An amicus brief co-authored by Massa-
chusetts Bar Association Health Law Sec-
tion Council member Lorianne Sainsbury-
Wong was mentioned in the U.S. Supreme
Court’s landmark health care decision on the
Affordable Care Act. The constitution-
ality of the act was upheld in a 5-4 decision
on June 28, ruling that individuals who fail
to obtain insurance must pay a tax penalty
to what was happening in Massachusetts.”
Associate Justice Ruth Bader Ginsburg
in her minority opinion quoted the brief on
page 73 of the decision. “[O]ut-of-state residents continue to seek and receive millions of dollars in un-
compensated care in Massachusetts hospi-
tals, limiting the state’s efforts to improve
its health care system through the elimi-
nation of uncompensated care,” reads the
brief, which argued that the Afford-

Why the state bar association counts
Over the past 12 months or more, we
have been soundly tested as a profession.
Justice is threatened by some of the problems
that have manifested over that timeframe:
• The judiciary, so starved of financial
support, closed some courts, sus-
pended normal operating hours in
other courts such that ordinary citi-
zens could not get their business done
when they rightly expected to find
the courts open (e.g., the lunch hour),
and lost some of our most experience
trial judges to early retirement as they
choose to avoid the indignities of con-
tinued service to the commonwealth
without adequate financial support.
• Predator businesses like “Notarios,”
holding themselves out as ex-

By Kelsey Sadow and Tricia M. Oliver
Martha Rush O’Mara, of the Law Office of Martha Rush
O’Mara in Melrose and Christopher P. Sullivan, partner of Rob-
ins, Kaplan, Miller & Ciresi LLP in Boston, will join the return-
ing MBA officer slate as leaders for the 2012-13 year.
Starting Sept. 1, Rush O’Mara, who focuses her practice
in juvenile law, will become MBA secretary. Sullivan, whose
practice concentrates on the civil jury trials of complex litiga-
tion matters, will serve as an MBA vice president.
Rush O’Mara previously co-chaired the MBA’s Juvenile &
Child Welfare Law Section. She also was an MBA designee on
the board of the Massachusetts Legal Assistant Corporation’s
and sits on the association’s Executive Management Board, as
well as its governance and membership committees.
A former president of the Massachusetts Association
of Women Lawyers, Rush O’Mara previously served on the
Massachusetts Interest on Lawyers Trust Account Committee
as well as two terms as a hearing officer for the Board of Bar
Overseers.
For nearly 20 years, Rush O’Mara has operated her own
firm, practicing in Boston Juvenile Court and Probate and Fam-
ily Court. She devotes a significant amount of time to volunteer
work, both in her hometown community of Melrose and in the
Massachusetts legal community, conducting pro bono work
and mentoring recent law school graduates.

Rush O’Mara, Sullivan join 2012-13 MBA Officer Slate

By Jennifer Rosinski
An amicus brief co-authored by Massa-
chusetts Bar Association Health Law Sec-
tion Council member Lorianne Sainsbury-
Wong was mentioned in the U.S. Supreme
Court’s landmark health care decision on the
Affordable Care Act. The constitution-
ality of the act was upheld in a 5-4 decision
on June 28, ruling that individuals who fail
to obtain insurance must pay a tax penalty

Campbell winds down a
productive presidential term

By Tricia M. Oliver
Massachusetts Bar Association President
Richard P. Campbell oversaw a productive as-
sociation year with regard to his established
priorities. Since last September, Campbell
assembled a task force to analyze the Massa-
chusetts law economy; launched a high profile
awareness campaign for adequate court fund-
ing and inserted the Massachusetts bar into
discussions surrounding the state’s Gateway
Cities.
Working alongside his fellow officers and
the MBA’s extended leadership team, Camp-
bell also oversaw a busy legislative agenda
(see related article on page #3) for the associa-
tion and celebrated influential, major events
while moving forward other association pri-
orities.
Analyzing a lopsided
law economy

After tapping chairs Eric Parker and Radha
Natarajan as its chairs, the Task Force

Statistics

Predator businesses like “Notarios,”
holding themselves out as ex-

Statistics

Predator businesses like “Notarios,”
holding themselves out as ex-

Statistics

Predator businesses like “Notarios,”
holding themselves out as ex-

Statistics

Predator businesses like “Notarios,”
holding themselves out as ex-

Statistics
PRESIDENT’S VIEW
Continued from page 1

ports in law, fed off the ignorance of unsophisticated clients in Gateway Cities like Lawrence, New Bedford, Brockton and Springfield, causing great damage to them.

• The nine in-state and seven area law schools, like a ruptured gushing watermain converting an otherwise valuable resource into a costly problem, kept spilling more than 1,500 un-employed and unemployable newly minted graduates into the commonwealth’s law economy with little regard to the impact of their actions on those new graduates or on our ci- zens and practicing lawyers.

• Hapless and hopeless, many newly admitted lawyers “hung a shingle” without any practical experience or skills, thereby choosing to experi- ment on unsuspecting clients, oppos- ing counsel, and the courts.

Why does your state bar association count? The answer is really self-evident. The Massachusetts Bar Association is the singular organization in the common- wealth that speaks for all lawyers regard- less of the city or county where they prac- tice; the race, ethnicity, gender, sexual orien- tation or religious tradition that define them; or the idiosyncrasies of their indi- vidual practices. Large metropolitan bars, county bars and affinity bars are incred- ibly meaningful to their members. But, when the Legislature wants to hear from “the bar,” it turns to the Massachusetts Bar Association. When the governor needs support in solving problems in Gateway Cities, he looks to the Massachusetts Bar Association. And, when the judiciary has “someone at their back,” the image in the mirror is the Massachusetts Bar Associa- tion.

This year the Massachusetts Bar As- sociation chose to tackle major problems head on. For the first time ever, the Massa- chusetts Bar Association pursued a broad based outreach program involving high- way billboards and website videos to in- form and instruct ordinary citizens about the adverse impact that an underfunded judiciary had on the rule of law and with it the quality of their lives. That initiative, trumpeted and acclaimed by the Amer- ican Bar Association, is now being copied across the nation.

For the first time ever by a state or federal bar association, the Massachusetts Bar Association publicly called into ques- tion the endless expansion of graduating law school students saddled with enor- mous debts. In the face of biting criticism from some law schools, the association formed a task force to study and report on the law economy and the law school paradigm. Following publication of the task force’s report, the American Bar As- sociation organized its own task force on the “future of legal education.” And, most prominently, Boston College Law School’s Dean Vincent Rougeau called for reform of the law school education model by incorporating a residency-like program comparable in substance to the one advan- ced by the Massachusetts Bar Associa- tion’s task force.

In the face of abundant numbers of newly admitted lawyers opening law of- fices shortly after passing the bar, the Mas- sachusetts Bar Association opened debate on the necessity of minimum, mandatory continuing legal education. And now, rec- ognizing that dramatic shifts in the legal market place leave new lawyers without mentors, the Supreme Judicial Court, has since proposed the first ever mandatory CLE program in Massachusetts history. In my opinion, it is just a matter of time be- fore the SJC chooses to add Massachusetts to the list of 46 states that already mandate continuing legal education for all licensed lawyers.

The importance of the Massachusetts Bar Association to the Executive Office of the Governor, the Legislature, the ju- diciary and our profession was front and center at our annual dinner at Westin Sea- port Hotel on May 31. Gov. Deval Patrick was represented at the event by his Chief of Staff Mo Cowan and his counsel Mark Reilly; the Legislature was represented by Speaker Robert DeLeo and at least a dozen members, including the chairman of the Judiciary and Ways and Means Commit- tees; and the judiciary was represented by Chief Justice Roderick Ireland and five of his colleagues on the SJC. Chief Justice for Administration and Management Robert Mulligan and the new Court Administrator Harry Spence, five of the Trial Court Chief Justices, and numerous judges from across the commonwealth. Most importantly to me, however, the annual dinner was com- pletely sold out, because my fellow mem- bers of the bar recognized the importance of our gathering and took time from their busy lives to be present and to register their approval of the association’s efforts.

We just completed our 101st year of dedicated service to the citizens of the commonwealth, the advancement of an independent and properly supported judi- ciate, and the education and assistance of the Executive and Legislative branches on matters related to the law. Our work never ends, however, because our basic rights depend on an active, engaged, committed, and financially viable bar. In year 102, the Massachusetts Bar Association will carry on as the Knights Templar for freedom and the rule of law.

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ON DEMAND
www.massbar.org/ondemand
An innovative approach to Continuing Legal Education and other association offerings
LEGISLATIVE UPDATE

Legislative session comes to a close

By Lee Ann Constantine

The Legislature wrapped up its formal session on July 31. Although, they will continue to meet for the rest of the year, it will be on an informal basis. However, in informal legislative sittings, just one objection by a legislator can derail a measure.

At the time Lawyers Journal went to press, there was action on a number of issues of great interest to the bench and bar.

Habitual Offender Bill

Late last month, the Legislature enacted the so-called habitual offender bill. Along with addressing repeat offenders, it calls for a reduction in school zone drug offenses from 1,000 to 300 feet, which the Massachusetts Bar Association supports. It also alters mandatory minimum sentences for certain non-violent drug offenses by raising the amount of drugs necessary to trigger a mandatory minimum sentence. Several key legislators have indicated their desire to revisit mandatory minimum sentences in the new legislative session beginning in January 2013, including House Judiciary Chairman and Conference Committee Co-Chair Rep. Gene O’Flaherty (D-Chelsea), Rep. David Linsky (D-Natick) and Rep. Brad Hill (R-Ipswich), as well as Gov. Deval L. Patrick.

The habitual offender piece of the bill covers over three dozen crimes. Felons sentenced for at least three years for one of the enumerated crimes would trigger the three strikes provisions. For felons serving two life sentences or for felons who get a third strike, parole eligibility will be eliminated.

The MBA, while not having a position on the habitual offender portion of the legislation, is a long term opponent of mandatory minimum sentencing.

At press, the bill was awaiting final action by Patrick.

Foreclosure

The conference committee charged with brokering a compromise on foreclosure legislation finished its work as Lawyers Journal went to press. The final bill seeks to prevent unnecessary foreclosures. This bill focuses on loan modifications and does not contain the Senate-backed mandatory mediation between banks and homeowners. The MBA will urge the Legislature to revisit the mediation proposal during the next legislative session.

Work Place Safety

A bill strongly supported by the MBA, referred to as the "Temporary Workers Right to Know Bill," had passed the House at press time and was being considered by the Senate. The bill protects temporary workers by requiring employers to provide them with written notice of key details of their work assignments and the legal protections available to them.

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Thank You.
on Law, the Economy and Underemployment quickly got busy to examine the merits of law school given the increasingly high unemployment rate for graduates. Throughout the association year, the group explored, identified and analyzed root causes of and potential solutions to the underemployment of recent law school graduates compounded by a weakened economy and bleak prospects.

The task force chairs presented a report to the MBA’s governing body — the House of Delegates — at its final May meeting. Delegates voted to accept the report entitled, “Beginning the Conversation.”

“Many new law students emerge from law schools unequipped to thrive in the current law economy. In their report, the task force analyzes the problems, provides likely reasons behind this phenomenon, and offers suggestions on what may turn the tide around,” Campbell said. “The task force has done a great service for the bar and for society by shining a light on an endemic problem that leaves so many young law school graduates in desperate circumstances.”

Funding message takes to the highways

Through a billboard campaign launched in mid-January, the association aimed to grab the average citizen’s attention to reinforce that court funding does impact him or her. The MBA’s message was showcased on billboards in Greater Boston, along I-93 in Dorchester and Medford; in Worcester along I-290; and in Fall River along Rt. 24.

“We’ve never done this before,” Campbell said at the onset of the high-profile awareness campaign.

The billboard message directed passersby to the MBA Web site, www.massbar.org. Included on the MBA’s site were informational materials on court funding as well as resources citizens and members of the legal community to reference when reaching out to their respective legislators on this important issue.

As part of the informational on-line pack- age, public service announcement-style videos were featured. The videos highlighted the negative impact of inadequate court funding through the perspective of judicial leadership, attorneys, academic leaders and court staff.

In addition to the billboards and YouTube videos, the MBA shared word of this new campaign through comprehensive outreach to membership and the larger legal community, as well as other key community and opinion leaders.

An important piece of that outreach was directed to legislators during the collaborative March 10 Court Advocacy Day held at the Statehouse. The MBA and Boston Bar As-
An eye on Gateway communities

Campbell was integral in reaching out to key leaders most knowledgeable about and connected to the research and initiatives underway surrounding the state’s Gateway Cities—those mid-sized cities whose residents are experiencing significantly higher rates of unemployment and a stalemate in social, economic, and civic innovation. Some examples are Brockton, Fall River, Lawrence, New Bedford, Springfield and Worcester.

Following his selection of attorneys Margaret Xifaras and Francis Ford to lead this MBA initiative, Campbell first reached out to MassINC, a lead researcher on these communities. Following such outreach, Xifaras and Ford organized two informational forums. The goal of the forums, as described by Campbell, was to “identify ways in which attorneys can lend their expertise with issues affecting Gateway City communities across Massachusetts.”

On Jan. 29, the MBA hosted its first forum at the University of Massachusetts School of Law in Dartmouth. The panel featured Sen. Benjamin Downing (D-Pittsfield) and Rep. Antonio Cabral (D-New Bedford), co-chairs of the Gateway Cities Caucus, and other civic, legislative and educational leaders who have long worked on the issues with the highest impact on Gateway communities. The success of the January forum was followed by a second forum in Worcester that took place on April 30. The panel for the Worcester forum featured Lt. Gov. Timothy Murray, Secretary of Education Paul Reville and other respected leaders on this topic from Central Massachusetts.

A stage for sharing MBA’s message

Alongside his three presidential initiatives, Campbell and his fellow MBA leadership, including Supreme Judicial Court Chief Justice Roderick L. Ireland. Following the program, event attendees were encouraged to meet with their local legislators to reiterate the importance of adequately funding the Massachusetts judicial branch.

In early July, the state budget for fiscal year 2013 was signed into law by Gov. Deval Patrick. The Trial Court received $561 million worth of funding for FY13.

Up next

As the association year comes to a close, Campbell is set to hand over the leadership of the MBA to President-elect Robert L. Holloway Jr. As Campbell explained to the delegates at the final HOD meeting in May, Holloway is a “true consensus builder” to the delegates at the final HOD meeting in May, as part of the symposium’s high turnout. Speaker DeLeo was in attendance, as were the majority of SJC associate justices and many Trial Court chiefs.

January’s Annual Walk to the Hill for Civil Legal Aid, hosted by the Equal Justice Coalition, provided Campbell the opportunity to stress the importance of legal aid funding. Hundreds of legal professionals and supporters attended the lobbying event and met with their local legislators to deliver the message personally.

In May, Excellence in the Law, co-hosted with Massachusetts Lawyers Weekly, afforded the MBA to recognize the judicial excellence of U.S. District Court Chief Judge Mark Wolf, as well as the law-related journalistic excellence of Boston Globe columnist Kevin Cullen.

Also in May, came the MBA’s final major event of the association year — the MBA Annual Dinner. The MBA’s signature event featured keynote speaker Victoria Reggie Kennedy, as well as the 2012 Access to Justice Award Winners and the presentation of the legislator of the Year Award to DeLeo.

ers worked to share the MBA’s agenda at key major events throughout the year. In addition, various special guest speakers and honorees added a celebratory tone to the events and their resulting exposure.

The first major event of the association year was the October Bench Bar Symposium. Chief Justice Ireland delivered his first address to the bar at that time. As part of the symposium’s high turnout, Speaker DeLeo was in attendance, as were the majority of SJC associate justices and many Trial Court chiefs.

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The Affordable Care Act is constitutional. (Brief for Health Care for All, Inc., et al. as Amici Curiae in No. 11–398, p. 4)

Ginsburg used the quote in a section of her opinion that states Congressional intervention is necessary because otherwise states that have undertaken their own health care reform are at an economic disadvantage.

“I knew early on the perspective I wanted to explore,” said Northeastern University School of Law Associate Dean Wendy E. Parmet, a co-author of the brief and a board member at Health Law Advocates.

“Don’t think about health care reform as something states can do on their own. The decisions people make in other states, whether to have or not to have insurance - affect the success of health care reform in Massachusetts,” Parmet said. “The state can only go so far because of the interstate effect.”

The statistics in the brief, and much of the research needed to make its arguments, was provided by a team of four second-year students at Boston University School of Law as part of their class, Constitutional Litigation and Health Care.

“I don’t think there’s many law students that can go into an interview with a Supreme Court citation in the most important case of the decade,” said one of the class’s professors, Kevin Outterson, an associate professor at both Boston University’s School of Law and School of Public Health.

Outterson said to soften the blow of the students giving up their winter break to work on the brief, he promised them a party if any of the briefs were quoted or cited. “I still owe them that,” Outterson said.

The students who worked on the brief were Paul Payer, Braden Miller and Katie O’Neill. Eleven additional students in the class worked on three other briefs submitted by the class.

Filed before the Supreme Court on Jan. 13, the brief was written on behalf of several Massachusetts organizations involved in Massachusetts’ 2006 health reform legislation. Among the groups were Health Care For All, Community Catalyst, and the Massachusetts Hospital Association, all based in Boston. It was one of more than 120 briefs submitted in the case.
CHILD JUSTICE PHILIP RAPOZA INVITED TO SERVE AS ELECTION OBSERVER IN TIMOR-LESTE

At the invitation of the U.S. Department of Justice, Hon. Philip Rapoza, chief justice of the Massachusetts Appeals Court, recently served as one of two American delegations on an international election observer mission in Timor-Leste, commonly known as East Timor. Timorese authorities requested that the Association of Southeast Asian Nations (ASEAN) Regional Forum, in which the United States participates, facilitate a team of observers to monitor the July 7 election of the country’s 65-member parliament. Timor-Leste recently celebrated the tenth anniversary of the restoration of its independence and the United Nations is scheduled to withdraw its peacekeeping mission from the country by the end of 2012.

Over the last decade, Rapoza has played a prominent role in Timor-Leste, a former Portuguese colony. From 2003 to 2005, he took an unpaid leave of absence from the Appeals Court and lived in the Timorese capital of Dili, where he served as an international judge on an UN-established war crimes tribunal. Since then he has returned to Timor-Leste at the invitation of the UN on virtually an annual basis to assist in ongoing efforts to improve the country’s justice system.

A Dartmouth native, Chief Justice Rapoza served as a trial judge on the District and Superior Courts before his appointment to the appellate bench in 1998. In 2006, Gov. Mitt Romney appointed him chief justice of the Appeals Court. In December 2011, SJC Justices established a Committee on the Code of Judicial Conduct, and charged it with recommending amendments to the Massachusetts Code of Judicial Conduct regarding judges’ ability to speak to the public on matters related to the administration of justice.

The Supreme Judicial Court has announced the appointment of Brian H. Redmond, pictured, right as the new reporter of decisions for the Supreme Judicial Court and Appeals Court, effective July 1. Redmond succeeds C. Clifford Allen, who retired as reporter of decisions in June. The reporter provides editorial support for the SJC and Appeals Court justices, publishes slip opinions daily in printed and electronic formats and administers a database for the publication of printed advance sheets and permanent bound volumes of the official reports of the two courts.

ADDITIONAL COURT LOCATIONS TO ADJUST PUBLIC OFFICE HOURS

On July 2, the five permanent clerks’ offices that comprise the Southeast Division of the Housing Court — Fall River, New Bedford, Brockton, Plymouth and Taunton — began operating under a staggered schedule that closes each office for two days a week. Court users may go to any of the five locations to conduct business. At least two of the five locations will be open for business on any given day.

Last year, the Housing Court’s Southeast Division opened a fifth session at the new courthouse in Taunton after many years of holding sessions in four locations to cover Bristol and Plymouth counties. Staff of the division travel among the locations on a regular basis and the new schedule will better balance the coverage throughout the region. The five Housing Court locations will open as follows:

- Mondays: Fall River, New Bedford, Brockton, Plymouth
- Tuesdays: Fall River, Brockton, Taunton
- Wednesdays: Brockton, Taunton
- Thursdays: Fall River, New Bedford, Plymouth
- Fridays: New Bedford, Plymouth, Taunton

In addition, Lawrence District Court extended its restricted counter and phone coverage from three days to five days between the hours of 1:30 and 3:30 p.m. The Newburyport/Ipswich district courts also expanded from three days to five days its restricted telephone coverage between 1:30 and 3:30 p.m.

The scheduling of court sessions is not affected by the changes in office hours and access is available for emergency matters. This reduction in counter and telephone hours provides uninterrupted time for staff to prepare cases for court sessions and execute court orders, as well as to complete filing, docketing, scanning and other case processing.

PROBATE AND FAMILY COURT ANNOUNCES CHANGES TO STANDING ORDER 2-99

The Probate and Family Court has announced the approval of Amended Standing Order 2-99, governing the “Procedure for Submission and Disposition of Certain Post-Hearing Motions.” The changes reflect recommendations made by the Probate and Family Court BenchBar Committee on Rules. Hon. Paula M. Carey, chief justice of the Probate and Family Court Department, and Hon. Robert A. Mulligan, chief justice for Administration and Management, approved the changes effective July 2.

The amended standing order identifies the post-hearing relief available in the Probate and Family Court and clarifies the specific Rules of Civil Procedure and Domestic Relations Procedure that are applicable to motions for post-hearing relief.
MBF 2012 Legal Intern Fellowship Award recipients announced

The Massachusetts Bar Foundation’s Board of Trustees proudly announce the award recipients of its 2012 Legal Intern Fellowship Program (LIFP). This year, the program will provide three law students with stipends of $6,000 each for full-time, summer internships at a Massachusetts organization providing civil legal services to the poor.

Selected through a competitive application process, each law student intern brings to her placement a strong passion and dedication to working in civil legal services. “The committee was deeply impressed not only by the excellent academic qualifications of this year’s LIFP candidates, but also by their determined commitment to trying to make a positive contribution in providing civil legal assistance to those who cannot afford it,” said LIFP Review Committee Chair Harvey Weiner.

At a time when many legal services providers face difficult funding cuts, the work of these law students is eagerly welcomed. “Demand for services really continues to exceed our capacity to meet the needs of our clients,” noted Rebecca Haag, executive director of the AIDS Action Committee of Massachusetts, one of three organizations hosting 2012 LIFP interns. “With funding so tight, this fellowship provides crucial support and makes it possible for us to address clients’ immediate issues more quickly.”

LIFP’s goal is encouraging careers in public interest law while simultaneously providing valuable staffing assistance to civil legal services agencies in Massachusetts. To add your support to this important program, visit www.MassBarFoundation.org.

MBF welcomes Eisenberg to Board of Trustees

Attorney Lewis C. Eisenberg has joined the Massachusetts Bar Foundation’s Board of Trustees. A principal at Cosgrove, Eisenberg & Kiley PC in Quincy, he focuses his practice in civil litigation, with an emphasis on personal injury and construction law. Active in many bar activities, he is a Fellow of both the American College of Trial Attorneys and the American Board of Trial Advocates. He is a graduate of Rutgers University and New England School of Law.

Eisenberg is also a deeply committed Fellow of the MBF. He participates in the annual grant review every year with tremendous enthusiasm and thoroughness. His firm was one of the first to become an MBF Legacy Partner, agreeing to support the foundation with an annual gift. For his generosity and dedication to the MBF, Eisenberg was presented with the 2010 MBF President’s Award. “It is an honor to have Lew Eisenberg on the MBF board. He is a distinguished trial lawyer and a longtime volunteer for pro bono service. We are glad to have him working with the foundation in his new trustee role,” said MBF President Jerry Cohen.

MBF seeks new Fellows

The Massachusetts Bar Foundation is seeking recommendations of outstanding members of the bar to join the MBF Society of Fellows. All current MBF Fellows are encouraged to submit nominations of lawyers and judges who have demonstrated a commitment to ensuring equal access to the legal system for all Massachusetts citizens, consistent with the mission of the MBF.

Established in 1964, the MBF Society of Fellows consists of more than 1,400 lawyers and judges working together to promote access to justice in the commonwealth. Membership is limited to just 5 percent of the practicing bar in Massachusetts. The MBF’s greatest strength lies in the leadership, commitment and support of its Fellows. Please help us to strengthen the Foundation by submitting your nominations at www.MassBarFoundation.org. Initiating the process is easy and takes less than five minutes.

For more information on nominating or becoming a Fellow, contact MBF Executive Director Elizabeth Lynch directly at (617) 338-0534 or by e-mail at elynch@massbar.org.
Grace Bacon Garcia is quick to lavish praise on other attorneys for their volunteer work at the Massachusetts Bar Association. But as chair of its Volunteer Recognition Committee for the past two years, Garcia, a partner at Morrison Mahoney LLP in Boston, devotes long hours herself to honoring members who deserve special recognition for their outstanding contributions to the MBA.

From putting out the call for nominations to combing through nominations with the five other committee members and then recommending honorees, Garcia puts great effort into helping select the recipients of the association’s annual Volunteer Recognition Awards. “There are so many volunteers within the MBA,” she said. “It’s a fantastic way for those who have volunteered, who work without the limelight, to get recognition.”

Garcia has been on the committee since its inception three years ago, and has been active in various MBA sections for the past 11 years. She was a council member of the Civil Litigation Section from 2006 to 2009; the Business Law Section from 2003 to 2006; and the New Lawyers Section from 2001 to 2003.

Working on various committees and sections was “great,” she said, “because you meet people certainly from other practices and various firms outside of Boston.”

In addition to her committee work, Garcia is a program chair and lecturer for the MBA. Since 2002, she has taught at least one continuing legal education course a year on taking depositions and conducting discovery.

“For both these CLEs (discovery and depositions), audience participation is important because my goal is for every person in the audience to leave with whatever questions they came with answered, or learning one new tool to use in their next deposition or their next case for discovery,” she said.

Garcia graduated from Boston University School of Law in 1998, worked for a year as a contract attorney at Todd & Weld LLP in Boston, then spent three years as a litigation associate at Sherin and Lodgen LLP in Boston.

She joined Morrison Mahoney in 2002 and became a partner in 2006. Her practice is focused on civil litigation defense, including construction, product liability, premises liability, business/commercial matters, disability public access claims and transportation.

Garcia said she enjoys sharing her knowledge about litigation techniques. “Someone has spent time helping me, mentoring me,” Garcia said. “So, with the CLEs, to an extent I can help someone in an area that they need help on, is gratifying.” Her Volunteer Recognition Committee work is also rewarding, Garcia said, because it gives her the opportunity to learn about the many selfless efforts of attorneys throughout Massachusetts on behalf of the MBA. “You’re never giving as much as you get back,” she said. “It’s really inspiring.”
BAR NEWS

YLD hosts final 2011-12 networking event on the Boston waterfront

Members of the Massachusetts Bar Association’s Young Lawyers Division gathered for a final 2011-12 association year networking reception on July 12 at M.J. O’Connors Irish Pub at the Westin Boston Waterfront.

The event provided attendees with an opportunity to mingle with fellow attorneys and members of the bar.
Free LOMAP Super Marketing Conference II offers marketing and client tips, networking and more

**Miss the program? Watch it anywhere, anytime via MBA On Demand**

**By Marc A. D’Antonio**

On June 19, the Massachusetts Bar Association hosted the Massachusetts Law Office Management Assistance Program’s second annual Super Marketing Conference. Over 100 attorneys participated both in person and via MBA On Demand Real-time Webcast, and were treated to presentations by legal marketing experts on a wide array of marketing topics. The fast-paced program also gave conference participants the opportunity to network with colleagues and conference presenters throughout the day.

“The energy surrounding today is palpable,” said Jared Correia, senior law practice advisor for LOMAP and conference moderator. “What started as a small lunch group to discuss the challenges lawyers face in today’s legal market, has now grown into a vibrant and interactive webinar series culminating in a half-day program. It’s really amazing. Of course, none of this would have been possible without the support of the MBA.”

Presenters at the conference included speakers Ed Scanlan, founder of Total Attorneys, who told those in attendance how not to run their law firms, and Brett Owens, CEO of Chrometa, who focused on teaching attendees how to automate their law firm marketing. In addition to Total Attorneys and Chrometa, Clio, a law practice management software provider, also sponsored the event.

Local presenters included Gabriel Cheong, Alan J. Klevan, Jay Shepherd and Matthew P. Trask.

Did you miss the LOMAP Super Marketing Conference II? Watch the program anytime, anywhere via MBA On Demand at www.massbar.org/OnDemand. The 2011 “LOMAP Super Marketing Conference II” is also available at www.massbar.org/OnDemand.
Feature Story

Engaging conferences. Inspiring pro bono work. Welcoming networking events. You belong here, at the Massachusetts Bar Association.

Tell us why you belong. E-mail us at ibelong@massbar.org to share your story and be entered to win a FREE 2013-2014 MBA membership. E-mails must be received by Dec. 31, 2012. A winner will be selected on Jan. 14, 2013. The MBA offers the legal community a wide array of professional development and volunteer opportunities. Visit www.masslaw.org/membership to see why others belong.

NOTE: All testimonials shared by e-mail, mail and phone may be published in various MBA publications, posted on the MBA web site and its social media platforms, printed on marketing materials and used in advertising or for other related endeavors.

CONTINUED FROM PAGE 11

By Marc A. D’Antonio

The Health Law Section Council hosted its annual spring conference on June 26 at the Massachusetts Bar Association in Boston. The half-day conference offered attendees with an opportunity to gain a better understanding of a wide variety of topics in the complex world of health law practice. Topics included use of social media in the health care sector, an in-depth discussion of insurance coverage for services for the treatment of Autism Spectrum Disorder, and the Supreme Judicial Court’s recent decision regarding the constitutionality of excluding legal immigrants from state-subsidized health insurance. Additionally, Health Law Conference Co-Chair Stephen M. Fiore and MBA Vice President Jeffrey N. Catalano provided an overview and history of apology laws that apply in medical malpractice cases.

Professor Wendy Mariner, from Boston University School of Public Health delivered the conference’s keynote address. Mariner provided an in-depth analysis of the Supreme Court’s soon to be issued ruling on the constitutionality of Affordable Care Act. Rather than speculate on the outcome, Mariner broke down the arguments and offered some valuable insight on the impact this decision will have on the way Americans obtain and pay for health insurance.

“Most constitutional experts thought this case was an easy one, a slam dunk,” Mariner said. “However, those of us who work in the health care field recognized the complex nature of this case.”

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Tell us why you belong to the MBA

Health Law Conference focuses on SJC’s affordable care act decision

By Marc A. D’Antonio

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Did you miss the June 26 Health Law Conference? Visit www.massbar.org/ondemand to view it anywhere, anytime via MBA On Demand.

Members of the legal community participate in the June 26 Health Law Conference.
Minahan receives 2012 ABA Pro Bono Publico Award

Boston attorney Neal E. Minahan has been selected as a 2012 Pro Bono Publico Award recipient by the American Bar Association’s Standing Committee on Pro Bono and Public Service. The award is presented each year to individual lawyers and institutions in the legal profession who have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged.

Minahan is a partner at McDermott, Will & Emery LLP, where he focuses on complex business disputes, white-collar criminal defense and internal compliance investigations. Minahan is president and chair of BAGLY Inc., a 30-year-old nonprofit that supports and advocates for LGBT youth in Massachusetts. He previously served on the board of the Massachusetts LGTBQ Bar Association and as a commissioner of the GLBT Commission for the city of Cambridge.

In addition, Minahan was recently honored by the National LGBT Association as one of the country’s “Best LGBT Lawyers Under 40.” He has also been recognized as a Massachusetts Lawyers Weekly “Up and Coming Lawyer” and a Super Lawyers Magazine “Rising Star.” Minahan graduated from Boston University School of Law in 2004.

Kenney honored by alma mater

Boston University School of Law is presenting Chris Kenney of Kenney & Sams PC with its Silver Shingle Award for Outstanding Service to the Law School. This is the highest award given to Law alumni. Kenney served as president of the BU Law Alumni Association in 2010-2011.

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Rush O’Mara received her B.S. from Salem State College and went on to earn her law degree from New England Law | Boston.

Sullivan’s practice concentrates on the civil jury trials of complex litigation matters such as financial and securities cases and intellectual property matters. He has previously served as an MBA member-at-Large of the House of Delegates and as a member Executive Management Board. He also sat on the Civil Litigation and Business Law section councils. Sullivan also serves as tri-chair of the Federal Practices and Procedures Committee.

Sullivan has also served on the National Institute of Trial Advocacy and as Massachusetts Chapter president of the Federal Bar Association, of which he is currently vice president for the First Circuit.

Sullivan graduated from the College of Holy Cross in Worcester, and he is currently an Executive Board Member of the Holy Cross Lawyers Association. He went on to receive his J.D. from Fordham University Law School, and he is New England Chapter Vice President of the Fordham University Law School Alumni. He is a resident of Hingham.

“I am honored to join the MBA officer ranks. I look forward to serving on Bob Holloway’s team of great bar leaders as we endeavor to make the MBA an indispensable resource for our members,” said Sullivan.

The fellow officers of Rush O’Mara and Sullivan include President Robert L. Holloway Jr., President-elect Douglas K. Sheff, Treasurer Marsha K. Kazarosian and Vice President Robert W. Harnais (all pictured below).

Holloway is a shareholder and president of MacLean, Holloway, Doherty, Ardiff & Morse PC in Peabody. He is a long-term member of the MBA’s Ethics Committee, a member and past chair of the MBA’s Civil Litigation Section Council, and former regional delegate to the MBA House of Delegates, the governing body of the MBA. He lives in Topsfield.

A senior partner at Sheff Law in Boston, Sheff is a nationally renowned brain injury litigation expert and specializes in all aspects of personal injury law. He is also a member of the MBA’s Executive Management Board and Budget and Finance Committee. In addition, he served as treasurer, two terms as MBA vice president, as MBA secretary and as co-chair of the MBA Civil Litigation Section. Sheff is chair of the Workplace Safety Task Force and has also served as chair of the MBA Membership Committee and as co-chair of the MBA Centennial Conference and Ball. He is also a fellow of the Massachusetts Bar Foundation, the philanthropic arm of the MBA. He lives in Boston’s North End.

Kazarosian is managing partner of Kazarosian Law Offices in Haverhill, where she concentrates in civil rights litigation, family law and discrimination. She previously served as an MBA secretary and vice president. Former chair of both the MBA’s Education Committee and the Technology Implementation Task Force, she served as co-chair of the MBA Centennial Conference Committee in 2011. Kazarosian has also served on the MBA’s Executive Management Board, House of Delegates, Joint Bar Committee on Judicial Nominations, Nominating Committee and Gala Dinner Committee. She has sat on a dozen association committees and sections. In addition, Kazarosian is a Life Fellow of the MBF. She resides in Haverhill.

Harnais is with Mahoney Diamond and Harnais Law Offices in Quincy, where his general practice concentrates on criminal law, family law, real estate, labor and consumer law. A past MBA secretary, he has sat on the MBA’s governing body — House of Delegates — since 2006, has been a member of its Executive Management Board and has served as co-chair of the MBA Task Force on Diversity. He lives in Braintree. ■
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The impact of Wal-Mart Stores, Inc. v. Dukes on 93A claims

BY MATTHEW M. K. STEIN

People don’t always realize that claims for G.L. c. 93A violations brought on behalf of a putative class are not certified under Mass. R. Civ. P. 23. Nope. Instead, they’re certified under chapter 93A’s special class-action provision — G.L. c. 93A, § 9(2) — which the Supreme Judicial Court has said does not require a showing of predominance or superiority (although the trial court does possess a degree of discretion to consider those issues).1 And, after Shady Grove Orthopedic Associates, P.A. v. Altiste Insurance Co.,2 that might be the case in federal court too. (This is undecided. The only court that appears to have been asked to decide it declined to do so.)3

So, thinking about a proposed chapter 93A class action, what an attorney to do?

Save money. Live better. Go to Wal-Mart. Specifically, Wal-Mart Stores, Inc. v. Dukes.4

In Wal-Mart, the U.S. Supreme Court raised the bar for class certification under Rule 23(a)(2). Justice Antonin Scalia explained that commonality is directed at a classwide issue: “That common contention, moreover, must be of such a nature that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke.”5

Wal-Mart matters to chapter 93A claims because § 9(2) requires proof that a common question satisfies Rule 23(a)(2)’s commonality requirement without proof that it predominates.6 Therefore Wal-Mart implicitly imposes a type of predominance on that class-certification analysis by requiring a common question that drives the litigation. (Obviously Wal-Mart addresses only the federal version of Rule 23. But given that the SJC has said that § 9(2) incorporates all of Rule 23(a)’s requirements, it would be a distinction too far to say that Wal-Mart’s clarification of Rule 23(a)’s commonality requirement doesn’t apply to § 9(2), especially as Massachusetts courts have looked to federal court interpretations of their Rule 23 for guidance.)7

Consider Campbell v. Glods,8 a case challenging the alleged use of excessive force on behalf of a class of inmates in a county jail. On a motion-to-dismiss record, Judge Garry Inge found commonality because “[a]ll potential class members have an interest in the subject matter of this suit and a right to the same relief,” although “the interests of all the potential class members are not identical, since the circumstances surrounding each alleged use of excessive force differ.”9

Had Wal-Mart applied, the court would have been required to find something more: that “a classwide proceeding [would] generate common answers apt to drive the resolution of the litigation.”10 Simply finding the common interest and common right to relief would not have been enough. A 2007 Superior Court decision, Holzman v. General Motors Corp., demonstrates how Wal-Mart could apply to class-certification rulings under § 9(2). There, Judge Thomas Billings denied certification on claims that GM vehicles included an allegedly defective jack on commonality grounds (among others). The judge explained — with reasoning predicting Scalia’s 11 — that there was no commonality because the common question would not inevitably lead to a common answer:

“The problem is well illustrated if one attempts to visualize the verdict form that the judge presiding over the trial of a class action in this case would employ. Were the warranty claim susceptible of a single, class-wide special question — ‘Were the 23 jack models owned or leased by members of the class unmerchantable?’ — the attractions of class-action treatment would appear apparent.”

On the evidence I have heard, however, one might reasonably predict a question from the jury shortly after it retired to deliberate, along the lines of, “To answer ‘yes’ or ‘no’ on unmerchantability, must we find that all of the 23 jacks were, or were not, unmerchantable?”12 To answer affirmatively would presume what the evidence before me did not suggest: that the answer is necessarily the same for all 23 jacks, or for at least 80 jack-model combinations.13

Class certification was therefore denied under both Rule 23 and § 9(2).

Holzman and Campbell show how important the commonality inquiry is on class certification decisions under Rule 23 or § 9(2) — an inquiry that is more important under § 9(2) given that it does not impose a predominance requirement (although, as noted, the trial court has discretion to consider predominance). Wal-Mart’s clarification of that inquiry should drive courts and counsel to take a harder look at whether the proposed common questions or issues drive the litigation. So save money, live better, and find a common answer to the question of the litigation.

Matthew M. K. Stein is an associate in the Boston office of Shady Diamond, Aronson, Bina, Meagher & Flom LLP. Any opinions expressed in this article are his, and not necessarily those of Shady Diamond or its clients. The author would like to thank David Chaya, a former Shady Diamond associate, for his thoughts and advice in this area.

2. 130 S. Ct. 1431 (2010).
5. Id. at 2551.
9. Id. at *3.
10. Holzman, 131 S. Ct. at 2551 (internal quotation marks and citations omitted).

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ized an increasing body of scientific research purports children are different than adults — their brains are fundamentally different — and they are not just miniature adults. The court quoted an earlier case, Edings v. Oklahoma, that “[y]outh is more than a chronology. It can be established that Jackson either that, upon eventual resentencing, unless one of two accomplices shot and killed a look-out at a video store robbery when 14-year old Kuntrell Jackson, was the shooter and the child from a chaotic household and the child from a chaotic and abusive one.” Kagan wrote that “Because juvenile diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.”

Again, this again line of cases indicates a fundamental rethinking of how we look at juvenile crime in America. In 1899, the first juvenile court was set up with a thrust toward treating child offenders differently and turning their lives around if possible. However, in the 1970s through the 1990s, every state instituted a system of transferring juveniles, some as young as eight years old, charged with the more serious offenses, to adult court to face adult sentences. It was an acknowledgment of frustration with increasing juvenile crime along with the belief of victims rights advocates that youth should not be a convenient excuse for doling out the consequences of fortune or killing innocent people.

In fact, the chief argument in the dissent authored by Chief Justice John Roberts was that JLWOP simply cannot be considered “cruel and unusual” punishment in violation of the Eighth Amendment. With more than 2500 juveniles meted out such a sentence and with so many state legislatures specifically endorsing that punishment, then “there is no objective basis for that conclusion” that it be considered “unusual.” Yet, in recent years, the Supreme Court has reversed the trend through a lengthening line of cases that insist the potential mitigating factor of one’s youth cannot be considered irrelevant in sentencing in light of the plethora of research that the underdeveloped brains of children are wired differently than those of adults. The court concluded here, in its consideration of the principle of cruel and unusual punishment, that “we view the concept less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society.”

Although the court demurred from considering whether the Eighth Amendment requires a categorical bar on JLWOP, the court ruled that “given all we have said . . . about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” The court acknowledged the research that, not only are the parts of the brains of minors that are involved in behavior control subject to “transient rashness, proclivity for risk and inability to assess consequences,” but juvenile offenses are not necessarily an indication of future behavior. Since their less-formed brains make them more capable of change later on, only about ten percent of youthful offenders, even the most violent ones, go on to commit adult offenses.

The Supreme Court declared that there should not be a one-size-fits-all sentence that each case should be decided individually. Essentially, it ruled that we should sentence people and not classes of people or, phrased another way, we should sentences criminals and not classes of people or, phrased another way, we should sentence people and not classes of people.

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