

HOUSE OF DELEGATES

Delegates' first 2012-13 meeting. **>8**

NOTICE TO CRIMINAL BAR

Wrongdoing at DPH drug lab **>19**

COMING SOON:

Look for details next month

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MASSACHUSETTS LAWYERS JOURNAL

WWW.MASSBAR.ORG VOLUME 20 | NUMBER 2 | OCTOBER 2012

Bench-Bar Symposium to feature Chief Justice Ireland's Annual Address to the Legal Community

BY TRICIA M. OLIVER



The Massachusetts Bar Association's Annual Bench-Bar Symposium will feature Supreme Judicial Court Chief Justice Roderick L. Ireland's Annual Address to the Legal

Community. The event will take place on Wednesday, Oct. 17, beginning at 4 p.m. at the John Adams Courthouse.

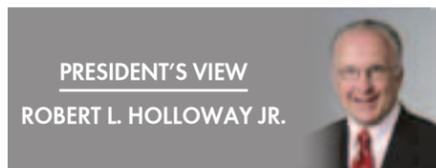
"We are delighted to once again provide the stage for Chief Justice Ireland's much anticipated annual remarks," said MBA President Robert L. Holloway Jr., who will provide welcome remarks and introduce Ireland at the annual event. Ireland's 2012 address will be his second, following his inaugural address delivered in fall 2011. Ireland was sworn-in as

chief justice in December 2010.

Trial Court Administrator Lewis H. "Harry" Spence will serve as another featured speaker at the Oct. 17 event. This will be Spence's first public address since historic court reform led to his hiring in April 2012 as the first non-judicial professional to the Trial Court Department's business operations. Spence's most immediate focus has been on a comprehensive strategic planning process for the Trial Court launched earlier this year,

work toward updating the Trial Court's personnel policies and practices and the development of a new capital plan for court buildings, in coordination with the state's Division of Capital Asset Management.

The 2011 court reform legislation split the management of the Trial Courts between judicial and business operations, "a move that had been championed by the Massachusetts Bar Association for decades," said Holloway. **>12**



New MBA year and president Holloway celebrated at opening reception

BY JENNIFER ROSINSKI

A night of great music and warm revelry welcomed Massachusetts Bar Association President Robert L. Holloway Jr. as more than 100 colleagues

and friends gathered at the Regattabar at the Charles Hotel on Sept. 13 in Cambridge to celebrate the opening of the 2012-13 association year.

Following a jazz and blues infused set from a band of musicians, includ-

ing Grammy-nominated blues musician Duke Robillard. President-elect Douglas K. Sheff offered a retrospective introduction of the MBA's newest president, eliciting hearty laughter from the crowd.

Including photos from his time as a rugby player at Amherst College, Sheff regaled the group with vignettes from Holloway's life as a sportsman, musician, family man and lawyer. Family members, including Holloway's wife, Peg, watched from the sidelines. Clearly entertained by the photo of himself and his grandfather projected on the big screen, Holloway's two-year-old grandson Thomas grinned and clapped often.

"When Holmes and Brandeis started the MBA 101 years ago, they wanted to create a diverse membership," Sheff said. "So it makes sense that the president of our great organization should be well-rounded, versatile and able to lead such a diverse membership."

Sheff proclaimed Holloway **>7**



Lessons learned from the band

As I write this column, I am less than three weeks into my term as your president. Yet your officers, section councils and others have hit the ground running with membership initiatives, educational offerings and other efforts commencing in full force.

Those who attended the MBA President's Reception at the Regattabar on Sept. 13 were beneficiaries of a good time with good music. My friend, the superb pianist and keyboard player, Bruce Bears, assembled an all-star line-up that included Chris Rivelli on drums, Brad Hallen on bass, Scott Aruda on trumpet, Mark Early on saxophone, and Boston's queen and king of the blues, Toni Lynn Washington and Duke Robillard. Although some of these musicians have worked with each other from time to time, the band, as assembled, never had played together before. Aside from needing considerable musical chops to play under those circumstances, the principal skills needed are the ability to listen and to play in a complementary fashion.

The musicianship on display on Sept. 13 was quintessential ensemble playing. In short, it was musical teamwork of the highest order. I hope those present appreciated the talent and teamwork required to do what was on display at the Regattabar. Soloing by the musicians was subservient to the group. The musicians listened to and played off one another. The whole, I suggest, was greater than the sum of the parts.

We, as lawyers and as an association, can learn from the example **>2**

Let's talk: Family Law Conference at Cranwell

A gathering to share ideas and experiences

BY CHRISTINA P. O'NEILL

Talking issues through has always been an elemental part of the practice of family and probate law in Massachusetts. At the end of this month, family law attorneys and judges from across the state get an annual opportunity for such discussions, outside of the daily pressures of the courtroom. The 22nd Annual Family Law Conference will be held at Cranwell Resort Spa

and Golf Club in Lenox, beginning at 4 p.m. on Friday, Oct. 26, and ending at 4 p.m. on Saturday, Oct. 27.

Family law practitioners and judges will gather together to share insight on substantive family law issues that they deal with daily. They will also engage in the conference's hallmark collegial social forum to acknowledge the importance of the societal role of family law practitioners and judges.

"Laypeople ask family law **>8**



PRESIDENT'S VIEW

Continued from page 1

set forth by those musicians. Working together toward common goals and objectives requires careful communication and keen listening skills. Many of us tend to listen more in terms of our own positions than in truly hearing the positions of others. Like a band with players who do not listen to each other and ultimately do not play well together, a group of lawyers who do not listen to each other will not work well together. In those circumstances the whole, indeed, will be less than the sum of the parts.

There are many musicians with terrific skills who play poorly in a group setting primarily because they do not listen and are focused too much on their own performance. The same

problem can stifle an association like the MBA. We have many talented lawyers volunteering their valuable time for the good of the group. We need to make sure we all listen to and hear each other to maximize the substantial value of this wealth of altruism.

I therefore urge all of us to adopt a chorus from the music book of the band from Sept. 13: let's listen carefully to each other, hear what each of us has to say and only then, respond accordingly. By doing that, as a team, we will address effectively the common challenges of our profession like the superb musical ensemble that performed on Sept. 13. ■

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VIEW POINT

Life lessons learned from the courtroom

BY JAMES ROSSEEL

On Friday, Aug. 17, a mock pretrial “motion to suppress” evidentiary hearing was conducted in Courtroom 806 of the Suffolk County Courthouse before Judge Annette Forde of the Boston Municipal Court Department. The prosecution team consisted of Boston Judicial Youth Corps (JYC) interns, and the defense team was comprised of Worcester JYC interns. Forde presided over an engaging, well-prepared and hard fought exchange between this year’s Boston and Worcester JYC interns.

Paul J. Liacos, former chief justice of the Supreme Judicial Court, originally conceived the idea of establishing a program for urban school students in Massachusetts to introduce these students, and others, to the workings of our judicial branch of government. Liacos recruited then Appeals Court Justice Roderick L. Ireland to assist in creating this new program, and Ireland, in concert with

Joan Kenney and others from the SJC’s Public Information Office, answered the call. The model they established in 1991 has been followed ever since in Boston, and has been duplicated for the last six years in Worcester.

The Worcester JYC program began in 2007 and to date has conducted internships for nearly 100 high school students, most of whom have continued their education at the college and university level. These interns have participated in a 12- to 14-week program and have had the opportunity to learn about the court system and the importance of the rule of law in our free society. The annual four-month program has consisted of two educational components. Beginning in mid-May and continuing through late June, the participating high school students have attended weekly educational sessions that introduce them to the court system in Worcester. Judges, court staff and attorneys volunteer as guest lecturers, covering such topics as juvenile justice, landlord-tenant issues, family

law, mediation and the appellate process. By the end of this phase of the program students have a more informed awareness of the five trial courts and are prepared to proceed to the second phase of the program.

The second half of the program extends from early July through August and consists of paid internships in various court offices in the new state courthouse in Worcester. The interns are welcomed as “regular employees” in clerks’ offices and probation departments in the Worcester courthouse, and are soon fielding questions from the public at the front counter, or running folders to and from the trial court sessions, or simply helping the office staff to catch up on the backlog of filing and other clerical duties. For many of the interns, this is their first experience with gainful employment, and one that they will not soon forget!

The student-interns also attend an educational session on each Thursday or Friday during the summer ➤5



Worcester’s 2012 Judicial Youth Corps.

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LEGAL NEWS

Hillman honored at public ceremony



Hon. Timothy S. Hillman, United States District Court for the District of Massachusetts.

On Nov. 30, 2011, President Barack H. Obama nominated Timothy S. Hillman to the United States District Court for the District of Massachusetts as the successor to Judge Nancy Gertner upon her retirement. Hillman was confirmed by the Senate on June 4, 2012 and received his commission on

June 6, 2012. The Oath of Office was administered initially by Chief Judge Mark L. Wolf on June 7, 2012.

A public ceremony in honor of Hillman, during which the Oath of Office was again administered, was held on Thursday, Sept. 6 at the Hanover Theatre, 554 Main St., in Worcester. Senator Scott Brown and Congressman James McGovern participated in the ceremony.

Since February 2006, Hillman has served as a U.S. Magistrate Judge for the District of Massachusetts. He was instrumental in establishing the court's RESTART program for high risk offenders, with a goal of reducing recidivism and reintegrating ex-offenders into the community with an emphasis on employment skills. Hillman has also served as a justice for the Massachusetts Superior Court and as presiding justice in both the Worcester District Court and the Gardner District Court.

Healy appointed to represent Massachusetts on the Uniform Law Commission

Martin W. Healy, the Massachusetts Bar Association's chief operating officer and chief legal counsel, has been appointed by Gov. Deval L. Patrick to represent Massachusetts on



Martin W. Healy

the Uniform Law Commission, for a five-year term. Healy is one of three commissioners who represent the commonwealth.

The ULC is a 120-year-old national law group with headquarters in Washington, D.C. comprised of more than 300 with the goal of drafting and promoting uniform laws designed to solve problems common in all states.

Patrick in his appointment stated

that Healy's "experience and sound judgment will contribute substantially to the board."

An attorney, Healy also serves on the governing board for the Committee for Public Counsel Services, is a member of the Board of Bar Examiners and is a former hearing committee member of the Board of Bar Overseers.

Healy is the MBA's chief legal advisor and liaison to the legislative, executive and judicial branches. He is responsible for legal advice in corporate matters and legal support in issues of public policy concerning the practice of law and administration of justice. Healy serves as counsel to the MBA's leadership team and its House of Delegates and Executive Management Board. He works with the MBA's sections and committees in developing policy, analyzing legislation, drafting bills and testifying before court, legislative and regulatory bodies. Healy also sits on the Editorial Board of *Massachusetts Lawyers Weekly* and the SJC Judiciary-Media Committee.

Prior to his arrival at the MBA in 1989, Healy was a law clerk in the Suffolk County District Attorney's Office and in the Law Office of William F. Coyne in Boston. He also served as a senior legislative aide in the Massachusetts Senate.

Healy received his law degree, cum laude, from Suffolk University Law School and his bachelor's degree from Suffolk University.

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LEGAL NEWS

Commonwealth seeks BMC clerk-magistrate for West Roxbury

The Commonwealth of Massachusetts is seeking a person to serve as clerk-magistrate of the Boston Municipal Court's West Roxbury Division with a vacancy created by the Hon. Richard L. Walsh. The application deadline is Oct. 25, 2012. Visit www.mass.gov/governor/administration/jnc/vacancies/vacancies.html for more information.

Superior Court Business Litigation Session issues new procedural orders

The Business Litigation Session of the Superior Court has issued two new procedural orders.

The first relates to partial dispositive motions, to ensure each motion and its disposition will substantially advance the litigation. The second provides for telephone participation by attorneys in certain hearings and conferences upon request.

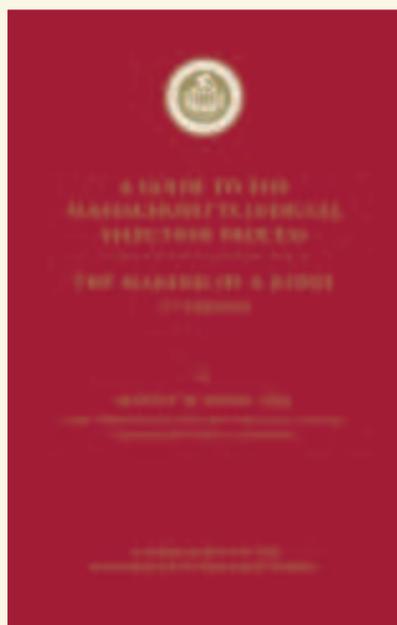
The Business Litigation Session accepts cases upon initiation of any party. Administrative Directive 09-1 describes the procedure and selection criteria for admission. Both orders become effective Tuesday, Sept. 4, 2012.

Massachusetts Trial Court Law Library builds its ebooks collection

Trial Court rules and other documents (such as model jury instructions, *2012 Massachusetts Guide to Evidence*, (etc.) are now accessible from practitioners' mobile media devices or computers.

These online resources can be found at www.lawlib.state.ma.us/source/mass/rules/ebooks.html.

Review the MBA's Guide to the Massachusetts Judicial Selection Process



The path to judicial selection can be arduous. Candidates are vetted through both public and private bodies including: the Judicial Nomination Commission, the Joint Bar Committee on Judicial Appointments and the Governor's Council.

MBA's *A Guide to the Massachusetts Judicial Selection Process* gives a step-by-step account of how the process works. This second edition covers the most recent Executive Order filed by Gov. Deval L. Patrick, which established the current Judicial Nomination Commission.

Visit www.massbar.org/media/1168972/massjudicialselectionprocess.pdf for an online version of the guide.



LIFE LESSONS LEARNED FROM THE COURTROOM

Continued from page 3

phase of the program, and enjoy presentations by the Jury Commissioner's Office, the Public Defenders' Office and the District Attorney's Office. Finally, the interns prepare and present a mock trial, usually presided over by a presiding trial court justice.

The Massachusetts Bar Foundation has been the principal source of funding for the Worcester JYC program, and this has allowed the Worcester program to establish itself as a visible and viable entity in the Worcester judicial community. Efforts are now under way to establish sources of local financial support for the Worcester program for next year and for

the years to come. The Boston model has served Worcester well these first six years of the Worcester JYC program. The initiatives that Worcester will soon implement to ensure a self-sustaining and effective local program may serve as a model to other local Massachusetts communities to do likewise. In the process, the program continues to respond to Liacos' challenge, as Ireland did over 20 years ago. ■

.....
James Rosseel is an educator in the Worcester area who serves as the teacher coordinator for the Massachusetts Bar Association-administered summer Judicial Youth Corps in Worcester.

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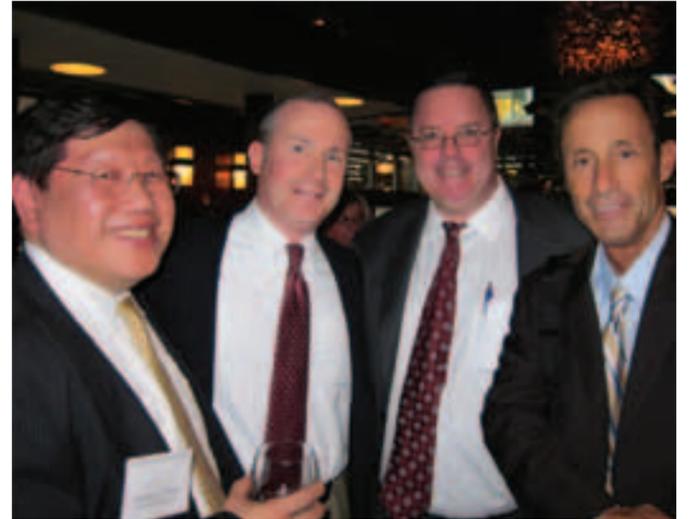
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BAR NEWS

MBA kicks off 2012-13 association year

The Massachusetts Bar Association hosted its first member reception of the 2012-13 association year on Thursday, Sept. 20 at the Back Deck, 2 West St., Boston.

The networking event offered members of the legal community an opportunity to relax and mingle with fellow MBA members, while enjoying complimentary beer/wine and hors d'oeuvres. ■



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BAR NEWS

NEW MBA YEAR AND PRESIDENT HOLLOWAY CELEBRATED

Continued from page 1

a “tough guy,” explaining that while playing rugby in college – when he “had more hair,” Holloway was knocked out cold but insisted on finishing the game when he regained consciousness.

Holloway said he was humbled by Sheff’s remarks. “As rare as it may be, I’m rendered virtually speechless,” he said.

Always the self-effacing jokester, Holloway shared with the group that he learned something new about himself from reading a *Lawyers Journal* article with him as the focus. “I discovered I’m short,” Holloway dead-panned. “When did that happen?”

The MBA’s membership and education programming will be the central focus of Holloway’s year, which he hopes will be a year of coming together. “We’re all in this profession together. We’re all in this society together,” Holloway said. “That’s what we’re committed to,” he said of the officers and himself, “working together to address the issues of our profession.” ■



(L to R) MBA Treasurer Marsha V. Kazarosian, MBA Vice President Robert W. Harnais, MBA COO and Chief Legal Counsel Martin W. Healy, MBA Secretary Martha Rush O’Mara, MBA President Robert L. Holloway Jr., MBA President-elect Douglas K. Sheff and MBA Vice President Christopher P. Sullivan at the Sept. 13 President’s Reception.



Holloway is joined by family members.



MBA President-elect Douglas K. Sheff introduces Holloway.



Entertainment was provided by a musical ensemble comprised of some of Holloway’s former bandmates, including the Grammy-nominated blues musician Duke Robillard.



Holloway and colleagues from his Peabody-based law firm MacLean, Holloway, Doherty, Ardoff & Morse PC.

PHOTOS BY JEFF THIEBAULT

BAR NEWS

Holloway convenes first HOD meeting of association year

BY TRICIA M. OLIVER

MBA President Robert L. Holloway Jr. called to order the first House of Delegates meeting for the 2012-13 association year at the MBA offices in Boston.

As his first report of the year, Holloway shared with the group his priorities — membership, education and media/public relations. He also mentioned that he'd be focusing on outreach to Massachusetts' affiliated county bars and meeting with various civic groups across the state.

Holloway, fresh off of a meeting with SJC Chief Justice Roderick L. Ireland and Trial Court Chief Justice Robert A. Mulligan, expressed commitment to further enhancing bench-bar communications. To that end, he mentioned the first in a series of informal receptions for the bench and bar to be held in Essex County in the coming months.

"We hope to move that into other counties," Holloway said.

He has also tapped attorney Christa Arcos, along with judges Stephen E. Neel (ret.) and Peter M. Lauriat to begin discussing the issues arising from the lack of law clerks in Superior Court.

Holloway encouraged all delegates to follow his lead and serve as "ambassadors for our profession." He also set the expectation for each delegate to recruit one new member over the next month.

Holloway was followed by MBA

President-elect Douglas K. Sheff, who gave an overview of the three key committees formed to focus on the association's priorities. The Membership Committee is chaired by MBA Vice President Christopher P. Sullivan, the Education Committee is being co-chaired by MBA Treasurer Marsha V. Kazarosian and MBA Past President David W. White Jr., while the Media Committee is being led by Sheff.

MBA Vice President Robert W. Harnais followed with brief remarks concentrating on an initiative that ties into MBA's continued efforts to address the socioeconomic issues plaguing the state's so-called "Gateway Communities." Harnais explained that meetings with members of the federal bench and Chief of the U.S. Probation Department for Massachusetts Christopher Maloney have led to the MBA's involvement in a re-entry program for federal inmates.

Harnais handed off the microphone to Kazarosian who spoke more about the recharged MBA Education Committee, sharing that the group will be working with volunteer members and staff to present CLE offerings that are "current, more dynamic and cost-effective." As treasurer, Kazarosian reported that numbers for FY12 look to be slightly better than budget and membership renewals for this association year (FY13) are on budget.

Secretary Martha Rush O'Mara



MBA President Robert L. Holloway Jr.

HOD PHOTOS BY TRICIA M. OLIVER

fielded a few edits to the minutes of the last delegates meeting in May, before the delegation approved them as corrected.

Officer reports were followed by an update from Chief Legal Counsel and Chief Operating Officer Martin W. Healy. Healy touched upon the crisis with the DPH drug lab and its far-reaching impact on the criminal justice system, describing it as "unprecedented" both in Massachusetts and nationally. Roughly 60,000 samples have been reported to have handled by rogue chemist in the Jamaica Plain-based lab. Healy explained that such discourse is believed to have af-

ected more than 30,000 cases, some potentially ending in wrongful incarceration or deportation.

"The MBA has been collaborating with key government offices on this issue," said Healy, who ended his remarks on this topic by further characterizing the situation as a "colossal, political nightmare."

Healy described a busy summer for the MBA, including the work of the Joint Bar Committee on Judicial Appointments. The group, comprised of representatives from both the MBA and the Boston Bar Association, reviewed the credentials of 13 judicial candidates over >10

FAMILY LAW CONFERENCE

Continued from page 1

attorneys why they chose this work, because it is so wrought with emotion," says co-chair Michael I. Flores of Michael I. Flores LLC in Orleans. "You are always dealing with the disintegration of families. Most every family law practitioner I've come across has a passion for the work and a sense of empathy. They want to help people in times of duress and strife."

Last year's conference in Chatham had an unprecedented number of attendees, driven by the state's new alimony reform law, which went into effect this past March. In response to attendee feedback, the upcoming conference will have fewer programs but their coverage will be more in-depth and will address various topics in a pragmatic rather than academic way, giving registrants the ability to immediately put their knowledge to use in court, Flores says.

Friday afternoon's session will address changes in Massachusetts child support guidelines since the revisions of 2009, in two components — one, an update from the Child Support Guidelines Task Force and the feedback they have received to date. The second component will address recent developments in Massachusetts child support case law.

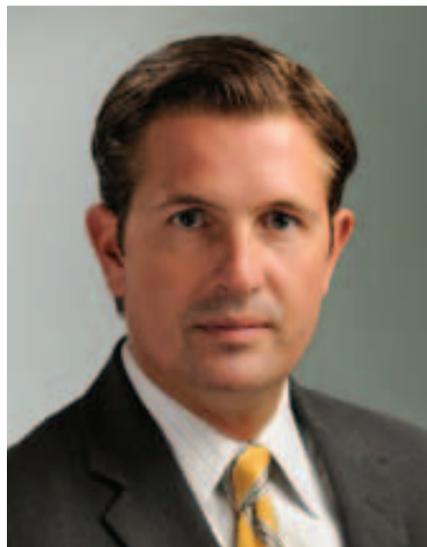
"We need to better define child care costs," says attorney Marc

Fitzgerald, partner in the Boston law firm Casner & Edwards, LLP and conference co-chair. He says the current calculation favors the non-custodial parent; in cases of shared physical custody relationship, a key question is whether the calculation is fair to the higher-earning parent. Currently, judges have discretion on this matter.

Also up for discussion is increasing the income cap from its current \$250,000 — and the tax implications of any adjustment — as well as the cost of health insurance. Federal health care law now in place has bumped the child emancipation age to 26, from the previous 23 years.

Saturday morning's keynote address by Probate and Family Court Chief Justice Paula M. Carey focuses on the larger issues of probate and family court law. Justice Carey addresses where family court is going, how to meet demands of the public seeking relief in the courts; the societal problems that continue to drive parties to the courts; the economy, which affects whether people can afford legal representation; and how probate and family court administers justice.

The Saturday session that follows Chief Justice Carey's keynote address will highlight the state's Alimony Reform Act of 2011. This program will assess the act's inter-



MARC FITZGERALD

pretation at the trial court level, and will offer strategies on employing the new statute on the part of clients.

A session on child custody guardians ad litem will include discussion on preparing a client for a guardian ad litem investigation; what a guardian ad litem is looking for from the parties; how to cross-examine a guardian ad litem on the stand, and how to limit the guardian ad litem's report with respect with motions to strike. The panel, run by a retired judge, will feature experienced family law practitioners as well as a highly-respected guardian ad litem, Flores notes.



MICHAEL FLORES

The final session will cover child custody parenting plans, and their evolution over the years as the result of changing societal norms regarding parenting. A wealth of child psychology research data has produced empirical data to rely on in crafting plans, Flores says. Each childhood age has different psychological and emotional needs that are best addressed in parenting schedules, and those are best when designed by the parents, rather than judges. "Every family is different; there is no default schedule that works for everyone," Flores says. "The more you do this type of work, the more you see

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BAR NEWS

HOLLOWAY CONVENES FIRST HOD MEETING

Continued from page 8

the summer season.

Following reports, the first order of business for the HOD to consider was related to House Bill No. 25 that amends certain articles of the Uniform Commercial Code. Francis C. Morrissey, a former Business Law chair for the MBA, presented to the group, explaining that the bill would further harmonize how the code is adhered to and provide necessary updates to the UCC. Delegates agreed and voted in favor of supporting the bill in principle.

MBA Juvenile and Child Welfare Chair Michael F. Kilkelly urged the delegation to support proposed legislation that would alter the current Massachusetts law that determines competency equally in adults and juveniles. Kilkelly and the Juvenile Section propose that a separate set of criteria should be applied to children under 17. Following HOD's approving vote, Kilkelly and his council will discuss the legislation with the MBA's other sections for further input.

Next up, Isabel Raskin, on behalf of the Access to Justice Section Council, presented a resolution to encourage pro bono and financial support of the legal aid system. Raskin cited the reality of less than two hundred legal aid attorneys to serve the commonwealth's 750,000 indigent citizens. Delegates voted to support such a measure.

Finally, a past chair of the Judicial Administration Section Kathy Jo Cook and Northeastern University



Chief Legal Counsel and Chief Operating Officer Martin W. Healy.

professor Janet Randall provided the delegation with an update on the MBA's nearly five-year project on plain English jury Instructions. Cook and Randall described the committee's recent expansion to include citizens and linguistic experts, like Randall. Regarding next steps, the committee will continue to work with the judiciary on getting access to jurors for input and it will seek funding for its pilot project phase.

The House of Delegates will convene again on Thursday, Nov. 15 at 4 p.m. at the MBA's Boston offices. ■



Francis C. Morrissey addresses the delegates on the topic of the Uniform Commercial Code.



Michael F. Kilkelly speaks about the laws to determine competency in juvenile cases.

PHOTOS BY TRICIA OLIVER

MBA CLE AT-A-GLANCE

OCTOBER CONTINUING LEGAL EDUCATION PROGRAMS BY PRACTICE AREA

BUSINESS LAW

Intellectual Property Basics for the Non-Specialist

Tuesday, Oct. 9, 4–7 p.m.
MBA, 20 West St., Boston

Faculty:

Stephen Y. Chow, Esq., program chair
Burns & Levinson LLP, Boston
Stacey C. Friends, Esq.
Ruberto, Israel & Weiner PC, Boston
Stanley B. Kay, Esq.
Law Office of Stanley B. Kay, Auburndale
Anne Marie Longobucco, Esq.
Birnbaum & Godkin LLP, Boston



Sponsoring section: Business Law

CIVIL LITIGATION

Considering, Preparing and Conducting Mediation and Arbitration Hearings

Tuesday, Oct. 2, 4–7 p.m.
Western New England University School of Law
1215 Wilbraham Road, Springfield

Faculty:

Robert H. Astor, Esq., program chair
Robert H. Astor Attorney at Law, Springfield
John P. DiBartolo, Esq.
Law Office of John P. DiBartolo, Easthampton
L. Jeffrey Meehan, Esq.
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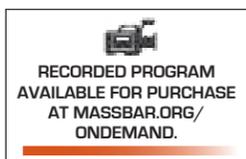
22nd Annual Family Law Conference

Friday, Oct. 26–Saturday, Oct. 27
Cranwell Resort, Spa and Golf Club, Lenox

Conference co-chairs:

Marc E. Fitzgerald, Esq.
Casner & Edwards LLP, Boston
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Sponsoring section: Family Law



MARC E. FITZGERALD

MICHAEL I. FLORES

FACULTY SPOTLIGHT

STEPHEN Y. CHOW, ESQ.

Burns & Levinson LLP, Boston

Program chair: "Intellectual Property Basics for the Non-specialist"

Chow is a partner at Burns & Levinson LLP in Boston and practices in the development, assertion, licensing and litigation of intellectual property portfolios for technology-based enterprises. He graduated from Harvard University with an A.B. in Physics and Philosophy *cum laude* and an S.M. in Applied Physics and from Columbia University, with a J.D. as a Stone Scholar and is admitted to practice before the U.S. Patent and Trademark Office.

Chow is active in developing legislation involving the convergence of commercial and intellectual property law, notably as a member of the National Conference of Commissioners on Uniform State Laws, drafting committees on the Uniform Computer Information Transactions Act and the Uniform Electronic Transactions Act and as a member of the American Law Institute. He wrote the legal treatise, "E-Commerce and Communications," (Lexis-Nexis) and has revised and updated the treatises, "International Computer Law" and "Law of the Internet." Chow taught for 16 years at Suffolk Law School, including the courses "Litigating Technology Disputes" and "Counseling Technology-Leading Emerging Enterprises." He also was a member of the U.S. delegation to the United Nations Commission on International Trade Law (UNCITRAL) Working Group VI (Secured Transactions).



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Thursday, Oct. 4
5:30–7:30 p.m.
Boston College Law School, Newton

MODERATOR



Hon. Mark D. Mason
Associate Justice, Springfield District Court
Chair, Trial Court's Standing Committee
On Dispute Resolution

PRESENTERS and TOPICS

Hon. Dennis J. Curran

Associate Justice, Superior Court
Chair, Superior Court ADR Committee

Why I Presumptively Favor Mediation for Most Civil Cases and How I Can Help You Get There

Hon. Maynard M. Kirpalani

Associate Justice, Superior Court

My Experiences in Practice with Mediation – When it is Useful, When Not

Brian C. Dever, Esq.

Keches Law Group PC, Boston

As an Active Plaintiffs' Attorney, Why I Decide to Use Mediation

Adam A. Larson, Esq.

Campbell, Campbell, Edwards & Conroy PC, Boston

When, as a Defendants' Attorney, I Find Mediation a Good Choice for My Client

John P. Donovan

Professional Liability Claims Specialist, CNA Insurance, Springfield

An Insurance Claim Representative's View on When Mediation is Best Used for a Pending Civil Case

QUESTIONS and OPEN DISCUSSION

EXPERTS & RESOURCES

BAR NEWS

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Member Spotlight

MBA APPOINTS NEW POLICY AND OPERATIONS DIRECTOR



LEE ANN CONSTANTINE

Lee Ann Constantine has been named the MBA's new Policy and Operations Director. Previously serving as the MBA's Legislative Activities Manager, Constantine has served the MBA in various roles since 1998. In her new position, Constantine takes on an expanded role as a liaison to the MBA's key contacts in the legislative, judicial and executive branches of government. She will continue to play an important administrative role as she works with the MBA's volunteer leadership on shaping the association's policies and positions as it anticipates and responds to critical issues of high relevance and impact on the Massachusetts legal community.

As Constantine joins the MBA's senior management team, she will continue to report to Chief Legal Counsel and Chief Operating Officer Martin W. Healy.

“Lee's institutional knowledge and professional acumen are beneficial additions to the association's senior staff,” said Healy. “Since her start with the MBA nearly 15 years ago, she has proven to be an increasingly valuable asset to the MBA's legislative activities department and the association as a whole.”

Constantine began her newly expanded role on Sept. 1.

MBA MEMBERS RECEIVE 'TOP WOMEN OF LAW' AWARD

Massachusetts Lawyers Weekly is set to honor 50 “Top Women of Law” on Oct. 12 at an event at the Hynes Convention Center in Boston, including 18 Massachusetts Bar Association members. The award is presented to women who have made great professional strides and demonstrated outstanding accomplishments in private practice, the corporate arena and social advocacy.

“Top Women of Law” MBA honorees include:

- **Lisa G. Arrowood**, Arrowood Peters LLP
- **Jacquelynne J. Bowman**, Greater Boston Legal Services
- **Rebecca M. Cazabon**, Foley Hoag LLP
- **Nancy M. Cremins**, Gesmer Updegrave LLP
- **Jennifer K. Dieringer**, Community Legal Aid
- **Erin K. Higgins**, Conn, Kavanaugh, Rosenthal, Peisch & Ford LLP
- **Marianne C. LeBlanc**, Sugarman & Sugarman PC
- **Susan H. Levin**, Rosenberg, Freedman & Goldstein LLP
- **Katherine J. Michon**, Shilepsky, Hartley, Robb, Casey, Michon LLP
- **Maureen Mulligan**, Ruberto, Israel & Weiner PC
- **Christine M. Netski**, Sugarman, Rogers, Barshak & Cohen PC
- **Janice C. Nigro**, Nigro, Pettepit & Lucas LLP
- **Holly M. Polglase**, Hermes, Netburn, O'Connor & Spearing PC
- **Rebecca Pontikes**, Pontikes Law Firm
- **Amy B. Royal**, Royal LLP
- **Carol A. Starkey**, Conn, Kavanaugh, Rosenthal, Peisch & Ford LLP
- **Emily S. Starr**, Starr Vander Linden LLP
- **Doreen M. Zankowski**, Saul Ewing LLP ■

BENCH-BAR SYMPOSIUM

Continued from page 1

MBA Past President and former member of the Court Management Advisory Board Leo V. Boyle will also provide remarks at the Oct. 17 symposium. Boyle was instrumental in launching MBA's advocacy on court reform when he served as president in 1990-91.

The event is free to attend for members of the Massachusetts judiciary and bar; however, those interested in attending should register as space is limited — visit www.massbar.org/benchbar.

The speaking program will be followed by a networking reception to begin at 4:45 p.m. ■



LEO BOYLE



HARRY SPENCE

CONTINUED ON PAGE 13

Calendar of Events

TUESDAY, OCT. 2

Considering, Preparing and Conducting Mediation and Arbitration Hearings
4-7 p.m.

Western New England University School of Law, 1215 Wilbraham Road, Springfield

WEDNESDAY, OCT. 3

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

THURSDAY, OCT. 4

Making Your Job Easier with ADR
5:30-7:30 p.m.
Boston College Law School, 885 Centre St., Newton

MBF Grantee Reception
4:30-6:30 p.m.
Bulkley, Richardson and Gelinis LLP, 1500 Main St., Springfield

TUESDAY, OCT. 9

Intellectual Property Basics for the Non-Specialist
4-7 p.m.
MBA, 20 West St., Boston

TUESDAY, OCT. 16

Western Massachusetts Dial-A-Lawyer Program
3:30-7:30 p.m.
Statewide dial-in #: (413) 782-1659

WEDNESDAY, OCT. 17

ANNUAL BENCH-BAR SYMPOSIUM AND RECEPTION
4 P.M.
JOHN ADAMS COURTHOUSE, ONE PEMBERTON SQUARE, BOSTON

FRIDAY, OCT. 19

Juvenile & Child Welfare Legal Chat Series
1-2 p.m.
NOTE: There is no on-site attendance available for Legal Chats.

MONDAY, OCT. 22

Mock Trial Teacher Orientations
6-7 p.m.
MBA, 20 West St., Boston

WEDNESDAY, OCT. 24

The New Massachusetts Uniform Trust Code
Noon-4 p.m.
MBA, 20 West St., Boston

Mock Trial Teacher Orientations
6-7 p.m.
Kingston Public Library, 6 Green St., Kingston

Mock Trial Teacher Orientations
6-7 p.m.
Bowditch & Dewey, 311 Main St., Worcester

THURSDAY, OCT. 25

Tiered Community Mentoring Kick-off Event

9 a.m.-12:30 p.m.
John Adams Courthouse, 1 Pemberton Square, Boston

Mock Trial Teacher Orientations
6-7 p.m.
MBA Western Mass. Office, 73 State St., Springfield

Mock Trial Teacher Orientations
6-7 p.m.
Massachusetts School of Law, 500 Federal St., Andover

FRIDAY, OCT. 26-SATURDAY OCT. 27

22nd Annual Family Law Conference
Cranwell Resort, Spa & Golf Club, 55 Lee Road, Lenox

THURSDAY, NOV. 1

Annual Public Law Conference
9 a.m.-2 p.m.
MBA, 20 West St., Boston

WEDNESDAY, NOV. 7

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

THURSDAY, NOV. 8

Western Mass. Bankruptcy Conference
4-7 p.m.
Western New England University School of Law, 1215 Wilbraham Road, Springfield

Tiered Community Mentoring Career/Law Day Event
2-3:30 p.m.
New Mission High School, 67 Alleghany St., Boston

THURSDAY, NOV. 15

How to Draft a Trust That Works
Noon-4 p.m.
MBA, 20 West St., Boston

FRIDAY, NOV. 16

Juvenile & Child Welfare Legal Chat Series
1-2 p.m.
NOTE: There is no on-site attendance available for Legal Chats.

FRIDAY, NOV. 30

10th Annual In-House Counsel Conference
9 a.m.-2 p.m.
MBA, 20 West St., Boston

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Municipal Financing Program can aid private developments

Act allows tax-exempt financing of project infrastructure

BY WILLIAM F. GRIFFIN JR.



WILLIAM F. GRIFFIN JR.

support private development or community projects.

Chapter 23L of the General Laws, which I participated in drafting, is a proven method of tax-exempt financing public infrastructure in many other states. It has also been used in Massachusetts when authorized by special legislation.

Many desirable private or community development projects must be supported by public infrastructure improvements. However, municipalities are often unwilling or unable to allocate scarce tax revenues or increase municipal debt burdens to finance public infrastructure for worthy projects.

Massachusetts has attempted to deal with this problem through a variety of programs, including direct state grants, state tax credits and pledging expected increases in state or local tax revenues to finance bonds for infrastructure improvements. The common thread of all of these programs is that either the state or its municipalities ultimately use their resources to support private development.

This measure is different: It is the “developer pays” option. It provides the missing link enabling our communities to tap into a robust, multi-billion dollar market for investment capital for public infrastructure, without placing further stress on scarce municipal resources.

How it works

Under the new measure, a private landowner may file a municipal petition to establish a “development zone.” The petition must be consented to by all affected landowners and include a detailed improvement plan, an estimated budget and timetable to complete the public improvements.

If the petition is approved by the municipal governing body after a public hearing, then an “assessment plan” is adopted to impose special betterment assessments on privately-owned property within the development zone. These special assessments will provide the revenues to support tax-exempt bonds issued by MassDevelopment to finance construction of the public improvements, which may be owned only by a public entity. The entire cost of construction, financing and maintaining the improvements is borne by the property owners in the development zone, not by the municipality.

Special assessment financing is not novel. It has been employed for years in more than 35 states. Bond issuance peaked at about \$5 billion in 2007, but has declined since the 2008 financial crisis. The five largest bond underwriters sold 573 issues totaling \$8.6 billion in principal amount from 2005 to 2009. Because these bonds

are secured by tax liens on the property, they are high-credit, tax-exempt, long-term securities very attractive to investors.

Developers like special assessment bonds because they provide a long-term, low-interest source of funding for pre-construction expenditures, which does not interfere with construction or permanent project financing. The municipality benefits from enhanced property tax revenues from the project, without a reduction of its scarce tax revenues or an increase in its municipal debt burden.

Legislation's effect

The special assessment financing legislation in Massachusetts:

- Does not create an entitlement for developers. It is entirely optional. The municipality may elect in its sole discretion to take advantage of its provisions in any given case, and to condition its approval of a special assessment project as it deems appropriate.
- Does not add additional debt burdens to municipalities. The costs of the infrastructure and the debt service on the associated bonds are paid by special betterment assessments on the privately-owned real property in the development zone. By law, the state and its municipalities have no liability on the special assessment bonds, which are “revenue bonds” secured only by the special assessments on the property in the development zone. Betterment assessments are, by law, excluded from tax revenues subject to the Proposition 2 ½ limit.
- Will enhance municipal tax revenues. The municipality in which a development zone is created benefits from enhanced tax revenues from new construction added to the municipal tax base.
- Does not affect zoning or land use regulation. Private development in a Chapter 23L development zone is subject to all zoning and land use regulations applicable to conventional development projects.
- Can be used to finance municipal improvement programs. Special assessment financing may be used to finance community development projects as well as to support private development, so long as all affected landowners consent to the special assessments.
- Bonds may be used only for public infrastructure. Proceeds of special assessment bonds must be used for public infrastructure improvements and costs of issuance.

The Massachusetts law embodies a proven financing program successfully used in many other states to attract billions of dollars of investment capital for public infrastructure. It is a local option, not an entitlement, which allows each municipality to choose the rate of economic growth which best fits its needs. No state or local general tax revenues or credit are involved. Special assessment financing promises to be the rocket fuel needed to propel economic growth in Massachusetts. ■

.....
Attorney William F. Griffin Jr. is a shareholder at Davis, Malm & D'Agostine P.C. in Boston. His practice focuses on business law, real estate and environmental areas.

CONTINUED ON PAGE 16

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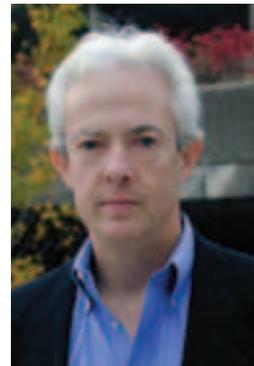
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With new ABA ethics rule, there's no more hiding from technology

BY ROBERT J. AMBROGI



Robert J. Ambrogi

The legal profession underwent a sea change last month, but few lawyers even knew about it. In a historic but little-heralded move,

the American Bar Association said that lawyers must be competent not only in the law and its practice, but also in technology.

The ABA's House of Delegates, meeting in August, voted to amend the comment to its Model Rule of Professional Conduct governing lawyer competence to make clear that a lawyer's skill set must include technology.

The rule itself, Rule 1.1, remains unchanged. It says: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

The change was to the comment that follows the rule, which provides interpretative guidance as to the rule's application and meaning. The revised comment adds the clause shown in italics here:

"To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

While not binding on lawyers, the ABA Model Rules serve as models for the ethics rules in most states. Only time will tell whether state ethics regulators will adopt this change, but I predict most will.

The change regarding competence was one of several amendments to the model rules approved at the annual meeting. The changes resulted from the work of the ABA Commission on Ethics 20/20, which spent three years reviewing legal ethics rules in light of advances in legal technology and the increasing globalization of the legal profession.

Too little, too late?

There are some who argue that this urging of technological competence is too little, too late. It is hard to

argue with that position. Although the 20/20 Commission's report alluded to "the sometimes bewildering pace of technological change," the fact is that lawyers have been using PCs since the late 1970s and the Internet for at least two decades.

Still, the pace of technological change has accelerated in recent years, driven by our increasingly digital culture and an unprecedented degree of digital mobility. And, even in the face of so much change, Luddites remain. Just recently, a lawyer told me that he refuses to use email in his law practice and he has no idea what a blog is. It is one thing to draw a line in the sand, but it is something else altogether to bury your head in it.

Interestingly, the 20/20 Commission takes the position that this duty of technological competence is nothing new. "Comment [6] already encompasses an obligation to remain aware of changes in technology that affect law practice," the commission says in its report to the ABA. "The proposed amendment ... does not impose any new obligations on lawyers. Rather, the amendment is intended to serve as a reminder to lawyers that they should remain aware of technology."

Luddites need not apply

That assertion may come as a surprise to many lawyers. But for lawyers in areas of practice that rely heavily on technology — such as electronic discovery — the need to be competent in technology should be obvious. It is impossible to competently (let alone zealously) represent a client in a matter involving electronically stored information without a better-than-average familiarity with technology. You cannot be both a Luddite and an advocate in e-discovery — at least not for long.

In fact, some argue that the 2006 e-discovery amendments to the Federal Rules of Civil Procedure already imposed on lawyers who handle e-discovery a duty of technological competence. A 2008 article by the legal ethics counsel for the District of Columbia Bar, "R U Competent?" made this point, citing a 2008 ABA report that concluded that the FRCP changes required lawyers to understand their clients' IT systems, know how to identify ESI, and have knowledge regarding digital file formats, sources of electronic data, and how computers operate.

Note that I said that the need for technological competence in e-discovery and certain other fields should be obvious. Regrettably, it isn't always so. As I said above, many lawyers choose to stick their heads >18



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FOR YOUR PRACTICE

Qualified sick pay plans prevent IRS headaches

BY JEANNE BRUTMAN



Jeanne Brutman

Many small businesses, law firms and family-owned corporations do not take advantage of a very important employee benefit

called the “qualified sick pay plan.” This is a plan that will allow an organization to deduct the wages paid to an employee who is too sick or injured to work. Without a formal written plan, the IRS does not allow your business a deduction for these expenses. Every \$1 you pay out costs \$1.65 (\$1.81 for S-

corporation owners, partners and sole proprietors) because the IRS views it as an “ad hoc” payment that is not tax deductible.

Funding a qualified plan is best accomplished through the use of disability income insurance. This not only allows you to expense the costs, but a “return of premium” provision can bring your net cost to almost nothing.

There are several Internal Revenue Codes that deal specifically with this issue. Internal Revenue Code 105 describes an “accident sickness plan” as a program for paying employees who gets sick or is injured. Because they continue the salaries of employees forced out of work by accident or illness, sick pay plans are included in this definition. Benefits received under an employer-provided sick pay plan are taxable, and only a portion of the benefits provided

by the employer are subject to federal income tax. These plans must be established solely for a firm’s employees.

Internal Revenue Code, Section 106, explains that when a sick pay plan is backed by disability income insurance, premium payments made by the employer are considered contributions to an accident or health plan. These payments will not be included in an insured employee’s gross income. Internal Revenue Code, Section 162, shows how an employer can deduct disability income insurance premiums paid to support a sick pay plan as an ordinary and necessary business expense. There are exceptions for S-corporation shareholders, partners and sole proprietors.

This actually sounds more complicated than it is, and any representative from a disability insurance company can show you how to set this up. There

are really only two steps in creating a sick pay plan. The first step is to draft a formal, written plan document using a disability income proposal, and the second step is to let participating employees know the plan exists. It is almost that easy! If your firm has fewer than 100 employees, you might be exempt from ERISA reporting requirements.

Remember, proper implementation of employee benefits can save your business money on premiums, give you deductible expenses, and provide peace of mind. A qualified sick pay plan is a great way to improve employee loyalty and help you reward and retain key employees. ■

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NEW ABA ETHICS RULE Continued from page 16

in the sand when it comes to anything involving technology — even when the technology benefits both them and their clients.

And let’s also face the fact that this stuff isn’t always easy. With reference to e-discovery, U.S. Magistrate Judge John M. Facciola, a Washington, D.C. jurist who is considered a leading authority in the field, has described the complexity of just one

aspect of e-discovery — search — as taking legal professionals into an area “where angels fear to tread.”

Fortunately, the ABA rule does not require that we all run out and enroll in advanced courses at MIT. We can understand the “benefits and risks” of technology without understanding its most-intricate inner workings. I have long believed that a key to technological competence is

knowing what you do not know. Lawyers do not have to be IT professionals or engineers — but they need to know when they need one.

Of course, even knowing what you do not know requires a higher level of understanding about technology than many lawyers have today. That is why this rule amendment from the ABA is welcome, if overdue. While I can’t argue with those who say this is

“too little, too late,” I prefer to view it as “better late than never.” Maybe this official pronouncement from the ABA will force a few lawyers to pull their heads out of the sand. ■

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Robert J. Ambrogi is a lawyer and media consultant based in Rockport, Mass., and author of the blog LawSites, www.lawsitesblog.com. He can be reached via email at ambrogi@legaline.com.

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FOR YOUR PRACTICE

Practice alert for criminal justice practitioners in the wake of wrongdoing at DPH Drug Lab

The Massachusetts Bar Association has been asked by the Commonwealth of Massachusetts Executive Office of Public Safety and Security to inform the criminal bar of critical information in the wake of the news of wrongdoing by a former chemist at the Department of Public Health's Drug Laboratory at the Hinton State Laboratory Institute in Jamaica Plain.

The commonwealth has provided the Committee for Public Services, the District Attorney's Offices and the U.S. Attorney's Office, as CORI certified agencies, with access to a database of information to identify individuals whose cases potentially may have been impacted.

Such access will also be provided to the private criminal defense bar. Because the information contained in that database contains criminal offender record information and must be handled in accordance with state and federal law, any requesting attorney will be required to submit an agreement of non-disclosure of CORI form. Visit www.massbar.org/practicealerts to access the practice alert and links to the related nondisclosure form.

Any attorney who 1) handled a drug-related matter between the years of 2003 and 2012, inclusive, in which the drug analysis may have been con-

ducted in the DPH Drug Lab; or 2) handled a matter in which the defendant's sentence may have been enhanced by a drug-related conviction based on conduct between the years of 2003 and 2012, inclusive, in which the drug analysis may have been conducted in the DPH Drug Lab, may seek access to the aforementioned database by filling out the non-disclosure form and attestation to their compliance with CORI.

Note that the DPH Drug Lab served Barnstable, Bristol, Essex, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties. Middlesex County cases were transitioned to the State Police Crime Lab in Sudbury in two phases beginning in 2009. Ashland, Concord, Framingham, Hudson, Marlborough, Natick and Weston Police Departments began using the State Police facility for drug testing on Oct. 1, 2009.

Practitioners who intend to submit the non-disclosure and attestation form (accessed at www.massbar.org/practicealerts) should send completed forms in writing by mail or fax to:

Massachusetts Executive Office of Public Safety and Security
 One Ashburton Place, Room 2133
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