.L. c. 93A, § 9(3).

Accordingly, the court found that the $450,000 stipulated judgment should be considered the multiplicand in calculating damages on the assigned claim and remanded the matter for further proceeding- s to determine whether that amount should be doubled or tripled. On Dec. 23, 2010, the Supreme Judicial Court denied further appellate review.

RHODES V. AIG

In few months after the Appeals Court issued its decision in Gore, a dif- ferent Appeals Court panel took a devi- sion view of damages in a similar 93A case that was arguably even stronger for the plaintiff. The Rhodes case arose from an extremely serious motor vehicle acci- dent where Marcia Rhodes, the plaintiff, was rear-ended by a tractor-trailer, left paraplegic and had documented past and future special damages of nearly $3 mil- lion, along with her husband and daughter, filed suit in July 2002.

By August 2003, plaintiffs’ counsel had fully documented the damages, pro- vided 90-day-old videotape of the accident, and made a $1.65 million demand for settle- ment. The demand was forwarded to Zur- ich American Insurance Company, which provided the primary layer of $2 million in liability insurance to the trucking com- pany, and to the AIG affiliate, AIGDC, which provided an additional $50 million of coverage.

Despite the fact that the third-party administrator retained by the defendant found no clear liability and estimated the damages as likely exceeding $5 million, no offers of settlement were forthcoming until August 2004, which was a year af- ter the verdict, and AIGDC had been issued its final offer just weeks before trial, when the parties met at mediation. Then, the combined offer of settlement was only $3.5 million, and was rejected.

At trial, liability was stipulated. Prior to the verdict, AIGDC raised the com- bined offer to $6 million, which was also rejected. The jury found in favor of the plaintiffs in the amount of $9.412 mil- lion, which, with interest, exceeded $1 million. AIGDC appealed.

While the appeal was pending, the plaintiffs sent Zurich and AIGDC a 93A letter demanding a reasonable settlement within 30 days. In response, Zurich paid its entire policy limits plus a share of the pre-trial interest, but AIGDC failed to act until plaintiffs actually filed their 93A action. At that point, AIGDC paid nearly $9 million to settle the personal injury claim. The plaintiffs did not release AIGDC from the 93A and 176D claims as part of the settlement.

In the trial of the 93A case, the Supe- rior Court judge found AIGDC had committed knowing and willful viola- tions of 93A and 176D by failing to ef- fectuate prompt settlement once liability became reasonably clear.

However, he also found that the pre- trial offer settlement of $3.5 million was within the reasonable offer range, albeit at the low end, and that the plaintiffs would have rejected any offer less than $8 million, thus, as he ruled, the plain- tiffs suffered no actual damages as a re- sult of AIGDC’s pre-trial misconduct.

The judge further found that AIGDC’s post-verdict offer of $7 million was in- sulting and unreasonable, thus violating 93A/176D. The judge then awarded the plaintiffs only loss of use damages from the date of the judgment until the mat- ter was ultimately settled, which amount was doubled for AIGDC’s

PIKULA

Continued from page 19

and arrested a motorist in connection with a minor traffic violation.

The claim against the commonwealth in Dobos was filed in negligence by the trooper’s supervisor and the common- wealth alleged the supervisor’s deci- sions were exempt as discretionary.

The SJC declined to apply the exemption with reasoning that characterized the supervisors’ alleged injury-producing conduct as follows. The reinstatement of Driscoll to highway patrol despite the supervisors’ knowledge (actual or con- structive) of ample reasons for not de- lying, the failure to follow established procedures resulting in failing to impose probationary conditions on Driscoll’s return to highway patrol that would have assisted his removal prior to his encounter with the plaintiffs, the failure to monitor Driscoll’s activities, and the failure to remove Driscoll, or to investi- gate his record, as various substantiated allegations of his misconduct arose.

The Pina decision noted the inqui- ries relevant as to whether the act of a public employee involved discretionary- ary conduct: “Was the injury-producing conduct an integral part of governmen- tal policymaking or planning? Might the imposition of tort liability jeopardize the quality and efficiency of the govern- mental process? Could a judge or jury review the conduct in question without usurping the power and responsibility of the legislative or executive branches? Is there an alternate remedy available to the injured individual other than an action for damages?”

In Sena v. Commonwealth, the SJC recognizes that Chapter 258 follows the Federal Torts Claims Act. In Massachusetts courts have found Federal opinions construing the Federal Act helpful when interpreting discretionary function ex- emptions set forth in Chapter 258 Sec- tions 10(b) of the Massachusetts Torts Claims Act. Specifically, Sena notes that the court in Harry Stoller & Co. Inc. v. City of Lowell, adopts a two-prong test applied by United States Supreme Court in negligence suit of Berkovitz v. United States, for determining whether specific conduct falls within the dis- cretionary function exemption.

CONCLUSION

While the inclusion of private sui- nance as subject to the provisions of the Tort Claims Act expands the scope of immunity protection compared to past interpretations, the Morrison decision is similar to other cases where courts have exempted roadway design issues as discretionary functions. The chapter 258 notice provisions are a trap for the unwary who fail to comply. As shown in the Berkovitz v. United States, is a good example of why a chap- ter 258 demand letter should be sent on virtually any type of claim involving the government.

Overall, the decision appears to car- rying out the balanced purpose and intent of the Legislature in abolishing common law immunity, while creating a compre- hensive scheme to maintain limits to li- ability.
How to get past hourly billing, and maintain a profitable practice

BY STEPHEN SECKLER AND MATTHEW SULLIVAN

Hourly billing has been common practice in the legal profession for more than half a century. While clients sometimes complained, until recently, law firms had little incentive to set fees any other way. Now, as a result of the recession and other factors, clients are demanding not only lower rates, but fixed fees.

In addition to seeking to control runaway legal expenses, clients want more certainty and predictability. The challenge for lawyers, therefore, is to find ways to reduce fees and increase predictability without reducing firm profitability.

Flat-fee billing is not without precedent in the legal profession. For example, it has long been customary to charge a fixed fee for residential real estate closings or simple wills. In most other matters, however, law firms have little experience in anything other than setting an hourly rate and counting the hours worked.

The good news is that other professions have been using fixed fees successfully for years. Accounting and management consulting firms, for example, figured out a long time ago that by standardizing processes (i.e., standardizing the way work gets done) and

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

BY STEPHEN SECKLER

is president of Seckler Legal Coaching. He coaches a broad mix of lawyers on how to achieve marketing and career success. He consults with law firms on a range of marketing and management issues and maintains an award-winning blog that can be found at www.seckler.com.

MATTHEW SULLIVAN

is a founder and principal at Red Bridge Strategy Inc. He specializes in helping clients evaluate, optimize and globalize legal services through process improvement and legal process outsourcing (LPO). He has experience serving businesses as an attorney, management consultant and technologist. He blogs on legal outsourcing at GlobalLegal.wordpress.com.

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willful and knowing misconduct. Both parties appealed.

The Appeals Court affirmed the lower court’s finding of pre- and post-trial misconduct by AIGDC, reversed the trial judge’s denial of damages for AIGDC’s pre-trial misconduct, and held that even where a plaintiff testifies that he would have rejected an offer within the range of reasonable offers, such evidence would not alleviate the insurer’s obligation to make a reasonable settlement offer.

However, the Appeals Court determined that the plaintiffs’ damages should not simply be measured by the judgment obtained in the underlying action, as the plaintiffs urged. Rather, the proper measure of damages in a case such as this was the judgment amount such as Gore and R.W. Granger & Sons, Inc. v. J & S Insulation, Inc., 435 Mass. 66 (2001), where the Supreme Judicial Court affirmed damages against an insurer that were a multiple of the underlying judgment against its insured. The SJC should grant the FAR in Rhodes and clarify whether that decision can be harmonized with Gore and Granger.

If the damage analysis in Rhodes is not overturned, then one of the concerns created by the decision is whether insurers will now perceive a new way to minimize bad faith damages. Under the Appeals Court ruling in Rhodes, an insurer needs only to make a marginally good faith offer just before trial, no matter how long its bad faith has been ongoing and no matter how outrageous its conduct, and its damages will be limited to the loss of the use of the money on the lowball offer. Under this scenario, the purposes of our strong consumer protection statutes may be seriously undercut.
A change of pace: An earnings improvement strategy for your practice

By Brian Dies

In today’s weak economy, most lawyers feel as though they are losing control over many of the factors that influence profitability. Clients are wielding newfound power over pricing and staffing decisions, not to mention slowing down payments. New clients are harder and harder to come by as competition among law firms has increased. And despite modest improvements in busyness in late 2010, most law firm partners find they are still less busy than they would like to be or need to be.

Yet even in a recession, there are concrete strategies to improve productivity levels and profitability that are available to almost all lawyers. By changing the approach to the backlog and the pace at which assignments are worked, it is possible to be more efficient and more profitable without selling additional work to new clients.

Pace Determines Volume

How busy a lawyer is during any period is a measure of how many assignments are worked on in a given period of time. Weekly time reports, monthly profit and loss statements, and annual earnings records are all tied to accounting periods with specific start and end dates.

Partners can effectively increase their productivity by accelerating the pace and tempo of the practice, i.e., pulling some amount of billable work across those accounting boundaries from the future into the present. In essence, the partner commits to doing a little of next week’s work this week, a little of next month’s work this month, and eventually a little of next year’s work this year.

The pace at which a lawyer works the assignments in the backlog is both fluid and elastic. Everyone has experienced proof of this by recording more billable time than normal the week before a vacation. Why? Some of the work needs to be done soon, and so it is completed before leaving.

The same result would follow if the average lawyer were told that in two weeks, they would be staffed on the biggest case of their career. Billable time would spike between now and then as the lawyer worked through the backlog to “clear the decks” for the upcoming plum engagement.

The elasticity of the pace of the practice also works in reverse. If a lawyer is preparing for a trial in two weeks and the case suddenly settles, there may no longer be enough work to keep the lawyer feeling busy. The typical response is to slow down the work that remains and ration it out carefully over a longer period until a stronger backlog builds again.

Individual lawyers have significant control over the pace of the practice and how quickly they address their personal backlog of assignments.

The Backlog is an Asset

The backlog of assignments is the largest asset in a law firm that eludes centralized management. Effective law firm managers carefully watch accounts receivable and unbilled time. However, in most firms, the value of an assignment is not captured until the work is recorded on a timesheet. Drawing on this unmanaged asset can boost earnings in any economic cycle.

A lawyer taps this asset every day. By doing legal work, the value of the completed task moves from the backlog into unbilled time. To increase profits, the lawyer needs to speed up the pace of the work. This does not mean putting in more time at the office or more time on an assignment than it deserves.

Instead, it means raising the billable yield on the existing workday by completing more tasks and checking off more items on the to-do list. By increasing the throughput of completed assignments, the lawyer can increase the pace at which he or she manages their own backlog.

The Psychological Trap

Most professionals fall into an insidious psychological trap during recessionary times. Lawyers are prone to hoard work in their backlog when they are worried about not having enough work to do. They instinctively slow down the work they have in order to make sure they have something productive to do tomorrow or next week.

This is exactly the wrong strategy. It slows down the pace of the practice even more, which makes the lawyer even more nervous about having enough to do, and the cycle reinforces itself. The lawyer may be spending a full day in the office, but his or her productivity may fall significantly as many small slots of potentially productive time

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improvement strategy for your practice

be formed. These measures should include the number of documents to be corporate transactions, projections may for each of those stages. For large cor mean dividing the litigation into stages will take and which firm resources will ect. This means that before beginning lawyers need to better understand the estimates and

Prepare Project

complete different types of projects, law tracking the resources needed to com

there are several concrete strategies a lawyer or a law firm can employ to in

corporate transactions, projections may

STRATEGIES TO INCREASE THE PACE

There are several concrete strategies

- ACCCELERATE INTERNAL AND EXTERNAL DEADLINES. It is impor tant for a lawyer to accelerate inter nal deadlines for both himself or herself and his or her team. This could be as simple as setting a deadline this week’s bill able work on Thursday, and starting next week’s billable work on Friday.

- APPROACH TASKS BASED ON TIME TO COMPLETION. A savvy lawyer should avoid thinking about when a document is acceptable due back to the client, opposing counsel or the court. Instead, he or she should fo cus on how long the project should take to complete. If an assignment should take two days to complete, but is not due for 10 days, the law yer should consider finishing it in two days, and then move on to something else. He or she should not let the assignment drag out 10 days by completing it in a series of smaller, less efficient blocks of time.

- PRODUCTIVELY MANAGE ASSOCIATES AND SUPPORT STAFF. It is good to know how busy the associates and support staff were last week, but it is much better to know how busy the associates are during the current week. One of the first things a lawyer should do when starting a project is to communicate regularly. One of the basic principles of fixed-fee billing is that fixed fees are based on the expectation that work can be done in a timely manner. Second, increasing the pace of the practice also leads to better client service. By accelerating deadlines when possible, the lawyer reduces his or her own response time. Although some matters involve intentional delays or rationed fees per month, most mat ters produce happier clients with faster results. Additionally, this technique will often lead to more work from the same client as the next phase of the project or ongoing work can start that much sooner.

Third, increasing the pace also pro duces important benefits that are less tangible, but no less valuable. Most lawyers are happier when they are busy (up to a point). Especially in a recession, con sidering the efforts to keep the pace of the practice high improve lawyer morale and can improve the mood of the entire office.

Finally, maintaining a brisk tempo in the practice improves the lawyer’s ability to work on big new assignments in the future. Most lawyers habituate to a certain level of busyness and build their daily routine around it. A lawyer who formerly completed 40 hours a week can quickly grow accustomed to recording 30 hours a week. When the practice picks up again and 40 hours a week is required, the lawyer will find it much slower to get back to his former productivity level, and is much less likely to exceed it.

REAL BUT UNFOUNDED FEAR

The main question we get from our clients is what happens if a lawyer re ally does accelerate the pace of the prac tice and completely works off all the backlog of assignments. In other words, what should a lawyer do if he or she comes up dry?

First, this is not so likely to happen as one may think. Most lawyers find that the benefits of accelerated work are greater than they originally thought and not so easy to work off completely. In addition, most legal work is iterative; a draft completed earlier triggers a response received earlier. Most lawyers find that new work becomes available through the perception of increased efficiency, and heightened market expo sure (from getting more work done).

Second, improving the pace of the practice would be a very good idea even if the lawyer completely worked off the backlog and had no further billable assignments. By accelerating the bill able assignments and working them in larger, denser chunks of hours, less time throughout the period would be dissipated in idle work. One full day with no billable work would surely have more value for mar keteting or continuing education than the cumulative value of all of the six-and 10-minute increments of non-billable time during the span of the work week. Increasing your pace means that the billable work has the benefit of aggregating this non billable time into larger, more produc tive blocks of time.

Take, for example, a lawyer with 30 hours of billable work to complete in the week. The natural tendency would be to spread the required resources evenly over a five-day work week, resulting in small blocks of non-billable time each day. A lawyer consciously accelerating his pace would work those 30 hours in the first four days of the week. If no new assignments arose from new or existing clients, that lawyer would find himself with 10 hours of SRO time for productive non-billable activities.

It is much easier to undertake firm marketing efforts when you have a base line of two to three hours a day to work on firm emergent projects or in an emerging practice area with a large block of time instead of smaller blocks scattered throughout the week. The lawyer could go have coffee with his largest clients, write a firm article, update the firm’s marketing materials, at tend a seminar, or even develop a more robust marketing or continuing education than the

Most lawyers find that the benefits of accelerated work are greater than they originally thought and not so easy to work off completely.

Tangible improvements — often in the range of 5 percent to 10 percent — in the level of billable time and billable hours worked. In other words, working faster is working smarter and is more profitable.

SUCCESSFUL ADOPTION REQUIRES PLANNING

To adopt alternative fee agreements and maintain profits, lawyers must spend time understanding costs and planning for the most cost-effective ways to operate. Client bills may be lower, but this should not mean the same or even grow as lawyers discover ways to get work done better, faster and cheaper.

DIES

Continued from page 22

become lost or wasted. The result is that lawyers could improve the practice also leads to better client ser vice in an emerging practice area with a large block of time instead of smaller blocks scattered throughout the week.
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