National Women’s History Month

The first semblance of celebrating women’s history in our nation came to light in the 1970s. The official observance has since grown into a month-long celebration. First recognized as “Women’s History Week” in 1981, National Women’s History Month carries throughout the month of March and enjoys bipartisan support in the House and Senate, as both continue to support the resolution annually.

This national observance is also a timely excuse for me to highlight the extraordinary women who enrich our profession and those who simply serve as an inspiration to us all.

First, I look to the women who have come before me in the MBA office of the president. I’ve been privileged to gain much from each of these women presidents, who all have aptly led the association as the preeminent voice of the legal community in Massachusetts.

In honor of National Women’s History Month: 

WOMEN LEADERS OF THE MBA

BY TRICIA OLIVER AND KELSEY SADOFF

In 1913, the Massachusetts Bar Association set a national precedent when it admitted its first female member, Mary A. Mahan. After this milestone, it would be quite some time for the MBA to appoint its first female president. However, when it did in 1986, each of the eight female leaders of the MBA blazed impressive, but distinct paths during their respective terms.

Collectively, they provided further strength to the organization’s core principles of diversity and access to justice, while raising the level of legal education and professionalism in legal practice.

As the association embarked on celebrating its centennial anniversary earlier this year, the MBA made history once again when the presidency was handed from one woman to another. As she continues to lead the MBA through its most meaningful celebration to date, Denise Squillante has enjoyed standing on the shoulders of those women and men who have come before her.

In honor of National Women’s History Month, Lawyers Journal spoke with each of the women leaders as they reflected upon their presidential terms.

THE LIGHTNING ROD

In 1986, the MBA elected its first female president, Alice E. Richmond. At the time of her presidency, the Harvard Law and Cornell University graduate was a partner at Hemenway & Barnes in Boston.

“When I was coming through the ranks, there were at least a couple...”

In honor of National Women’s History Month, Lawyers Journal spoke with each of the women leaders as they reflected upon their presidential terms.
PRESIDENT’S MESSAGE

Continued from page 1

I trust you’ll read with great interest the cover article that focuses on this impressive slate of women.

Second, I salute the women in our profession who continue to make a difference in their clients’ livelihoods on a daily basis — from the many women attorneys who have succeeded in being named partner at their respective large firms to the many solo practitioners across the state.

I also applaud those women who respectfully serve as part of Massachusetts’s exemplary judiciary. I commend the Hon. Margaret Marshall and her work as the first female SCJ chief justice, and applauded the examples set by Associate Justice Margot Botsford, outgoing Associate Justice Judith Cowin and the newest addition to the Supreme Judicial Court, the Hon. Fernande R.V. Duffy. Their collective contributions have been remarkable and have set a path for younger female attorneys to aspire to.

Likewise, we are honored to have three of the departments of the Trial Court led by highly respected jurists. Chief Justice Barbara J. Rouse, Lynda M. Connolly and Paula M. Carey have consistently led the Superior, District and Probate and Family courts in the commonwealth to better serve the citizens of Massachusetts.

Last, stepping back and looking beyond our local community, I am not at a loss to quickly point out leading women at the helm of influential public and private institutions. I applaud the hard work of Attorney General Martha Coakley, Senate President Therese Murray, Sen. Cynthia Stone Creem, Harvard Law School Dean Martha Minow, Bentley College President Gloria Larson and Blue Cross Blue Shield Chief Legal Counsel Sandra Jesse, to name only a few.

I encourage the legal community, men and women alike, to let this column serve as a reminder of the important impact women attorneys have had on the good of the Commonwealth. As a mother to a grown daughter, I take particular pride in seeing the opportunities awaiting her as she begins to make her mark in the professional arena and beyond.

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of women who I thought were able, but the first woman of everything becomes the lightning rod,” said Rich-
mond. “When you are first, you have to be more.”

Richmond did her best to use her position as MBA president to change the industry’s perception of female attorneys. At the same time, Richmond appreciated the sense of inclusiveness that the MBA offered, something she hadn’t felt at other bar associations. When tapped as the president, she continued to carry on the MBA’s inclusiveness.

“Women leaders of the MBA
Continued from page 1

Richmond subsequently became the first female president of the Massachusetts Bar Foundation, the philanthropic partner of the MBA.

Richmond’s public service work seemed to be some of her stronger recollections of her time as MBA presi-
dent. Richmond’s sense of service was evident early in her legal career, as she began as an assistant district attor-
ney and later served as a special assistant to the attorney general.

Still residing in Boston today, she continues to make her mark on the national legal stage as treasurer of the American Bar Association.

TO THE COURTS

Despite growing up in the 1950s, Elaine Epstein, a daughter of a commercial Realtor and a homemaker, was taught that “girls can do anything.” Her parents, along with other family mem-
bers, were front and center in the audience during her installation reception for her presidency of the MBA in 1992.

Court reform was the hot issue during Epstein’s term and that topic was something near and dear to this trial attorney, who began her career in a small practice in Brockton. Such reform was morphing the court system to follow more of a business model and court administrators began to be appointed.

“Court reform was something people felt strongly about,” said Epstein. Like Richmond, Epstein mentioned that women were treated differently from their male coun-
terparts in the courtroom. In the bar association world, however, Epstein felt quite the opposite.

“By the time I got there, it wasn’t so special to be the second woman president of the bar association,” said Epstein, who was appointed by MBA President William Bernstein to serve on the committee that nominated Rich-
mond to serve as the MBA’s first woman president.

Epstein explained her time as president preceded “glass ceiling” issues. “Let’s just keep moving forward,” she recalled. “It didn’t feel like, ‘Oh, wow, it’s a female president of the MBA.’”

“I was still in the forefront, but the ship was moving in the right direction,” she said. According to Epstein, in-
routes were already made by Richmond (as president) and other female lawyers were serving in key appointments in leadership beyond the officer ranks in the association.

A relentless champion for county bar associations, Epstein found attending engagements around the state one of the more memorable parts of her presidency. To this day, Epstein attends the Plymouth County Bar As-
sociation’s Annual Meeting each year. She remains close to the Plymouth area colleagues with whom she made connections early in her career.

From all she learned during her tenure as president, she offers guidance to other women contemplating lead-
ership roles. Epstein suggests “not to be daunted by the arena you’re in.” She also encourages women to “rely on thick skin, a sense of humor and always remember to reach back and treat more youthful attorneys the same.”

Epstein’s MBA presidency followed her time as the first president of the Women’s Bar Association. Through both important experiences, her viewpoint of what issues could be addressed by attorneys was broadened.

By the time Epstein entered her MBA presidency, she found the culture in the legal community to be supportive of women moving into leadership positions. Likewise, she felt that support and was met with a sense of encour-
agement during her travels around the commonwealth.

AN IMPACT ON EDUCATION AND DIVERSITY

In 1994, Kay H. Hodge became the first labor law-
yer, minority woman and Asian-American president of the MBA. Focused on the status of minority law-
yers in the practice, Hodge also took a special interest in civic education.

During Hodge’s presi-
dency, the MBA estab-
lished Saturday work-
shops to both encourage minority law students to stay in Massachusetts after law school and help them become successful in their respec-
tive areas of practice.

“I think the need still exists to include in the bar — lawyers of color;” said Hodge.
Burak appointed executive director; A. Cowin to retire served for 20 years in the U.S. Air Force.

Chief Justice for Administration & Management Robert A. Mulligan.

Moran named commissioner of probation Chief Justice for Administration & Management Robert A. Mulligan has appointed Ronald P. Corbett, Ed.D., to serve as the commissioner of probation on an acting basis for two years.

Ron Corbett brings a depth of knowledge on probation best practices, along with strong management experience and extensive partnerships in the criminal justice community, to strengthen probation at this challenging time,” said Mulligan. “Probation is a key public safety entity with a positive history in the judicial branch until recently. We are very fortunate to have a leader of this caliber who can work collaboratively with the executive branch and provide direction to the many hardworking probation officers across the state. Ron, who is widely respected, will issue regular reports on the many initiatives underway in probation.”

Mulligan highlighted the importance of establishing stability in the department in the short term, given the recent turmoil. Under recently enacted legislation, the position of commissioner of probation carries a five-year term. Mulligan said he expects to conduct a full search at a point that is appropriate for the organization.

“I welcome the opportunity to restore Probation to administrative excellence and credibility throughout the court system and in the eyes of the public. Going forward, we will focus on further strengthening several key areas,” Corbett said. “These include the need to establish a culture based on performance management with new metrics and full account-ability; finish introduction of a new, validated risk/need classification instrument to form the foundation of our key supervisory practices; ensure comprehensive and accurate data systems to enable accurate caseload reporting; continue to enhance relationships with our allied state agencies in the interests of an effective criminal justice system; and insure that all future hires are based on best personnel practices and reflect a commitment to a merit-based system.”

Corbett served as deputy commissioner of probation from 1993 to 2000. He was named executive director of the Supreme Judicial Court. He teaches criminal justice at the University of Massachusetts at Lowell.

Casper sworn in as U.S. District Court judge On Jan. 17, Denise Jefferson Casper took the oath of office and became a U.S. District Court Judge for the District of Massachusetts. A public event to recognize Casper’s appointment was held at Faneuil Hall on Feb. 18.

Casper succeeds Judge Reginald Lindsay, who died in March 2009. Prior to her appointment, Casper served for four years as the deputy district attorney for Middlesex County. Casper also spent six years as an assistant U.S. attorney for the District of Massachusetts. Prior to becoming a prosecutor, she was a litigator at what is now Bingham McCutchen LLP and a law clerk to two members of the Massachusetts Appeals Court.

Maloney named chief probation officer The judges of the U.S. District Court for the District of Massachusetts have selected Massachusetts native Christopher Maloney to serve as chief of the U.S. Probation Department for Massachusetts. Maloney fills the vacancy created by the recent retirement of Chief Probation Officer John M. Bocca. Chief Judge Mark L. Wolf, who administered the oath to Maloney, said: “Our Probation Office is recognized nationally for its excellence. My colleagues and I look forward to Chris Maloney’s leadership in sustaining and enhancing that excellence.”

Maloney served for six years as chief of the U.S. Probation Office for the District of New Jersey. He also spent seven years working with the Administrative Office of the U.S. Courts in Washington, D.C. He was responsible for oversight of the federal probation system’s substance abuse, mental health and location monitoring programs.

Maloney began his career with the federal judiciary in 1992, when he was appointed as a U.S. Probation Officer in the District of Massachusetts. He received the Salvation Army’s Community Service Award in 2010.


The guide includes: substantially revised and expanded sections on topics including the first complaint doctrine; the relationship between hearsay and the confrontation clause; expert testimony; the authentication of public records; the fair report privilege; the collateral source rule; the marital privilege; the discharge of jurors; and the risk of inaccurate forensic analysis.

The third annual edition of the guide is available without charge on the websites of the Supreme Judicial Court, Appeals Court and Trial Court at www.mass.gov/courts/sjc/guide-to-evidence, where it can be searched and downloaded. The print edition is available for purchase from the Flaschner Judicial Institute.

The SJC established a 17-member advisory committee in 2006 to prepare the guide at the request of the Massachusetts Bar Association, Boston Bar Association and Massachusetts Academy of Trial Attorneys. Associate Justice Judge R. Marc Kantrowitz is editor-in-chief of the guide.

SJC seeks judge evaluations in four counties As part of the continuing program to evaluate and enhance judicial performance, the Supreme Judicial Court will be sending questionnaires to attorneys in Berkshire, Hampden, Hampshire and Franklin counties starting Monday, Feb. 14, to evaluate the performance of Trial Court judges in Massachusetts.

The SJC’s evaluation program is the best opportunity for attorneys to voice their opinions of the members of the judiciary. Attorneys who have appeared in these courts in the last two years will receive questionnaires. The great majority of questionnaires will be sent electronically, with attorneys receiving an e-mail linking to the evaluation Web site. As required by statute, the evaluations are confidential and anonymous. The results of the evaluation will be transmit-
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Presidential profiles:

Samuel P. Sears’ response to communist paranoia leads to Law Day

In the late 1940s and early 1950s, a craze swept the nation years before rock n’ roll threatened to corrupt impressionable young minds. Communism was jeopardizing everything America stood for, and vigilance was critical.

No one was above suspicion: federal employees, entertainers and even teachers were required to take loyalty oaths. In 1950, the American Bar Association appointed a committee to investigate communist strategies, and in 1951, a committee of the Massachusetts Legislature proposed that lawyers take a loyalty oath.

Specifically, lawyers would have to “solemnly swear” that they did not belong to any organization seeking the overthrow of the state or federal government. Refusing to do so would prevent new members from being admitted to the bar; current members would be suspended.

The American Bar Association’s Executive Committee opposed it, however. MBA President Samuel P. Sears (1950-53) felt the best way to thwart the spread of communism was through education and appreciation for the court system.

“Amidst the rampant fingerpointing and the righteous, unreasonable harassment of many innocent people, Sears attempted to find a grassroots solution to what was, in the hearts and minds of Americans of the fifties, a real and frightening problem,” Robert J. Brink wrote in Fiat Justitia, A History of the Massachusetts Bar Association 1910-1985.

In 1950, Sears visited and addressed local high schools. The Massachusetts Bar Association’s Young Lawyers Section, which was formed in 1910 and incorporated in 1911, celebrates its centennial anniversary with a number of events this year. As part of that observance, Lawyers Journal and eJournal will highlight past presidents, interesting MBA trivia and list upcoming centennial events.

Material from Fiat Justitia, A History of the Massachusetts Bar Association 1910-1985 by Robert J. Brink, was used for this story. Compiled by Billarchambault.

CENTENNIAL TIMELINE: 1950s

1950: Continued fears about widespread Communism in the country and in the legal profession spurred American Bar Association president Cody Fowler to establish a seven-planet committee to investigate Communist tactics, strategies and objectives.

MARCH 1952: MBA President Samuel P. Sears, believing part of the country’s paranoia stems from ignorance about the inner workings of the laws and the courts, institutes the Good Citizenship Program, wherein prominent lawyers visit and address local high schools.

1952: Sears is selected as the Army’s chief counsel at the Army-McCarthy hearings; he resigns after his pro-McCarthy comments were made public. He is replaced by MBA member Joseph Welch, who famously commented, “Have you no decency, sir?” and precipitated McCarthy’s downfall.

1954: The continued response to Sears’ idea to preserve democracy through education is overwhelming. More than 100 lawyers volunteered to speak to high school students, and it was estimated that more than 50,000 students would hear their speeches that year.

Public libraries created displays of the state’s history and heritage, and prominent, local newspapers covered the events. December 1954 was declared Massachusetts Heritage Month.

1958: The culmination of education efforts is the declaration of Law Day, designated as May 1 by President Dwight D. Eisenhower, the first national, public observance of its kind—though most celebrations focused on the differences between democracy and Communism than the celebration of the nation’s laws and Constitution.

LATE 1950s: As the association’s membership and involvement grows, an organizational framework recognizable to its current membership begins to emerge, including the creation of the position director of public relations, the creation of the newsletter and a statewide continuing education program.

1959: MBA Acting President Harold Harvitz establishes the Committee on Juvenile Delinquency.

In the 1950s, the MBA began a force on the frontlines defending and defending the boundaries of the legal profession. It helped form the Joint Committee of the Press and Bar, which monitored conflicts between the press and other media rights to freedom of the press under the First Amendment, and lawyers claims to their clients’ rights to freedom under the Sixth Amendment.

For example, in 1951, a state sales tax on professional and business services went into effect. This threatened the stability of the firm and lawyers’ small operating costs, as well as the ability of poorer clients to afford the total cost. A little more than 48 hours later, the legislature removed sales tax. This represented a major legislative victory for the MBA, whose members had campaigned against the tax for two years.

In the 1940s, MBA President May A. Shattuck recognized that it was adequately represent the voices of the Massachusetts bar, the MBA began to include younger lawyers in its activities. In 1949, the MBA sponsored the Massachusetts Junior Bar Group— and in 1958, attended the annual meeting effort to modernize and improve the lives of more than 100,000 members. Each major MBA committee and board is served by a member of the Junior Bar.

The Junior Bar Group was expanded to become the Young Lawyers Section in December 1953 and was established as the Young Lawyers Division 1968-2006 at the direction of MBA Past President James N. Maguire.

MBA CENTENNIAL

Did you know?

In the 1950s, the MBA became a force on the frontlines defending and defending the boundaries of the legal profession. It helped form the Joint Committee of the Press and Bar, which monitored conflicts between the press and other media rights to freedom of the press under the First Amendment, and lawyers claims to their clients’ rights to freedom under the Sixth Amendment.

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BAR NEWS

Sections sponsor guest speakers at open forums, events

BBO LAWYERS ANSWERS IMMIGRATION LAW QUESTIONS

The Immigration Law Section Council hosted Anne S.J. Kaufman, director of the Board of Bar Overseers’ Attorney Client Assistance Program since 1999, for an “Ask the Experts: Legal Ethics For Immigration Practitioners” on Feb. 10. The co-drafter of Chapter 209A, the Massachusetts abuse prevention statute, Kaufman answered immigration attorneys’ ethics questions on joint representation cases, the use of IOLTA funds and other topics.

The council is holding bench-bar sessions throughout the association year. The next meeting is scheduled for Wednesday, March 9, in Brockton.

EMERGING TRENDS IN CIVIL AND CRIMINAL LAW AS TO THE ANTI-BULLYING LAW

The Individual Rights and Responsibilities Section Council held an open meeting Feb. 9 on the recently passed anti-bullying legislation, how it will affect victims and potential clients, and the roles of the courts and lawyers in such cases. Bristol County Juvenile Court Associate Justice Lawrence Moniz said using the anti-bullying statute can be a better first-line defense “to the benefit of both the victim and the accused” than a civil harassment or other more serious charge that would end up on a child’s record for life.

INDIVIDUAL RIGHTS SECTION HOSTS “BULLYING” FORUM

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MBA CLE AT-A-GLANCE

MARCH CONTINUING LEGAL EDUCATION PROGRAMS BY PRACTICE AREA

CIVIL LITIGATION

Story-Telling
Tuesday, March 22, noon–1:30 p.m.
MBA, 20 West St., Boston
Luncheon roundtable (lunch provided)
Faculty:
Daniel Duigan, Ph.D., program chair; President, Trial Science Inc., Renne, NV; Laura M. Arnold, Esq., Trial Consultant, Trial Science Inc., Renne, NV
Sponsoring sections: Civil Litigation, Juvenile & Child Welfare

Scientific Trial Preparation
Wednesday, March 23, noon–1:30 p.m.
MBA, 20 West St., Boston
Luncheon roundtable (lunch provided)
Faculty:
Daniel Duigan, Ph.D., program chair; President, Trial Science Inc., Renne, NV; Laura M. Arnold, Esq., Trial Consultant, Trial Science Inc., Renne, NV
Sponsoring sections: Civil Litigation, Juvenile & Child Welfare

FACULTY SPOTLIGHT

Elizabeth N. Mulvey, Esq.
Crowe & Mulvey LLP, Boston

Mulvey is a founding partner of Crowe & Mulvey in Boston who has built an outstanding reputation as a trial attorney and appellate lawyer. Her appearances before the appellate courts in most of New England have resulted in many important decisions in the field of personal injury law.

Mulvey has been honored by Super Lawyers magazine as one of the top 10 lawyers in Massachusetts since 2005. She has been included in The Best Lawyers in America since 1996 and was named as their Medical Malpractice “Lawyer of the Year” for 2010. In 1999, Mulvey was inducted as a Fellow of the American College of Trial Lawyers, has served as chair of its Massachusetts State Committee and was the national chair for its Committee on Outreach. She is also a fellow of the International Academy of Trial Lawyers and served as a member of its Board of Directors. She has also been elected as an Advocate of the American Board of Trial Advocates and was recently inducted into the Inner Circle of Advocates.

Mulvey is currently a member of the Executive Committee for the Massachusetts Guide to Evidence and the Standing Advisory Committee on Rules of Professional Conduct. She has also served on the Board of Bar Overseers. Mulvey has taught trial advocacy for Massachusetts Continuing Legal Education, Harvard Law School, the National Institute of Trial Advocacy and the American Bar Association. Her work has been published in numerous professional journals and she has served as a co-chair of the MBA’s Civil Litigation sections and as chair of the its Bench-Bar Committee.

Mulvey is a graduate of Phillips Academy at Andover, Harvard College and Suffolk University Law School.

GENERAL PRACTICE

Preparing Yourself for the Changes to Rule 1.5 of the Rules of Professional Conduct
Tuesday, March 8, 4–7 p.m.
MBA, 20 West St., Boston
Faculty: Jeffrey M. Catalano, Esq., Todd A. Weidt LLP, Boston; Elizabeth N. Mulvey, Esq., McManus & McManus LLP, Boston; Constance Vecchione, Esq., Office of the Bar Counsel, Boston; Additional faculty to be announced.

IMMIGRATION LAW

Proceed with Caution:
Navigating the Perils at the Intersection of Immigration and Family Law
Wednesday, March 16, 4–7 p.m.
MBA, 20 West St., Boston
Faculty: Svetlana Spaic, Esq., program chair, Ecco, Gross & Lee PC, Centerville; Kathleen M. Brassaii, Esq., Kathleen M. Brassaii, Attorney at Law, Lowell; Marisa A. DeFranco, Esq., Law Office of Marisa A. DeFranco, Middleton; Michael C. Flores, Esq., The Law Offices of Michael C. Flores LLC, Orlando
Sponsoring sections/division: Family Law, Immigration Law, Young Lawyers Division

FREQUENTLY ASKED QUESTIONS ABOUT EMPLOYING FOREIGN NATIONALS
Saturday, March 26, 8:30 a.m.–5 p.m.
MBA, 20 West St., Boston
Faculty: Robert H. Ryan, Esq., program chair, Ryan & Lange PC, Boston; Adam J. Ruttenberg, Esq., Looney & Grossman LLP, Boston; Anne J. White, Esq., Demco & Associates PC, Boston
Sponsoring sections/division: General Practice, Solo & Small Firm, Probate Law, Young Lawyers Division

PROPERTY LAW

How to Handle a Residential Real Estate Closing
Tuesday, March 15, 4–7 p.m.
MBA, 20 West St., Boston
Faculty: Michael G. Galit, Esq., program chair, Law Office of Michael G. Galit, Framingham; Lisa & Kravit, J.P. Morgan Chase, Boston; Laura Palumbo-Hansen, Hammond Real Estate, Cambridge
Sponsoring sections/division: General Practice, Solo & Small Firm, Property Law, Young Lawyers Division

Social Media for the Rest of Us
Wednesday, March 16, 11:30 a.m.–1 p.m.
MBA, 20 West St., Boston
Luncheon roundtable (lunch provided)
Faculty: Lisa Terrenzi, Esq., moderator, Career coach and placement consultant and Chair, MBA Lawyers in Transition Committee, Boston; Stewart M. Hirsch, Esq., Founder & Principal, Strategic Relationships, Sharon

FACULTY SPOTLIGHT

Robert H. Ryan, Esq.
Crowe & Mulvey LLP, Boston

Ryan is the program chair for the MBA’s solo and small firm programs. He is a founding partner of Crowe & Mulvey LLP and serves as an adjunct faculty member for the Boston College Law School’s Center for Professional Responsibility. He is also a member of the Massachusetts Bar Association’s Solo & Small Firm’s Committee and has served on its Ethics Committee.

Ryan is a graduate of Harvard College and the University of New Hampshire School of Law and has been admitted to the bars of Massachusetts and New Hampshire since 1983. He has been named a “Super Lawyer” and a “Boston Business Journal” Attorney of the Year.

Ryan is a founding partner of Crowe & Mulvey LLP, a nationally recognized full-service law firm with offices in Boston and Andover.

Sponsoring sections/division: General Practice, Solo & Small Firm, Probate Law, Young Lawyers Division

FAMILY LAW

Basics of Divorce Practice
Wednesday, March 23, 4–7 p.m.
UMass School of Law, North Dartmouth
Faculty: Deborah M. Faenza, Esq., program co-chair, Andover Law PC, Andover; Timothy D. Sullivan, Esq., program co-chair, Law Office of Susan A. Hunter PC, Sandwich
Sponsoring sections/division: Family Law, General Practice, Solo & Small Firm, Young Lawyers Division
Co-sponsors: UMass School of Law and the Bristol County Bar Association

PROBATE LAW

The New Homestead Act — Developing a Solid Foundation
Wednesday, March 9, 4–7 p.m.
MBA, 20 West St., Boston
Faculty: Robert H. Ryan, Esq., program chair, Ryan & Lange PC, Boston; Adam J. Ruttenberg, Esq., Looney & Grossman LLP, Boston; Anne J. White, Esq., Demco & Associates PC, Boston
Sponsoring sections/division: General Practice, Solo & Small-Firm, Probate Law, Young Lawyers Division

Types of Trusts
Tuesday, March 29, 4–7 p.m.
MBA, 20 West St., Boston
Faculty: Kevin G. Diamond, Esq., program co-chair, Shea & Diamond LLP, Holliston; Timothy F. Fidgian, Esq., program co-chair, Hammeney & Barnes LLP, Boston; Timothy D. Sullivan, Esq., program co-chair, Andrews Law PC, Andover
Sponsoring sections: Probate Law, Taxation Law


**BAR NEWS**

Alimony reform, courtroom cameras votes headline HOD; Chief Justice Rapoza reports on Appeals Court progress

**BY TRICIA M. OLIVER**

Massachusetts Appeals Court Chief Justice Phillip Rapoza addressed the members of the MBA House of Delegates on Jan. 20 in Worcester. His remarks set the tone for a productive meeting that included votes on key issues, including The Alimony Reform Act of 2011 and amendments to SJC Rule 1:19 involving cameras in the courtroom.

Rapoza provided an upbeat report on the state of the Massachusetts Appeals Court, peppered with encouraging statistics on case flow improvements. Rapoza reported that 2,283 appeals were filed last year, making it the third-highest caseload in the history of the Appeals Court, with the previous year being the second highest, with 2,355 appeals.

Despite the high volume, he offered statistics to showcase court efficiencies. Specifically, from 2001 to 2009, the time from full briefing of civil cases to oral argument decreased from 22 months to five months and from 14 months to four months for criminal cases. In addition, 41 days were shed from the duration between oral argument and decision rendered in criminal cases from 2001 to 2010, while 38 days were trimmed in civil cases from 2001 to 2010.

He also spoke to the significant budget and staff reductions experienced in the last few years, but also mentioned technological innovations undertaken despite the reduction in human resources. “The Appeals Court is second to none in the quality of its jurisprudence,” said Rapoza, who blended his report of the Appeals Court with timeless themes of justice.

“Justice is not only a basic human right. Justice is also a basic human need.” Delegates then swiftly moved through the meeting agenda. The delegation’s key votes included:

- Vote to support The Alimony Reform Act of 201, which more clearly defines and sets limits of duration of alimony, provides opportunity to end alimony at retirement, alters alimony when ex-spouses cohabitate with new partners, adds factors to consider in an alimony order, and allows judicial discretion to deviate based upon particular case law.
- Vote against the proposed amendments to Supreme Judicial Court Rule 1:19, Cameras in the Courts, which would expand the definition of media and allow media to operate an electronic device in the courtroom and permit live blogging to take place from the courtroom. The House called for further review and input on the amendments set forth by the SJC’s Judiciary-Media Committee.
- Vote to support a resolution on medical-legal partnerships by encouraging lawyers, firms, legal services agencies, law schools and bar associations to develop medical-legal partnership with hospital, community-based health care providers and social service organizations to help resolve legal matters affecting patients’ health and well being.
- Vote in support of legislation to end life sentences without parole for juvenile offenders.

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In addition, for young people in the community, Hodge worked to create a newsletter for kids, “Your Law,” and an “On Your Own” booklet, to give guidance to young people in the community. “Nothing provided young people this kind of information,” said Hodge, of the “On Your Own” booklet. “While I was rising up in the leadership of the MBA, I was getting involved with the American Bar Association. I learned that other states had done things like ‘On Your Own’ and you [could] borrow their ideas.” Since becoming involved in the bar early in her career, Hodge has valued the relationships she’s gained. “My most meaningful experience is to have known so many people, and to have met and worked with so many on the board,” said Hodge, who directed this program to balance both her MBA and firm commitments. “I had to balance so that I had a practice to return to—it is a time-consuming process to be president,” said Hodge.

PROFESSIONALISM IN THE PRACTICE

When Marylin A. Beck became MBA president in September 1997, she took the helm as the first sole female president in the organization’s history. “I was interested in making the legal system work better for all—judges, lawyers, litigants and the public, in general,” said Beck. “I had prioritized my presidency during her year. “The Court Facilities Bond Bill was passed, we supported professional management of the courts and we started the process of judicial review.”

During Beck’s term, the MBA’s 20 West St. headquarters were undergoing major re-construction and the MBA launched its own insurance agency, one of the first of its kind in the country, after the groundwork had been laid in prior years. Invited to chair the Civil Litigation’s Legisla- tion Committee by Past President Richard Hoffman, Beck’s presidency was influenced by Hoffman’s view of the role of a bar association. “Hoffman set a high standard of professionalism and saw the MBA as an organization to help its mem- bers strengthen and improve the legal system,” said Beck.

“I strongly agree and focused my presidency on doing the same.” Beck. “I strongly agree and focused my presidency on doing the same.” Beck.

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A TESTAMENT TO VOLUNTEERS

Involved in the MBA for as long as she can re- member, Kathleen M. O’Donnell is the second female MBA president to come from a solo practice. “I think what I was able to do is put good people in place; then something good happened, and then did some terrific work,” said O’Donnell of her achievements as MBA president. During O’Donnell’s 2004-05 term, she appointed the Hon. Roy A. Bourgeois to an MBA Task Force on Lawyer Disci- pline, which successfully evaluated the Board of Bar Overseers and made 22 recommenda- tions, making the process of lawyer discipline system better for attorneys across the state.

In addition, O’Donnell worked with the Hon. John Fenton, who chaired the Middlesex County Court- house Committee, which was charged with investigat- ing alleged public safety concerns at the Edward Sul- livan Courthouse in Cambridge. O’Donnell believes that the courthouse committee came to a quick resolu- tion because of Fenton’s hard work.

However, looking back on her presidency, O’Donnell wishes she had had more time to enjoy the experience. Still an active bar member, O’Donnell advises young attorneys to “find a practice area you are passionate about” and “control your schedule and calendar.” O’Donnell continues to be heavily involved in the MBA through its centennial year and celebration. Wel into her presidency now, Squillante, like those women leaders before her, is busy moving forward the mission of the MBA, creating a strong legacy and serving as an ex- ample to young women who will assume the presidency in the future.

THE CENTENNIAL LEADER

Currently, Denise Squillante, a “main street law- yer” from southeastern Massachusetts, is leading the MBA through its centennial year and celebration. Wel into her presidency now, Squillante, like those women leaders before her, is busy moving forward the mission of the MBA, creating a strong legacy and serving as an example to young women who will assume the presidency in the future.

As one of only a few women to hang her own shingle in southeastern Massachusetts in the early 80s, Squillante believes the “worst thing you can do is work in isolation,” and urges young women entering the profession to join a bar association to “find se- nior lawyers, network with male colleagues and meet practitioners in similar situations.”

In the future, Squillante hopes that women con- tinue to excel in bar leadership and that they achieve a work-life balance. To do this, she believes young practitioners should partner with senior attor- neys early in their careers, with every senior female lawyer having a “responsibility to pull someone up.” In addition, Squillante urges young attorneys to “find a practice area you are passionate about” and “control your schedule and calendar.”

Squillante continues to be heavily involved in the MBA’s Lawyers In Transition efforts, to which she was influential in getting off the ground. Such efforts focus on providing guidance to those either transition- ing into or out of a career in law.

“The struggle for women in every profession is the thought that they can’t do it all,” said Squillante. “Women still feel they can’t juggle family, the practice and the profession. I hope in the future that notion is broken.”

The Diversity Task Force launched its Tiered Mentoring program, and the Crisis in Court Funding Task Force released a report which received considerable media attention. She said, “Our Governance Committee achieved a substantial grant for revising our internal governance, including the creation of a new position of chief operating officer/ chief legal counsel, and our high-profile Report to the Challenge Task Force launched its efforts to examine and make recommendations concerning the use of peremptory challenges.”

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Women leaders of the MBA

Continued from page 3

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MBA honors Judge Agnes, attorneys Doyle and Reardon with Centennial Awards

The Massachusetts Bar Association recognized Superior Court Judge Peter W. Agnes Jr., attorney Shirley A. Doyle and attorney James G. Reardon, who passed away in 1999, with Centennial Awards on Jan. 20 at the MBA’s House of Delegates meeting in Worcester. “These honorees have given of themselves to both their profession and their communities,” MBA President Denise Squillante said. “They exemplify the spirit of public service on which the Massachusetts Bar Association was founded a century ago.”

Throughout the state, the MBA’s Centennial Awards have been and will continue to be given throughout 2011 to persons of extraordinary achievement who materially advanced the rule of law, enhanced the integrity of lawyers, judges or the legal profession, engaged or engaged in important legal scholarship, or protected the democratic principles upon which our country is founded.

- Agnes was appointed to the Superior Court in 2000, previously serving as a District Court justice for 10 years. A member of the MBA’s Task Force on Preemption Challenges, he is also a commissioner of the Supreme Judicial Court’s Access to Justice Commission, serves as the assistant editor of the Massachusetts Guide to Evidence and chaired the SJC’s Standing Committee on Dispute Resolution from 1994 to 1998.

- Doyle, a former president of the Worcester County Bar Association, is a long-time active member of the MBA. A member of MBA’s Crisis in Court Funding Task Force, she has run her own law office for two decades, is a board member of the Worcester chapter of Dress for Success, a member of the Worcester Academy Board of Trustees and an incorporator of the St. Agnes Guild Day Care Center.

- Reardon, a long-time MBA member, was a beloved trial attorney who had a zeal for justice and was an intense advocate for his clients. A co-founder of the Massachusetts Academy of Trial Attorneys, he was bestowed the Courageous Advocacy Award by the group a year after his death.

MBA Vice President Jeffrey N. Cunliffe, left, presents Judge Peter W. Agnes Jr. with his award.

DeNapoli recognized as Neponset Valley Business Person of the Year

The Neponset Valley Chamber of Commerce (NVCC) named Albert A. DeNapoli, a partner at Tarlow, Breed, Hart & Rodgers PC, its Business Person of Year for 2010. At the Chamber’s Annual Awards dinner in Foxboro on Jan. 21, NVCC praised DeNapoli for his “selfless giving of time and talent over the years” to NVCC and his involvement in the economic and community development issues in the region.

DeNapoli, the chairman of the firm’s Hospitality Practice Group, concentrates his practice in civil litigation, with a focus on contract disputes and employment issues. He is a founding member and executive director of the Family Business Association, whose mission is to recognize excellence within family businesses and provide resources to help family businesses succeed.

DeNapoli is past chairman of the NVCC and currently serves as a member of the board of directors and executive board, and is also general counsel to the chamber. Since 1894, the NVCC has promoted business growth in the Neponset Valley.

Calendar of Events

Tuesday, March 8
Preparing Yourself for the Changes to Rule 1.5 of the Rules of Professional Conduct @ 4–7 p.m. MBA, 20 West St., Boston

Wednesday, March 9
The New Homestead Act — Develop a Solid Foundation @ 4–7 p.m. MBA, 20 West St., Boston

Thursday, March 10
House of Delegates meeting @ 2–5 p.m. Hilton Dedham, 25 Allard Drive, Dedham

Tuesday, March 15
Legal Chat: Standing in Land Use Appeals @ 4–5 p.m. NOTE: There is no on-site attendance available for Legal Chats. Real-time webcast at www.massbar.org/ondemand

How to Handle a Residential Real Estate Closing @ 4–7 p.m. MBA, 20 West St., Boston

Wednesday, March 16
Social Media for the Rest of Us @ 11:30 a.m.—1 p.m. MBA, 20 West St., Boston

Proceed with Caution: Navigating the Perils at the Intersection of Immigration and Family Law @ 4–7 p.m. MBA, 20 West St., Boston

Tuesday, March 22
Story-Telling Luncheon Roundtable @ Noon–1:30 p.m. MBA, 20 West St., Boston

Wednesday, March 23
Scientific Trial Preparation Luncheon Roundtable @ Noon–1:30 p.m. MBA, 20 West St., Boston

Basics of Divorce Practice @ 4–7 p.m. University of Massachusetts School of Law, 333 Francis Center Road, North Dartmouth

Thursday, March 24
Young Lawyer Speed Networking @ 5:30–8 p.m. MBA, 20 West St., Boston

Monday, March 28
Mock Trial Final Four (not open to public)

Tuesday, March 29
Outreach: Questions about Obituary Employment Foreign Nationals @ 4–7 p.m. MBA, 20 West St., Boston

Wednesday, March 30
Frequently Asked Questions about Obituary Employment Foreign Nationals @ 4–7 p.m. MBA, 20 West St., Boston

Thursday, March 31
GP | Solo Symposium: Strategies for Success: 2011 @ 2–6 p.m. (registration to follow) MBA, 20 West St., Boston

Friday, April 1
(open to invited guests/schools/public)

Mack Trial state championship 10 a.m. Great Hall, Fenway Hall Market Place, Boston

Monday, April 4
MBA Section/Division Open House @ 5:30–7:30 p.m. MBA, 20 West St., Boston

Wednesday, April 6
MBA Monthly Dial-A-Lawyer Program @ 5:30–7:30 p.m. Statewide dial-in #: (617) 338-0610

Thursday, April 7
Final Directives: Medical and Legal Perspectives on Death and Dying @ 3–7 p.m. MBA, 20 West St., Boston

Monday, April 11
Special Education Law and Autism @ 4–7 p.m. MBA, 20 West St., Boston

Thursday, April 14
Assistive Reproductive Technology: A.B.T and its Current Trends, Practice & Procedure @ 4–7 p.m. MBA, 20 West St., Boston

Wednesday, April 27
Veterans Dial-A-Lawyer Program @ 5:30–7:30 p.m. Dial-in #: local (617) 338-0610; toll-free (877) 686-0711

Thursday, April 28
Dying legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and Final Directives: Medical and 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Perspectives on Death and Final Directives: Medical and Legal Perspectives on Death and
MBA hosts discussion to preserve private bar advocates

BY TRICIA M. OLIVER

Following Gov. Deval Patrick’s proposal to eliminate the use of assigned private counsel as part of his fiscal 2012 budget and bring Committee for Public Counsel Services within the purview of the executive branch, MBA President Denise Squillante convened a meeting of bar advocate representatives throughout the commonwealth to discuss the topic at MBA headquarters on Feb. 7.

With representation from most Massachusetts counties, audience members discussed the various flaws with the governor’s proposal, namely the unaccounted overhead costs associated with such a plan, the negative impact on current caseloads and the lack of specifics on the proposed, dramatic cost savings that the governor claims would result from his plan.

Joining Squillante to provide remarks were MBA Past President Edward P. Ryan Jr., who will be chairing the MBA’s Standing Committee on Bar Advocates, CPCS’ Chief Counsel Anthony Benedetti, MBA COO and Chief Legal Counsel Martin W. Healy, and Massachusetts Association of Court Appointed Attorneys Legislative Counsel Benjamin Fierro.

“This is really a call to action,” said Ryan, who along with the other meeting leaders encouraged all bar advocate programs to be in touch with their legislators stressing the importance of assigned private counsel.

The MBA has long been a supporter of private bar advocates in Massachusetts, a system that is recognized nationally as a model for the delivery of defense counsel.
Massachusetts pet trusts go into effect April 7

BY GABRIEL CHEONG

On Jan. 7, 2010, Gov. Deval Patrick signed into law “An Act Relative to Trusts for the Care of Animals” which will be codified in 3C of Chapter 203 of the Massachusetts General Laws. This new law will take effect on April 7, 2011.

What this law does is essentially bring Massachusetts in line with the majority of states that allow for trusts to be created for the benefit of pets. Most states allow pet trusts where the pets themselves are the beneficiaries. Massachusetts, up to this point, has not allowed for such a trust.

As a pet owner myself (three rabbits and one dog), this new legislation puts my worries to rest about who will take care of my pets and how they will be taken care of. As any pet owner will tell you, our furry friends are just as much a part of our family as children, and as such, should be allowed the opportunity to be included in our estate planning.

In the past, if a pet owner wanted to provide enough money to care for a pet, they would have to bequeath the money to a guardian of the pet or leave the money in trust. However, the bequest to the guardian of the pet is outright and does not require the guardian to use the money to take care of the pet. Similarly, if the money was left in trust, the beneficiary could not be the pet themselves. This created a problem, since the courts cannot hold the guardian accountable for taking care of the pet, and it left pet owners with a gaping hole in their estate plan.

The new law establishes several guidelines in regards to the creation of these new pet trusts. Any pet trust created must terminate upon the death of the animal or animals that it was created to provide for. If there is a challenge, a probate court judge may lower the amount of money left in trust for the pet if the amount is unreasonably large. If the trustee does not do their duty, then a residual beneficiary of the trust or the guardian of the pets (if the guardian is not the trustee) may sue the trustee for breach of a fiduciary duty.

Lastly, pet trusts are exempt from the rule against perpetuities. This might look strange at first — why the rule against perpetuities must be exempt — but it makes sense if you consider that some people have pets with a very long lifespan, such as certain types of turtles.

There will be subsequent changes to this new law to correct certain errors in the drafting. For example, the new law references the rule against perpetuities to Chapter 184A rather than the new Uniform Probate Code at Chapter 190B. Gabriel Cheong, Esq., owns Infinity Law Group LLC in Quincy, which focuses on family law, estate planning, bankruptcy and immigration law. Cheong’s areas of practice are in divorce and estate planning. For more information, visit www.infinitylawgroup.com or www.bostonestate-planning.com. He is also a Law Practice Management Section council member.

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LEGISLATION WILL HELP YOUTH AGING OUT OF FOSTER CARE

BY ERIK PITCHAL AND MARY WILSON

When children are not able to live safely at home, the Department of Children and Families, pursuant to an order from the Juvenile Court (or, in some instances, the Family and Probate Court), will place them in foster care. Foster care is meant to be temporary, but many stay in DCF custody for years, sometimes for the duration of their childhood. Each year, approximately 800 youth in Massachusetts turn 18 and “age out” of DCF custody.

The struggles that these young people face in the adult world are well documented. Various national studies indicate that they are more likely to be homeless and less likely to have stable families, jobs, and homes. The courts are challenged by an unprecedented volume of cases involving young adults at this age group. Judges are forced to undertake the conferencing of cases, as officers of the court, should promote courtesy and patience among those waiting, and be of those waiting outside is an ongoing concern of court officials.

In order to mitigate these harms, for many years DCF has worked with young adults after their 18th birthday on a mutually voluntary basis, providing them continued shelter, support and other services, sometimes until they turn 22.

However, these services have been paid for exclusively with state dollars; since the inception of a national foster care program in the 1970s, the federal government has only provided funds to states to care for children under the age of 18. During the difficult budget cycles of the last few years, DCF has been cutting back its commitment to this population, since there is no mandate in state law for them to provide assistance past 18.

Fortunately, additional help for this vulnerable group is now available. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act ("Fostering Connections"), with wide bipartisan support, which went into effect in July 2009.

Among other things, Fostering Connections gives states the option of changing into law, which became effective January 1.

There are some key aspects of the new law that advocates should know about.

"YOUNG ADULTS" DEFINED

For the first time, the statute formally defines this population, adding the term "young adult" as a person between the ages of 18 and 22. This label reflects the goals of placement for this age group — providing stable living, learning and working environments as these young people transition into adulthood.

DCF “SHALL OFFER” ONGOING SERVICES TO YOUNG ADULTS

The old regulations instructed that DCF "may elect, on a case-by-case basis" to continue to serve this population after they reach age 18. Now, DCF "shall offer" ongoing services to these young adults.

RIGHT TO A COPY OF SERVICE PLAN

Under the new law, every young adult is entitled to a copy of his or her service plan or case plan. In the case of,

A LINE FOR A GOOD REASON

FAMILY LAW

BY MARC E. FITZGERALD AND MEGAN CHRISTOPHER

If you visited the Middlesex Probate and Family Court in Cambridge in the fall of 2010 or January of 2011, you may have experienced a feeling of say, Logan Airport. The long lines into the Middlesex Probate and Family Court building on 208 Cambridge St., and to a certain extent, the Old Third District Court, created some headaches and maybe a brain freeze or two for lawyers and litigants over the past several months.

A change in policy requires that attorneys go through the metal detectors rather than be allowed entrance upon showing their bar cards. Recently, Paula Carey, chief justice of the Probate and Family Court Department and Peter DiGangi, first justice of the Middlesex Probate and Family Court, sat down with members of the MBA’s Family Law Section Council to address concerns and discuss alternatives.

Judge DiGangi, with the support of the chief justice, implemented this new policy as a result of specific events demonstrating risks to judges and courthouse staff. Since metal detectors were first installed, a number of serious weapons have been confiscated in courts across the commonwealth.

As we who practice in this area know well, emotions run high when they involve family matters. Attorneys are not immune to those emotions. Some would argue that our declining level of civility is the problem the policy is meant to resolve.

We may argue for a consistent policy in all courts. For example, certain courts, such as Suffolk County and Essex County, allow attorneys access without going through the metal detectors. Judge DiGangi’s decision provides for a very high level of security in the building, protecting us all.

While the effects of this policy change was first being felt, Judge Carey received a regular stream of e-mails documenting wait times and conditions. She monitored these closely and was fully engaged in seeking a solution. The court obtained a second metal detector, which is now fully operational and in use during the early morning rush.

Court employees have banded together to provide adequate staffing for the additional machine. In general, lines are much shorter and wait times to enter the building average under 10 minutes. Both Judge Carey and Judge DiGangi are committed to hearing, and addressing if possible, legitimate complaints and concerns from members of the bar.

This improvement is hardly an optimal solution. The illness or other absence of a single court employee now has a tremendous effect. Ensuring the safety and well-being of those waiting outside is an ongoing concern of court officials.

It is to be hoped that no one waiting would object to an elderly or disabled person, or a person with an infant or young child, jumping to the front of the line, particularly in bad weather. Litigants who are parties to a restraining order may step out of line to wait for a safer moment to enter the building. They may call the judicial secretaries’ office or the registrar’s office to inform the court about the delay. We, as officers of the court, should promote courtesy and patience among those waiting and provide support to those who need help.

The line is only one symptom of the distress felt in completely under-funded courts. Staff members have the pressures of new tasks, such as document scanning and data entry, in addition to accepting filings from the increasing number of pro se litigants. Judges are forced to undertake secretarial tasks, causing significant delays. We cannot be surprised that we, too, are inconvenienced. We have the justice system, from the front door to the judge’s lobby, that we pay for.

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Our Child Support Guidelines (the “guidelines”) are not meant to apply where the combined annual gross income of the parties is $250,000 or more. In cases where income exceeds this limit, the court should consider the award of support at the $250,000 level as the minimum presumptive order. Additional amounts of child support may be awarded in the court’s discretion.5

Unfortunately, notwithstanding the significant overhaul of the guidelines, which occurred in 2009, there remains little guidance for attorneys and judges in fashioning an appropriate level of child support where, for example, the parties are currently at that income level. Nevertheless, several cases have addressed this issue. In such cases, the court should consider the following factors:

1. The parties’ combined gross income. For example, in the case of Katzman v. Healy, where the father had income totaling approximately $360,000 annually and the mother’s net income was approximately $21 million, although the mother had been earning just prior to the child’s birth (earning some $41,000 annually), she had stopped working shortly thereafter. Based upon these facts, a child support obligation of $13 million was ordered by the trial court and affirmed by the Appeals Court. This periodic child support (exclusive of unreimbursed obligations) totaled approximately 17 percent of the obligor’s gross, pre-tax income.

2. The financial obligations of the parties when addressing an appropriate level of child support. In Katzman v. Healy, the court considered the parties’ combined obligations to be in excess of the limits set forth in the guidelines. Nevertheless, each of these cases does provide a potentially relevant example when addressing an appropriate level of child support to be paid where gross, pre-tax income is well in excess of the limits set forth in the guidelines.

Because the appropriate level of child support that was ordered in each of these cases was based upon the specific facts of each case, it is difficult to identify any one factor that should be applied “across the board” to each and every case which exceeds the guidelines cap. Nevertheless, each of these cases does provide a potential relevant example when addressing an appropriate level of child support to be paid where gross, pre-tax income is well in excess of the limits set forth in the guidelines.

Because child support payments are neither taxable to the recipient nor tax-deductible by the payor (I.R.C. section 262), the availability in any given case of designating child support payments as tax-deductible “alimony” or “unallocated alimony and child support” under I.R.C. section 71 may play a significant role in determining the reasonable-ness of an obligor’s support obligation. For example, a child support obligation of $60,000 (which is necessarily paid with “net, after tax” income) has the net effect of absorbing as much as $100,000 of an obligor’s gross, pre-tax income; while a tax-deductible “unallocated alimony and child support obligation of $60,000 actually absorbs as little as $36,000 of an obligor’s net, after-tax income (assuming for illustration purposes a combined marginal state/federal/payroll tax obligation of 40 percent). As such, these income tax ramification should be given appropriate consideration when fashioning the child support order of any such case.9

CONCLUSION

Every case brings with it certain unique facts and circumstances. In those cases where the gross, pre-tax income of the parties is in excess of the limits set forth in the guidelines, the court should begin with an analysis of the “reasonable needs” of the child. To that extent, a careful determination of the actual expenses of the child should be undertaken. If it can be shown that some alleged expenses of the child are in fact unnecessary, counsel should highlight those expenses so clearly that the court may easily identify the

Robert J. Rivers is a partner in the Boston law firm of Lee & Levine LLP. He was a member of the then-existing Child Support Guidelines Task Force that prepared the current Child Support Guidelines (effective Jan. 1, 2009).

This case involved child support to be paid for two children. The father’s gross income totaled approximately $625,000 annually (while the mother was earning just over $54,000 annually). Ultimately, a child support obligation of $70,000 annually (computed as 17 percent of the mother’s pre-tax income) was ordered by the trial court and affirmed by the Appeals Court. This periodic child support (exclusive of unreimbursed obligations) totaled approximately $17 percent of the mother’s gross, pre-tax income.

This case involved child support to be paid for four children. The father’s income exceeded the then-existing maximum applicable levels of support (exclusive of any consideration of an obligor’s net, after-tax income). Because the appropriate level of child support that was ordered in each of these cases was based upon the specific facts of each case, it is difficult to identify any one factor that should be applied “across the board” to each and every case which exceeds the guidelines cap. Nevertheless, each of these cases does provide a potentially relevant example when addressing an appropriate level of child support to be paid where gross, pre-tax income is well in excess of the limits set forth in the guidelines.

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CHILD SUPPORT
Continued from page 17

Discrepancies which exist and make appropriate adjustments to the purported "needs" of the child.

Conversely, counsel representing parents seeking an award of child support should strive to prepare a weekly budget which delineates, to the greatest extent possible, the current expenses of the other parent.

Because many of a child's categories, for example, include direct payments to third parties providing services for the child's benefit (i.e., extracurricular activities, camps, private school, etc.), it may prove to be more efficient and often times more manageable (if the child support obligor) to structure an overall resolution which includes the obligor making payments directly to third parties providing needed services for the child, rather than seeking to otherwise increase the amount of periodic child support being paid directly to the other parent.

Unfortunately, because each case has its own specific facts and circumstances, it is unlikely that any "across the board" mathematical formula may be gleaned from an analysis of the appellate case law that presently exists. Nevertheless, there does exist a sampling of both published and unpublished appellate case decisions that establish some potential trends in the determination of reasonable child support orders in cases which exceed the guidelines limit.

Ideas in this article derived from a panel discussion sponsored by the Massachusetts Council of Family Mediators Special Task Force on Dispute Resolution: Nancy Noorwuz, Esq., and mediators Mary Johnson, John Ginsburg and Diane Noorwuz.

While by no means the product of an academic study, the insight that may be gained from an analysis of these appellate cases does, and the parameters within which discretionary orders do have been made, does offer some small measure of guidance to practitioners, and perhaps, a so-called "sanity check" for purposes of determining a reasonable level of child support under similar factual circumstances.

BY DONALD G. TYE AND JOHN A. FISHER
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The field of dispute resolution expands, and the wallets of clients shrink, mediation is becoming a more and more popular way to resolve issues in a divorce. Many litigators are finally turning over control of a case to anyone but a judge. But if both attorneys and mediators are careful to clarify and respect each other’s roles, the process can be an effective way to settle simmering disputes without either side getting burned.

Rule 5 of the SJC Rules of Dispute Resolution requires lawyers to provide clients with information about court-connected dispute resolution services, and to discuss with clients the advantages and disadvantages of each. In fact, a lawyer must certify to the court that he or she has complied with this requirement. Family law practitioners often file such certification along with the divorce papers.

But in practice, not all divorce lawyers actually discuss the option of mediation — at least, not at great length — before embarking on the often tumultuous journey of litigation with a client. Indeed, many members of the family law bar feel strongly that mediation is not for everyone.

Other attorneys insist on asking their clients key questions, such as whether they are comfortable being unrepresented in the mediation session, whether they will concede something simply to keep the peace, and whether they will be intimidated by the mediation process before recommending this option. However, when used wisely, mediation can be a valuable tool, and one with which most counsels should be familiar.

In the divorce context, it is crucial that each party has access to information and full disclosure of the other party’s finances. Some mediators believe that they can achieve this without a formal discovery process. Many attorneys, though, insist on obtaining all relevant information, including the values of the parties’ assets, before every setting foot in the mediator’s office. The lawyers should also have a frank discussion with each other, enabling each side to understand the other’s positions and rationales.

Mediation can also be useful in other aspects of divorce cases. For example, it can be helpful in assigning parenting issues to a mediator to defuse conflict in this often heated area. Mediation can be a useful post-judgment as well. Lawyers may need to consider insuring a separation agreement a provision that mediation is to be used before any litigation is commenced, to prevent disputes over interpretation or modification of the terms of a divorce judgment.

Selecting the mediator in advance, and naming him or her in the separation agreement, can significantly speed up the resolution process.

In selecting a mediator, it is important to be creative. One should choose a mediator whose personality seems particularly well-suited to handle the issues at hand. Soliciting the opinions of colleagues is often useful in making this choice. Careful selection will go a long way toward making clients feel as comfortable as possible. Also, the parties should understand in advance what to expect.

Clients should consult with their attorneys during the mediation process to ensure they make informed decisions. Some mediators use the parties’ Rule 401 Financial Statements as the starting point for full disclosure, and involve the parties’ lawyers in the discovery process. Other mediators, however, find that too much information work, when counsel are involved minimally, or not at all.

Understanding and understanding the professionals’ roles is key to a successful mediation between parties who are represented by lawyers. Mediators whose clients have counsel should be aware of the consequences which exist and make appropriate adjustments to the purported “needs” of the child.

Donald G. Tye is a partner and co-chair of the domestic relations practice group at Prince, Lobel, Glovsky & Flynn LLP in Boston. He has more than 30 years of experience as an attorney, guardian ad litem, master mediator, arbitrator, author and lecturer.

John A. Fisher is an attorney and mediator with Healy, Flahoury, Landry and Matthew, a Cambridge firm concentrating in family law and mediation, which he has practiced for 30 years.

Kimberley Keyes is an associate at Prince Lobel.

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FOSTER CARE
Continued from page 15

young adults and foster youth close to their 18th birthday, this plan is often referred to as a “permanency plan,” indicating that the DCF’s goal is not necessarily to return the young adult to their birth family, but to provide a plan for a permanent, stable living situation.

CONTINUED JURISDICTION OF COURT AND RIGHT TO COUNSEL

Previously, young adults in this population lost the right to both court oversight and legal representation at their 18th birthday, even if they maintained a relationship with DCF for four more years. Now, a young adult who remains in the care of DCF has the right to annual permanency hearings and a right to counsel. This change allows young adults to have more equal footing in negotiations with DCF.

COURT-APPROVED TRANSITION PLANS REQUIRED 90 DAYS BEFORE CASE TERMINATION

Either DCF or the young adult may elect to terminate services prior to the young adult’s 22nd birthday. Whenever services end, DCF must work with the young adult to create a transition plan 90 days prior to the termination date. The same court overseeing the annual reviews must review and approve the transition plan prior to the termination.

FOSTER CARE REVIEWS FOR ALL YOUNG ADULTS

For the first time, this population will also benefit from the work of the independent foster care review unit within DCF. At least once every six months, a panel of three persons with no direct involvement with the case will perform a review of the status of each young adult in the care of the department.

Since this legislation was enacted, DCF, the Committee for Public Counsel Services and the Juvenile Court have been busy on implementation.12 CPCs has developed a training module for bar advocates in the Child and Family Law program, so that they can provide the best advocacy possible to this new client population. The court has issued a new policy guiding the scheduling and internal record keeping for these cases. Everyone involved in this effort hopes that the promise of the bill will be realized—that our young adults who have experienced lengthy stays in foster care will be better prepared for education, work and life.■

12. Prior to the enactment of legislative changes described in this article, the General Laws permitted, but did not require, DCF to offer voluntary services to young adults who turned 18 while in the department’s custody.
15. In some instances, changes were made to the General Laws that go beyond the requirements of federal law, to strengthen the rights of young adults and conform with best practices.
18. This population is distinct from young adults ages 18-22 who are under the care of the department pursuant to a guardianship proceeding under Mass. Gen. Laws Ch. 190B § 10.
19. 110 C.M.R. § 8.02. This legislation will have to be amended in order to comply with the new language of Mass. Gen. Laws ch. 190B (2013).
20. The court will follow the criteria set out in 42 USC § 671D(b)(4) in deciding the sufficiency of such plans.
21. As of Jan. 3, 2011, every youth who turns 18 while in DCF care is eligible for the new law’s protections. However, only some of those young adults who were already receiving voluntary DCF services on that date will receive the benefit of the law. Specifically, the laws’ retroactivity is limited to those young adults whose cases were eligible for federal reimbursement at the time they entered foster care. Only about one-third of youth in DCF care meet this requirement, due to complicated factors beyond the scope of this article.
23. Juvenile Court Uniform Practice and Procedure 81-2011, Scheduling Permanency Hearings for Young Adults and Children.
We like to say “if someone takes the old lady’s money, we take it back.” But, in real-
ity, fiduciary litigation in the elder law area is a grab bag of legal and equitable remedies to
the problems surrounding the finances of elders.

In many cases, the remedies can and
should, be pursued in more than one forum
at the same time.

CLIENT
The first step in any litigation is to de-
termine who your client is. In most areas of
law, the identification of the client is easy. It
is the person who came through your door with
a problem.

Where elders are involved, the case is
often much more difficult. Often, the first
approach to a lawyer is by someone purportedly
acting on behalf of the elder. (In these cases, the elder’s physical or mental health is
often compromised.)

“Purportedly” is a term of prejudice.
Whenever a lawyer is approached by some-
one seeking to “help” or act for an elder, the
lawyer should initially approach the problem
by inserting the adverb “purportedly” before
the first time a name is used.

Ultimately, you will be working either
for or against the rights and/or desires of the
ever. If the person who came through
your door with a problem is a creditor, client iden-
tification is easy. You will seek to collect the
debt owed to your client.

If the person who came through your
door is a “friend” or family member of the
ever, it is a grab bag of legal and equitable remedies
for is often perceived by the lawyer who
gives the time to learn and apply to the
the personal objectives of the person who
walked in the door.

CLIENT’S PROBLEMS/ OBJECTIVES
When dealing with clients of modest to
moderate means, very often significant ob-
jectives include the preservation of assets and
the protection of family members.

Like estate planning, elder law involves
helping clients navigate the complex set of
laws and regulations which control the way
which our government takes money from
citsizens and dispenses it back to them.

There is an important emotional differ-
ence in perspective. In the instance of estate
planning, the planner seeks to maximize the
amount of money which he is required to
pay to the government. In the case of Medic
aid planning, the planner seeks to maximize the
benefits which the government dispenses while
limiting the amount he must pay.

This difference in perspective raises public
policy questions which sometimes result in
radical rhetoric and even kneel-jerk solutions from
elected individuals.

One such overreaction was the Balanced
Budget Act of 1997. Popularly known as the
“Granny Goes to Jail Law,” Congress for a
very short time made it illegal to do Medic
aid planning. Upon realizing a) what it had
done and b) the immediate and overwhelm-
ing of society. Congress jumped back from
attacking ‘Granny.”

The result was an amendment to the Balanced
Budget Act of 1997 aimed not at
‘Granny” but at those nasty lawyers. The
“Granny’s Lawyer Goes to Jail Law” pro-
vided for criminal penalties, including a year
in jail and a $50,000 fine for Medicaid plan-
n. (The solution to this second attempt
was an injunction in the Federal Court,
District of New York and a statement from U.S.
Attorney General Janet Reno admitting that
the law was unconstitutional and assuring the
public that it would not be enforced.)

The complexities of [the law] … should
never be allowed to blind us to theessen-
tial proposition that a man or a woman
should normally have the absolute right
to do anything or she or he seeks to do with his
or her assets, a right which includes the right
to give those assets away to someone else for
any reason or for no reason. … We would
only amplify this by saying that no agency
of the government has any right to com
plain about the fact that middle class people
confronted with desperate circumstances
choose voluntarily to inflicts poverty upon themselves when it is the government itself
which has established the rule that poverty is
a prerequisite to the receipt of government assistance in the defraying of the costs of
nursing homes, but absolutely essential,
medical treatment.!

You client comes before the government but
as a supplicant, begging the govern-
ment to pay for those necessities which she cannot afford, and as a citizen, demanding her
rights under the Constitution, the social
contract which forms our government.

As an elder law attorney, your role is to
support your client and help her achieve the
benefits which she has earned and/or quali-
ﬁed for.

Much of elder law involves planning for
and qualifying for Medicaid. This means un-
derstanding the complexities of the law and
effectively planning to achieve the client’s
objectives. In its planning phase, this role
is essentially the same as the role assumed by
an estate planning attorney.

However, the elder law attorney faces
many additional hurdles. First, an elder
law attorney must be able to negotiate the
MassHealth application process. This pro-
cess involves the assembly and presentation
of increasingly more extensive and complex
documents, which often has to be assembled from little more than random scraps and piles from
the detritus of the home of a mind which
lost its focus.

When the elder is then applied to the complex
set of regulations that is Medicaid law.
The elder law attorney negotiates this legal ad-
mative maze of qualifying with skill and
compassion. (In contrast, the charla-
tan either pretends to help by filling in
the blanks on an application without knowledge
of or concern, or defaults society by distorting
the facts.)

Our society profits from the noble efforts
of qualified advocates. We suffer when the
desperation of the individual is used or
assumed as factual and become the basis for
destroying the safety nets we have laid for
the members of our long-suffering working clas-

The Uniform Adult Guardianship and Protective
Proceedings Act (UAGPPA) – It’s time has come

BY TIMOTHY D. SULLIVAN

The Uniform Adult Guardianship and Protective
Proceedings Act (UAGPPA), the “Guardianship
Jurisdiction Act,”

Following the lead of the National Guard-
ianship Association, the American Bar Asso-
ciation Commission on Law and the Elderly, the
AARP, the National Academy of Elder Law
Attorneys and the Alzheimer’s Associa-
tion, not to mention the Massachusetts and
Boston Bar Associations, we recognize that the
Guardianship Jurisdiction Act is proposed
legislation whose time has come.

Because the Guardianship Jurisdiction Act will bring clarity and predictability to
guardianship cases in which more than one
state is involved, and will not come with an
expense price tag, we are hopeful that it will
be seen by our legislators as a “no brainer,”
a win-win situation benefiting incapaci-
tated persons, their families, fiduciaries and
even our legal system. Unfortunately, the
law has struggled with unanswerable questions.

Nationally, elder and disability advocates
have written about the disturbing trends of
grandparent snatchers,” in which family
members take elders from one state to
another, often motivated by anything but the
benefit of the elder. The classic case is the
Glasser’s case, where a grandmother was
the subject of guardianship proceedings in three
different states — and her estate subject to
total fees in the amount of dollars. It is not just the growing number of
notorious cases which invite the adoption of
the Guardianship Jurisdiction Act, however, but
delaying the guardianship proceedings — often
with out real answers — when a guardian must
move an incapacitated person from one state
to another, or must chase the person who has
relocated the individual and now seeks com-
peting authority from a court in another juris-
diction. The Guardianship Jurisdiction Act,
also known as the Uniform Court of Uniform
Laws — (CCUSL), is designed to address the
problems inherent in the full faith and credit
fictions.

If adopted (as opposed to adopted by
the states involved), the proposed law of
the act will provide a welcome measure of
uniformity — everybody should be able to understand “the rules.”

Problems arise in three basic areas:

Initial Jurisdiction: When to begin a pro-
cceeding in which there is more than one
possible court of competent jurisdiction.

Recognition of authority of fiduciary:
How to convince a state court to recognize or
even the fiduciary’s authority decreed in the
court of another state.

Transfer: How to move a case from one
state to another.

INITIAL JURISDICTION
On the theory that only one state should
exercise jurisdiction at a time, there is a pre-
liminary determination of the individual’s
“home state” and any “significant connection
state (or states). The home state is where the
individual lived for at least six consecutive
months immediately before commencement
of a guardianship or protective proceeding. A
significant connection state means the state in
which the individual has a significant con-
nection other than mere physical presence, or
where substantial evidence concerning the
individual is available.

The default is to the home state, unless it
has declined jurisdiction in favor of the sig-
nificant connection state. Any state in which
the individual is physically present has juris-
diction to appoint an emergency guardian if
an urgent situation exists.

RECOGNITION OF AUTHORITY OF FIDUCIARY
Generally speaking, guardianship law is
based upon the claim of full faith and credit,
and, while most states have some process for
a conservator to transact business in another
state (usually an administrative filing of an order), few states have any pro-
cess to recognize the authority of a “foreign”
guardian. The Guardianship Jurisdiction Act
does provide for court-to-court recognition in
the recording of another office.

Regardless of whether the order has been
registered or not, however, the court of the
order has the claim of full faith and credit to
the order decreed by state court which took
jurisdiction.

TRANSFER
Where a transfer is necessary, instead of the current usual scenario — the
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On Dec. 16, 2010, Gov. Deval Patrick signed Senate Bill 2406, an Act Relative to the Estate of Homestead (hereinafter referred to as the “act”), which is a complete revisi

This summary is intended to provide highlights to probate and trust and estate practitioners so that they may become familiar with the legislative act which will become effective on March 16, 2011 (per Massachusetts legislative rules, laws generally become effective 90 days after the governor signs the law).

There has been considerable discussion regarding homestead protection during the past few years by many practitioners, and several articles have appeared in Massachusetts legal publications highlighting problems with the current law — which have mostly been addressed by the act.

IMPACT OF TRUST OWNERSHIP OF PRINCIPAL RESIDENCE ON HOMESTEAD DECLARATION

The way of the use of trusts, the transfer of title of a principal residence is often done without proper consideration being given to the issue of the homestead protection. For several years, some practitioners have believed that a properly recorded homestead declaration on a principal residence could be preserved by registering the transfer when a transfer of the principal residence was made to a trust.

The authority generally cited for this position is chapter 188, section 4 of the Massachusetts Homestead Law. The act clarifies that although multiple co-owners of a principal residence may benefit from homestead protection, the aggregate protection to principal residences for which the apparent blanket waiver of a mortgage does not terminate an existing homestead protection to a property that is the principal residence of the owner.

However, the amount of automatic protection is limited to $125,000 of equity of an existing homestead. For example, a homeowner must still file a homestead declaration to benefit from the full amount of the $500,000 of equity protection. The automatic homestead will apply to all existing principal residences as of March 16, 2011. It should be noted that the act makes a major change in the homestead law so that it applies against pre-existing debts (but not pre-existing liens).

CLARIFICATION OF EXTENT OF PROTECTION FOR MULTIPLE OWNERS

The act clarifies that although multiple owners of a principal residence may benefit from homestead protection, the aggregate protection is limited to the $500,000 home equity amount. However, in the case of a married couple who can both benefit from what is known as an elder and disabled homestead, the aggregate protection for the principal residence may be increased to $1,000,000 of equity.

In the case of non-married co-owners of a principal residence (e.g. sibling co-owners) who all file for the elderly or disabled homestead, the aggregate protection is the product of $500,000 of equity multiplied by the number of co-owners who qualify for the elderly or disabled homestead.

Finally — homestead applies to a principal residence titled in trust

In recognition of the extensive use of trusts to hold title to principal residences, the act finally extends the benefit of homestead protection to principal residences for which title is held in trust. In order to obtain such protection, the trustee must file a declaration of homestead stating, among other things, the names of the beneficiaries who seek to obtain such homestead protection, and the fact that the property is their principal residence.

All in the family

The act provides that the transfer of a principal residence between family members does not terminate an existing homestead — even if the new deed fails to reserve the homestead upon the transfer. In addition, a homestead existing at the death or divorce of a person holding a homestead shall continue for the benefit of his or her surviving spouse or former spouse and minor children who occupy or intend to occupy said home as a principal residence.

However, any adult child who has an ownership interest in the principal residence is required to file their own homestead declaration if they wish to have the increased protection of the $500,000 amount.

SALES AND INSURANCE PROCEEDS RELATING TO HOMESTEAD PROPERTY ARE PROTECTED

Finally resolving an age-old question, the proceeds from the sale of a principal residence, or the insurance proceeds from a principal residence that suffers a casualty loss, are protected by the homestead in order to purchase a new principal residence or repair a principal residence that suffers a casualty. The proceeds from the sale are protected for the period of one year from sale of the current principal residence, but the insurance proceeds are protected for a two-year period from the date of the casualty.

MORTGAGE WAIVER OF HOMESTEAD IS JUST THAT

Another age-old question relates to whether the apparent blanket waiver of a homestead protection in a trust document terminates the protection of a homestead against all creditors. The act provides the sensible answer that a mortgage does not terminate a previously filed homestead protection, but only subordinates the homestead to the specific mortgage at issue.

SIMPLE SOLUTION TO WHICH SPOUSE FILES THE HOMESTEAD

To resolve the question of which spouse should file the homestead, the act chooses a simple solution — it requires that both spouses who have an ownership interest in the principal residence and beneficial interest in the homestead. In addition, the declaration must identify each person receiving homestead protection, including the name of a spouse who may not be an owner. The declaration must also state that each person occupies, or intends to occupy, the property as his or her principal residence.

The information contained in this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The information is intended for general informational purposes.

For more information, go to www.masslaw.org or www. about.org/aging/guardianship/htjotcide.html.

1) For those looking to read the act on the state legislative website, please note the actual text of the final version of Senate Bill 2406 (18th th th th House amendment).
3) In the GUARDIANSHIP OF LILIANA GLASSER, an Incapacitated Person, No. 04-07-00539-CV (1st App. 2009).
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