



ATTORNEY PROFILE

Joseph McDonough brings rule of law to Middle East law students >5

BAR NEWS



Officers elected at MBF Annual Meeting, including President Jerry Cohen >13

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

MASSACHUSETTS



LAWYERS JOURNAL

WWW.MASSBAR.ORG

VOLUME 19 | NUMBER 7 | MARCH 2012

LEGISLATIVE NEWS

Governor recommends level funding for courts in 2013 budget

BY LEE ANN CONSTANTINE

In late January, Gov. Deval L. Patrick filed his budget recommendations for fiscal 2013. Recognizing the tremendous cuts already endured by the court system, Patrick recommends level funding for the courts and grants transferability among Trial Court accounts.

Further, Patrick recommends removing

the Probation Department from the auspices of the court and seeks to place it with parole under the Executive Office of Public Safety.

Additionally, in a repeat of his stance last year on restructuring the Committee for Public Counsel Services, Patrick proposes to further expand the use of public attorneys instead of state contracting with private counsel. Additionally, he recommends

enhanced efforts on indigency verification.

Also, Patrick allocates \$12 million for the Massachusetts Legal Assistance Corporation, a \$1.5 million bump from fiscal 2012 funding levels.

The budget he filed marks the beginning of a long and arduous process. In April, the House is expected to debate and pass its version of the budget. The Senate will follow suit in May with its version.

The branches will each appoint three members to a conference committee, which is charged with hashing out the differences between the bills.

The compromise bill is then voted upon by both branches with an up or down vote, usually in June, and sent to the governor for his approval, after which he has 10 days to sign the budget. Fiscal 2013 begins July 1. ■

PRESIDENT'S VIEW

RICHARD P. CAMPBELL

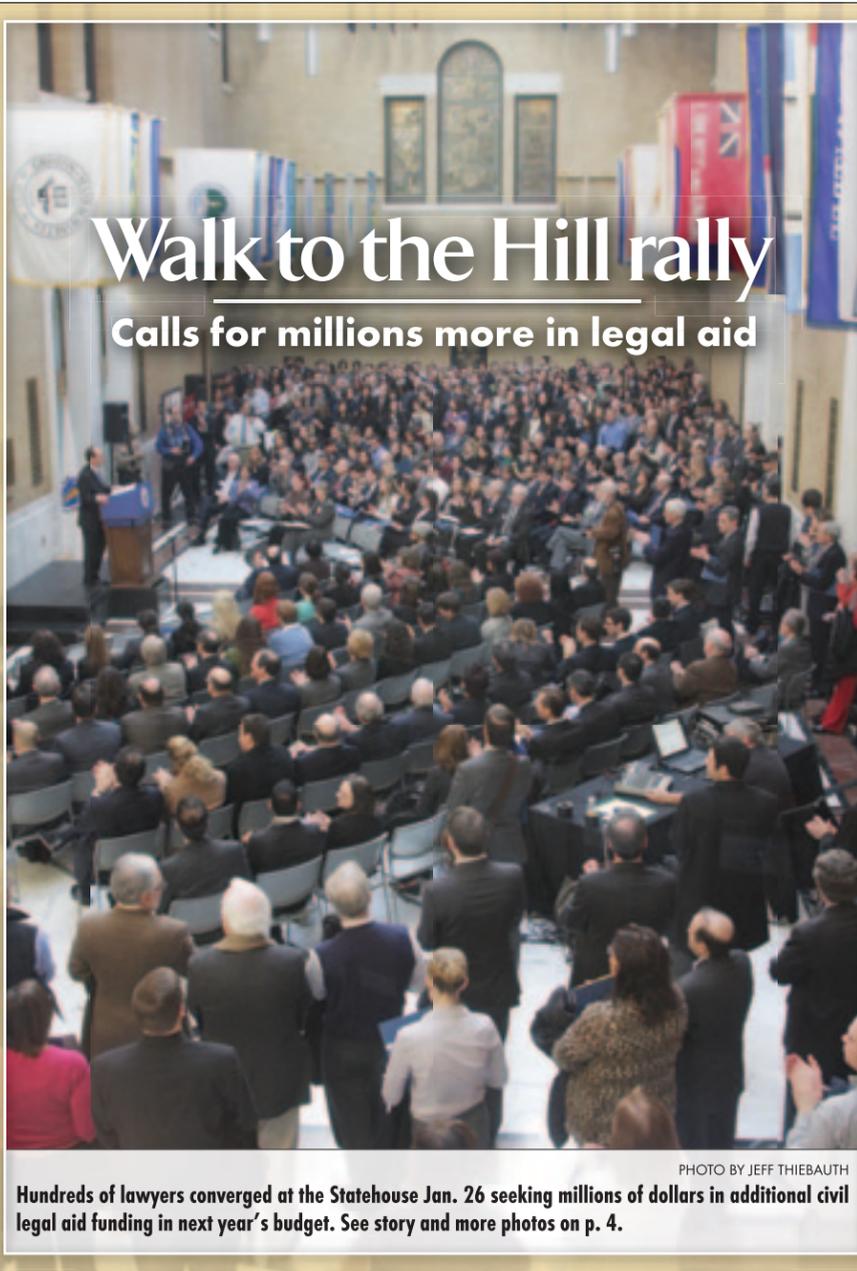


When the law school bubble finally bursts

The law economy in the Commonwealth of Massachusetts annually suffers the introduction of 2,500 newly minted lawyers competing for approximately 720 identifiable paying jobs. Those new lawyers come to the commonwealth from nine law schools resident in the state¹ and another seven law schools resident in the contiguous New England states.²

With the exception of three law schools that tend to place their graduates in large national law firms, federal government agencies and academic positions,³ most graduates of the New England law schools direct their job searches to the Commonwealth of Massachusetts. The math is both incontrovertible and depressing. Each year, these 16 law schools churn out more than 1,500 graduates who will not have jobs as practicing lawyers when they pass the bar and likely will never have satisfactory careers as full-time practicing lawyers able to financially support themselves and a family.

The Massachusetts Bar Association is actively engaged in the evaluation of the facts and circumstances that animate this problem. Led by Chairs >2



Walk to the Hill rally Calls for millions more in legal aid

Hundreds of lawyers converged at the Statehouse Jan. 26 seeking millions of dollars in additional civil legal aid funding in next year's budget. See story and more photos on p. 4.

PHOTO BY JEFF THIEBAUTH



ABA President Bill Robinson provides one of the video testimonies on behalf of the MBA's court funding campaign, which can be viewed in the "Video Galleries" section under "Press Room" at www.massbar.org.

MBA co-hosts March 19 court funding Advocacy Day

BY TRICIA M. OLIVER

In January, the Massachusetts Bar Association launched a high-profile awareness campaign on the effects of underfunded courts through a series of videos, billboards and other outreach. The campaign launched shortly before Gov. Deval Patrick released his proposed fiscal 2013 budget and will continue leading up to the House and Senate budget debates in April and May, respectively.

As part of this campaign, four public service announcement-style videos have been produced and released so far. The videos highlight the negative impact of inadequate court funding through the perspective of judicial leadership, attorneys, academic leaders and court staff. The four videos debuted in January and February and can be found at www.massbar.org or YouTube. Two more videos will be posted in the weeks ahead. >7

MBA hosts Gateway Cities forum at UMass

BY TRICIA M. OLIVER

Members of the legal community, elected officials and other community leaders convened at the University of Massachusetts School of Law in Dartmouth on Jan. 26.

Leading voices on Massachusetts' Gate-

way Cities served as featured forum panelists, including Rep. Antonio Cabral (D-New Bedford) and Sen. Benjamin Downing (D-Pittsfield), chairs of the Gateway Cities Caucus; Executive Office of Housing and Economic Development Undersecretary for Business Development Michael Hunter; and

MassINC Research Director Benjamin Forman, among others.

Much of the discussion focused on the New Bedford community, a designated Gateway City. Common themes were the need for improving educational attainment in gateway communities and collaboration >8

INSIDE THIS ISSUE

ON THE COVER

- **GOVERNOR RECOMMENDS LEVEL FUNDING FOR COURTS IN 2013 BUDGET**
- **PRESIDENT'S VIEW**
When the law school bubble finally bursts
- **MBA HOSTS GATEWAY CITIES FORUM AT UMASS**
- **WALK TO THE HILL RALLY**
Calls for millions more in legal aid
- **MBA CO-HOSTS MARCH 19 COURT FUNDING ADVOCACY DAY**

- 2 **FEATURED MEMBER BENEFIT**
Daily Legal Headlines

VIEWPOINT

- 3 **STUMPING FOR THE MBA: GATEWAY CITIES OPPORTUNITIES; HAMPSHIRE COUNTY NEWS**

LEGAL NEWS

- 4 **LAWYERS SEEK MILLIONS MORE IN**
- 4 **LEGAL AID FUNDS AT WALK TO HILL**
- 5 **MIDDLE EAST MEETS WEST**
Joseph McDonough nurtures acceptance of rule of law education
- 7 **NEWS FROM THE COURTS**

BAR NEWS

- 7 **CAMPBELL APPOINTS 2012 NOMINATING COMMITTEE**
- 11 **MBA LEADERS MEET WITH LT. GOV. MURRAY**
- 11 **FREE YLD SPEED NETWORKING EVENT PAIRS NEW, EXPERIENCED LAWYERS**
- 11 **VOLUNTEER SPOTLIGHT**
James E. Harvey Jr.
- 12 **CAMPBELL WINS ABA SUPPORT FOR U.S. MAGISTRATE JUDGE RESOLUTION**
- 12 **MEMBER APPRECIATION RECEPTION**
- 12 **'HOW TO START AND RUN' CONFERENCE HELPS SOLO LAWYERS**
- 13 **MBF HONORS JUDGE WILLIAM G. YOUNG AT ANNUAL MEETING**
- 13 **2012 MBF OFFICERS, TRUSTEES ANNOUNCED**
- 14 **MEMBER SPOTLIGHT**
Squillante joins *Lawyers Weekly* board
- 14 **CALENDAR OF EVENTS**
- 15 **MOCK TRIAL SEMI-FINALS, FINALS IN MARCH**
- 15 **LAWYER REFERRAL SERVICE LAUNCHES SITE**

SECTION REVIEW

PROBATE LAW

- 17 The improvement standard and observation status: Two barriers to Medicare coverage

JUVENILE, CHILD WELFARE LAW

- 17 The state's anti-bullying law and students with disabilities: Legal requirements and practical applications

EXPERTS & RESOURCES

► 13, 15, 16, 19

PRESIDENT'S MESSAGE

Continued from page 1

Eric Parker and Rhada Natarajan, the Task Force on Law, the Economy and Underemployment comprises outstanding individuals from a wide variety of backgrounds:

- **Hon. David Ricciardone**, Massachusetts Superior Court, Boston;
- **Heather Engman, Esq.**, Thornton & Naumes, Boston;
- **Kyle R. Guelcher, Esq.**, Law Office of Kyle Guelcher, Springfield;
- **John B. Koss, Esq.**, Mintz Levin, Boston;
- **Marc A. Moccia, Esq.**, Suffolk Law School 2011 graduate, Boston;
- **Denise I. Murphy, Esq.**, Rubin & Rudman, Boston;
- **Lynn Sari Muster, Esq.**, Massachusetts Appeals Court, Boston;
- **Elizabeth O'Connell**, prelaw advisor, Wellesley College, Wellesley;
- **Doreen M. Rachal, Esq.**, Bingham McCutchen, Boston;
- **Paul Edward White, Esq.**, Sugarman, Rogers, Barshak & Cohen, Boston; and
- **Marc P. Zwetchkenbaum, Esq.**, Marc Z Legal Staffing, Boston.

In addition, the deans of Suffolk, Boston College and Northeastern have appointed faculty members to serve as liaisons to the task force. The task force will present an interim, informational report to the House of Delegates in March. It will publish its final report and present any proposed resolutions (and perhaps draft legislation) at the May House of Delegates meeting. The work is extraordinarily important to our profession and we owe a debt of gratitude to the task force members.

But, like all matters related to the economy, forces beyond the direct control of the involved players are at work as we ponder the problems of the law economy. And professor William D. Henderson of Indiana University's Maurer School of Law addressed at least one set of forces that is bound to have an impact.⁴

Professor Henderson's data is sickening.

"In 2010, 85 percent of law graduates from ABA-accredited schools boasted an average debt load of \$98,500, according to data collected from law schools by *U.S. News & World Report*. At 29 schools, that amount exceeded \$120,000. In contrast, only 68 percent of those grads reported employment in positions that require a JD nine months after commencement. Less than 51 percent found employment in private law firms."

FEATURED MEMBER BENEFIT



Daily Legal Headlines

Looking for recent legal news? Each morning, visit www.massbar.org to view the latest news headlines related to state and federal laws, the legal profession and the MBA. Updated every day, our headlines section is accessible at www.MassBar.org.

Subscribe to the MBA's Headlines RSS feed at www.massbar.org/rss/headlines. ■

We know from information developed by our task force that individual debt for law school alone can reach as high as \$200,000.

Professor Henderson looked at the problem from the source of those borrowed funds; *viz.*, the federal government. (You can read that term as "we the taxpayers.")

"Direct federal loans have become the lifeblood of graduate education, and they shelter law schools financially from the structural changes affecting the profession. The bills are now coming due for many young lawyers, and their inability to pay will likely bring the scrutiny of lawmakers already moaning about government spending." Warnings about the reliance on federal dollars to undergird law school financial structures have been issued by knowledgeable people for many years, according to Dean Phoebe A. Haddon of the University of Maryland School of Law.

But now, in the face of unemployed law school graduates who cannot repay their loans, Henderson poses the rhetorical question: "Why should the U.S. government, through the Department of Education direct-lending program, continue to make billions of dollars of loans to law students when structural changes in the legal market suggest that a large portion will lack the earning power to repay those loans?"

Why indeed, as the funding crisis of our state courts so clearly demonstrates, when tax dollars are declining and legislators confront difficult choices among many worthy programs (and specifically ones directed at homeland security and "widows and orphans") less important programs are eliminated or cut short?

Terminating federal funding of law school tuitions will result in many law schools closing their doors. Professor Henderson posits one outcome that many in our profession would welcome: "the Education Department using its accreditation authority to force law schools to demonstrate, as a condition of receiving federal loan money, a minimum threshold of employability and income upon graduation."

That would work. ■

1. Boston College, Boston University, Northeastern, Suffolk, New England, Western New England, Massachusetts School of Law, UMASS, and Harvard.
2. Vermont, University of New Hampshire, University of Maine, UCONN, Roger Williams, Quinnipiac, Yale.
3. Harvard, Yale and Boston College.
4. W.D. Henderson and R.M. Zahorsky, *The Law School Bubble: How Long Will It Last If Law Grads Can't Pay Bills?*, *ABA Journal*, January, 2012; republished with permission in Massachusetts Bar Association's *Lawyers Journal*, February 2012.

MASSACHUSETTS LAWYERS JOURNAL

Volume 19 / No. 7 / March 2012

EDITOR: Bill Archambeault

CONTRIBUTING WRITERS: Jennifer Rosinski, Kelsey Sadoff

SENIOR DESIGN MANAGER: N. Elyse Lindahl

DIRECTOR OF MEDIA AND COMMUNICATIONS: Tricia M. Oliver

CHIEF OPERATING OFFICER/
CHIEF LEGAL COUNSEL: Martin W. Healy, Esq.

LEGAL EDITOR: Martin W. Healy, Esq.

LEGISLATIVE ACTIVITIES MANAGER: Lee Ann Constantine

PRESIDENT: Richard P. Campbell, Esq.

PRESIDENT-ELECT: Robert L. Holloway Jr., Esq.

VICE PRESIDENT: Jeffrey N. Catalano, Esq.

VICE PRESIDENT: Marsha V. Kazarosian, Esq.

TREASURER: Douglas K. Sheff, Esq.

SECRETARY: Robert W. Harnais, Esq.

© 2012 Massachusetts Bar Association

Materials may not be reproduced without permission.

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

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

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

E-mail address: lawjournal@massbar.org.

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



A publication of the Massachusetts Bar Association

THE WARREN GROUP

Real Estate & Financial Information Since 1872

TIMOTHY M. WARREN, Chairman

TIMOTHY M. WARREN JR., CEO and Publisher

DAVID B. LOVINS, President and COO

CUSTOM PUBLICATIONS

EDITOR: Christina P. O'Neill

ASSOCIATE EDITOR: Cassidy Norton Murphy

CREATIVE SERVICES

CREATIVE DIRECTOR: John Bottini

SENIOR GRAPHIC DESIGNER: Scott Ellison

GRAPHIC DESIGNER: Nate Silva

GRAPHIC DESIGNER: Christina Briggs

GRAPHIC DESIGNER: Ellie Aliabadi

PUBLISHING GROUP SALES & MARKETING

PUBLICATIONS GROUP SALES MANAGER: George Chateaufneuf

NEWSPAPERS

ADVERTISING ACCOUNT MANAGER: Mark J. Schultz

ADVERTISING, MARKETING & EVENTS COORDINATOR:
Emily Torres

EVENTS

DIRECTOR OF EVENTS: Sarah Warren

TELEPHONE NUMBERS:

ADVERTISING (617) 896-5344

EDITORIAL (617) 896-5353

EVENTS (617) 338-5314

Don't forget to check us out online at www.massbar.org

VIEWPOINT

Stumping for the MBA: Gateway Cities opportunities; Hampshire County news

BY ROBERT L. HOLLOWAY JR.

GATEWAY CITIES UPDATE

The MBA's initial Gateway Cities forum held at UMass Law School in North Dartmouth on Jan. 26, ably organized by Margaret Xifaris and Fran Ford, confirmed that there are numerous existing opportunities for lawyers to get involved — now. The majority of forum participants, representing New Bedford and environs, echoed a common theme: mentoring is a crucial element in improving the quality of life and opportunities for the residents. Education, of course, also was deemed crucial.

But a more nuanced and expansive approach to education and training, as suggested by several of the forum participants, views mentoring as being not just for typical school-age individuals, but also, adults seeking to return to school, frequently without a support system to assist them in doing so.

As an example, a single parent, who dealt with a pregnancy as a teenager and as an adult in her 20s, wants to better herself by further education and training, may lack the resources necessary to juggle the roles of parent, worker and student. An empathetic and supportive adult mentor can make all the difference.

The 15-year-old with a spotty record in school, with limited family support

and guidance, can benefit from a mentor providing encouragement and other assistance in seeing to it that this youngster continues with school and gets a diploma. Urban school attendance rates are shockingly low, with correspondingly high dropout rates. Speaker after speaker echoed the theme that a little bit of mentoring help can go a long way in enhancing the prospects for appropriate education, training, employment and, ultimately, responsible, satisfying adulthood.

Opportunities already existing are abundant. For example, take a look at the SMILES mentoring program in New Bedford. This program works to keep youngsters in school, matching appropriate adult community members with youngsters. Similar programs no doubt exist in communities near you. Programs like these are wonderful opportunities for volunteerism.

Thinking more expansively about our role as lawyers in the society of which we are just a part is what the Gateway Cities initiative is really about. If the initial forum at UMass Law School is any indication, I am confident that there is much that we lawyers, individually and collectively, can do by thinking globally and acting locally, as the shopworn phrase goes. Stay tuned for more information as the Gateway Cities initiative progresses.

NEWS FROM HAMPSHIRE COUNTY

As a representative of the MBA, I was privileged to attend the Hampshire County Bar Association's 16th Annual Appreciation Reception & Contribution to Justice Award Ceremony at the Hotel Northampton on Feb. 2, 2012. The event was organized under the leadership of Hampshire County Bar President Leslie McLellan Brown. The award recipient was Diane "Dee" Grzeskowitz, the operations supervisor for the Hampshire Probate & Family Court. Grzeskowitz, by all accounts, is a superb example of what it means to be a dedicated public servant.

Speaker after speaker echoed the theme of her hard work, her expertise, her unfailing good nature, her sense of humor, and ultimately, her ability to serve the public — lawyers and litigants alike — in a climate of declining resources for our courts. Among the speakers I was pleased to hear was former MBA Family Law Section Council chair and Hampshire Probate & Family Court Judge Linda S. Fidnick, who did a masterful job praising Grzeskowitz. When she accepted the award, Grzeskowitz came across as the humble, dedicated public servant described by Judge Fidnick and others.

As I drove home that evening from Northampton to Topsfield, I reflected on our collective good fortune in having a court employee like Grzeskowitz, a

ROBERT L. HOLLOWAY JR. is MBA President-elect of the Massachusetts Bar Association.



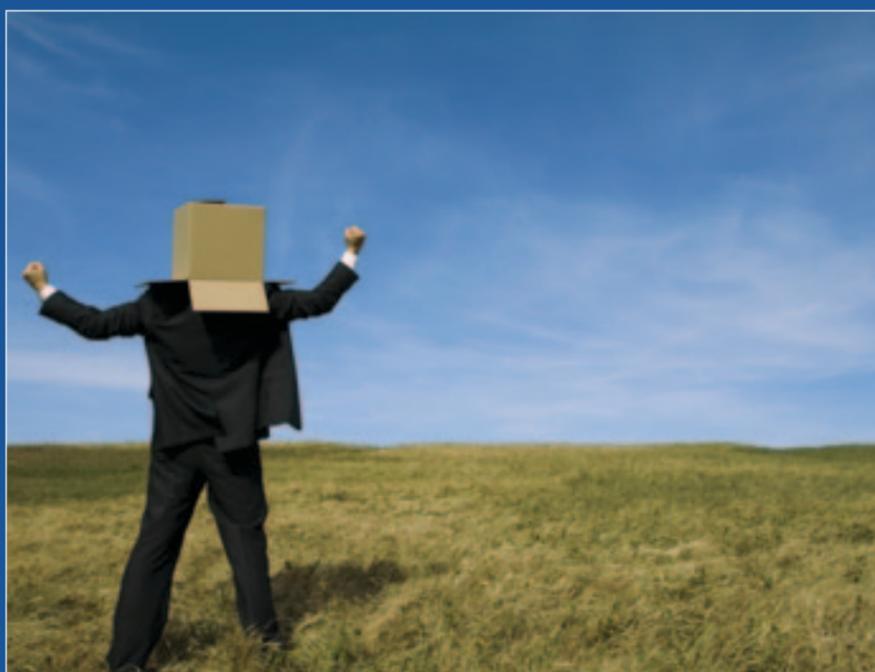
county bar president like Leslie McLellan Brown, and a judge like Linda Fidnick. While the event specifically was to honor Grzeskowitz, it had broader meaning. It is heartening and encouraging that we have court employees, judges and lawyers like these working together to do what our system is about: providing justice for all of us. It was an honor for me, as an MBA representative, to be at this event.

COMING ATTRACTIONS

It is my hope — scheduling logistics permitting — to attend many county and other bar association events throughout the commonwealth, in order to find out what you are thinking, and, in turn, to share when appropriate, some of my own views.

We have been experiencing many changes in our profession during the past 25 years or so, some of which have had a substantial impact on the way we practice law and how we interact with each other. We need to face up to these changes, adapt to them and take appropriate positions and action when necessary. Doing so will require good communication, among other things. I hope to hear from as many of you as wish to be heard. The MBA is, after all, your organization. ■

AFTER THE VERDICT IS IN,



DENNIS J. CALCAGNO, ESQ

617.328.8888

WWW.NORTHEASTMEDIATION.COM

Case Evaluation | Full Neutral Panel



NO ONE CAN HEAR YOU SCREAM.

LEGAL NEWS

Lawyers seek millions more in legal aid funds at Walk to Hill

BY JENNIFER ROSINSKI

Hundreds of lawyers from across Massachusetts converged on the Statehouse Jan. 26 to implore their legislators for \$14.5 million in civil legal aid funding in the fiscal 2013 budget.

The Massachusetts Legal Assistance Corporation called for a \$5 million increase over the \$9.5 million appropriated last year, though \$1 million was added later as part of a supplemental budget to bring the fiscal 2012 total to \$10.5 million.

The 13th annual Walk to the Hill for Civil Legal Aid featured a surprise visit from Lt. Gov. Tim Murray, who told a standing-room-only crowd in the Great Hall of Flags that he is confident the governor will sign a supplemental budget to increase MLAC's funding this current fiscal year "because he believes in what you do."

"You represent people who have been disenfranchised ... You make sure they are heard," Murray said. "Thank you for your advocacy."

In the past four years alone, MLAC has seen its funding from the Interest on Lawyers' Trust Accounts drop from \$17 million to just over \$3 million. At a time when the number of Massachusetts residents qualifying for civil legal aid has jumped 11 percent, to just under 1 million people, MLAC has reduced its staff attorneys by 34 percent.

"The free lunch from IOLTA is gone," Supreme Judicial Court Associate Justice Ralph D. Gants said. "The legal problems



MBA President Richard P. Campbell delivers his remarks.

of the poor have not dwindled. They, too, have grown."

Gants said there is no way to ask for less than a \$5 million increase, which he considers a "sound investment" for the commonwealth. "Legal services ensure the promise of justice for all is more than just a promise," he said.

MBA President Richard P. Campbell commended the governor for stepping up and recommending \$12 million for MLAC for fiscal 2013, but said it's not enough.

"Legal service organizations throughout the state are being pushed to their breaking point as they are faced with drastic cuts in IOLTA funds and an ever-increasing need for services," he said. "The sad truth is that the resources fall short of the need for legal aid."

Increased funding is critical to restore



From left to right: Marybeth Hopkins, president of the Bar Association of Norfolk County; Veronica Kane, president of the Massachusetts Association of Women Lawyers; Richard P. Campbell, president of the MBA; Lisa C. Goodheart, president of the Boston Bar Association; Manisha Bhatt, president of the South Asian Bar Association of Greater Boston; Christopher S. Pitt, president of the Real Estate Bar Association; Lucinda Rivera, president of the Massachusetts Association of Hispanic Attorneys; and Lisa Wilson, co-chair of the Massachusetts Lesbian, Gay, Bisexual, Transgender and Queer Bar Association.

service levels and prevent further cuts to legal aid programs, as they have been struggling to meet demand due to a 78 percent decrease in revenue since fiscal 2008 in IOLTA funding.

"Thousands of low-income Massachusetts residents with critical problems ... have to be turned away when they seek legal aid," Boston Bar Association President Lisa C. Goodheart said.

Without the help of Greater Boston Legal Services, Remon Jourdan of Randolph would never have been able to fix a discrepancy between MassHealth and his

doctor that left his personal care attendants without pay for one month. Jourdan, who has been confined to a wheelchair since a car accident 10 years ago, said GBLS was able to convince MassHealth to retroactively pay his attendants.

"It was like a weight lifted from my shoulders," Jourdan said. "I know it might not seem like a big case, but for me it was huge."

The event was sponsored by the MBA, Equal Justice Coalition and Boston Bar Association, and co-sponsored by 30 county and specialty bar associations. ■



Hundreds of lawyers attending a Statehouse rally for civil legal aid heard Supreme Judicial Court Associate Justice Ralph D. Gants state that increased funding is a "sound investment" for the state. From left to right: MBA Vice President Jeffrey Catalano, MBA President Richard P. Campbell, Gants and Boston Bar Association President Lisa C. Goodheart.

PHOTOS BY JEFF THIEBAUTH

A Sixty Year Tradition
of Representing
the Seriously Injured



TEAM APPROACH
CUTTING EDGE ADVOCACY
SUPERIOR RESULTS

SHEFF LAW OFFICES, P.C.

Ten Tremont Street, Boston, MA 02108
617-227-7000 www.shefflaw.com

Integrity • Compassion • Excellence

AT JAMS, YOU
FIND EXPERIENCE.
KNOWLEDGE.
FAIRNESS. SERVICE.

AND AN UNSURPASSED PANEL OF NEUTRALS.

JAMS BOSTON MEDIATORS & ARBITRATORS

Hon. Samuel Adams (Ret.)

Hon. Elizabeth Butler (Ret.)

Jerry Cohen, Esq.

Hon. William I. Cowin (Ret.)

Hon. John C. Cratsley (Ret.)

Hon. Gordon L. Doerfer (Ret.)

David Geronemus, Esq.

Hon. Margaret R. Hinkle (Ret.)

Hon. Patrick J. King (Ret.)

James E. McGuire, Esq.

Hon. Stephen E. Neel (Ret.)

Hon. James V. Ryan (Ret.)

Carl M. Sapers, Esq.

Hon. Robert L. Steadman (Ret.)

Hon. Charles B. Swartwood, III (Ret.)

Hon. Allan van Gestel (Ret.)

Eric E. Van Loon, Esq.

Maria C. Walsh, Esq.

Hon. John M. Xifaras (Ret.)

THE RESOLUTION EXPERTS



JAMS Boston Resolution Center | One Beacon Street | Suite 2300 | Boston, MA 02108
617.228.0200 | www.jamsadr.com | Resolution Centers Nationwide

LEGAL NEWS



PHOTO COURTESY OF JOSEPH MCDONOUGH

Joseph McDonough on the grounds of the Emirates Palace Hotel on the Corniche in Abu Dhabi.

Middle East meets West

Joseph McDonough nurtures acceptance of rule of law education

BY CHRISTINA P. O'NEILL

When Boston attorney Joseph B. McDonough ran through the basics of electronic contract law at the Sultan Qaboos University Law College in Oman in 2009, his fourth-year law students gave him quizzical looks. "I was really teaching my students contracts for the first time," he says. "I realized that they didn't have the foundation that [Western] students have in contracts."

"It was a great subject, because commerce knows no borders."

JOSEPH B. MCDONOUGH

That knowledge gap is something that McDonough, who has 25 years of teaching experience, is bridging, not only in Oman, but throughout his career. His experience in international law has led to his appointment as a partner in the Abu Dhabi office of Holland & Knight LLP. The firm is expanding that office, which opened four years ago, due to the region's rapid growth in energy, construction, transportation, finance and international arbitration. The Abu Dhabi office currently has 10 employees — half of them from the

U.S. and half from the Middle East.

He has lived in the Middle East for the past few years. He has recently been selected to coordinate judicial reform and education programs for the supreme courts of Oman, Bahrain, Nepal and Yemen, all of which have large Muslim populations. "After preaching and advocating for three years, the opportunity with Holland & Knight will allow me to practice what I preach," he says.

In his new post, he will work with younger attorneys from the region, many of whom have attended Western law schools. He will be charged with bringing them from the status of younger associates, arranging mentors for them, and getting them to work as a team, using critical thinking skills.

COMMERCE WITHOUT BORDERS

The adoption of uniform commercial standards, while necessary to make the country more attractive to business investment and development, is a delicate dance of diplomacy — the choreography of which McDonough is familiar.

Over three decades, Oman's economic departments and its Ministry of Legal Affairs have been codifying its commercial law to conform more closely to global commerce standards, but the country's legal educational system hadn't kept up. ➤23

REACH THE CLOUD FASTER.



Today, more and more companies rely on the cloud to access information and share files so that teams can productively collaborate in real time, regardless of location. That means the speed and ease with which you access the cloud is just as important as what is stored there. **Comcast Business Class** Internet brings you the cloud at speeds up to 66 times faster than T1. Or flexible data solutions like Metro Ethernet make access to the cloud even better.

800-391-3000 | business.comcast.com



Restrictions apply. Not available in all areas. Speed comparison between Comcast 100 Mbps service and standard 1.5 T1 (downloads only). Actual speeds vary and are not guaranteed. Call for details. Comcast © 2011. All rights reserved.

Winner of Boston Magazine's 2011 Best of Boston Award for Best Seafood...

The Daily Catch - North End
133 Hancock St., Boston, MA
The Original in Boston's North End
617-553-8507

The Daily Catch - Brookline
444 Harvard St., Brookline, MA
J.P.A. Crossing in Brookline
617-739-2300

The Daily Catch - Seaport
Two North St., Boston, MA
Joseph Moakley U.S. Courthouse
Boston's Seaport District at Fan Pier
617-772-4400

Make Reservations Online:
www.dailycatch.com



Newly Remodeled Location at the Joseph Moakley U.S. Courthouse

Member Benefit From



Trust
your transactions
to the only
merchant account
recommended by over
60
bar associations!

The Easiest Way to Get Paid!

- ✓ Increase business and control cash flow.
- ✓ Avoid commingling client funds.
- ✓ Save up to 25% off standard fees.
- ✓ Accept credit cards for retainers.

The process is simple. Begin accepting payments today.

Call 866.376.0950 or visit affiniscap.com/massbar

AffiniPay is a registered ISO/MSP of Harris, N.A., Chicago, IL

**Are You
PCI Compliant?**
Let us help.



Ask about our solution
for PCI Compliance.
www.PCICentral.com

LAWPAY

CREDIT CARD PROCESSING

866.376.0950

affiniscap.com/massbar

LEGAL NEWS

News from the Courts

FEDERAL

Sorokin named U.S. District Court chief magistrate judge

On Feb. 1, Magistrate Judge Leo T. Sorokin succeeded Magistrate Judge Judith Gail Dein as chief magistrate judge of U.S. District Court for the District of Massachusetts. He will serve a three-year term. Dein served as chief magistrate judge from Feb. 1, 2009, through Jan. 31, 2012.

Sorokin, who was appointed to the court on April 11, 2005, presides over the Court Assisted Recovery Effort for the District of Massachusetts, which promotes the development and maintenance of sober, employed and law-abiding felons under the supervision of the court. It was one of the first federal courts to create such a program and was a model for other districts.



HON. LEO T. SOROKIN

He has served as a faculty member on numerous educational programs sponsored by the U.S. District Court, the U.S. Court of Appeals for the First Circuit, the Federal Judicial Center, the Federal Bar Association and the Boston Bar Association. In 2009, the Boston Bar Association awarded him its Citation of Judicial Excellence.

Sorokin graduated *cum laude* from Yale College in 1983 and Columbia Law School in 1991, where he was a Kent and Stone Scholar and the articles editor of the *Journal of Law and Social Problems*. After graduation, he clerked for U.S. District Court Judge Rya W. Zobel from 1991-92.

He joined Mintz Levin (1992-94), then became an assistant attorney general (1994-97), where he served in the Administrative Law Division of the Government Bureau. During his last year in the office, he became the attorney general's opinions coordinator. He then became an assistant federal defender in the Federal Public Defender's Office for the District of Massachusetts (1997-2005), where he represented indigent defendants in federal criminal prosecutions until his appointment. ■

STATE

2012 edition of Mass. Guide to Evidence now available

The Supreme Judicial Court and its Executive Committee on Massachusetts Evidence Law announced the release of the 2012 edition of the *Massachusetts Guide to Evidence* on Feb. 10. The SJC justices recommend use of the guide by the bench, bar and public.

SJC Chief Justice Roderick L. Ireland stated: "I commend the members of the executive committee for their continued commitment to excellence by updating and expanding the *Massachusetts Guide to Evidence* to reflect new legal developments. The guide is an outstanding and practical research tool that has quickly become a highly respected and well-used source of the current Massachusetts evidence law. Attorneys, judges and self-represented litigants daily use the guide in courts throughout the commonwealth."

The 2012 edition is available for free on the websites of the SJC, Appeals Court and Trial Court at www.mass.gov/courts/

sjc/guide-to-evidence. The print edition is available for purchase from the Flaschner Judicial Institute at (www.flaschner.org/publications.htm), which is again providing a complimentary copy to every judge in the commonwealth.

The guide, which assembles existing Massachusetts evidence law in an easy-to-use document organized similar to the *Federal Rules of Evidence*, includes extensive explanatory notes and citations to pertinent authorities.

The 2012 edition reflects developments in Massachusetts evidence law that occurred between Jan. 1, 2011 and Dec. 31, 2011. It includes dozens of new opinions issued in 2011 by the SJC, Appeals Court and the U.S. Supreme Court, as well as new sections addressing industry and safety standards, electronic or digital, consciousness of guilt or liability, and missing witness.

In addition, the committee revised the introductory note to Article VIII to address several opinions issued by the U.S. Supreme Court and the SJC that discuss the confrontation clause and hearsay in criminal cases.

The SJC established a 17-member advisory committee in 2006 to prepare a *Massachusetts Guide to Evidence* at the request of the Massachusetts Bar Association, Boston Bar Association and Massachusetts Academy of Trial Attorneys.

Appeals Court Judge Marc Kantrowitz is the editor-in-chief of the guide and chairs the executive committee, which includes: Hon. Peter W. Agnes (editor), Hon. David A. Lowy (editor), Appeals Court Clerk Joseph F. Stanton (reporter), Hon. Mark S. Coven, SJC Senior Attorney Barbara F. Berenson, New England Law | Boston professor Philip K. Hamilton, attorney Elizabeth N. Mulvey, and Appeals Court Law Clerks Emily Hamrock and Lydia Edwards. ■

SJC urges judicial evaluation responses

The Supreme Judicial Court is asking attorneys to evaluate the performance of Trial Court judges. The evaluation forms, which were sent in late February, will help the SJC's Judicial Performance Evaluation program enhance the quality of the judicial branch. Crucial to this effort is the full participation of the bar.

The SJC notes that a large response is more helpful in evaluating performance, and its evaluation program is the best opportunity for attorneys to offer their opinions of the members of the judiciary. The deadline for responses is April 12.

Suffolk County judges in the Boston Municipal, District, Juvenile, Housing and Probate and Family courts will be evaluated starting Feb. 22 by attorneys, court employees and jurors.

Attorneys who have appeared in these courts in the last two years, according to court records, will receive questionnaires. Attorneys will receive an e-mail asking them to log into the website to complete the evaluation electronically. As required by statute, the electronic system keeps the evaluations confidential and anonymous. If an attorney's e-mail is not in the system, a paper questionnaire is mailed.

The evaluation results will be transmitted to the judge, the chief justice of each involved court department, the chief justice of the Supreme Judicial Court, and the chief justice for administration and management. ■

BAR NEWS



The message showcased on billboards in Greater Boston, Worcester and Springfield.

MBA to co-host Advocacy Day

Continued from page 1

The association's billboard campaign has 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. The board on I-93 in Dorchester remains on display.

"As officers of the court, it is imperative for the MBA to continue to be out front on the importance of adequately funding the third branch of government," MBA President Richard P. Campbell said. "The rule of law is in jeopardy without that financial support."

Campbell explained that the MBA will continue its commitment to advocate

for this cause by organizing a Court Funding Advocacy Day on March 19 with the Boston Bar Association and affiliated bars throughout the state (see page 21 for more information).

For more information on this campaign, visit www.massbar.org. Also included on the MBA's site are informational materials on court funding, as well as resources that members of the legal community can reference when reaching out to their respective legislators on this important issue.

"We've never done this before," Campbell said. "The fact that the MBA has committed to elevating awareness in this fashion is a clear indication of how dire the circumstances have gotten in the court room atmosphere and operations." ■

Campbell appoints 2012 Nominating Committee

MBA President Richard P. Campbell has announced the members of the 2012 MBA Nominating Committee. The committee is charged with reviewing the nominations submitted for consideration for MBA officer positions for the 2012-13 association year, which begins Sept. 1, 2012.

DENISE SQUILLANTE, CHAIR

She is the MBA's immediate past president and a family law and corporate law practitioner in Fall River. A co-chair of the joint MBA/Boston Bar Association Alimony Task Force, Squillante also served on a legislative task force that drafted major alimony reform legislation enacted in 2011. She is a former president of the Fall River and New England bar associations, is a Massachusetts Bar Foundation Fellow and a Massachusetts delegate to the American Bar Association's House of Delegates. She also received the MBA's Pro Bono Publico Award.



DENISE SQUILLANTE

Bogdanow PC, she co-founded the MBA Monthly Leadership Roundtables, spearheaded the MBA Diversity Task Force from 2005 to 2007 and is a past president of the Massachusetts Academy of Trial Attorneys. Awarded the prestigious Wiedemann-Wysocki "Citation of Excellence" from the American Association for Justice, she was named to *Massachusetts Lawyers Weekly's* Hall of Fame for Up and Coming Lawyers.

EDWARD W. MCINTYRE

An MBA past president and a solo practitioner in Clinton, he is a U.S. Army veteran, sat on the MBA President's Task Force on Judicial Evaluations and the MBA's ABA Nominating Committee. Chair of MBA's Judicial Performance Evaluation Standing Committee since 2004, McIntyre is a former recipient of the MBA's Community Service Award and is a Massachusetts Bar Foundation Fellow and trustee. ►11



VALERIE A. YARASHUS



EDWARD W. MCINTYRE

MBA ON DEMAND

An innovative approach to Continuing Legal Education and other association offerings

WWW.MASSBAR.ORG/ONDEMAND

GATEWAY CITIES*Continued from page 1*

among groups with common interests and goals to bring about positive change.

MBA President-elect Robert L. Holloway Jr. welcomed to a crowd of about 60. He also thanked New Bedford attorney Margaret D. Xifaras and Worcester attorney Francis A. Ford for co-chairing the MBA's Gateway Cities initiative and moderating the Jan. 26 program.

Massachusetts' Gateway Cities are 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, Pittsfield Springfield and Worcester.

Downing characterized gateway communities by using his hometown of Pittsfield as an example. The General Electric plant in Pittsfield, which formerly employed nearly 1,500 area workers, today employs only 400. Growing up, Downing was told by his elders that Pittsfield's "best days are behind us." Home to only 45,000 residents today, the town enjoyed a population of 60,000 in the 1980s and 70,000 in the 1970s.

He explained that to address the issues impacting those communities, "We have a great friend in the Patrick administration. We now have to make sure we are looking at every policy partner," said Downing, who described the lack of private and public investment in his and other gateway communities as "troubling."

In contrast to the workforce prospects populating communities closer to Boston, 20 percent or less of gateway residents over age 25 have a bachelor's degree. The percentage increases to around 40 percent in those communities closer to the city.

Downing and Cabral have led the Gate-



From left to right: UMass School of Law Dean Michael G. Hillinger shares a word with panel moderators Francis A. Ford and Margaret D. Xifaras prior to the Jan. 26 event.

PHOTOS BY TRICIA M. OLIVER

way Cities Caucus since it was founded in 2008 with an economic development focus.

Cabral touched upon proposed legislation that would incentivize businesses to move into and remain in those communities, including expanding and extending tax credits.

MassINC Research Director Benjamin Forman talked about the importance of planning and strategy associated with community and economic development. He pointed to New Bedford as "a great example of success because they planned."

Former New Bedford Mayor Scott Lang, who had a hand in the city's ongoing revitalization, was an audience member at the meeting. Fall River Mayor William Flanagan also attended.

"I think the story is pretty good," said Forman, who explained that comparable cities in other regions of the United States are not faring as well. He said that the high tech trend for businesses to set up shop near Boston doesn't have to be the only trend.

He said that Massachusetts' gateway communities offer an "authentic urban fabric" to prospective employers. Unfortunately, he pointed out, two opposing trends are at work — the rebuilding of the Gateway



Sen. Benjamin Downing is flanked by Undersecretary for Business Development Michael Hunter (left) and Rep. Antonio Cabral (D-New Bedford).

Cities and an economic recession.

Michael Hunter, who now serves in the Patrick administration as the undersecretary for business development, admitted to a bit of déjà vu. He remarked that before Patrick's team looked at this issue, the last time it was talked about was by then-governor Michael Dukakis.

Like Forman, Hunter focused his comments on the importance of municipal strategy and the ability to access state resources and private investments.

"A lot of this is not rocket science, but it takes a lot of focus," he said, stressing that the alignment between business needs and

workforce development is essential.

Kate Fentress from the Women's Fund and the Education Roundtable, talked about solutions found when reaching out to and educating women in the gateway communities. "If you educate women, there is a 20 percent increase in the likelihood that their children will go on to obtain a college degree."

Fentress talked about the importance of community collaboration, as she has seen its influence with both the Women's Fund and Education Roundtable. "That's what makes things happen."

Kate Knowles, executive director of New Bedford's Zeiterion Performing Arts Center, spoke to the importance of arts in rehabilitating the culture of the Gateway Cities. "In 12 days, the arts brought 10,000 people downtown. That activity creates perception and affects how the community views itself and the community around it," she said. "There needs to be a conscious investment to put the arts in the mix as a component in revitalization."

Jim Mathis, former city councilor and current executive director of the SMILES mentoring program in New Bedford, reiterated points made by Fentress and Knowles about finding solutions through community collaboration. "If New Bedford was going to be better, it was New Bedford that was going to do it for itself," he said.

Mathis said that the only way to solve these issues is to "pick something and do it," and he encouraged all in the audience to do so.

His remarks segued into a question-and-answer session with attendees and panelists.

Following the initial forum in South-eastern Massachusetts, the MBA expects to hold comparable forums in Central Massachusetts and other parts of the state in the future. ■

Attention Personal Injury Attorneys!

When your client needs cash now...
The choice is **EMPIRE!**



Cash Now for Plaintiffs™

- ✓ Buys you the time to develop a more powerful case
- ✓ Helps clients with urgent cash needs
- ✓ Strengthens relationships
- ✓ Underwritten by experts
- ✓ Fast turnaround time
- ✓ We are available 24/7
- ✓ We're from Massachusetts!

LITIGATION FINANCING

EMPIRE SETTLEMENT FUNDING

877.227.4458

TO FIND THE RIGHT CLIENTS YOU NEED THE RIGHT MAGNET.

BETTER VISIBILITY BY DESIGN.

LexisNexis® Web Visibility Solutions.

A more magnetic website will attract more customers and be your firm's greatest lead generator. LexisNexis knows what it takes to get it there. LexisNexis Web Visibility Solutions deliver websites that combine superior website design with search engine optimization to deliver real results. With our unparalleled knowledge of the legal industry, no one is better positioned to help you build your business and make the most of your marketing dollars by drawing in more potential customers.



TO FIND OUT HOW WE CAN HELP YOU GROW, VISIT US AT
lexisnexis.com/webvisibility4
or call 1-877-273-6794



MBA CLE AT-A-GLANCE

MARCH CONTINUING LEGAL EDUCATION PROGRAMS BY PRACTICE AREA



FAMILY LAW

Divorce Basics: A View from the Bench and Bar

Thursday, March 1, 4:30–7 p.m.
MBA, 20 West St., Boston

Faculty:

Calvin J. Heinle, Esq., program chair, Todd & Weld LLP, Boston; Hon. Maureen Monks, Middlesex Probate and Family Court, Cambridge; Elizabeth Killeen, Esq., Atwood & Cherny, PC, Boston; Ross Venables, Esq., Burden Sedgwick & Venables, Newton

Sponsoring section/division: Family Law, Young Lawyers Division



CALVIN J. HEINLE

FACULTY SPOTLIGHT

Marc C. Laredo, Esq.

Laredo & Smith LLP, Boston

Program chair, "It's Confidential – Privilege Law in Massachusetts"

Laredo brings his strategic legal approach to business litigation, general business law and employment law matters. He represents clients in a wide array of business disputes, including commercial contract cases, disputes in closely-held corporations, business torts, executive employment and non-competition litigation, government investigations, commercial real estate matters and construction cases. In addition, Laredo serves as counsel to closely-held businesses, advising them on issues such as the initial formation and maintenance of the business entity, contract and employment matters, as well as crisis situations. Early in his career, Laredo served as an Assistant Attorney General in the Criminal Bureau of the Massachusetts Attorney General's Office.

Laredo is a member of the Editorial Board of the *Massachusetts Law Review* and serves as its Book Review Editor. He is the author of *The Attorney-Client Privilege in the Business Context* and *Shareholder Duties and Disputes in Closely-Held Corporations in Massachusetts*, both published by the *Massachusetts Law Review*. Also, Laredo teaches at numerous continuing legal education programs. He is a graduate of Cornell University and the University of Pennsylvania Law School.



Ethics and Practice Management Series

All programs 12:30–1:30 p.m.
MBA, 20 West St., Boston

Marketing Madness

Ethical Marketing
Wednesday, March 7

Developing a Marketing Plan
Wednesday, March 21



DAVID W. WHITE JR.

Program chair:

David W. White Jr., Esq., Breakstone, White & Gluck PC, Boston
Additional faculty to be announced.



PUBLIC LAW

How to Conduct an Open Meeting Law Training

Wednesday, March 21, 9–11 a.m.
MBA, 20 West St., Boston

Faculty:

Jonathan Sclarsic, Esq., program chair
Assistant Attorney General, Division of Open Government; Amy Nable, Esq., Director of Division of Open Government, Office of the Attorney General



JONATHAN SCLARSIC



CIVIL LITIGATION

It's Confidential — Privilege Law in Massachusetts

Thursday, Mar. 29, 4:30–7 p.m.
MBA, 20 West St., Boston

Faculty:

Marc C. Laredo, Esq., program chair, Laredo & Smith LLP, Boston; Jessica Block, Esq., Block & Roos LLP, Boston; David A. Bunis, Esq., Chief of Staff, Office of the President, Brandeis University, Waltham; Paul R. Cirel, Esq., Collora LLP, Boston; John R. Mayer, Esq., Law Office of John R. Mayer, Salem

Sponsoring sections/division:

Business Law, Civil Litigation, Criminal Justice Section, Juvenile and Child Welfare, Probate Law, Young Lawyers Division



PUBLIC LAW

Responding to Disaster: FEMA Eligibility and Reimbursement

LUNCHEON ROUNDTABLE (LUNCH PROVIDED)

Tuesday, March 20, Noon–2 p.m.
MBA, 20 West St., Boston

Program chair:

Edward M. Pikula, Esq., City Solicitor, City of Springfield Law Dept., Springfield

Sponsoring section:

Public Law



EDWARD M. PIKULA



PROPERTY LAW

Conveying Real Estate Under the New MUPC

Thursday, Mar. 29, 9–11 a.m.
MBA, 20 West St., Boston

Program chair:

Elizabeth J. Barton, Esq., CATC, Wellesley

Sponsoring sections:

Probate Law, Property Law



ELIZABETH J. BARTON



YOUNG LAWYERS

Taking on the Anti-Bullying Law from All Angles

LUNCHEON ROUNDTABLE (LUNCH PROVIDED)

Friday, Mar. 30, 11 a.m.–1 p.m.
MBA, 20 West St., Boston

Faculty:

Katie A. Meinelt, Esq., program chair, Kerstein, Coren & Lichtenstein, LLP; Mia Karvonides, Esq., U.S. Department Of Education Office for Civil Rights, Boston; Alisia E. St. Florian, Esq., Murphy, Hesse, Toomey & Lehane LLP, Quincy; Abigail Williams, Esq., Abigail Williams & Assoc., Worcester

Sponsoring division:

Young Lawyers Division



KATIE A. MEINELT

Don't miss this MBA co-sponsored event ...

2012 Massachusetts Conference on Bullying Bullying and the Law: Policies, Programs and Best Practices

Sponsored by the Massachusetts Bar Association, the Massachusetts Commission on GLBT Youth and School Climate Consulting Services

Friday, March 16, 8 a.m.–3:30 p.m., Harvard Law School
Austin North Conference Room, 1563 Massachusetts Ave., Cambridge

Keynote Speaker: Dean B. Eggert, Esq., Wadleigh, Starr & Peters PLLC, Manchester, NH

Conference Presenters: Richard W. Cole, Esq., principal, Cole Civil Rights and Safe Schools Consulting, Boston; Paul Poteat, Ph.D., assistant professor, Department of Counseling, Developmental and Educational Psychology, Boston College; Jeff Perrotti, M.A., C.A.S., founding director, Massachusetts Dept. of Elementary and Secondary Education's Safe Schools Program for Gay, Lesbian, Bisexual and Transgender Students; Randy Ross, M.S., M.A., Equity and Diversity Specialist, New England Equity Assistance Center, The Education Alliance, Brown University

Register by Thursday, March 1 by contacting Molly Gosline at (603) 505-6652 or Molly@School-Climate-Consulting.org

Visit www.MassBar.org/Events for a full schedule and additional registration and conference information.



Real-time Webcast
available for purchase at
www.MassBar.org/OnDemand.

BAR NEWS



PHOTO BY JENNIFER ROSINSKI

The MBA's 2011-12 leadership team meets with Lt. Gov. Timothy P. Murray. From left to right: President Richard P. Campbell, Chief Operating Officer and Chief Legal Counsel Martin W. Healy, Vice President Jeffrey N. Catalano, Secretary Robert W. Harnais, Vice President Marsha V. Kazarosian, Treasurer Douglas K. Sheff and Murray.

MBA leaders meet with Lt. Gov. Murray

MBA President Richard P. Campbell and fellow officers met with Lt. Gov. Timothy P. Murray at the Statehouse on Jan. 31. Among the topics covered were court funding, the MBA's Gateway Cities initiative, medical malpractice legislation and the re-

cent expansion of the Committee for Public Counsel Services.

MBA Chief Operating Officer and Chief Legal Counsel Martin W. Healy and MBA Legislative Activities Manager Lee Ann Constantine also attended the meeting. ■



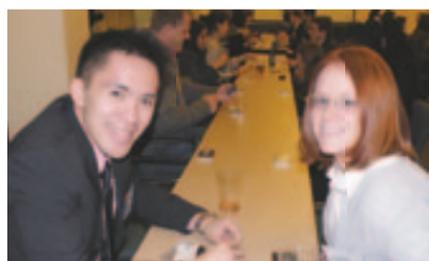
PHOTOS BY KELSEY SADOFF

The Young Lawyers Division hosted a free Speed Networking event Feb. 9 at the MBA's Boston office.

Free YLD Speed Networking event pairs new, experienced lawyers

More than 40 Massachusetts Bar Association attorneys and members of the legal community participated in the Young Lawyers Division's Speed Networking event and reception on Feb. 9 at the MBA's Boston office.

The program, which paired newer attorneys with experienced mentors, provided participants with an opportunity to gain insight into and information about various legal practices. ■



Jason Y. Chan, of Jason Chan, Attorney at Law, speaks with Janet E. Justmann.



From left to right: Heather M. Ward, Melissa Conner, Dawn Harper and Jason Y. Chan.

VOLUNTEER SPOTLIGHT

James E. Harvey Jr.

BY TRICIA M. OLIVER

Massachusetts Association Bar members who have found the MBA's *Traps for the Unwary* helpful in their practice have attorney James E. Harvey Jr. to thank. Although Harvey is not one to willingly accept praise for the labor-intensive latest edition, he put hundreds of hours into the recently released sixth edition and spearheaded the comprehensive project that took more than a year to complete.

"*Traps* is for the conscientious lawyer who faces an issue or accepts a case outside his or her usual expertise, and doesn't know where the landmines are. Over a hundred lawyers have contributed ideas that we've used, and we've been doing this for over 20 years, so *Traps* has become a clearinghouse for those hazards," he said.

Harvey had the idea to produce the initial version of MBA's *Traps for the Unwary* in 1987. According to Harvey, this was at a time when the economy was similar to today's and many attorneys were accepting cases that they typically wouldn't have.

Highly involved with the MBA's Young Lawyers Division (YLD) at the time, Harvey brought five ideas to include in a "traps" guide to Steven Hoffman, the then-Civil Litigation Section chair. "Come to find out, Steve had 10 more ideas," said Harvey. The first version of *Traps for the Unwary* was published in 1988.

Through his work with the MBA's YLD, Civil Litigation Section, Insurance Committee, House of Delegates, and Nominating Committee, Harvey was highly involved in the MBA until 1996, when his law partner unexpectedly passed away. His MBA volunteer commitments diminished due to firm commitments.

Now a well-established attorney managing a very busy practice at O'Malley & Harvey LLP in Boston, he remains an



PHOTO BY TRICIA M. OLIVER

James E. Harvey Jr. serves as editor in chief for the MBA's *Traps for the Unwary*.

MBA member and every few years takes on the responsibility with colleague Kevin G. Kenneally of LeClairRyan's Boston office of editing and expanding the next version of *Traps for the Unwary*.

Now that the 6th edition of *Traps* is in the hands of MBA members, Harvey's discretionary time is split between playing golf and volunteering for his church (St. Joseph's in Belmont). His favorite golf opponent is his 90-year-old father — a former scratch handicapper — who still manages to beat Harvey during their weekly games when the weather's right.

When he's not lucky enough to be playing golf, Harvey enjoys his career in the law and seems to thrive on the demands of the profession. "Being an attorney is a hard job, but if you didn't love it, it's really hard. I am lucky I love it."

Much of Harvey's family share that passion, as they too are in the legal profession. His uncle was a judge, while two of his four siblings are attorneys. Harvey's wife, Mary, is also an attorney and practices insurance defense. >15

2012-13 NOMINATING COMMITTEE

Continued from page 7

THOMAS J. BARBAR

Thomas J. Barbar, chair of the MBA's Law Practice Management Section and a past co-chair of the MBA Family Law Section Council, is a principal at Deutsch Williams, Brooks, DeRensis & Holland PC. Barbar has testified at the Statehouse on behalf of the MBA regarding family law legislation. He has also been a panel participant and chair for probate and family law issues for the Boston Bar Association and the MBA.



THOMAS J. BARBAR

LAURENCE M. JOHNSON

A shareholder at Davis, Malm & D'Agostine PC, Johnson was a co-chair of the Individual Rights & Responsibilities Section. He is a past president of the Massachusetts Bar Foundation, where he is a trustee and an MBF Oliver Wendell Holmes Life Fellow. A member of the Massachusetts IOLTA Committee and Supreme Judicial Court Law Clerks' Society, he has served as director of the Lawyers Committee for Civil Rights Under Law



LAURENCE M. JOHNSON

for more than 30 years.

NANCY FRANKEL PELLETIER

An attorney with Robinson Donovan PC, she has been recognized as a Massachusetts Super Lawyers "Top 50 Women Attorneys." A member of the Massachusetts, Hampden County, Women's and Federal bar associations, Pelletier is also a Fellow in the International Association of Defense Counsel and a Life Fellow of the Massachusetts Bar Foundation. She has also volunteered as a judge in the MBA's Mock Trial program.



NANCY FRANKEL PELLETIER

MICHELLE I. SCHAFFER

A shareholder at Campbell, Campbell, Edwards & Conroy PC, she is actively involved in the Federal Bar Association and the Defense Research Institute and published articles and spoken at educational programs on various topics. She has served as the chair of several educational programs sponsored by professional organizations, including the American Bar Association, DRI and Massachusetts Continuing Legal Education Inc. ■



MICHELLE I. SCHAFFER

BAR NEWS



PHOTO BY DENISE SQUILLANTE

MBA President Richard P. Campbell makes the case for a resolution regarding U.S. magistrate judges at the American Bar Association's House of Delegates on Feb. 6.

Campbell wins ABA support for U.S. magistrate judge resolution

MBA President Richard P. Campbell addressed the American Bar Association's House of Delegates on Feb. 6 at the ABA mid-year meeting in New Orleans.

Campbell was successful in his bid for the ABA delegates to adopt a resolution that supports the provisions of Title 28, U.S.C. 636 (c).

The provisions grant U.S. magistrate judges the power, by request of either party, to conduct any and all proceedings in a jury or non-jury civil matter in

federal court. It also orders the entry of judgments in the case as being consistent with and not violating Article III of the Constitution.

"The resolution addresses an access to justice issue," said Campbell, who said that in the last decade alone, magistrate judges disposed of more than 10,000 civil cases per year under § 636 (c).

The MBA's House of Delegates approved the same resolution on January 19, 2012. ■



PHOTOS BY JEFF THIEBAUTH

From left to right: Rory J. Gill, Law Office of Rory J. Gill, Jamaica Plain; Alan J. Klevan, Klevan & Klevan LLP, Wellesley; Kathryn Vesco Chelini, Milford; Brian C. Olson, Squillace & Associates PC, Boston; and David A. Klein, Natick.

Member Appreciation Reception

'How to Start and Run' conference helps solo lawyers

Lawyers who either want to — or are being forced to — go into business on their own received comprehensive advice from nearly a dozen panelists during the daylong How to Start and Run a Successful Solo or Small-Firm Practice conference at Lombardo's in Randolph on Jan. 26.

The conference's sessions were divided into the topic areas: "The Mechanics of Setting up Your Firm," "The Mechanics of Running Your Firm," "The Essentials of Marketing" and "Putting it All Together." ■

The Massachusetts Bar Association hosted its second 2011-12 association year Member Appreciation Reception on Jan. 26 at Lombardo's in Randolph.

More than 50 members enjoyed hors d'oeuvres while networking, after the "How to Start and Run a Successful Solo or Small-Firm Practice" Conference. ■



From left to right: Scott Douglas Burke, Morrison Mahoney LLP, Boston; Christa A. Arcos, Morrison Mahoney LLP, Boston; and Terry Welsh, president, Massachusetts Bar Association Insurance Agency.

EXPERIENCED BANKING GUIDANCE FOR LEGAL EXPERTS.

Expect it.



FINANCIAL SERVICES FOR ATTORNEYS

We take your practice personally.

At Webster, our dedicated business bankers act as your personal banking consultants. We focus on your unique financial needs then recommend the right solutions. You can expect a wide range of banking products designed for the legal industry, including cash management solutions, remote deposit capture, convenient IOLTA accounts, and flexible, low-cost lending options! Our team of bankers will help you get the most out of your business. To learn more, contact Jordan Arovos at 508.235.1351 or jarovas@websterbank.com.

 WebsterBank®

WebsterBank.com/ExpectIt

¹ All credit products, pricing and overdraft protection are subject to the normal credit approval process. Some applications may require further consideration and/or supplemental information. Certain terms and conditions may apply. SBA guaranteed products may also be subject to additional terms, conditions and fees. All loans/lines of credit require a Webster business checking account which must be opened prior to loan closing and which must be used for auto-deduct of payment. The Webster Symbol and Webster Bank are registered in the U.S. Patent and Trademark Office.

 Webster Bank, N.A.
Member FDIC

BAR NEWS



PHOTOS BY MERRILL SHEA

Attendees, from left to right: Faye B. Rachlin, Community Legal Aid; Jonathan L. Mannina, Community Legal Aid; Jayne B. Tyrrell, Mass. IOLTA Committee; Sheila C. Casey, Neighborhood Legal Services; and A. Gerry Singen, Access to Justice Commission.

MBF honors Judge William G. Young at annual meeting

The Massachusetts Bar Foundation honored U.S. District Court Judge William G. Young with its Great Friend of Justice Award at its annual meeting, which was held Jan. 25 at the Social Law Library in the John Adams Courthouse.

The award is presented annually to an individual who has demonstrated extraordinary passion for justice, consistent with the MBF's values and mission.



Newly elected MBF President Jerry Cohen noted, "Judge Young's unwavering commitment to the rule of law in our society, to the absolute importance of trial by jury, and to the preservation of individual rights in our justice system exemplifies the values the MBF Great Friend of Justice Award recognizes."

In his keynote address, Young inspired the more than 125 MBF Fellows, grantees and friends in attendance to do all that they can to ensure that justice remains a priority, not just for the judiciary and those in the legal community, but for the nation's general public. ➤18



Newly elected MBF President Jerry Cohen of Burns & Levinson LLP (right) presents U.S. District Court Judge William G. Young with the MBF's 2012 Great Friend of Justice Award.



Attendees, from left to right: Hon. Anne M. Geoffrion, Hampden County Probate & Family Court; Alfred J. Geoffrion Jr., Law Office of Alfred J. Geoffrion Jr.; David E. Sullivan, Northwestern District Attorney's Office; Leslie Walker, Prisoners' Legal Services; and Lawrence J. Farber, Law Office of Lawrence J. Farber.

2012 MBF officers, trustees announced

At its annual meeting Jan. 25, the Massachusetts Bar Foundation's Board of Fellows unanimously elected its 2012 leadership, following the recommendations of the Nominating Committee, which was chaired by Francis A. Ford and included Steven L. Wollman and Craig E. Stewart, all of whom are past presidents.

OFFICERS

- President **Jerry Cohen**, Burns & Levinson LLP, Boston
- Vice President **Robert J. Ambrogi**, Law Office of Robert J. Ambrogi, Rockport
- Treasurer **Janet F. Aserkoff**, Rappaport, Aserkoff & Gelles, Boston
- Secretary **Lawrence J. Farber**, Law Office of Lawrence J. Farber, Amherst

TRUSTEES

- **Daniel J. Gleason**, Nutter, McClennen & Fish LLP, Boston
- **Richard J. Grahn**, Looney & Grossman LLP, Boston
- **Katherine A. Hesse**, Murphy, Hesse, Toomey & Lehane LLP, Quincy
- **Marsha V. Kazarosian**, Kazarosian Law Offices, Haverhill
- **Edward W. McIntyre**, Law Office of Edward W. McIntyre, Clinton

EXPERTS & RESOURCES

MASSACHUSETTS LAWYERS JOURNAL

ADR

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



Can we talk!

I will sit down with clients and attorneys in a private, easily accessible location.

I bring 45 years as a practicing attorney and respected judge to the table.

Case evaluations, mediation, arbitration and master's hearings.

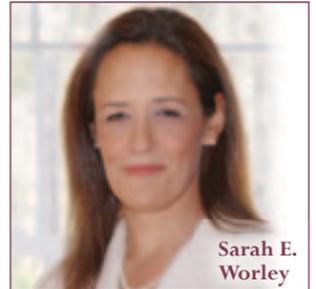
"Let's Reason Together"

TEL (617) 964-8744
www.beverlyboorstein.com

ADR

Where **conflict** meets **resolution.**

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



Sarah E. Worley

14 Beacon Street,
Suite 610
Boston,
Mass., 02108

45 Bristol Drive
South Easton,
Mass., 02375

617-419-1900
www.worleyconflictresolution.com

ADR

"Choose the Best Alternative"™
in mediation.

Visit our website
for more information:
www.fitzgeraldresolution.com



Warren Fitzgerald
TEL: 617.241.4299
wf@fitzgeraldresolution.com

ADR

Now, more than ever,
ADR is the answer



MASSACHUSETTS
DISPUTE
RESOLUTION
SERVICES

800-536-5520
mdrs.com

AVIATION LAW

Experience and
technical training



makes a
difference.

John T. O'Connell is a Commercial Pilot with Land and Sea ratings who has been litigating commercial and general aviation crash cases for the past 30 years. He is licensed in MA, CO, FL and multiple federal jurisdictions including as a patent attorney at the USPTO.

O'Connell & Associates, LLC
470 Atlantic Avenue, Boston, MA 02110
(617) 996-2500 | www.oapc.com
email: oconnell@oapc.com

AVIATION LAW

AVIATION LAW



ANTHONY TARRICONE, concentrating in cases involving serious personal injuries and wrongful death resulting from the

operation, design, and maintenance of all types of aircraft. Thirty years experience in aviation cases including airline, commercial and general aviation.

Kreindler & Kreindler LLP

277 Dartmouth St.
Boston, MA 02116
Tel (617) 424-9100
Fax (617) 424-9120
E-mail: atarricone@kreindler.com
www.kreindler.com

Thank you

MBA Member Appreciation Week April 2–6

Member Reception and Dessert Tasting

FREE CLES

Annual Dinner Pass

Free Memberships

RAFFLES

SAVE THE DATE

All week — Raffles and Giveaways



www.MassBar.org

BAR NEWS

MEMBER SPOTLIGHT

Squillante joins Lawyers Weekly board

Denise Squillante, the Massachusetts Bar Association's 2010-11 president and a family and corporate law practitioner at Denise Squillante PC, Attorney at Law, in Fall River, recently joined *Massachusetts Lawyers Weekly's* Board of Editors.

The advisory board meets monthly to discuss potential editorials that will appear in the newspaper. Members of the Board of Editors are appointed to two-year terms.



DENISE SQUILLANTE

Squillante is a Massachusetts delegate to the American Bar Association's House of Delegates and was co-chair of the joint MBA/Boston Bar Association Alimony Task Force. She was also appointed to a legislative task force that drafted major alimony reform legislation enacted in 2011. Squillante is a former president of the Fall River and New England bar associations. In 2010, she was awarded the John S. Brayton Jr. Memorial Community Service Award by the Fall River Chamber of Commerce, and she is a Fellow of the Massachusetts Bar Foundation, the MBA's philanthropic partner. ■

Calendar of Events

THURSDAY, MARCH 1

Divorce Basics: A View from the Bench and Bar 
4:30–7 p.m.
MBA, 20 West St., Boston

WEDNESDAY, MARCH 7

Law Practice Management Section Educational Series: Marketing Madness: Ethical Marketing 
12:30–1:30 p.m.
MBA, 20 West St., Boston

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

FRIDAY, MARCH 9

Tiered Community Mentoring Program: Adams Courthouse tour, SJC hearings observation
8:30 a.m.–noon
Supreme Judicial Court, One Pemberton Square, Boston

MBF IOLTA Grants Program applications due
MBA, 20 West St., Boston

FRIDAY, MARCH 16

2012 Massachusetts Conference on Bullying (co-sponsored by MBA)
8 a.m.–3:30 p.m.
Harvard Law School, 1563 Mass. Ave., Cambridge

MBF Legal Intern Fellowship Program applications due
MBA, 20 West St., Boston

MONDAY, MARCH 19

Court Advocacy Day
11 a.m.
Statehouse, Boston

Mock Trial Final Four Competition
1 p.m.
John Joseph Moakley U.S. Courthouse, One Courthouse Way, Boston

Mock Trial Final Four Competition
1 p.m.
Worcester Superior Court, 225 Main St., Worcester

SAVE THE DATE

THURSDAY, MAY 31

MBA Annual Dinner
Reception: 5:30 p.m.
Dinner: 7 p.m.

TUESDAY, MARCH 20

Responding to Disaster — FEMA Eligibility, Reimbursement 
Noon–2 p.m.
MBA, 20 West St., Boston

WEDNESDAY, MARCH 21

Open Meeting Law
9 a.m.–11 p.m.
MBA, 20 West St., Boston

Law Practice Management Section Educational Series: Marketing Madness: Developing a Marketing Plan 
12:30–1:30 p.m.
MBA, 20 West St., Boston

THURSDAY, MARCH 22

MBA House of Delegates Meeting
12:30–4:30 p.m.
UMass Lowell Inn and Conference Center, 50 Warren St., Lowell

FRIDAY, MARCH 23

27th Annual MBA Mock Trial Championship
10 a.m.–12:30 p.m.
Great Hall, Faneuil Hall, Boston

THURSDAY, MARCH 29

Conveying Real Estate under the New Uniform Probate Code 
9–11 a.m.
MBA, 20 West St., Boston

It's Confidential — Privilege Law in Massachusetts 
4–7 p.m.
MBA, 20 West St., Boston

THURSDAY, MARCH 30

Taking on the Anti-Bullying Law from All Angles 
11 a.m.–1 p.m.
MBA, 20 West St., Boston



Real-time webcast available for purchase through MBA On Demand at massbar.org/ondemand.

FOR MORE INFORMATION,
VISIT MASSBAR.ORG/EVENTS/CALENDAR

BAR NEWS

Mock Trial semi-finals, finals in March

BY ANDREA S. BURKE

High school students will compete in the semifinal and final elimination rounds of the 2012 Mock Trial Program at the end of March. This is the 27th year of the Massachusetts Bar Association Mock Trial competition.

This year's civil case explores the level of responsibility of schools and teachers have in preventing and addressing cyber-bullying among students.



JOSHUA A. MCGUIRE

"School bullying has received substantial attention in the media, and the recent anti-bullying legislation shows that people in Massachusetts want to use the law as one way to tackle this difficult problem," said attorney Joshua A. McGuire, chair of the MBA's Mock Trial Committee.

The semifinal elimination round will be held March 19 with simultaneous trials at the John Joseph Moakley U.S. Courthouse in Boston and Worcester Superior Court. Each of the four teams in this round will have already competed in at least five trials.

"(Teams) have seen the case from both

sides, and had the opportunity to refine their arguments and presentations," McGuire said. "The quality of the thinking and advocacy at this level is very high, and yet new challenges emerge in every round of the tournament."

Two finalists will advance to the state championship on March 23 in the Great Hall of Boston's Faneuil Hall. In 2011, the Pioneer Valley Performing Arts Charter Public School of South Hadley won the state championship and placed 31st in the national tournament.

The Mock Trial Program, first organized in 1985, places high school teams from 16 regions across the state in a simulated courtroom situation where they take on the roles of plaintiff attorneys, defense attorneys and witnesses. More than 100 high school students across the state participated in the 2012 Mock Trial Program, which began with preliminary trials at the end of January. Local attorneys serve as team coaches and judges in the preliminary rounds.

The Mock Trial Program is made possible by a grant from Brown Rudnick through its Center for the Public Interest in Boston, which has contributed \$25,000 per year to the program since 1998. ■



The website www.masslawhelp.com recently went live.

Lawyer Referral Service launches site

The Massachusetts Bar Association's Lawyer Referral Service, one of the largest referral services of its kind, has launched a new website to help connect members of the public with an attorney in their area who has the knowledge they need.

The user-friendly website, offered as a public service of the MBA, provides the public with answers to the most common legal questions in the areas of family law, labor and employment, estate planning, real estate, consumer protection, personal injury, criminal law, personal finance, business, individual rights, government benefits and services and immigration.

In addition, members of the public are provided with information about various legal services.

The website also makes it easy for the

public to contact the MBA's LRS to find an attorney.

Go to www.masslawhelp.com to view the new public site, or to sign up to become a member of the MBA's LRS. Also, link your website to the LRS site to provide information to your clients.

RENEW YOUR LRS MEMBERSHIP OR SIGN UP NOW

Current LRS members can avoid any interruption in their membership by renewing before the March 31 deadline. Renewal notices were mailed recently.

If you are not a member and would like more information, go to www.massbar.org, click the "For Attorneys" tab on the top menu and select Lawyer Referral Service, or call (617) 338-0556. ■

VOLUNTEER SPOTLIGHT

Continued from page 11

The couple has three grown children and one granddaughter. His kids decided not to pursue legal careers, so they won't benefit from their father's diligence in updating one of the MBA's most valuable member benefits.

However, for those who will benefit

from it, Harvey says the latest edition of the guide is better organized than past editions, while it includes a significantly improved index and a new table of cases.

"It's easier to reference cases multiple times after the first read," said Harvey, who admits he already has a file started for the 7th edition of the popular guide. ■

EXPERTS & RESOURCES

CONTINUED FROM PAGE 13

BRAIN INJURY

Would You Know A
HEAD INJURY
If You Saw One?

Most People Wouldn't.®

Law Office of
Kenneth I. Kolpan, P.C.

175 Federal Street,
Suite 1425,
Boston MA, 02110
617-426-2558

For info on
brain injury
litigation, visit
www.kolpan.com
or send email to
ken@kolpan.com

COURT REPORTING

App for that

Q I'm boarding a plane. How can I check my depo calendar?

A O&L Mobile from O'Brien & Levine.

You will **app**solutely love it!

O'BRIEN & LEVINE
Court Reporting Services
Making Your Case

Worldwide Coverage / 617.399.0130
www.court-reporting.com

COURT REPORTING

Stop Wasting Billable Time!

Court Reporting
Depositions, Arbitrations, Hearings

Legal Dictation
You Dictate, We Type, Your Print

Video Conferencing
You Call, We Set-up - DVD Available

CATUOGNO
COURT REPORTING
www.catuogno.com

(888) 228-8646

DATA SECURITY

Your clients come to you for legal protection. You can come to Infoshred for data protection.

Infoshred has been a family and woman-owned shredding and storage provider since 1997. Our reputation is built on providing clients with personal customer service. You can count on us for all of your legal document destruction and records storage needs. Call us today for a free consultation.

infoshred LLC
Destruction and Recycling Services
Records Storage and Management

888-800-1552
www.infoshred.com

DISABILITY INS. CLAIMS

Can Your Clients Collect Disability Insurance Benefits?

DELL & SCHAEFER
Since 1979
LAW FIRM

Assisting Claimants With:

- ▶ Individual & Group Disability Policies
- ▶ Application For Disability Benefits
- ▶ Monthly Claim Handling
- ▶ Erisa Appeals
- ▶ Claim Denials / Lawsuits / Appeals
- ▶ Lump-Sum Policy Buyouts

CALL FOR A FREE REVIEW OF YOUR DISABILITY POLICY
FREE PHONE CONSULTATION
800-269-5148
NATIONWIDE REPRESENTATION
▶ REFERRAL FEES PAID ◀
diAttorney.com

DISABILITY INS. CLAIMS

LONG TERM DISABILITY (ERISA) APPEALS

If you or a client has been denied long-term disability benefits, or had benefits terminated, Attorney Susan Sachs has the specialized knowledge and experience to handle the appeal. In most instances, the claim will be governed by federal statute, the Employee Retirement Income Security Act (ERISA). ERISA pre-empts almost all state laws. Ms. Sachs specializes in the initial, mandatory administrative appeal process and has a high success rate. But if administrative appeal is unsuccessful, ERISA allows for further appeal by filing a lawsuit in U.S. District Court, which has exclusive jurisdiction. She is also experienced and successful at this level. Fee arrangements are flexible. The initial consultation is gratis.

Susan Sachs
attysusansachs@gmail.com
(413) 732-0035

CONTINUED ON PAGE 16

EXPERTS & RESOURCES

CONTINUED FROM PAGE 15

E-DISCOVERY

If you think e-discovery is too expensive, chances are you are not conducting it correctly.

Evidox

We conduct e-discovery from the perspective of the litigator, not just the technician.

Evidox Corporation
207 South Street, Boston MA 02111
617-654-9060
www.Evidox.com

EXPERT WITNESS

DICK ALBERT Meteorologist

CONSULTING AND
EXPERT WITNESS SERVICES



Realbert44@gmail.com
TEL: 617-834-5615

FLORIDA PERSONAL INJURY

FLORIDA ATTORNEY



LAW OFFICES OF Randy C. Botwinick

Formerly of Pazer & Epstein

Concentrating in Personal Injury

• 25 Years Experience • Co-Counsel and Participation Fees Paid

MIAMI OFFICE
One Biscayne Place
1098 Biscayne Blvd.
Suite 405, Miami, FL 33131
P: 305 895.5700
F: 305 892.1107

PALM BEACH OFFICE
Peninsula Executive Center
2385 NW Executive Center Dr.
Suite 100, Boca Raton, FL 33431
P: 561 995.5001
F: 561 962.2710

Toll FREE: 1-877-FLA-ATTY (352-2889)
www.personalinjurylawyer.ws

INVESTIGATORS

SIMMONS AGENCY, INC.

Civil and Criminal
Investigations
ESTABLISHED 1935



- Asset locations
- Backgrounds
- Due diligence
 - Probate
 - Proxy fights
 - Surveillance

190 High Street
Boston, MA 02110
Tel (617) 523-2288
simmons.agency@comcast.net
www.simmonsagency.com

IRS/DOR REPRESENTATION

We speak IRS & DOR. Fluently.

For more than 14 years, Matthew J. Previte CPA PC has worked exclusively to resolve IRS and state tax problems for individuals and businesses. So law firms like yours don't have to.



By referring us your clients in trouble with the IRS or DOR, you avoid the huge learning curve involved in handling these cases, which destroys profitability and increases the risk of malpractice.

Most importantly, your clients get a locally-based expert here in Massachusetts who will provide one-on-one personal attention. In addition, they will never have to meet or speak with the IRS or DOR. We do it for them while you continue taking care of their legal needs.

Visit www.taxproblemsrus.com for video and written testimonials.

Clients receive a free initial consultation. Call 508-655-1500.

Matthew J. Previte, CPA PC - Natick, MA
Tel. (508) 655-1500 email: info@taxproblemsrus.com

YOUR AD NEEDS TO BE HERE.

For all your advertising needs in the *Massachusetts Lawyers Journal*, contact Mark Schultz.
(617) 896-5323
mshultz@thewarrengroup.com

LAWYER ASSISTANCE

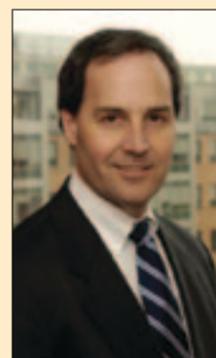
NEVER AGAIN WILL A LAWYER
HAVE TO SAY THERE WAS
NOWHERE TO TURN.

617-482-9600 | WWW.LCLMA.ORG

LCL
LAWYERS CONCERNED
FOR LAWYERS
LCL

FOR THE ISSUES OF LIFE IN LAW

LAWYER ASSISTANCE



Rodney S. Dowell, Esq.
DIRECTOR, LOMAP

Your law practice advisor.

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

FREE ■ CONFIDENTIAL ■ PRACTICAL SOLUTIONS



**Law Office Management
Assistance Program**

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

CONTINUED ON PAGE 19



PROBATE LAW

The improvement standard and observation status: Two barriers to Medicare coverage

BY ALICE BERS

According to the statute, Medicare provides coverage for care that is “reasonable and necessary.”¹ The real-world application of this standard, however, can become complicated. This article highlights two areas where Medicare’s purpose has been thwarted by policies that inappropriately deny coverage to beneficiaries. One of the policies — dubbed the “improvement standard” by advocates — has been deeply ingrained in the medical system for decades, whereas the other — “observation status” in hospitals — has come to the fore more recently.

IMPROVEMENT STANDARD

Many people who work with elders or people with disabilities have had the experience of a skilled nursing facility or home health agency informing them that a person’s Medicare coverage will be terminating because the patient has “plateaued” or is “chronic and stable,” “maintenance only” or simply not improving. It can happen, for example, to a patient in a physical therapy setting who is re-learning to walk, or to a patient in a home health care setting who requires ongoing wound care.

These coverage terminations are of-

ten devastating to the patient and his or her family, who have been relying on services to slow the course of a disease or maintain functioning. Some people cannot even access coverage in the first place because an agency will not accept a patient who is “chronic” or not able to improve. Many of those affected have degenerative conditions, such as multiple sclerosis, Alzheimer’s disease, Parkinson’s disease or ALS.²

Yet the improvement standard at the root of these coverage denials is not supported by law.³ To receive coverage, patients in a nursing home or receiving home health care must require skilled services of some kind, but they are not required to improve to receive coverage. The Medicare regulations explicitly state:

The restoration potential of a patient is not the deciding factor in determining whether skilled services are needed. Even if full recovery or medical improvement is not possible, a patient may need skilled services to prevent further deterioration or preserve current capabilities.⁴

Further, the regulations regarding skilled services specifically recognize that there are cases in which *maintenance* therapy must be provided by skilled per-

ALICE BERS

practices elder law at Benjamin & Bers in East Longmeadow and is a consulting attorney for the Center for Medicare Advocacy, a national nonprofit education and advocacy organization. Before entering private practice and joining the center, Bers represented Medicare beneficiaries at Western Massachusetts Legal Services (now Community Legal Aid).



sonnel.⁵ Medicare recently clarified its home health regulations to emphasize that skilled care can include services to maintain a person’s condition, and that no informal rules, including those that require restoration potential, should be used to deny care.⁶ But despite these directives, denials for patients who “plateau” or are “chronic” remain commonplace.

The improvement standard imposes a rule of thumb that operates as an illegal condition for coverage. Many patients do not appeal coverage terminations because, based on what medical personnel have told them about the improvement standard, they think they cannot succeed.

And it is often the practice of Medicare contractors that conduct coverage determinations and lower-level administrative appeals to apply the improvement standard and deny coverage.

While beneficiaries who appeal up to the administrative law judge (ALJ) level have a better chance of success, such lengthy appeals are difficult to pursue, especially without representation, and beneficiaries generally must incur liability for the cost of services provided while their appeal is pending. Providers continue to apply the improvement standard because that is how they have been trained and how they see Medicare handling submitted claims.

There has been some litigation on the improvement standard resulting in decisions favorable to beneficiaries. *Fox v. Bowen*⁷ prohibited the use of arbitrary rules of thumb and mandated that each patient’s unique medical condition be assessed to determine whether skilled physical therapy services are required. More recently, courts in Pennsylvania and Vermont held that Medicare had inappropriately applied an improvement or stability standard to individual beneficiaries.⁸ The Department of Health and Human Services did not appeal these decisions, so they are not binding outside the states in which they were brought. ►18

JUVENILE & CHILD WELFARE LAW

The state’s anti-bullying law and students with disabilities: Legal requirements and practical applications

BY ALISIA ST. FLORIAN

The Massachusetts Anti-Bullying Law, M.G.L. c. 71, s. 37O, went into effect on May 3, 2010. This article will examine the language of the statute and its practical application through the Individualized Education Program (IEP) Team process. Additionally, the Office for Civil Rights (OCR) has advised that instances of bullying may implicate civil rights laws, which will require school districts to respond in a more global way, investigating whether a hostile environment exists in the school.

This article will also consider steps that school districts can and should take to avoid potential liability within the context of bullying as it relates to students with disabilities.

Finally, some observations from the field will be shared. Specifically, how special education teams should handle situations when both the victim and the aggressor are students with disabilities, and how to address the situation when a bullying investigation does not substantiate allegations of bullying, but the victim’s perception of being bullied impacts his ability to access his education and make effective progress.

On this last point, a description of a

real scenario that an IEP Team recently encountered: At a team meeting for a ninth-grade student with social disabilities who had alleged bullying by a disabled peer, the following question was posed by the parent: Why not simply remove the alleged bully from the inclusion classes that her daughter attended so that the two students would not be together during the day? Sounds simple enough, but here’s the rub: the alleged bully was a student with Asperger’s Syndrome also on an IEP.

The school’s investigation found that the bully made harassing statements to the victim as a result of provocation by the victim who, by reason of her disability, often made impulsive remarks to students that were perceived as socially inappropriate. To further complicate matters, the school was unable to substantiate the extent of bullying described by the victim, and it was suggested that the victim perceived greater bullying than was actually occurring.

Thus, at least two questions were raised: 1) how to address the situation where both students are on IEPs; and 2) how to address the conclusion that the victim’s reaction to the alleged bullying appeared disproportionate to the actual acts of bullying. Add to this that the team

ALISIA ST. FLORIAN

is a special education attorney at Murphy, Hesse, Toomey & Lehane LLP in Quincy, representing public school districts and charter, collaborative and private special education schools in all matters. She has served as a guardian *ad litem*/educational advocate for the juvenile courts and an educational surrogate parent for the Department of Education.



needed to be careful to maintain both students’ confidentiality, what ensued was a stunted and, from the parents’ perspective, a rather unsatisfactory discussion about how her daughter’s needs and safety could be met by the school.

The team’s eventual response follows, but first a review of the law: Section 7 and 8 of Chapter 92 of the Acts of 2010 (An Act Relative to Bullying in Schools), amending M.G.L. c. 71B, s. 3, reads as follows:

Section 7: Whenever the evaluation of the Individualized Education Program team indicates that the child

has a disability that affects social skills development or that the child is vulnerable to bullying, harassment or teasing because of the child’s disability, the Individualized Education Program shall address the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing.

Section 8: Whenever an evaluation indicates that a child has a disability on the autism spectrum, which includes autistic disorder, Asperger’s disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, or Rhetts’s Syndrome, as defined in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, the Individualized Education Program (IEP) team, as defined by regulations of the department, shall consider and shall specifically address the following: the verbal and nonverbal communication needs of the child; the need to develop social interaction skills and proficiencies; the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing. ►21

MEDICARE COVERAGE

Continued from page 17

However, in January 2011, the Center for Medicare Advocacy and Vermont Legal Aid filed a national class action lawsuit against the secretary of Health and Human Services to end the improvement standard nationwide. *Jimmo et al. v. Sebelius*⁹ was filed in the District of Vermont on behalf of several individual plaintiffs and organizational plaintiffs, including the National Multiple Sclerosis Society, the Alzheimer's Association and Paralyzed Veterans of America.

The plaintiffs challenge the secretary's continued use of the improvement standard as a policy that results in the illegal termination, reduction or denial of coverage for thousands of Medicare beneficiaries. In October 2011, the court largely denied the government's motion to dismiss.¹⁰ The motion for class certification is pending. As the case proceeds, the goal is to eliminate this unlawful rule of thumb and ensure that each Medicare beneficiary receives coverage based on his or her unique condition and individual needs as required by law.

OBSERVATION STATUS

Another more recent barrier to Medicare coverage in hospitals and skilled nursing facilities is use of observation status during hospitalization. For Medicare to cover a stay in a skilled nursing facility, the beneficiary is required, among other things, to have been hospitalized for at least three consecutive days as an inpatient prior to admission to the facility.¹¹

An increasing number of Medicare beneficiaries have been finding that although they thought they had been a hospital inpatient for at least three days, they were formally classified as being on observation status or receiving "observation services," which are not covered by Part A (which generally covers inpatient services), but by Part B (which generally covers outpatient claims).

These beneficiaries often come to the

hospital after a fall or some other acute event. They are often moved from the emergency room to a regular hospital floor where they are treated just as any other inpatient would be. They are staying overnight in a hospital bed, wearing a wristband, served hospital food, given medication, tested, monitored, etc. They are too sick to go home and must remain hospitalized for several days. Patients often become deconditioned, meaning they have lost some functional ability, and, when they are well enough to leave the hospital, they need rehabilitation services in a skilled nursing facility.

However, upon discharge to the facility, they learn that Medicare will not provide coverage because they did not have a qualifying three-day inpatient stay. Beneficiaries must choose between paying out of pocket for the nursing facility (which in Massachusetts can cost around \$10,000 per month) or forgoing the skilled care they need. For those who are eligible, Medicaid may cover their nursing facility stay, thereby shifting the cost of care to the state.

The terms "observation status" or "observation services" are nowhere to be found in the Medicare statute or regulations. "Observation services" appears only in sub-regulatory Medicare policy manuals, where it is circularly defined as:

a well-defined set of specific, clinically appropriate services, which include ongoing short term treatment, assessment, and reassessment, before a decision can be made regarding whether patients will require further treatment as hospital inpatients or if they are able to be discharged from the hospital.¹²

Yet the "well-defined" set of services is not found in Medicare policy. What hospitals tend to use to decide whether a patient is classified as an inpatient or outpatient are commercial criteria, such as the "InterQual" criteria published by McKesson Corp. These criteria are pro-

proprietary and not available to the general public. The criteria assess the severity of the patient's illness and intensity of services, but result in a paperwork decision that does not involve an in-person examination by a doctor or an individualized determination that takes the patient's unique situation into account.

Even if a doctor initially orders that a beneficiary be admitted as an inpatient, Medicare has authorized hospital utilization review committees to retroactively change a patient's status to observation status in certain circumstances. Medicare policy states that observation care is generally not supposed to last for more than 24 hours, occasionally up to 48 hours, but only in "rare and exceptional cases" should it last beyond 48 hours.¹³ However, the incidence and length of observation status stays is increasing,¹⁴ and advocates have seen examples of beneficiaries being on observation status for as long as 14 days.¹⁵

Compounding the problem is that Medicare does not require patients who are initially placed in observation status to receive notice. Only if the hospital retroactively changes a patient's status from inpatient to outpatient does Medicare policy require a notice, but in actual practice, it seems that few beneficiaries are given such notice, and those notices that are provided contain no language about appeal rights.

Indeed, it is not clear that patients have any appeal rights with regard to observation status. While they will eventually receive a Medicare Summary Notice in the mail listing the hospital services as outpatient claims, beneficiaries attempting to appeal those claims will often find themselves in a morass of communications from Medicare. They may be told that only *denied* services can be appealed, whereas these services were *covered* by Part B, and thus there is no basis for appeal, or that only a doctor can decide whether a patient is an inpatient or outpatient.

Beneficiaries who manage to appeal up to an ALJ may find their claim dis-

missed for lack of jurisdiction. Beneficiaries who go to a nursing facility after their hospital stay may receive a notice that their stay cannot be covered for lack of a qualifying three-day hospital stay, but use of such notices is discretionary for the facility. On top of this confusing process, beneficiaries and their families are often still dealing with the serious condition that brought them to the hospital in the first place.¹⁶

Why are hospitals placing more patients on observation status? The reason heard most often is Medicare's Recovery Audit Contractor (RAC) program, which was put into place to address fraud, waste and abuse. The program began as a three-year demonstration and was made permanent by the Tax Relief and Health Care Act of 2006.

The RAC reviews hospitalizations of Medicare beneficiaries, and if it finds what it believes to be improper payments to hospitals under Part A, it recoups the payment from the hospital, which cannot re-bill under Part B. It has apparently become a safer bet for hospitals to bill claims for some patients as Part B outpatient services rather than Part A inpatient services. Advocates have heard from many doctors and other hospital personnel that they are frustrated with observation status as well; they have seen how it can harm their patients.

Advocates and legislators are working to address the observation status problem. Legislation that would require time spent in observation status to count toward the three-day stay requirement has been introduced in both the House of Representatives and the Senate.¹⁷ A congressional briefing sponsored by the Center for Medicare Advocacy, AARP, the Alzheimer's Association and the American Medical Association, among others, was held in October 2011.

In November 2011, the Center for Medicare Advocacy and the National Senior Citizens Law Center filed a national class action lawsuit against the Secretary of Health and Human Services that seeks to end Medicare's practice of depriving beneficiaries of Part A, inpatient coverage of their hospital stays by allowing (and, in fact, implicitly encouraging) them to be placed on observation status. *Bagnall et al. v. Sebelius*,¹⁸ filed in the District of Connecticut, also addresses beneficiaries' lack of notice and appeal rights. The government has filed a motion to dismiss, which will probably be decided in the next few months.

Dealing with Medicare denials caused by either the improvement standard or observation status can be very difficult. While there are no quick fixes at the moment, beneficiaries are advised to seek help from advocates. They can attempt to appeal denials, ideally with the support of a treating physician. The website of the Center for Medicare Advocacy contains self-help packets for appeals.¹⁹ ■

1. 42 U.S.C. § 1395y(a)(1)(A) (2011).

2. While this article discusses the improvement standard in the traditional Medicare program, the problem also arises for beneficiaries enrolled in the Medicare Advantage program who receive their coverage through private companies.

3. The only provision in the Medicare statute that requires improvement is specifically for improving the functioning of a "malformed body member." 42 U.S.C. § 1395y(a)(1)(A) (2011). The intent of this provision was to distinguish between cosmetic and functional services so that coverage is allowed only for functional purposes. See *Jimmo, et al. vs. Sebelius: Center for Medicare Advocacy Files Class Action to Block Illegal Medicare Denials for Patients with Chronic Conditions*, CENTER NEWS (Ctr. for Medicare Advocacy, Willimantic, Conn.), Winter/Spring 2011, at 2.

4. 42 C.F.R. § 409.32(c) (2010).

5. 42 C.F.R. § 409.33(c)(5) (2010).

6. 42 C.F.R. § 409.44(c)(2)(iii) (2010).

7. 656 F. Supp. 1236 (D. Conn. 1987).

8. *Papciak v. Sebelius*, 742 F. Supp.2d 765 (W.D. Pa. 2010) (holding Medicare Appeals Council erred in failing to address whether plaintiff required skilled care to maintain her level of functioning); *Anderson v. Sebelius*, No. 5:09-cv-16, 2010 WL 4273238 (D. Vt. Oct. 25, 2010) (holding ALJ impermissibly applied a retrospective "stability standard" in concluding that skilled care was not required).

9. *Jimmo et al. v. Sebelius*, No. 5:11-cv-17 2011 WL 5104355 (D. Vt. Oct. 25, 2011).

10. *Id.*, at *1.

11. 42 C.F.R. § 409.30(a)(1) (2010). Some Medicare Advantage plans do not require a three-day stay as a prerequisite to skilled nursing facility coverage.

12. Medicare Benefit Policy Manual, CMS Pub. No. 100-02, Ch. 6, §20.6.A, available at www.cms.gov/manuals/Downloads/bp102c06.pdf; same language appears in Medicare Claims Processing Manual, CMS Pub. No. 100-04, Ch. 4, §290.1 available at www.cms.gov/manuals/downloads/clm104c04.pdf.

13. Medicare Benefit Policy Manual § 20.6.A.

14. In a September 2010 presentation, the Medicare Payment Advisory Commission (MedPAC), which advises Congress on Medicare matters, stated that from 2006 to 2008, the number of observation claims increased by 22.4 percent, the average period of observation status increased from 26 to 28 hours, and the claims for periods of 48 hours or longer increased by 70.3 percent, which accounted for 8 percent of all claims in 2006 and 12 percent of all claims in 2008. Zach Gaumer & Dan Zabinski, MedPAC, *Recent Growth in Hospital Observation Care* (Sept. 13, 2010) available at www.medpac.gov/transcripts/observation%20sept%202010.pdf.

15. See *When is a Hospital Stay Not a Hospital Stay? When the Patient is on 'Observation Status'*, CENTER NEWS (Ctr. for Medicare Advocacy, Willimantic, Conn.), Summer/Fall 2010, at 1. Hospitalizations of the individual plaintiffs in *Bagnall et al. v.*

Sebelius, No. 3:11-CV-1703 (D. Conn. filed Nov. 3, 2011) ranged from three to seven days.

16. For a good description of one family's observation status experience, see: Tamar Lasky, *Caregiver Perspective: "Observation Days" in a Kafkaesque Hospital Setting*, 1 INT'L J. OF USER-DRIVEN HEALTHCARE 66 (2011).

17. Improving Access to Medicare Coverage Act of 2011, H.R. 1543, 112th Cong. (2011) (introduced by Rep. Joe Courtney, D-CT, now 13 co-sponsors); S. 818, 112th Cong. (2011) (introduced by Sen. John Kerry, D-MA, now four cosponsors).

18. No. 3:11-CV-1703 (D. Conn. filed Nov. 3, 2011).

19. *Medicare Coverage and Appeals*, CENTER FOR MEDICARE ADVOCACY, INC., www.medicareadvocacy.org/medicare-info/medicare-coverage-appeals/#SelfHelp (last visited Feb. 11, 2012).



MBF Immediate Past President Joseph P. J. Vrabel (right), passes the presidential gavel to 2012 MBF President Jerry Cohen.

MBF ANNUAL MEETING

Continued from page 13

Citing a troubling decrease in trial by jury, particularly in the federal courts on civil cases, Young challenged those assembled to seek out ways to keep this vital aspect of democracy alive. He said, "[T] here has to be a place where these words that we lawyers and judges use — 'Equal justice under the law, fair and impartial' — where these words have actual meaning, and we have to be it."

In addition to honoring Young, the MBF inducted 14 new Life members into the MBF Society of Fellows, all of whom

successfully completed generous pledges to advance the MBF's mission of increasing access to justice.

Before closing the meeting, Cohen stated the MBF's determination to preserve the structure and scope of legal services and urged outreach by the MBF Fellows to identify new sources of funding and volunteer efforts to mitigate the effects of the drastic cuts in Interest on Lawyers Trust Accounts (IOLTA) and other funding sources for the foundation and its grantees.

Cohen told the lawyers and judges present, "In addition to teaching today's truth of the legal system, as urged by Judge

Young, we can also preach a vision built on our aspirations for better days of legal services and work at it so the aspirations of today become the truth of tomorrow."

Founded in 1964, the MBF is the philanthropic partner of the Massachusetts Bar Association. Through its grant making and charitable activities, the MBF works to increase access to justice for all Massachusetts citizens. In 2011, the MBF IOLTA Grants Program awarded grants totaling approximately \$3.4 million to legal service related programs statewide.

For more information, go to www.MassBarFoundation.org. ■

EXPERTS & RESOURCES

CONTINUED FROM PAGE 16

LIFE COACH

LIFE COACHING FOR ATTORNEYS TIM REILLY, ESQ.



- Achieve balance between your personal and professional lives.
- Become more satisfied with your practice.
- Increase productivity and income.
- Reduce stress.
- Change your relationship with money and time.
- Create success.

Experience coaching from someone who truly understands the practice of law. We all have the capacity to create the life we want. Let me help you find the answers.

**Firm and sole practitioner sessions available.
Phone sessions and In-House Seminars available.**

**CONTACT ME AT 413-584-9900
OR AT TREILLY@REILLYLAW.NET**

WWW.REILLYLAW.NET

PERSONAL INJURY

EXPERIENCE ... RESULTS



PERSONAL INJURY AND MEDICAL MALPRACTICE REFERRALS WELCOMED

BREAKSTONE | WHITE | GLUCK

2 CENTER PLAZA, SUITE 530, BOSTON, MA 02108
(617) 723-7676 | WWW.BWGLAW.COM

SURETY BONDS

A.A. DORITY

SURETY BONDS

Since 1899

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

www.aadorty.com

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

TAX ATTORNEY

LOOKING FOR
AN EXPERIENCED
TAX ATTORNEY
FOR YOUR CLIENTS?

RICK STONE LAW

CHAIR - MA BAR ASSN.
STATE TAX PRACTICE GROUP
VICE CHAIR - MA BAR ASSN.
TAXATION SECTION
SERVING MA BAR ASSN.
MEMBERS AND THEIR CLIENTS
STATE, FEDERAL, AND
INTERNATIONAL TAX MATTERS

PLANNING	SALES & USE TAX
AUDITS	CORPORATE INCOME/ EXCISE TAX
APPEALS	MULTISTATE TAXATION
LITIGATION	

(617) 848 - 9360
(888) 483 - 5884
WWW.RICKSTONELAW.COM
RICK@RICKSTONELAW.COM

TRUST ADMINISTRATION

Trust Administration for Minors and Disabled Adults



CHRIS A. MILNE

Attorney Milne brings 25 years of experience as a nationally recognized trial attorney and trustee to a practice dedicated to trust administration and serving as a fiduciary for children and adults who are disabled.

- Over 50M in assets as Trustee
- Funds held at Morgan Stanley Smith Barney LLP at substantially discounted financial advisory fees for both large and very small trusts
- Complete transparency: duplicate monthly statements and annual accountings
- Committed to utilizing trust resources to maximize quality of life of trust beneficiary.

www.childtrust.com
(508) 785-8300 | chris.milne@childtrust.com

YOUR AD NEEDS TO BE HERE.

For all your
advertising needs
in the *Massachusetts
Lawyers Journal*,
contact Mark Schultz.
(617) 896-5323
[mschultz@
thewarengroup.com](mailto:mschultz@thewarengroup.com)

join the conversation

www.MassBar.org



www.Twitter.com/MassBar



www.MassBar.org/LinkedIn



[www.Facebook.com/
MassBarAssociation](http://www.Facebook.com/MassBarAssociation)

The Massachusetts Bar Association invites you to *join the conversation* on any of the three social networking platforms it uses to share information relevant to the legal community – including MBA events, CLEs and news. You are encouraged to post items of interest to you and the greater legal community and to comment on items already posted.

Red Flag Alerts Provided by The Warren Group

More than **150,000** tax liens, *lis pendens* and petitions to foreclose have been filed in Massachusetts since 2009.

**Be the first
to know about
delinquencies.
Take immediate
action.**

Keeping an eye out for delinquencies can be difficult. Red Flag Alerts deliver the information you need in an actionable format.

Red Flag Alerts combine new tax lien filings with *lis pendens* and petition filings. They contain more detailed information than you get from other sources. Important things like owner-occupancy status, property and owner address, an automated value model for the property in question and more.

**Essential, timely Red Flag Alerts
delivered to you automatically.**

DATA SOLUTIONS

Turning Information Into Opportunities

617-896-5392 datasolutions@thewarrengroup.com


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

ANTI-BULLYING LAW*Continued from page 17*

The first step in ensuring compliance with these provisions is meaningful evaluation. Without data, a team cannot address a student's vulnerability to bullying effectively. Massachusetts special education regulations require an initial evaluation to include an "an assessment of the student's attention skills, participation behaviors, communication skills, memory, and social relations with groups, peers, and adults."¹ The Individuals with Disabilities Education Act (IDEA) regulations include a similar provision.²

The anti-bullying law mandates that IEP teams address bullying for all students identified on the autism spectrum. Autism Spectrum Disorder (ASD) runs on a continuum and is generally defined as "a group of developmental disabilities that can cause significant social, communication and behavioral challenges."³ Research shows that students on the Autism Spectrum are three times more likely to be bullied than their nondisabled peers.⁴

Students with ASD tend to be both excluded by peers and to exclude themselves from social interactions, creating further isolation.⁵ Furthermore, their behavior is often viewed as "odd" by their peers, making them easy targets for bullies.⁶ They may be less likely to report incidents of bullying to school staff because their social cognition problems can lead them to assume that others are already aware of what has happened or because they simply do not understand that they are actually being bullied (particularly with more subtle forms of bullying).⁷

While the anti-bullying law carves out a mandate to address bullying with students with ASD, it also requires IEP

teams to consider the issue of bullying for students whose disabilities make them vulnerable to bullying. Research has shown that students diagnosed with learning disabilities (LD) and/or attention-deficit/hyperactivity disorder (ADHD) are more likely to either be the aggressor or the victim of bullying than typically developing peers. "Characteristics of LD that include difficulties with language, attention, information processing, and problems with interpreting social information may be interfering with the development of well-adjusted social relationships with peers."⁸

Therefore, rather than focusing on the diagnosis itself, IEP teams should consider the individual student and identify whether the student displays deficits or weaknesses that make him or her vulnerable to either being a victim or aggressor of bullying. If the team, upon review of evaluation reports, teacher and parent reports and other available information, makes the determination that the student is vulnerable to bullying, the next question is how to address that through the IEP.⁹

The Massachusetts Department of Elementary and Secondary Education (DESE) has provided guidance to IEP teams about accommodations and services which can be added to a student's IEP to address these vulnerabilities. Examples include: providing additional supports during those unstructured times of day, such as lunch and recess, when incidents of bullying are more likely to occur; designating a "safe" contact person within the school that the student can go to immediately when he or she feels that bullying has occurred; providing counseling; participation in a social skills group; and providing a functional

behavioral assessment and behavior intervention plan.¹⁰

IEP teams should take a "think-outside-the-box" approach to addressing bullying through the IEP and should tailor the accommodations and services so that they are appropriate to the age and circumstances of the particular student. This can be especially important if the student's disabilities make it difficult for him or her to identify bullying in the first place.

It is important for IEP teams and schools as a whole to remember, however, that adding accommodations and services to a student's IEP may not be enough to adequately address the issue of bullying. In a letter dated Oct. 26, 2010, OCR reminded school districts that adhering to a state's anti-bullying law may not sufficiently address anti-harassment and anti-discrimination civil rights statutes. OCR's *Letter to Colleagues* cautions that "some student misconduct that falls under a school's or district's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws."¹¹

For example, Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) prohibit discrimination based on disability. Therefore, if a student with a disability is the victim of bullying, the school district not only needs to address the safety of that student, but needs to investigate whether the problem is more widespread and creating a hostile environment in the school for students with disabilities. This may be uncovered during the course of the investigation into the allegation of bullying for the particular student in question.

If discovered, "a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination."¹²

To ensure compliance with civil rights laws in the context of bullying, school districts should adopt a practice of investigating the conduct in question, not just for the purpose of determining whether bullying has occurred, but also to examine whether a hostile environment is created within the school community. OCR has said that interventions should include, depending upon the nature of the incident, staff training and measures to ensure that further acts do not occur.

One practical way of putting staff and administration, as well as students and parents, on notice of the dual requirements to address bullying and possible related discrimination is to cross reference the school's anti-bullying policy with its anti-discrimination policy in its staff and student handbooks.

School districts may be liable for bullying under civil rights laws. The legal analysis is whether the bullying is sufficiently serious and pervasive to cause a hostile environment, whether the school has actual or constructive notice of the bullying, and whether the school failed to respond appropriately. Courts have looked to whether the school district demonstrated "deliberate indifference" or "bad faith or gross >22

COURT ADVOCACY DAY



Monday, March 19, 11 a.m.
Statehouse Grand Staircase, Boston

FEATURED SPEAKERS:**Hon. Roderick L. Ireland***Chief Justice, Supreme Judicial Court***Hon. Robert A. Mulligan***Chief Justice for Administration and Management***Richard P. Campbell, Esq.***President, Massachusetts Bar Association***Lisa C. Goodheart, Esq.***President, Boston Bar Association*

Following the speaking remarks, attendees will be asked to visit their legislators to lobby for additional court funding.

**Promoting the need for
adequate funding to
sustain the critical needs
of the Massachusetts
Court System.**

Find out more: MassBar.org

ANTI-BULLYING LAW

Continued from page 21

misjudgment.”¹³ Schools will generally not be held liable for the actions of a bullying student, but rather, will be judged based on its response to the bullying.

The Massachusetts anti-bullying law does not create a separate cause of action. While litigation on this issue is in its infancy, there is at least one Superior Court case that dismissed students' claims of negligence and infliction of emotional distress in the context of bullying on the basis of the Massachusetts Tort Claim Act (MTCA).¹⁴

The court noted that “The MTCA provides a waiver of sovereign immunity in limited circumstances. Section 10(j), however, retains sovereign immunity for ‘any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer ...’

The purpose of § 10(j) is to immunize public employees from harm caused by a third person that the public employee failed to prevent.”¹⁵ In dismissing the students' complaint, the court held that “[t]his is precisely the type of failure to prevent harm by a third person for which § 10(j) provides governmental immunity. Accordingly, the MTCA bars the Parsons' claims for negligence, negligent infliction of emotional distress and loss of consortium.”¹⁶

Where clearly a school district is responsible to react quickly and effectively to allegations of bullying, efforts to prevent bullying in the first place should be the ultimate goal. For students with disabilities who are vulnerable to bully-

ing, the focus is on the IEP team and the ability to gather necessary data to make thoughtful decisions about how to provide students with necessary services to address their vulnerabilities.

By addressing the bullying incident in question, as well as the larger issue of whether the bullying is creating a hostile environment for students who are members of a protected class, school districts will be on their way to protecting themselves from potential liability and, most importantly, helping to create an atmosphere of tolerance where bullying does not occur in the first place.

So, with all of this in mind, how did the team respond to the scenario described above:

In the end, this team set up a plan, having first completed a functional behavioral assessment of the student/victim, that involved: daily check-ins with the student; a designated point person that the student/victim could go to at any time of the school day when he felt unsafe and/or needed to check-in with an adult; a change in lunch schedule so that the two students would not be together

during this unstructured time of the day; and consent from the parent for the school district to communicate with the student's private therapist.

While the parents' request to separate the students in their academic classes was denied because the placement of those students had been made by their respective IEP teams, steps were taken to address the allegations of bullying. While far from perfect, the team devised a plan, to be carefully monitored, that both the school district and the family could agree to.

To summarize, the anti-bullying law mandates addressing vulnerability to bullying for students with disabilities. The importance of following school policy and using the team meeting as a forum to think critically about how to address the issue is paramount. Issues of confidentiality and maintaining parent trust through the process are challenges that teams will face. In the end, a district will be judged by its response to allegations of bullying and the efforts that it undertakes to create a safe educational environment for all of its students. ■

**MBA
member
benefit:**

Daily legal headlines

Find the latest legal news at www.MassBar.org

Updated every day, view headlines related to state and federal laws, the legal profession and the MBA at www.MassBar.org.



- 603 MASS. CODE. REGS. 28.04(2)(a)(2) (b) (2011).
- 34 C.F.R. § 300.304(c)(4) (2010).
- Autism Spectrum Disorder*, CTRS. FOR DISEASE CONTROL AND PREVENTION, www.cdc.gov/ncbddd/autism/index.html (last visited Feb. 10, 2012).
- Neil Humphrey & Wendy Symes, *Perceptions of Social Support and Experience of Bullying among Pupils with Autistic Spectrum Disorders in Mainstream Secondary Schools*, 25 EUR. J. OF SPECIAL NEEDS EDUC. 77, (2010).
- Jennifer Wainscott et al. *Relationships With Peers and use of the School Environment and Mainstream Secondary*

School Pupils with Asperger's Syndrome (High Functioning Autism): A Case Control Study. 8 INT'L J. OF PSYCHL. AND PSYCHL. THERAPY, 25, 26 (2008).

6. Humphrey, N. Including Pupils with Autistic Spectrum Disorders in Mainstream Schools. *Support for Learning*. Volume 23, Issue 1, pp. 41-47. (February 2008).

7. Moore, C. (2007). Speaking as a Parent: Thoughts about educational inclusion for autistic children. In R. Cigman (ed.), *Included or excluded? The Challenge of Mainstream for Some SEN Children*, pp 34-41. London: Rutledge.

8. Danielle M. Saia et al., *Bullying Experiences, Anxiety About Bullying, and Special Education Placement*. J. OF THE

AM. ACAD. OF SPECIAL EDUC. PROFS., 38, 39 (2009).

9. The Massachusetts Department of Elementary and Secondary Education has stated that “[s]chool districts are not required to reconvene IEP Team meetings for currently eligible students solely to discuss the law's new requirements for bullying prevention or intervention. However, each time the IEP Team convenes, the Team should consider whether the student has been involved in any bullying incident, and use that information to inform its discussion of the student's needs.” Advisory from Marcia Mittnacht, State Director of Special Education, to Superintendents, Regarding Bullying Prevention and Intervention. (Feb. 11, 2011).

10. *Id.*

11. Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, to Colleague 1 (Oct. 26, 2010).

12. *Id.* at 2-3.

13. Davis v. Monroe Cnty Bd. of Educ., 526 U.S. 629,633 (1999); M.P. v. Indep. Sch. Dist. No. 721, 326 F.3d 975, 982 (8th Cir. 2003).

14. Parsons v. Town of Tewksbury, No. 091595, 2010 WL 1544470, (Mass. Super. Ct., Jan. 19, 2010).

15. *Id.* at *3 (internal citations omitted).

16. *Id.* at *4.

*No ordinary
insurance agency ...*

INSURANCE

*... Designed by
Lawyers for Lawyers*



**Professional
Health
Life
Disability
Personal Auto
Umbrella**

With claims against practitioners on the rise, you need comprehensive coverage to protect your practice.

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

The MBAIA has created a policy to meet your specific practice needs by our no one-size-fits-all pricing. Get a tailored insurance policy with competitive rates, low financing, experienced and knowledgeable staff and a malpractice hotline through the MBA's insurance carrier.

Get the protection you need.

*Contact the
MBA Insurance Agency today.*

www.MassBarInsurance.com



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

E-mail: Insurance@MassBar.org

McDonough nurtures acceptance of rule of law education

Continued from page 5

When McDonough joined the SQU faculty in 2009 as the first Westerner to serve as an adjunct law professor in commercial law, no faculty member had experience in practicing or teaching electronic commerce, and the country's judiciary was concerned that they would be asked to replace Shariah law, derived from the Quran and which tends to be vague in commercial areas, with Western law.

SQU had been an exclusively Shariah law program until 2004, when it began a commercial track reflecting global standards. Upon his arrival, McDonough constructed a course patterned on the Electronic Transactions Law, passed in Oman in 2008, collaborating with Dr. Hussain Said Al Ghafri, of the Oman Information Technology Authority, and utilizing course materials from the U.S. Commerce Department's Commercial Law Development Program. James Filpi, now senior counsel with the Commercial Law Development Program (CLDP) in the Office of the General Counsel of the U.S. Department of Commerce, is a colleague of McDonough's, and formerly worked for Goodwin Procter in its Washington, D.C. office.

"It was a great subject, because commerce knows no borders," McDonough says.

BOOKS ON THE GROUND

McDonough developed an interest in foreign countries early on. Recreational travel was part of his family life, dating from the time he was too young to accompany his older siblings. A childhood injury that sidelined him for a year turned him into an avid reader, and high on his list was anything about travel. In addition to the three years he has so far spent in the Middle East, he has also worked in China and several Eastern European countries, under the auspices of the American Bar Association and the U.S. State Department of Commerce.

He is the former executive director of the Massachusetts Judges Conference, where he initiated its international outreach program. It has involved more than 700 judges and legal professionals in 14 developing countries. He developed and traveled on U.S. State Department programs in Russia six times, primarily regarding IP rights protection, advocacy and training.

As a visiting fellow with the McCormack Graduate School of Policy Studies Center for Democracy and Development, he worked on program development for the 1998 Rule of Law delegation from the Supreme People's Court of the People's Republic of China, organized and participated in the State Department-sponsored Moot Court/Judicial Exchange program in Beijing and Western China, and coordinated judicial education and consultancy projects in six former communist Central European countries.

"I took a much stronger interest in the Middle East after 9-11, as I felt strongly that the U.S. needed a strong civilian presence teaching and consulting on [the rule of law]," he says. "Books on the ground, not just boots on the ground, so I explored opportunities in the [Middle East – North Africa] region."

SOCRATES AND A LAPTOP

A series of ABA studies, begun in Oman in 2004 and funded by the U.S. State Department and USAID, examined possibilities for improving legal education in that country. At the time, students were graduating from law schools with broad theoretical education but little train-



PHOTO COURTESY OF JOSEPH MCDONOUGH

Joseph McDonough in Oman. He has joined Holland & Knight's office in Abu Dhabi.

"I took a much stronger interest in the Middle East after 9-11, as I felt strongly that the U.S. needed a strong civilian presence teaching and consulting on rule of law. Books on the ground, not just boots on the ground, so I explored opportunities in the [Middle East – North Africa] region."

JOSEPH B. MCDONOUGH

ing in how to help clients.

At the behest of the State Department, improving legal education has become a policy objective, and the ABA has responded in Oman and many other countries. "It was a seismic shift to transition from Mosque-based religious law studies to a legal system that could bring Oman into the global marketplace, and its young students to learn new methods of thinking and lawyering," McDonough says.

In 2006-7, California Superior Court Judge Ernest Borunda did an ascertainment and review with local Omani legal academics and drafted recommendations. Concurrently, and completed in 2008, SQU's university chancellor retained a team of consultants from the United States and Canada to review the law program and make recommendations, McDonough reports.

In 2008, the dean and the associate dean of the university told him that his own assessment, which recommended more practical and experiential legal education, dovetailed with the findings of the other two sets of studies. At the time, students were graduating from law schools with broad theoretical education but little training in how to help clients, and post-graduate education "was uneven, to say the least," he says.

The leadership at SQU wanted to adopt the case method and teach by example. This was McDonough's forte. In a 2008 workshop he ran for the law school faculty, he recommended interactive teaching techniques, such as the Socratic and case methods, to encourage critical thinking.

He brought his laptop to class and displayed web pages for Amazon, Travelocity and eBay on the classroom big screen. Students analyzed common e-commerce problems, such as a botched online hotel reservation in which a minor keyed in the data and accidentally double-booked a

hotel room. "It was a consumer case everyone could relate to," he says.

Students got to discuss the problem and to find the right place in the statute to address it. They would come to class with many solutions. McDonough graded on their ability to find all the issues and reason through the answers — the "on the other hand" method, which led one student to tell him he had too many hands.

In 2010, McDonough was given three months to develop a curriculum design for a new law school. The institution had to be accepted by the Ministry of Higher Education, it had to use best practices, and utilize U.S. law schools as models. Sohar University Law School started admitting last year. Its five-year program builds up English and research skills in the first year, followed by four years of an undergraduate law program. "I made a lot of friends. I learned a lot, too," he says. "It was really a two-way street."

RESPECTING DIFFERENCES

Fitchburg District Court Judge Elliott Zide accompanied McDonough to Oman when the latter served as project director for ABA Rule of Law Initiative for the Middle East and North Africa, prior to landing the professorship at SQU. Zide says McDonough has built a network not only of lawyers and judges, but of young people, and built an infrastructure of volunteer organizations, which were able to advocate for particular issues.

"Joe had a tremendous influence on their understanding of the American legal system and how it supports democratic values," Zide says. "Every person I met, including the ambassador and people at the embassy, had very high regard for Joe's ability to accomplish the mission set by the State Department when it funds rule of law initiatives in countries like Oman. People like him and respect him. He's intuitive in knowing how not to overreach. ... He doesn't put people off or challenge their existing ideas, except to challenge them to think in different ways."

"I've worked in other countries, and I did understand that you had to do your homework and understand the differences," McDonough says. "It's about respecting people. If you go in with a Lord Jim attitude, you are destined to fail."

The U.S. approach to the level of details of electronic commerce may be more advanced than Shariah law, but it's not necessarily superior, just different, and the differences aren't as wide as originally presumed. The key to bridging the two cultures is to understand how different cultures value things, he says.

Family comes first, and Islam's holy day is Friday, rather than Sunday. When a Westerner turns down a Sunday appointment in order to attend church, or demurs to spend time with family, "they completely understand, they respect you

for valuing your family and religion, and things can move at a different pace. Being able to understand and be patient about their process is part of that respect," McDonough says.

He developed a network of contacts including some students, NGO workers, teachers, judges and sometimes, taxi drivers. "This is what I would do while working in U.S. political campaigns when I was younger. Some professionals in the field like polls and statistical research. I like people and to hear their stories, and to learn what they believe in and why." Sitting down with friends over tea "has given me more insight than I could ever get reading a book or doing research."

RULE OF LAW

"Oman is a great opportunity because it's small. It has a very homogeneous society," says Zide. "It's very nationalistic. The primary value there is to be an Omani, then to be a Muslim. And to be a judge in Oman, you have to be both."

Omani judges take the bench at a relatively young age, holding the equivalent of a bachelor of law degree. (For advanced degrees, they must leave the country). "Up until 40 years ago, they had no formal [legal] education at all in anything commercial," McDonough says, "and then they found themselves on the bench, presented with the need to understand commerce and big contract work. That was not part of their educational experience, but most are very sincere and bright and they desire to learn."

The sultan of Oman, commercial leaders and investors had long called for judges to adopt the new globalized standards. Judges and older attorneys chose their profession based on their interest in Shariah, not specific categories of law, and judges sometimes didn't follow the reform statutes. Instead, they would rule in favor of the party they felt was more moral. Some expressed concern that they would have to abandon Shariah law and use Western law.

Religious and political leaders pushed back, stating that the standards had been vetted by Shariah experts and it was not the proper function of a judge to ignore statutes in favor of tradition, McDonough says. "To me, this went to the very heart of the rule of law."

To help the transition, McDonough and his team developed mini-bench books and checklists, and brought U.S. judges such as Zide and Associate Justice Sydney Hanlon, who now serves on the Massachusetts Appeals Court, to advise on their implementation.

Hanlon recalls a training visit in December 2010. "The issue of judge training is the same across cultural lines," she says. "What do you do if you're teaching people something they don't want to hear? Training is different if it's an update on a law everybody wants, or if you are introducing people to a whole new way of doing things."

While McDonough has a respect for cultural differences, Zide says, he doesn't flinch from asking direct questions, such as: When are we going to see more women judges in Oman? "It took Joe all three years I was there, just to be able to push that very direct question," says Zide.

At first, no one wanted to respond. It was a breakthrough when someone said "soon." Zide comments, "I've been around long enough to know that 'soon' can be an hour, next year or whenever Allah deems appropriate. Then you can get into a discussion of why there are not more women judges." He says later, "Joe's smart enough to know to engage in this in a way that doesn't offend." ■



**“IT HELPS ME
WIN CASES ...
AND CLIENTS.”**

TOM DWYER
FOUNDER, DWYER/PARTNERS LLP
BOSTON

WestlawNext®

For law firms, quickly finding the best information for the clients' issues is a major key to success. According to Tom Dwyer, "When you're out to win cases – and clients – you've got to have all the firepower you possibly can. And it's not just smart lawyers. It's smart, efficient technology. That's why I use WestlawNext®. I can deliver better, faster legal services – and at a lower cost to clients. There's nothing like it."

Hear what Tom and others are saying at Customers.WestlawNext.com or call 1-800-328-0109 for a demonstration. Learn more about Dwyer/Partners at dwyerpartnersllp.com.

