May 9 Annual Dinner to feature Gov. Patrick as keynote speaker

By Kelsey Sadoff

The Massachusetts Bar Association is pleased to announce that Gov. Deval L. Patrick will deliver the keynote address at its Annual Dinner set for Thursday, May 9 at the Westin Boston Waterfront.

“We are honored to have Gov. Patrick address the Massachusetts legal community at our hallmark event of the association year,” MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy said. “His perspective and accomplishments gained through his years as corporate counsel and leadership positions in both state and federal government are admirable and will make for a highly relevant keynote address.”

Patrick was first elected as the Commonwealth of Massachusetts’ governor in 2006 and was re-elected to a second term in November 2010. Committed to expanding opportunity and prosperity in Massachusetts, the Patrick administration has maintained or expanded the state’s investment in critical growth sectors, despite challenging economic times. Under Patrick’s leadership, the commonwealth has become as a global leader in biotech, bio pharmaceuticals and IT and a national leader in clean energy — the home to the country’s first offshore wind farm.

As governor, Patrick committed the commonwealth to renewing its aging and neglected infrastructure and over saw the expansion of affordable health care insurance to over 98 percent of Massachusetts residents. The Patrick administration also accomplished major reforms that had eluded decades of other elected leadership, reforming the state’s pension systems, ethics laws and transportation bureaucracy.

A graduate of Harvard College and Harvard Law School, Patrick began his legal career clerking for a federal judge and went on to become an attorney and business executive, rising to senior executive positions at Texaco and Coca-Cola. In 1994, President William Jefferson Clinton appointed Patrick as assistant attorney general for civil rights, the nation’s top civil rights post.

Gov. Deval L. Patrick

Spence proving to be an effective change agent at a critical time

By Tricia M. Oliver

At various speaking engagements in the last several weeks, Massachusetts Trial Court Administrator Harry Spence has centered his remarks on his initial assessments and progress during his inaugural nine months on the job. When listening to those remarks, one cannot question that he has hit the ground running at a pace necessary to achieve much change in the remaining four years of his five-year appointment.

Also hard to question are Spence’s credentials for this pivotal role in the state’s third branch of government.

“After many decades of lobbying by the MBA specifically calling for the appointment of a professional court administrator, we are extremely pleased to have an individual of Harry’s intellectual and policy depth to work closely with,” MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy said.

An expert in managing change, Spence has served in the public and private sectors at the state and local levels. A graduate of Harvard Law School and Harvard College, Spence’s skill and style have been tapped to turnaround operations in the City of Chelsea, New York City Board of Education and Massachusetts’ Department of Social Services. He is applying much of what he learned in those arenas to his current task at hand.

According to Spence, no matter what size organization he’s been a part of, somehow there is something magical about the third year. “That is when the process of change gains traction,” he said. However, Spence is quick to clarify that the time leading up to his third year on the job is not void of activity.

“Good things are happening.”

MBA Co-hosts Court Advocacy Day

Section Review

How to Post a Blog

Hundreds Attend the Annual Walk to the Hill

See page 2 for a complete listing of this issue’s contents.
or get the picture.

The Commonwealth of Massachusetts, home of many great lawyers and jurists throughout our history and the history of our great nation, now ranks 48th in compensation for judges among the 50 states and the District of Columbia, when compensation is adjusted for cost of living. Only Vermont, Hawaii and Maine are lower in this ranking.

Is this where Massachusetts wants to be? At the bottom? I confess, as a matter of philosophy, not being a fan of rankings, but where our great commonwealth stands in this matter of judicial compensation is both illuminating and, I think, shameful.

I know there are many demands on our tax dollars, and I know that many among us are struggling to recover from the substantial economic downturn of the last several years. But, it is a fact that our society, as a whole, measures success and value in economic terms. Whether or not you, individual readers, or I, do so is presently beside the point. If our judges are objectively underpaid — which I submit to you the overwhelming evidence indicates they are — then we are saying, as citizens of this commonwealth, that we do not value judges’ services.

Is that the statement we want to make in this commonwealth? I think not, and I hope not.

So, I invoke again Holmes to ask what this is all about.

I urge you to “buy civilization.” That’s what this is all about. I think, shameful.

I believe our judges — and our attorneys — should be the custodians of our economy, not victims of it.

We need our gatekeepers — our judges — to be recognized appropriately by providing them with fair compensation. While that is not now the case, it can and should be the case. That’s why I urge you to “buy civilization.” That’s what this is all about.

GOVERNOR FILES FY14 BUDGET RECOMMENDATIONS

Continued from page 1

Proposal also included a section establishing a standing commission to study the criminal justice system.

The Massachusetts Legal Assistance Corporation budget recommendation was $15.5 million, a $3.5 million increase over fiscal year 2013 funding. Patrick also recommends funding the Committee for Public Counsel Services at $189 million, $6.1 million below their maintenance request. The governor does not recommend any structural changes. The House and Senate will take up their own versions of the budget in April and May respectively.
Q: My wife and I met in law school and, as I launched a solo practice, she worked for a nonprofit until the first of our two young children was born. In the courtship stage, I was very attracted by a kind of excitement and unpredictability that she exuded. But since we have been trying to run a family together, her moodiness, flashes of anger (as well as much more welcome humor), and huge, dramatic reactions to so many things that happen in the course of day-to-day life have been hard to take. On those occasions when she is confronted (by me or occasionally a friend), she alternates between rage and tears, and at one point took a large bunch of pills that could have done her real harm. She did start therapy and initially thought her therapist walked on water, but now sees him as useless, and her constant emotional ups and downs have not stopped. Her doctor has prescribed antidepressants, which certainly helped a bit, but not enough. So many of my work days are disrupted by phone calls from her, or just by my distracting worries about how she is doing while looking after the kids. Recently, her therapist said he’d like to refer her to a “DBT” group. Is that a good thing? Is it likely to make a difference?

A: DBT is dialectical behavior therapy, a treatment approach developed by psychologist Marsha Linehan in the 1970s that has gained wide acceptance in the past couple of decades. It combines cognitive behavioral and Buddhist-influenced elements into a package that often combines individual and group therapy in a way that has been particularly useful to individuals who experience intense floods of emotion that may contribute to destructive behavior and unstable relationships. Over time, participants learn, for example, to better accept unpleasant realities, tolerate distress, solve interpersonal problems, and to soothe and encourage themselves. These and other elements are taught (largely in class-like groups that include homework) as learnable skills. There is good research to back up reports of treatment success using DBT — of course, no treatment is a panacea, and this approach requires active effort.

The DBT therapist recognizes that people with a tumultuous mood/personality style did not choose it and are not seeking to make life difficult — their behavior reflects their internal reality. But the therapist also makes it clear that many of these behaviors are maladaptive and requires collaboration from the patient with a joint mission to develop more workable and rewarding ways to cope.

It sounds as if your wife’s therapist is already aware of DBT resources in the area. If you would like to consult further about your role and stance as family life moves forward, feel free to arrange a (free, confidential) consultation at LCL.

Questions quoted are either actual letters/e-mails or paraphrased and disguised concerns expressed by individuals seeking assistance from Lawyers Concerned for Lawyers. Questions for LCL may be mailed to LCL, 31 Milk St., Suite 810, Boston, MA 02109; e-mailed to email@lclma.org or called in to (617) 482-9600. LCL’s licensed clinicians will respond in confidence. Visit LCL online at www.lclma.org.
now,” he said.

Spence has gained much information from his weekly visits to courthouses and results from a recent staff survey. Much of his attention has been devoted to evaluating staffing levels and department structure. The fiscal year 2014 budget request, technology enhancements and implementation and the Trial Court’s current strategic planning process have also consumed most of Spence’s energy and time. All add up to a tall order to be realized in Spence’s relatively short appointment.

Spence remains optimistic. He is putting his confidence in a general principle of management that modest improvements in operations by department will lead to collaborative improvement to the system as a whole.

RE-ENERGIZING AND REPLENISHING A WORKFORCE AND ITS RESOURCES

Following the lift of the hiring freeze in November, Spence has been working to replace 100 positions lost to attrition. He hopes to have that finalized by the end of May. He will also work to hire an additional 200 “desperately needed” positions.

As he begins acting on his careful assessment of his newest employer, Spence has been surprised by the lack of resistance to proposed change from court personnel. Nearly 50 percent of the 6,255 personnel responded to the recent staff survey. Results indicated 30 percent were interested in aggressive change, 90 percent were in favor of change and 10 percent were comfortable with the status quo.

Through the survey and his courthouse visits, Spence has been met with a fair share of skepticism. “Skepticism is valid,” said Spence. “Just set aside the cynicism.” He said that “part of our task is to give incremental evidence over time that we have the capacity to change.”

In less than a year, Spence has learned much from the conversations he has with staff at all levels. Many of the staff that Spence has interacted with have been asked to participate in meetings with local legislators to put a face to the effects of the lack of court funding. The Massachusetts Bar Association has coordinated two such meetings in Salem and Springfield, and it is evident that those staff have been provided a voice, thanks to Spence.

Spence likes to quote President of the Massachusetts Association of Magistrates and Assistant Clerks Daniel J. Hogan to describe the caliber of court personnel. “The system is not as good as the people in it,” Hogan told Spence during one of their first conversations.

Hogan, like many, is pleased with Spence’s “refreshing approach” and work so far. “I look forward to much needed change to bring this branch of government back to the prominence it should enjoy,” said Hogan.

According to Spence, courts previously did not have an essential “accountability for efficiency,” which, according to him, is the most fundamental tool of management. “We are beginning to raise the floor on performance,” he said. As expected, he places much confidence in the court’s ability to move change through its managers. Spence explains that any organization’s management skills need to be “tethered to the craft of the organization.” Said Spence, “We must connect management skills with the delivery of justice.”

In addition to a strong management team, Spence sees technology playing a critical role in modernizing court operations. In addition to the 2013 roll out of MassCourts to the Superior Court, a request for proposal is currently out for e-filing. “Both will lead to rapid and dramatic improvement,” Spence said.

“We want to move to as much digital storage as we can, saving us and attorneys significant amounts of money,” he added.

COUNTY-BASED CULTURE

Spence explains that the Trial Court culture is affected by the county-based system. He said that there is a tradition of localization. What is clear, Spence mentions, is that within the administration, “we need to strengthen Boston’s capacity to support those around the commonwealth.” He said, “our courts are our customers.”

In speaking with the MBA House of Delegates in January, Spence voiced his opposition to the unification of the courts, a concept the MBA has long lobbied for in its many reports issued on court reforms. Spence is, however, open to and seems to be working toward consolidating many of the “back office” functions that support the various Trial Court departments. Spence realized there is duplication of overhead in many areas.

A STRATEGIC VISION

In a move to improve the culture of the courts, Spence has engaged the Trial Court in a strategic planning process. To help with landmark change in the system, The Ripples Group — a Boston-based management consulting firm specializing in growth strategies and performance improvement — has been tapped to help.

Cynthia Robinson-Markey, legal counsel to the Boston Municipal Court Chief Justice Charles R. Johnson, serves as the project manager for this important process. “Strategic planning is a big part of Harry’s agenda,” said Robinson-Markey, who has seen the highs and lows of the system during her 16 years with the Trial Court.

“Other plans haven’t had the push of one core, central person,” she said. Robinson-Markey explains that fortunately Spence is the person currently. “He is a true visionary who knows what it takes to have an actionable, managed plan.” Robinson-Markey differentiates the current strategic planning process as being bottom-up, when compared to others in the past that have been top-down.

Spence and Robinson-Markey estimate that the strategic plan will be presented to the SJC for evaluation and endorsement in the summer months, but Spence and Robinson-Markey, through the guidance of The Ripples Group, are not holding out on change until that happens.

A CASE FOR FISCAL SUPPORT

As he works on the court’s roadmap for the future, Spence’s more immediate focus is securing adequate funding for Fiscal Year 2014. “I need to make sure the lifeline continues to flow,” Spence said to MBA delegations in January.

The court’s budget request was submitted to Gov. Deval L. Patrick in November. In addition to the Massachusetts Trial Court’s maintenance request of $589.5 million, Spence put together six other enhancements that the governor and/or the Legislature can decide to allocate funds to. Those “modules,” as Spence refers to them, are:

• Judicial pay increase, totaling $21 million;
• Staffing to restore full public hours in certain courts, totaling $1 million;
• Videoconferencing equipment, totaling $400,000;
• Enhanced security systems and increased security personnel, totaling $2.5 million;
• Information technology and phone system upgrades in the BMC, totaling $500,000; and
• Drug court enhancements to reduce recidivism, totaling $500,000.

Released in late January, Patrick’s recommended FY14 state budget allocated $577 million for court funding, $12 million shy of the Trial Court’s request. The House and Senate will take up their own versions of the budget in April and May respectively.

Spence addresses MBA HOD, delegates revisit spousal elective share debate

BY TRICIA M. OLIVER

Trial Court Administrator Harry Spence was the featured guest speaker at the Jan. 31 House of Delegates meeting. Spence detailed the areas of focus in his nine-month tenure in this newly created position in the Trial Court Department.

Spence told the MBA delegates of his strongest impressions during his time in his post — he has encountered a highly competent and professional work staff with “surprisingly more of an appetite for change” than he was anticipating.

Spence continues to make weekly visits to various courthouses throughout the state. These visits and a staff survey have provided his office with key anecdotal information, as well as data to help quantify and qualify staff perceptions. Spence reported the survey revealed that 30 percent of court staff was interested in aggressive change, 90 percent wanted change, and 10 percent was comfortable with the status quo.

Spence indicated that the Trial Court will soon be reaching out to the MBA for advice and assistance in the preparation of its strategic plan, which the court expects to submit to the Supreme Judicial Court for approval in June.

Aside from Spence’s remarks, the delegation also heard from the MBA Taxation Section. The section requested that the delegates rescind their vote taken in November to support in principle, the filing of legislation amending the Massachusetts Uniform Probate Code to add provisions relative to probate electoral share. After vigorous debate with input from representatives from the tax, probate and other MBA sections, as well as members of the ad hoc committee who brought the issue to the floor at the November meeting, the delegates voted against rescinding their original vote in November on the legislation.

The group also voted to support in principle the resolution and report relative to the powers of federal bankruptcy judges and to advocate for passage by the American Bar Association. The delegation voted unanimously in favor of this.

The next meeting of the MBA House of Delegates will take place on March 21 in Framingham.
News from the Courts

Extended hours pilot at the Brooke Courthouse

The Massachusetts Trial Court has announced the commencement of a pilot program extending the hours in three court departments operating sessions at the Brooke Courthouse in Boston. This program is designed to assess, over a period of time, the usefulness of extended court hours as a convenience for certain segments of the public. Effective Feb. 26, the Boston Municipal Court, Housing Court and Probate and Family Court departments began conducting certain limited court sessions on two Tuesdays each month until 7 p.m. In addition to Feb. 26, the dates for the first several months are March 12, March 26, April 9 and April 23.

The purpose of this pilot is to make the court available to members of the public during late afternoon and early evening hours. The sessions will be limited to specifically-designated case types. All matters will be pre-scheduled and/or by agreement of the parties. The Clerks' Offices and Registry of Probate will not be open to the public during the extended hours. Those offices will staff the sessions, as needed. Emergency matters occurring weekday evenings from 4:30 p.m. to the opening of court at 8:30 a.m., or on weekends or holidays will continue to be processed through the Judicial Response System as accessed through the local police departments.

Information regarding the types of matters that will be available for this pilot, their scheduling and courtroom locations will be posted to www.mass.gov/Courts by court department, or the courts can be reached as follows:

- Boston Municipal Court: (617) 788-8600
- Boston Housing Court: (617) 788-8485
- Suffolk Probate and Family Court: (617) 788-8300

Interim chief justice of the District Court appointed

Chief Justice of the Trial Court Robert A. Mulligan has announced the appointment of Hon. Paul F. LoConto as interim chief justice of the district court, in accordance with G.L. c.211B, §7. LoConto will succeed Chief Justice Lynda M. Connelly, who will retire on March 1, 2013. Mulligan, who will reach the mandatory retirement age in July of this year, recently stated that his successor will appoint the Chief Justice of the District Court to the full five-year term. LoConto has been a regional administrative judge of the district court department since 1999. He also has served as first justice of the Worcester District Court since 2004. Prior to that, he was first justice of the Fitchburg District Court for five years and first justice of the East Brookfield District Court for 10 years. He also served as presiding justice of the Appellate Division of the District Court in the western region from 1989 to 2011. He was first appointed to the District Court Department in 1985. Previously, he served as clerk magistrate of the East Brookfield District Court for 10 years, following his career as an attorney in private practice.

Probate and Family Court announces release of a procedural advisory and updated trust forms

Chief Justice Paula M. Carey of the Probate and Family Court has announced the release of a procedural advisory on trust matters, as well as new and revised trust forms. The procedural advisory highlights procedural and form changes as a result of the adoption of the Massachusetts Uniform Trust Code. The MUTC was enacted as part of Chapter 140 of the Acts of 2012. Chapter 140 amended various sections of G. L. c. 190B, the Massachusetts Uniform Probate Code and incorporated the MUTC as Chapter 203E of the General Laws.

The procedural advisory and trust forms were developed over the last several months by the MUPC Procedures Committee and the MUPC Forms Committee. Both committees are comprised of Probate and Family Court judges, court staff and members of the bar.

Proposed amendments to Rule 412 of the supplemental rules of the Probate and Family Court

Chief Justice Paula M. Carey, along with the Probate and Family Court Bench/Bar Committee on Rules, solicits comments on proposed amendments to Rule 412 of the supplemental rules of the Probate and Family Court. The proposed changes to Rule 412, Joint Petition for Modification of Child Support Judgment, would expand the rule to allow parties to modify any judgment or temporary order of the Probate and Family Court where the parties are in agreement, the agreement is in writing and all other requirements of the rule are met.

Separate and Secure Waiting Area Task Force releases implementation progress report

The SSWA Task Force has filed a progress report outlining steps taken to implement the provision of the Massachusetts Victim Bill of Rights. The report outlines the results of the court-by-court assessments through January 2013.

Regulations of the jury commissioner

The Supreme Judicial Court has approved amended Regulation 9 and new Regulation 10 of the Regulations of the Jury Commissioner, effective March 1, 2013.

Changes approved to SJ/C Rule 4:02

The Supreme Judicial Court has approved changes to the Rule 4:02 of the Rules of the Supreme Judicial Court effective March 1, 2013.
Spence has been a featured speaker at the MBA-led events to advocate for funding, including the Feb. 14 Court Advocacy Day (see related article, page 8). He and Supreme Judicial Court Chief Justice Roderick L. Ireland have emphasized the critical funding needs of the courts to the larger legal community at the events. “We are fortunate to have someone of Harry Spence’s caliber in a leadership position in the court system. In the short time since becoming Court Justice, Harry has been working diligently to modernize the operations of the Trial Court,” said Ireland.

“He has already accomplished a great deal, and is doing an outstanding job,” Ireland added.

New divorce/family law firm serves those most in need

By Christine P. O’Neill

Gabriel Cheong, owner of Quincy-based Infinity Law Group, has opened his second law firm, Cambridge Divorce Group LLC. The firm, which opened February 4, will offer exclusively reduced-fee limited assistance representation (LAR), in all areas of family law including divorce, custody, child support, alimony, and property division. Its 10 contract attorneys will help clients on a pay-as-needed basis to fill forms, draft agreements and court filings, and provide limited representation in court and general advice.

It targets middle-income divorce and family law clients who don’t qualify for free legal services, but who can’t afford traditional attorney fees for various reasons. Clients, expected to be largely walk-ins or referrals, are expected to be low-income people or those without access to their funds. Its hourly rate is $125, and it doesn’t take up-front retainers from its clients.

“It’s definitely a volume-based business,” says Cheong. The contract attorneys, all versed in family law and all of whom are mainly younger attorneys trying to build their own legal businesses, choose their shifts at Cambridge Divorce Group. They’ll be able to do their own work while they wait for walk-ins, he says.

Ninety percent of litigants in Massachusetts probate court don’t have legal representation and encounter legal roadblocks as a result. Referring these pro se clients to non-profit legal services in a bad economy, does not work, because a bad economy usually dries up Legal Services funding.

“The business model is not in sync with the population that it services,” Cheong says.

Pro bono work doesn’t close the gap.

“How can you ask new young lawyers struggling to pay their own bills, to give more of what they don’t have?” Cheong says. “So I took a look at this and said, let’s try to work at it from a different angle.”

A January 25 open house marking the firm’s opening saw 40 guests, mostly attorneys, but also representatives from domestic violence shelters across the state.

Cheong does say he’s gotten a bit of a pushback from legal community skeptics who question whether they’ll have to lower their fees in order to compete. He disagrees with that assessment — if piecemeal legal help is all a client can afford, that client never would have hired a more traditional-modern firm in the first place, he says. His hope, he says, is to get the legal community to realize there is value in LAR work and that it doesn’t take away from more standard practices.

Connect, share and collaborate with fellow section members on My Bar Access

How to post a blog

The Massachusetts Bar Association has launched My Bar Access, a valuable new member benefit, which provides MBA members an opportunity to share practice information in one convenient, online community.

Each MBA section/division has an interactive blog option on My Bar Access, which offers members an opportunity to post opinions about recent legal decisions, personal experiences in the courtroom, practice tip ideas and more.

HOW TO START A BLOG:

2. Log-in to My Bar Access using your MBA user name and password.
3. Click on BLOGS in the My Bar Access gold navigation bar.
4. In the BLOGS drop-down menu, click on “Create New Blog.”
5. Follow the My Bar Access blog template to create your entry. If you want to associate the blog with a particular My Bar Access group, choose your section/division from the drop-down menu under the content box. Don’t forget to spell check.
6. Click on who can see your post.
7. Click on who can make comments on your blog entry.
8. Click the “Publish” button to make your blog live.

The blog post will display on your My Bar Access homepage and on your member group’s landing page, if you associated the blog with a specific My Bar Access group. Questions? E-mail mybaraccess@massbar.org.
Bar News

Massachusetts Bar Association
MBa, 20 West St., Boston
noon–2 p.m.

Building Your Professional

ThuRSDay, aPRIL 4
Greater Boston food Bank, 70 Statewide dial-in #: (617) 338-0610
5:30–7:30 p.m.

MBa Monthly dial-a-lawyer

WEDNESDay, aPRIL 24
Boston
Match
Mock Trial program – finale
2–5 p.m.

WEDNESDay, maRch 20
Boston
courthouse, 1 courthouse Way,
John Joseph Moakley
1 p.m.

Match
Mock Trial program – finale
225 Main St., Worcester
Worcester Superior courthouse,
1 p.m.

mONDay, maRch 18
MBa, 20 West St., Boston
1–2 p.m.

chat Series
Juvenile & child Welfare legal
FRIDay, maRch 15
MBa, 20 West St., Boston
2–5 p.m.

law firm Business plan Workshop

Calendar of Events

TUESDAY, MARCH 12
Lifecyle of a Business Part IV
5–7 p.m.
MBa, 20 West St., Boston

 Use of Social Media in Health Care Organizations
4–7 p.m.
MBa, 20 West Street, Boston
FRIDAY, APRIL 19
Juvenile & Child Welfare Legal Chat Series
Noon–1 p.m.
MBa, 20 West St., Boston

The Sole Practitioner & Small Firm Symposium
Time: TBA
Lombardo’s, 6 Billings St., Randolph
FRIDAY, APRIL 26
Probate & Family Court Conciliation Training
9 a.m.–3 p.m.
MBa, 20 West Street, Boston
THURSDAY, MAY 9
SAVE THE DATE
2013 MBA Annual Dinner
5:30 p.m.
The Westin Boston Waterfront,
425 Summer St., Boston
The Massachusetts Bar Association will hold its 2013 Annual Dinner on Thursday, May 9, at the Westin Boston Waterfront, 425 Summer St., Boston. Gov. Deval L. Patrick will deliver the dinner’s keynote address. In addition, the event will feature the presentation of the annual Access to Justice Awards. Consider attending this event as a sponsor. Visit www.massbar.org/adl3 for our growing list of dinner sponsors, to learn more about sponsorship opportunities and buy tickets.

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Experts&resources

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EXPERTS&RESOURCES

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DIscAbeLity ins. cLAIMS

Can Your Clients Collect Disability Insurance Benefits?

The Massachusetts Bar Association and the Boston Bar Association hosted a Court Advocacy Day at the Statehouse on Feb. 14 to urge our legislators to preserve the rule of law in Massachusetts by supporting the Massachusetts Trial Court’s budget request for fiscal year 2014. The Trial Court has asked for $589.5 million to maintain quality justice for Massachusetts citizens. This funding is needed to address critical operating needs and stabilize the court system which has seen devastating cuts in recent years.

“The MBA has been and will be a strong supporter of adequate funding for our state’s third branch of government,” MBA President Robert L. Holloway Jr. said. “Our message to the Legislature is clear and simple — supporting the court’s maintenance request of $589.5 million dollars in funding for fiscal year 2014 is essential, it is not a luxury, to provide basic services to the public and preserve access to justice for everyone in this commonwealth.” Supreme Judicial Court Chief Justice Roderick L. Ireland said 22 percent of the commonwealth’s workforce reduction came from the judiciary despite having only nine percent of Massachusetts’s state workers.

“The judiciary branch has suffered a disproportionate share of hardship,” Ireland said. “That has had a dramatic impact on our ability to deliver timely justice.”

Ireland also called on the Legislature to support a judicial salary increase. Massachusetts judges are ranked 48th in the nation for salaries when cost of living is adjusted, and have had no increase for the past seven years. “It is a matter of basic fairness and equity,” Ireland said.

Employees of the Massachusetts Trial Court have continued to do exemplary work in spite of the budget constraints and workforce reductions, and they should be commended, said Chief Justice for Administration and Management Robert A. Mulligan.

Trial Court Administrator Harry Spence said the full $589.5 million in funding is necessary.

“We’re struggling to sustain the belief in the rule of law in this society,” Spence said.

BAR NEWS

MBA co-hosts Court Advocacy Day at the Statehouse

BY JENNIFER ROSINSKI

New Legal Lunch Series draws a hefty crowd

BY KELSEY SADOFF

The Civil Litigation section and Young Lawyers Division hosted Part I of the Legal Lunch Series on Jan. 31. The series, geared toward civil litigators of all experience levels, provides attendees with an opportunity to participate in a discussion of selected areas of law or practice in a collegial setting.

Hon. Stephen E. Noon (ret.) was the guest speaker at the first lunch event. Noon discussed his experiences as both a trial judge and a mediator and offered his perspectives on the different challenges presented to practitioners in these forums.

The lunch series was moderated by Courtney Shea, Esq. of Looney & Grossman, LLP and Craig Levey, Esq. of Bennett & Belfort PC.
**MEMBER SPOTLIGHT**

**Cowan to serve as the Massachusetts interim U.S. senator**

William “Mo” Cowan has been selected by Gov. Deval L. Patrick to serve as the Massachusetts interim U.S. senator. Patrick’s former chief of staff, Cowan will hold the post until a June 25 special election determines who will succeed John F. Kerry, who resigned after being named Secretary of State.

Patrick announced his selection of Cowan on Wednesday, Jan. 30 in the Governor’s Council chambers at the State House.

“The governor went with his most trusted confidant. Cowan has the wisdom and practicality to be a great steward for the state,” said Martin W. Healy, MBA chief legal counsel and chief operating officer.

“Mo has been at the forefront of every one of Patrick’s inside political appointments and complex legal decisions. He enjoys a great working relationship with federal and state office holders,” Healy said. “The historic appointment of an African American U.S. senator could not have been handled better by the governor.”

Hired by Patrick in 2009 as his legal counsel, Cowan was promoted to chief of staff one year later. He stepped down from his position in November with plans to return to the private sector.

**Flynn wins MBA iBelong campaign challenge**

The Massachusetts Bar Association is pleased to announce member Judith M. Flynn has won the association’s iBelong campaign challenge. The iBelong campaign was established in November 2012 and allows members to share their personal reasons for belonging to the MBA at www.massbar.org/iBelong. As the 2013 iBelong winner, Flynn has received a free 2013-14 MBA membership.

“The whole (of the MBA) is greater than the sum of its parts: there is not really one distinguishing element of the MBA that makes it the valuable resource that it is, but the totality of its many resources. The educational programs, networking, advocacy, publications, member groups, events, etc. The MBA is a great value, providing far more than the annual cost in benefit,” wrote Flynn in her winning submission.

Flynn is the founder of the Elder Law Office of Judith M. Flynn in Rockland, where she specializes in long-term care planning, estate planning, assisted living, crisis planning, special needs planning and conservatorships.

An MBA member since 2003, Flynn joined because of the valuable resources the MBA has to offer. Recently, Flynn has greatly benefited from the numerous MBA educational seminars and resources highlighting changes in the Massachusetts Uniform Probate Code and the Massachusetts Uniform Trust Code.

“The educational programs and networking were most important to me as a new attorney,” Flynn said. “The educational programs are just as important to me today as they were when I started out) since nearly every aspect of my practice area has been affected by significant changes in the laws over the past few years. The On Demand programs are a valuable resource to me as a sole practitioner, allowing me to view programs at my convenience.”

**Fee named trustee of Parmenter VNA and Community Care Inc.**

Michael C. Fee has been named to the board of trustees of Parmenter VNA and Community Care Inc. Fee has been involved with the Massachusetts Bar Association member groups, events, publications, member groups, events, etc. The MBA is a great value, providing far more than the annual cost in benefit,” wrote Flynn in her winning submission.

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Michael C. Fee has been involved with the MBA for many years. From 2002 to 2004, he served as chair of the MBA’s Property Law Section Council. He formerly served on the MBA’s Budget and Finance Committee, as well as the Executive Management Board.

Fee has also served on a variety of non-profit and municipal boards, and is currently the chairman of the Sudbury Planning Board and a commissioner of the Sudbury Water District. Fee received his Bachelor of Arts degree from Harvard University in 1982 and is a 1988 graduate cum laude from Boston College Law School.
Mass. Bar Foundation honors Boyle, announces 2013 officers and trustees

On Jan. 24, the fellows of the Massachusetts Bar Foundation gathered for their Annual Meeting at the Social Law Library in the John Adams Courthouse. Following the recommendations of the Nominating Committee chaired by Steven Wollman and including Francis Ford, Wendy Sibbison, and Craig Stewart, the MBF Fellows unanimously elected the following:

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

TRUSTEES
- Frank J. Ciano, Law Office of Frank J. Ciano, Cambridge
- Lewis C. Eisenberg, Coagvee, Eisenberg & Kiley, P.C., Quincy
- Hon. Andre A. Gelinas, Fitchburg
- Gerald P. Hendrick, Edwards Wildman Palmer LLP, Boston
- Dennis M. Lindgren, Pierce & Mandell, P.C., Boston
- Angela McConney Scheepers, Commonwealth of MA – Division of Administrative Law Appeals, Boston
- Andrew Rainer, Office of the Attorney General, Boston

In addition to presenting the Great Friend of Justice Award to Massachusetts Bar Association Past President Leo V. Boyle of Meehan, Boyle, Black & Bogdanow, PC, at the meeting, the MBF inducted 19 new Life Members into the MBF Society of Fellows, all of whom successfully completed generous pledges made to advance the MBF’s mission of increasing access to justice. In sharing his vision for the year ahead, MBF President Jerry Cohen reaffirmed the MBF’s determination to preserve the structure and scope of legal services in the Commonwealth. He urged outreach by the MBF Fellows to identify new sources of “money, time, and compassion” to mitigate the effects of the drastic cuts in IOLTA and other funding sources for the Foundation and its grantees.

For more information about the MBF, please visit www.MassBarFoundation.org.

Mock Trial Championship set for March 20

Join the MBA for the final round of the Massachusetts Bar Association’s 2013 Mock Trial Program competition on Wednesday, March 20 at 10 a.m. in the Great Hall at Faneuil Hall in Boston. The winning team will secure the state championship and advance to the national competition in Indianapolis, May 9-11.
**FACULTY SPOTLIGHT**

**ANTHONY V. AGUDELO, ESQ.**

Sugarman, Rogers, Barshak & Cohen PC, Boston

Program chair: “Winning Closing Arguments”

Aguadelo’s practice encompasses complex cases in product liability, toxic torts including asbestos, medical malpractice, premises liability, personal injury, liquor liability, employment discrimination and business disputes. Before joining SRBC in 2000, he was an associate for five years at a civil litigation firm in Richmond, Virginia, where he represented clients in a similar range of matters.

In addition to his trial practice, Aguadelo has been active in pro bono work. He served as section editor for the Massachusetts Bar Association’s Health Law Section Council for three years and currently serves on its Civil Litigation Section Council.

Aguadelo was named a *Boston* magazine Massachusetts Super Lawyers “Rising Star” (General Litigation) in 2006–07 and 2009–10. He is a member of the Massachusetts Bar Association, Massachusetts Academy of Trial Attorneys and the Defense Research Institute.

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**CIVIL LITIGATION**

**Winning Closing Arguments**

*All-star panel of Top Litigators Puts Michael Jackson, Star Wars and the Boston Red Sox on Trial*

Tuesday, March 5, 4–7 p.m.  
MBA, 20 West St., Boston

Faculty:  
Anthony V. Aguadelo, Esq., program chair  
Sugarman, Rogers, Barshak & Cohen PC, Boston  
Hon. Stephen E. Neel (ret.), JAMS, Boston  
Ivan A. Lukyn, Esq.  
Rogers & Gray LLP, Boston  
Frank J. Ricco, Esq.  
Law Office of Frank J. Ricco, Braintree  
John P. Ryan, Esq.  
Stearns & Walsh LLP, Boston  
Anthony J. Shana Jr., Esq.  
Hermer, Netburn, O’Connor & Spearing, PC, Boston  
Valerie A. Yarashus, Esq.  
Methan, Boyle, Black & Burganov, Boston

Sponsoring sections/divisions: Civil Litigation, Young Lawyers

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**BUSINESS LAW**

**Lifecyle of a Business Part IV: Mergers and Acquisitions and Bankruptcy**

Tuesday, March 12, 5–7 p.m.  
MBA, 20 West St., Boston

Faculty:  
Matthew S. Furman, Esq., program co-chair  
Tarlow, Breed, Hart & Rodgers PC, Boston  
Kelly Kneeshaw-Price, Esq., program co-chair  
Finnegan & Nicholson PC, Newburyport  
Christopher M. Condon, Esq.  
Humphry & Kemp PC, Boston  
Sergio D. Oshman, Esq.  
Foley Hoag LLP, Boston  
Francis C. Morrissey, Esq.  
Morrissey, Wilson & Zafirooulos LLP, Braintree  
David A. Parker, Esq.  
Bulkeley, Richardson & Gelinas LLP, Springfield

Sponsoring sections/divisions: Business Law, Young Lawyers

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**JUVENILE & CHILD WELFARE**

**Juvenile CORI Reform Roundtable**

Wednesday, Mar. 13, 4–6 p.m.  
MBA, 20 West St., Boston

Faculty:  
Georgia Cristley, Esq.  
Dept. of Criminal Justice Information Services, Chelsea

Sponsoring sections/divisions: Criminal Justice, Juvenile & Child Welfare, Young Lawyers

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**LAW PRACTICE MANAGEMENT**

**Law Firm Business Plan Workshop**

Wednesday, March 20, 2–5 p.m.  
MBA, 20 West St., Boston

Faculty:  
Damian J. Turco, Esq., program chair  
Turco Legal, Boston  
Sofia S. Lingos, Esq.  
Lingos Law, Boston  
Stephen Sekler, Esq.  
Sekler Legal Consulting and Coaching, Newton  
Susan Lettermann-White, Esq.  
Lawyers Leaders & Teams, Braintree

Sponsoring sections: Law Practice Management

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**Juvenile & Child Welfare Legal Chat Series**

Friday, March 15, 1–2 p.m.

*NOTE: There is no on-site attendance for this series.*

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**MEMBER BENEFIT**

Hundreds of lawyers turn out to advocate for civil legal aid funding at the Annual Walk to the Hill

BY JENNIFER ROINSKI

More than 650 lawyers assembled at the State House on Jan. 30 to request their legislators support Gov. Deval L. Patrick’s fiscal year 2014 budget recommendation of $15.5 million for the Massachusetts Legal Assistance Corporation.

The 14th Annual Walk to the Hill for Civil Legal Aid featured a visit from Patrick, who told attendees in the standing room only Great Hall of Flags that civil legal aid is necessary.

“I value what you do. I value on whose behalf you do it,” Patrick said. “We do not have to be victims of economic circumstance. We can shape our own future.”

The largest single funding source for civil legal aid in Massachusetts, MLAC received a $12 million appropriation from the state this fiscal year.

Legal aid programs are often the last resort for low-income people in Massachusetts, Supreme Judicial Court Chief Justice Roderick L. Ireland said.

“Without these services, indigent clients often try to navigate the legal system on their own, or give up hope … The results can be devastating,” he said. “We are here today to help balance the scales of justice.”

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

Civil legal aid programs have been struggling to meet demand due to a 78 percent decrease in revenue since fiscal year 2008 from the Interest on Lawyers’ Trust Accounts program, the other major funding source for civil legal aid. MLAC has cut grants to the 16 legal aid programs it funds by 56 percent since fiscal year 2008.

“We need to have adequate funding for civil legal aid services,” MBA President Robert L. Holloway Jr. said.

“The bottom line is we have a system in place where the funding is the lowest when the need is the greatest,” Boston Bar Association President James D. Smeallie said. “Thus, it is critical that the state step in to increase funding for civil legal services to assure access to justice for our citizens who are most in need of it.”

Civil legal aid saved her life, said Daniele Bien-Aime of Brockton. The former South Coastal Counties Legal Services client lost her job, health insurance, and was in danger of becoming homeless during her battle with breast cancer. The advocacy of a legal aid attorney helped Bien-Aime get her job back, providing her with health insurance to finish her cancer treatment and the income needed to keep her in her home.

“My legal aid attorney was Heaven-sent,” Bien-Aime said. “I don’t know what I would have done without her help, and I am grateful to everyone who supports the funding that enables these lawyers to continue to help people like me.”

From left: MBA President J.D. Smeallie; SJC Chief Justice Roderick L. Ireland; MBA President Robert L. Holloway Jr.; and MLAC Executive Director Lonnie A. Powers gather before the speaking portion of the program.
BAR NEWS

MBA and WGGB-TV team up to offer free 'Lawyer on the Line' call-in service

BY JENNIFER ROSINSKI

Volunteer lawyers from the Massachusetts Bar Association fielded 111 calls from Western Massachusetts residents with legal concerns during the “Your Money Monday: Lawyer on the Line” call-in segment on Feb. 11 presented jointly by the MBA and WGGB-TV, the station that broadcasts ABC 40 and Fox 6.

Calls flooded the phone line as soon as the program started at 5 p.m., when WGGB-TV’s newscast began. The segment was scheduled to end at 6:30 p.m., but most of the MBA’s eight volunteer attorneys stayed until 7 p.m. to answer questions from callers on hold.

While volunteer lawyers provided free legal help as a public service, WGGB-TV anchor and reporter Shannon Hegy interviewed MBA member and Springfield attorney Keith A. Minoff live in the newsroom. Minoff discussed the MBA’s mission and public services, the MBA Lawyer Referral Service and Court Advo-


ABC 40/Fox 6 is the Pioneer Valley’s source for breaking news, weather, traffic and national information, 24/7, online, and on the air. ABC 40/Fox 6 is locally owned by Gomally Broadcasting LLC in Springfield. The eight volunteer lawyers who handled the calls are:

- Jeffrey Burstein, Burstein Law Office, Springfield;
- Corey Carvalho, UMass Legal Services, Amherst;
- Mark Cress, Bulkley, Richardson & Gelinas LLP, Springfield;
- Michelle Feinstein, Shatz, Schwartz and Fenitin PC, Springfield;
- John Garber, Weinberg & Garber PC, Northampton;
- Andrea Reid, Reid & Gaudet Law Group, LLP, Springfield;
- Katherine Robertson, Hampden County District Attorney’s Office, Springfield; and
- Daniel Rothschild, Bulkley, Richardson & Gelinas LLP, Springfield.

During the program, MBA member and Springfield attorney Keith A. Minoff discussed the MBA’s mission and public services with WGGB-TV anchor and reporter Shannon Hegy.

MBA Tiered Community Mentoring program holds networking event at Roxbury Community College

BY JENNIFER ROSINSKI

Accomplished professionals in the legal community shared their paths to success at the Tiered Community Mentoring Program Networking Event held at Roxbury Community College on Feb. 7.

The program, in its fourth year, matches up to 10 practicing lawyers with more than two dozen students from high school, college and law school.

“Learn from people around you,” said MBA Vice President President Robert W. Hamnas, a partner at the law firm of Mahoney, Dia-

mond and Hammas Law Offices in Quincy.

Working in law offices while attending high school in Chicagho helped open the Hon. Shannon Prison’s eyes to a career in the law. She is now a judge at the Roxbury Division of Boston Municipal Court.

Keana S. Saxon, deputy general coun-

sel at the Executive Office of Housing and Economic Development, explained how she fell into a career in the law. A music major at Spellman College, Saxon took the LSAT’s while she was planning her career path fol-

lowing college. She learned that she loved it. “Being in law school was probably the best non-decision I ever made,” Saxon said.

Other speakers included Roxbury Community College Professor Carol Lieberman.

The Tiered Community Mentoring Program was the idea of Norfolk Probate and Family Court First Justice Angela M. Ondrotz. Its goal is to expose high school students to information about college, provide pre-law undergraduate students with information about the law school admission process and give law students with an inside view of the practice of law with their attor-

ney mentors.

The program was honored with the 2011 MBA Partnership Award from the American Bar Association because of its commitment to diversity.

Immigration and juvenile sections host open meetings

BY KELSEY SADOFF

The Immigration Law Section hosted a Feb. 13 section social, featuring Kate Auspitz, issues director for Congressman Michael E. Capuano, representative, 7th Congressional District of Massachusetts. Auspitz discussed what a congress-

sional inquiry can accomplish, how to request assistance and what cannot be reasonably expected from an inquiry. In addition, Auspitz spoke to attendees about what is happening on the hill regarding comprehensive immigration reform is-

sues.

That same evening, Reece Erlichman, director of the Bureau of Special Educa-

tions Appeals, an independent subdivision of the Division of Administrative Law Appeals, attended the Juvenile & Child Welfare Section open meeting.

Kate Auspitz, issues director for Rep. Michael E. Capuano, speaks at the Feb. 13 Immigration Law open meeting.

Reece Erlichman provided attendees an overview of the BSEA, a brief description of both the voluntary dispute resolution options offered by the BSEA and the due process hearing and fiscal year 2012 BSEA statistics.
The sole practitioner and small firm section

BY SCOTT D. GOLDBERG

As many of you may know, this year the “General Practice, Solo and Small Firm Section” changed its name to “The Sole Practitioner and Small Firm Section.” This change was not just for form but also for substance. We sought this change to better represent who we are, as well to distinguish our section membership from who we are not — all general practitioners or young lawyers. In fact, our section’s membership is comprised of attorneys who focus their practice in one or a few areas of law, many of whom have been practicing law for decades. In doing so, we are further defining how we can best assist our section’s members. We are forging our new identity and description within the MBA — and welcome your involvement.

The council views the section’s mission as identifying specific issues and challenges that most concern and affect sole practitioners and members of small firms, and assisting our members in a variety of ways. This assistance includes: exchanging ideas, opinions and advice at meetings, promoting and sponsoring programs, fostering networking and sharing useful information at events and through My Bar Access. Prospective members sometimes ask “What can I get out of joining this section?” We like to reply, “What would you like to get out of it? How can we collectively best assist you in your law practice?” The section is yours to set a course. As part of addressing some of the issues facing sole practitioners and attorneys at small firms, we are excited to present our annual symposium. This year we will be focusing on how to prepare cases cost-efficiently and effectively. Look for details on the symposium to be available soon.

In addition to the direct exchange of information amongst section members, The Sole Practitioner and Small Firm section represents our members’ viewpoints and positions on issues presented to the MBA’s House of Delegates. We focus on the effects that the proposed issues may have on our specific members’ practices. This year we have taken an active role in discussing and voting on issues that include: Access to Justice Section’s Emergency Shelter Crisis Affecting Homeless Families and Children in Massachusetts; Family Law Section’s Arbitration Act; and the Criminal Justice Section’s so-called “Three-Strike Law.”

The Sole Practitioner and Small Firm Section is a dynamic group of attorneys who collaborate to address the issues facing them and take positions that reflect our concerns. The SPFSSection is here to serve you — and each other. Section membership is now free to all MBA members. Please join us. Together we can advance our mission to improve our legal careers.

Annual Bankruptcy Conference held in Western Mass.

BY PATRICIA Olier

More than 60 members of the legal community participated in the Massachusetts Bar Association’s 11th Annual Western Mass Bankruptcy Conference on Monday, Feb. 4 at Western New England University School of Law. Conference faculty included four federal bankruptcy judges for the District of Massachusetts.

“The Western Massachusetts Bankruptcy Conference, now in its 11th year, has evolved into a premier vehicle for continuing legal education in bankruptcy law in the District of Massachusetts,” said Hon. Henry J. Baroff of the United States Bankruptcy Court in Springfield. “We are grateful for the involvement of the Massachusetts bankruptcy judges and the bankruptcy law and other practitioners who have devoted their time, attention and skills to this program over that time and for the support of the Massachusetts Bar Association, Western New England University School of Law and the western Massachusetts bar associations. The overwhelming success of the program is a great credit to each of them.”

This year’s conference focused on changes in the intersection of bankruptcy and family law, successful attorney/trustee interactions and issue, updates on new claims and new foreclosure law and comparing bankruptcy practice and procedure between Massachusetts and Connecticut.
Developing your firm’s business plan

BY DAMIAN J. TURCO

An attorney’s decision to develop a business plan for his or her firm is similar to a client’s plan to complete their estate plan. Both acknowledged long ago that it’s probably the responsible thing to do. They’ve each had a general sense of how things should go, but the task has always found its way to the back burner. It’s kind of a curious thing if you think about it. We all engage in critical, analytical thinking all the time. Our clients literally pay us to generate in critical, analytical thinking all the time. Our clients literally pay us to think through and set out strategic plans upon which we then execute.

But the task has always found its way to the back burner. It’s kind of a curious thing if you think about it. We all engage in critical, analytical thinking all the time. Our clients literally pay us to think through and set out strategic plans upon which we then execute.

We all sometimes make false assumptions and we generally accept that the time. Our clients literally pay us to engage in critical, analytical thinking all the time. Our clients literally pay us to think through and set out strategic plans upon which we then execute.

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We wouldn’t think to engage in any degree of complicated legal work, like go to trial or negotiate a corporate merger or plan a multimillion dollar estate plan, without first setting forth a plan. That would be foolish. We could look incompetent in the presence of colleagues and clients. We could open ourselves up to liability. Our reputations could be damaged. We could waste a lot of time, money, and energy in the process.

Are you starting to see where I’m going with this? It is important to plan important things. And when you plan effectively, your chance at success — great success — substantially increases. In developing a business plan, you think through every major component of the business of your law firm, rather than leaving important decisions to chance.

Now that I’ve hopefully convinced you that you need to develop your business plan, let’s touch on how: Developing a business plan for your firm just takes time, information, and focus. It’s best done without distraction. Most plans include the following sections, although you can find variations with a simple internet search:

- Business description
- Market analysis
- Competitor assessment
- Marketing plan
- Operating plan
- Financial plan
- Executive summary

Your plan will think through your firm’s structure, goals, and how you plan to attain them. If you want to better ensure you actually get the plan done, sign up for the upcoming MBA CLE: Law Firm Business Plan Workshop, scheduled for 2 p.m., March 20, 2013. You’ll walk in with ideas and walk out three hours later with your business plan in hand. One way or another, get it done. Your success depends on it.

BY SUSAN LETTERMAN WHITE

Rainmaking networks: Perfecting your sales

The effective network connects you (the circle at the far left of each image) with the knowledge of diverse indirect contacts. When your direct contacts, are connected to different people in different organizations with different interests, rather than with shared contacts, it expands your view into marketplace opportunities. Do you know what your lead generation network looks like?

Your other networks matter, too. Who are your connections in your key clients and target clients? Are you sufficiently connected with the decision-makers who distribute legal work and the indirect influencers, who have the ear of the direct decision-makers? Are you building your reputation with speaking and publishing opportunities.

You can count on the decision makers and indirect influencers being influenced by your professional reputation, even if only unconsciously. Finally, clients want a lawyer they believe will solve their unique and complex problems that keep them up at night. When you have an opportunity to pitch to such a client are you sufficiently networked to solution collaborators in your firm?

Growing your network is a key piece of your marketing strategy. If you are attaining your business development goals, it’s time to evaluate your network and consider options for expanding and improving it.

Growing your network is part of a disciplined marketing strategy and an organic process. Join Cynthia Mac-Cusland, Donald Lassman, Daniel Dain and me on Thursday, April 4, 2013, at noon when the MBA Law Practice Management Section presents Growing and Mining a Professional Network. You’ll receive tips from successful rainmakers on how to build your networks and have opportunities to ask them your burning questions on how to become a better rainmaker by building your professional network.

Susan Letterman White, JD, MS, is a principal in Letterman White Consulting, a consulting practice frequently uses assessments and other tools to help her clients change the way they think and is certified to administer and interpret the Myers Briggs Type Indicator (MBTI®).

1. The term “network” refers to a person’s direct and indirect contacts.

For more information, visit www.MassBar.org/Submissions.
BY THOMAS L. GUIDI

The Good Funds Statute, G.L. c. 183, §63Bl, was enacted by the Massachusetts legislature in 1994 to ensure that when a person obtains a loan that is to be secured by a mortgage on his or her home, before the mortgage is recorded in the Commonwealth of Massachusetts and distributed approximately $31 million each year.

The interest earned on IOLTA accounts to the IOLTA Committee, which was created by the Massachusetts General Court in 1985 and is mandated by Rule 1.15 of the Massachusetts Rules of Professional Conduct, which was created by the Supreme Judicial Court in 1985 and is mandated by Rule 1.15 of the

The Interest on Lawyers’ Trust Accounts (IOLTA) program, which was created by the Supreme Judicial Court in 1985 and is mandated by Rule 1.15 of the Massachusetts Rules of Professional Conduct, was a major beneficiary of the Good Funds Statute. Under Rule 1.15, client funds, including mortgage proceeds, must be held in lawyers’ clients’ funds accounts which are usually IOLTA accounts. The IOLTA program was created by the Supreme Judicial Court to administer the IOLTA program, distributes the interest earned on IOLTA accounts to the Massachusetts Mortgage Assistance Corporation, the Boston Bar Foundation and the Massachusetts Bar Foundation to be distributed to legal aid providers to improve the administration of justice.

In 2007, the IOLTA program received and distributed approximately $31 million in interest. However, the recent recession resulted in substantially fewer real estate closings, smaller loans due to decreasing property values, and in some cases, reduced interest rates on IOLTA accounts. Because title insurers and out of state settlement service companies have been conducting closings in which loan proceeds are funded to lawyers’ client trust funds accounts in apparent violation of the Good Funds Statute, the funds flowing through the IOLTA program have been further reduced. Consequently, in 2012, IOLTA receipts had dropped to approximately $7 million each year.

The major problem with the Good Funds Statute is that it has no enforcement mechanism. State Sen. William N. Brownsberger (D-Belmont) has filed proposed legislation (S.68) amending the statute to address this issue. The proposed amendments include a private right of action for any mortgagee aggrieved by a violation of the Statute, and provide for actual damages or, absent actual damages, statutory damages of $1000 for each violation, plus costs and reasonable attorneys’ fees. The proposed amendments also empower the Undersecretary of the Massachusetts Office of Consumer Affairs & Business Regulation to enforce the Statute and to promulgate reasonable rules and regulations relating thereto.

Under §68, a violation of the Statute would constitute a violation of Chapter 93A, and could be brought by the Attorney General of a lender’s license to make mortgage loans in Massachusetts.

The proposed amendments would authorize mortgagees, generate additional funds for legal services, and deter the unauthorized practice of law. Not surprisingly, both the IOLTA Committee and the Real Estate Bar Association for Massachusetts, Inc. support the proposed legislation.
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In a particular case decided in January 2013, the Supreme Judicial Court ruled that the availability of unsubsidized, affordable-market-rate housing cannot be considered in weighing the city’s or town’s local concerns against the regional need for low and moderate income housing under the Massachusetts comprehensive permit act, G.L. c. 40B, §§ 20-23. In Zoning Board of Appeals of Sunderland v. Sugarsuck Meadow, LLC, 2013 Mass. LANDLX 7, Sugarsuck Meadow, LLC (Sugarsuck) applied for a comprehensive permit to build five, three-story buildings containing 150 rental apartments. The Sunderland zoning board of appeals denied the application. Sugarsuck appealed the denial to the Housing Appeals Committee (HAC), which overturned the decision and ordered the board to issue the comprehensive permit. The Supreme Court subsequently upheld the HAC decision.

On appeal to the SJC, the board alleged that the HAC erred in “refusing to consider the availability of low-cost, market-rate, unsubsidized housing in the town in weighing the town’s local concerns against the housing need.” Id. at §12-13 (internal quotations omitted). Notwithstanding this evidence, the SJC rejected the town’s argument on the ground that the Act only requires the HAC to not allow the HAC to consider the availability of unsubsidized housing units in determining whether the “housing need” is outweighed by local concerns.

Under the regulations issued by the Department of Housing and Community Development (DHCD), the phrase “housing need” is defined to mean “the regional need for Low and Moderate Income Housing considered with the number of Low Income Persons in a municipality affected.” 760 Code Mass. Regs. § 56.02 (2012) (emphasis added). The Act defines “low and moderate income housing” as any housing subsidized by the federal or state government under any program to reduce the housing cost for any person who incomes fall below 80% of the area median income. Id. at §13B. Thus, it is not a legal device. The Administrative Office of the Courts has an administrative function, taking no position on the binding authority of the commonwealth in the creation of crimes.

In exercising restraint, the Supreme Judicial Court has said, “the public policy of the commonwealth in the creation of crimes is not for this court to determine, but for the Legislature.” Commonwealth v. Hayward, 41 Mass. App. Ct. 751, 757 (1997). Without being able to authentically establish interference with a police officer as a crime in case, custom, usage, or tradition, a judge who gives jury instructions outlining the elements of interference of a police officer is making the law rather than following it. This article is dedicated to my mentor, Charles K. Stephenson.

1. The District Court Complaint-Law Manual is not a legal device. The Administrative Office of the District Court serves an administrative function, taking no position on the binding authority of the commonwealth in the creation of crimes. 2. The Supreme Judicial Court cannot determine whether the “housing need” is outweighed by local concerns. 3. Under the regulations issued by the Department of Housing and Community Development (DHCD), the phrase “housing need” is defined to mean “the regional need for Low and Moderate Income Housing considered with the number of Low Income Persons in a municipality affected.” 760 Code Mass. Regs. § 56.02 (2012) (emphasis added). The Act defines “low and moderate income housing” as any housing subsidized by the federal or state government under any program to reduce the housing cost for any person who incomes fall below 80% of the area median income. Id. at §13B. Thus, it is not a legal device. The Administrative Office of the Courts has an administrative function, taking no position on the binding authority of the commonwealth in the creation of crimes.

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The Supreme Judicial Court ruled that the availability of low-cost, market-rate, unsubsidized housing cannot be considered in weighing the city’s or town’s local concerns against the regional need for low and moderate income housing under the Massachusetts comprehensive permit act, G.L. c. 40B, §§ 20-23. In Zoning Board of Appeals of Sunderland v. Sugarsuck Meadow, LLC, 2013 Mass. LANDLX 7, Sugarsuck Meadow, LLC (Sugarsuck) applied for a comprehensive permit to build five, three-story buildings containing 150 rental apartments. The Sunderland zoning board of appeals denied the application. Sugarsuck appealed the denial to the Housing Appeals Committee (HAC), which overturned the decision and ordered the board to issue the comprehensive permit. The Supreme Court subsequently upheld the HAC decision.

On appeal to the SJC, the board alleged that the HAC erred in “refusing to consider the availability of low-cost, market-rate, unsubsidized housing in the town in weighing the town’s local concerns against the housing need.” Id. at §12-13 (internal quotations omitted). Notwithstanding this evidence, the SJC rejected the town’s argument on the ground that the Act only requires the HAC to not allow the HAC to consider the availability of unsubsidized housing units in determining whether the “housing need” is outweighed by local concerns.

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In Sunderland, the argument that the HAC should have considered the availability of affordable market-rate housing in the town and presented a proper testimony that, within the Lunenburg region, “the maximum affordable sales prices for a household earning seven-tyeight and eighty per cent of area median income were $160,000 and $169,000, respec-tively. That 11.5 per cent of the homes sold in the town in 2006 and 2007 were purchased for $140,000 and $160,000, respectively... that 8.2 per cent of area median income properties were $140,000 and $160,000, respectively... that 11.5 per cent of the homes sold in the town in 2006 and 2007 were purchased for $140,000 and $160,000, respectively... that 11.5 per cent of the homes sold in the town in 2006 and 2007 were purchased for $140,000 and $160,000, respectively...

In Lunenburg, the pertinent “region” was defined as a seven-county area com-prised of Lunenburg, Franklin, Green-...ian Gardens, Inc., 401 Mass. 822 (1988), in which the SJC stated: “Without attempting to define comprehensively the terms ‘local need’ and ‘regional need,’ we think that in this context it is clear that ‘local need’ relates to the municipality directly concerned, while ‘regional need’ relates to the surrounding communities.” Id. at 826 n.4.

In Sunderland, the town and the develop-er offered differing views on how the region should be defined. The town’s version of the region was established by drawing a circle with a ten-mile radius of the proposed site, while the developer argued in favor of a six-town region that included Sunder-land and five abutting communities (Am-herst, Hadley, Whately, Deerfield, and Mon-tague). See Sunderland, 2013 Mass. LEXIS 7 at *21; see also Sugarbush Meadows, LLC Brief at 7. The SJC noted in Sunder-land HAC 08-02 at *5. The HAC accepted the de-veloper’s delineation, noting that the town’s version of the region was “hardly determined” and “based only on a contrived interpreta-tion” of testimony given by one of the devel-opers’ witnesses. Sugarbush Meadows, LLC, 2013 HAC 08-02 at *5.

The accepted Sunderland region might, at first glance, seem to employ the same “sur-rounding communities” approach espoused by the SJC in Byrland Gardens and accepted by the HAC in Lunenburg. It is noteworthy, however, that this region did not include the Town of Leverett, which abuts Sunderland to the east and shares a longer common bound-ary with Sunderland than any of the com-munities that were included in the accepted region. Although the town’s version of the Sunderland region was established using “national standards for examining supply and demand for the need for housing,” it is not clear why Leverett was excluded from the delineated region. It is also unclear whether the Sunderland region is intended to provide for affordable housing would have been differ-ent if the region was drawn to include Lever-ett.

This comparison of the regions that were accepted in the Sunderland and Lunenburg cases highlights the importance of defining the term “region” generally with G.L. c. 40B, §§ 20, 23. In its Sunderland decision, the HAC began its analysis of the regional need for affordable housing with the follow-ing observation: “At the outset, we must address the re-gional affordable housing need — a term which is defined and governed by G.L. c. 40B, §§ 20, 23. The region’s housing needs will continue to be decided on a case by case basis and will remain vulnerable to inconsis-tent interpretation.”

Sunderland, 2010 MA, HAC. 08-02 at *3. Until the term “region” is clearly de-fined, either in the Act or the regulations, this critical element of the regional need for lor continues to be determined in an ad-hoc manner and will continue to be decided on a case by case basis and will remain vulnerable to inconsis-tent interpretation.

Tallage Adams, LLC, et al., Massachusetts Land Court Case, No. 10 TL 14227.

BY AMANDA ZU RetTI

On Nov. 5, 2012, Land Court Judge Keith Long issued a notice to the Massachus-ets Attorney General pursuant to Mass. R.C.P.v. 24(d) coupled with a request for amicus briefs on two questions arising from tax lien cases in which private collection enti-tions were seeking to foreclose tax-payers’ rights of redemption of unpaid tax bills pursuant to G.L. c. 60, §§65-75.

The first question presented was: May property tax collection be privatized in the manner set forth in G.L. c. 60, §§2C, 45, 52; or is the collection of property tax a core governmental function that cannot be priva-tized at all?

The second question was presented: If such a power can be privatized, what “safe-guards” exist and what is the extent of those safeguards?

The court also posed the following questions: (a) Is the court’s power limited to the ability to set “payment plans” under which the full amount owed, principal and interest alike must be paid, or can the court reduce interest and principal? (b) Can the court appoint commissioners to sell proper-ty, preserving “surplus” for the taxpayer and reducing the burden on the courts? (c) Can the court ap-point guardians, receivers or representa-tives to take action on behalf of absent heirs, with “escrow” funds established to hold those surplus funds much like part-ition cases? See, G.L. c. 241, §§9, 22, 31, 34, 35, and (d) Are remedies other than the setting of payment plans for the full amount of principal and interest beyond those allowed the court?

Amicus briefs were submitted by Tal-lage Adams, LLC, Tallage IMP, LLC, Tal-lage Hancock, LLC and Tallage, LLC (col-lectively Tallage); the city of Worcester; Massachusetts Lien Servicing LLC; Mas-sachusetts Taxpayers Foundation (MTCFA); National Tax Lien Asso-ciation; the town of Hopkinton; Robert C. Hale of the Consumer Division of the Attorney General of Lawrence; and the National Consumer Law Center (NCLC).

AMANDA ZU RetTI is title counsel in CATIC’s Eastern Massachusetts office in Westborough, Mass. Prior to joining CATIC, she was in private practice concentrating in real estate conveyancing, commercial leasing and municipal law. She presents educational programs for lenders and real estate brokers throughout Massachusetts. Zuretti received her B.A. from Bates College and her J.D. from Northeastern University.

BACKGROUND

In each of the tax lien foreclosure cases affected by Long’s order, the petitioners had acquired municipal tax receivables ei-ther by bulk assignment under G.L. c. 60, §2C, under tax collector’s deeds pursuant to G.L. c. 60, §45, or by purchasing tax titles pursuant to G.L. c. 60, §52. Interest on un-paid balances accrues at 14 percent from the time taxes are due until the collector’s sale or tax taking occurs, under G.L. c. 59, §E.57, and at 16 percent thereafter pursuant to G.L. c. 60, §62.

Observing the significant difference in original and current account balances in the cases before him, Long noted that “[a] small tax bill,” if unpaid, “can... rapidly become much larger...” and that the “ap-plication of 14 percent (to) 16 percent in-terest rate and complete loss of equity once redemption rights are foreclosed” may lead to uncontrollable results, particularly if the property owner finds it difficult to “catch up” on missed payments. Long noted that nearly all of the taxpayers were pro or litigants, one of whom appointed a tax receiver and submitted notices from the private tax lien holder be-cause she did not believe that it held her tax title. She noted that many of the property owners were unemployed, and heirs who may have dif-ficult coordinating payment of tax bills af-ter a parent’s death, would be unfairly bur-dened by the imposition of such high rates of interest.

Long suggested that private tax fore-closure cases considered by the court should be defined as the foreclosure proceedings brought and pur-sued by private entities are outside the po-licy process... Such entities are responsible to their investors, not the citizens of a city or town, and their goals and incentives are not the same. Maximizing return on in-vestment may not include accommodation to individual circumstances to the ex-tent a municipality, acting for itself, might otherwise deem warranted.”

SOURCES OF MUNICIPAL TAX COLLECTION LAW


IS TAX COLLECTION SOLELY A GOVERNMENTAL FUNCTION?

As stated in Worcester’s brief, “[w]hen the government provides programs and services for the benefit of property, that property... is... held subject to the reciprocal obligation of meeting, in its due proportion, the expenses incident to such protection.” Worcester Brief at 4, cit-ting W&R Mortgage Co., Inc. v. Board of Assessors of Boston, 451 Mass. 716, 722 (2008). Accordingly, the Worcester Brief faults on that “reciprocal obligation,” mu-nicipalities may collect unpaid real estate taxes and municipal charges in accordance with procedures set forth by the Legis-la-ture in G.L. c. 60.

Tallage and Worcester explained sepa-rately that municipal tax collection is a governmental function, the sale of tax collector deeds or the assignment of tax titles is a form of collection, not a del-egation of a government function to a non-governmental party. But, even if this were a delegation of a government function, it is not regulated by G.L. c. 60, §3B, Tallage Brief at 3.

When a tax lien buyer pays an out-standing tax bill on the property owner’s behalf, the city or town receives immedi-ate payment of the outstanding tax bal-ance, and the tax lien buyer steps into the shoes of the municipality, so to speak, and holds the right to receive reimbursement for the amount paid to the municipality. If the property owner does not make prompt pay-ment, the holder of the debt, the holder of the debt may charge interest on the unpaid account, bears all costs of recording the tax deed or assignment of tax lien, and bears the cost of filing a complaint to foreclose the lien in the Land Court and providing notice to the taxpayer of the foreclosure action. Regardless of whether in the munici-pality or the tax lien buyer who col-lects delinquent taxes, the amount that can be collected does not change. All the municipal amici stressed that private par-ties who acquire tax receivables are bound by G.L. c. 60 just as municipalities are, and that private tax collection charges greater than could a city or town.

HARD TIMES, HARD DECISIONS

Lawrence, Worcester and the MCTA each stated that reductions in state aid to municipalities force communities to sell tax receivables when their budgets are not sufficient to pay for traditional tax collect-ion. Lawrence offered that, because the cost of filing a tax lien case and providing notice is now $580, it would cost the city of Lawrence $174,000 to file 300 tax lien cases. This expense is one that Lawrence cannot afford, given that it has reduced its municipal staff and needs an immediate infusion of capital to avoid re-duction in services and to $174,000.

Worcester offered a more detailed example, stating that: “[i]n the
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prior three fiscal years Worcester has received a total of $9,796,306, an average of $3,265,435 from the sale of tax collector's deed sale or assignments under §52. This amounts to 1.57 percent of the tax levy in FY10, to 1.49 percent in FY11; and to 1.42 percent in FY12. These average amounts represent between 62 percent and 57 percent of the allowable increase in the tax levy under Proposition 2 ½, G.L.C. 59, §21C, in each of the applicable fiscal years. In more concrete terms, this is the equivalent of 133 percent of Worcester's snowplow budget in FY10 or fifty police officers in FY11 or fifty two teachers in FY12. In addition, each tax collector's deed that Worcester sells represents a cash outlay that it avoids. In order to be valid the deed must be recorded within sixty days after the date of sale or the date of foreclosure by the Land Court or deputy sheriff. If a lien is one year old when assigned, and it takes 6 months to bid it out and assign it, plus another year to foreclose it, it must be at least 30 months or 10 quarters before a Judgment is issued. If two years have passed by, taxpayers who are unwilling or unable to pay overdue taxes. NCLC Brief at 7.


NCLC’s recommended safeguards speak to “enhanced” foreclosure notice and service of process. Specifically, NCLC recommends that an “Enhanced Notice of Tax Title Sale” be sent to the municipality that sells the right to collect taxes to a third party buyer or assignee. The enhanced notice would be written in plain language which would identify the purchaser of the tax receivable, would explain that the purchaser of the tax receivable may foreclose on the taxpayer’s property, and would emphasize what occurs in the foreclosure process and how foreclosure would affect the taxpayer’s redemption rights. NCLC Brief at 2-3.

The NCLC’s proposed “Enhanced Foreclosure Notice and Flexible Redemption Terms” would require personal service upon the taxpayer and would require that information on how to avoid foreclosure — including allowing redemption through sale, mortgage finance, or reverse mortgage transactions — be included. Should a taxpayer fail to appear at a hearing on the foreclosure petition, the Land Court would not enter a default under G.L.C. 60, §67, but would require the holder of the tax debt to notify social service or housing agencies such as the Councils on Aging or Massachusetts Executive Office of Elder Affairs of the pending foreclosure. NCLC did not address the method to be used where a delinquent taxpayer is not a resident homeowner, or the extent to which sale or redemption might be possible for, or desired by, taxpayers who are unwilling or unable pay overdue taxes. NCLC Brief at 7.

As to responding to the NCLC, the city of Lawrence dispelled the notion that tax foreclosure is a speedy process and described why the suggestion that municipalities fail to provide taxpayers with sufficient notice of the consequences of non-payment of taxes strains credulity in light of the number of notices that taxpayers receive before a tax lien is finally foreclosed: “Taxpayers get quarterly tax bills, a demand notice, a newspaper publication of assignment, posting of notices in public venues, a notice of assignment from the assignee when the lien is assigned, an Order of Notice filed in the Registry of Deeds, certified mail from the Land Court or deputy sheriff. If a lien is one year old when assigned, and it takes 6 months to bid it out and assign it, plus another year to foreclose it, it must be at least 30 months or 10 quarters before a Judgment is issued. If two years old before assignment, the tax payer has received 14 quarterly tax bills plus the notices mentioned above — bringing the paper trail to approximately 20 docu-
ments in total.” Lawrence Brief at 3.

Lawrence also refuted the argument that tax foreclosure results in unnecessary loss of equity in real estate, pointing out that 70 percent of the housing stock in Lawrence is investment property that is owned by absentee taxpayers, and that failing to pay taxes and deferring maintenance are ways in which property owners can use real estate as a “cash cow” to be “milked” to the end of its useful life. In Lawrence, many homeowners who obtained mortgages far in excess of the value of the home during the past several years may lack either incentive or ability to pay even the smallest of tax bills.” Lawrence Brief at 1-2. Holding owners to account, literally and figuratively, is one of the few tools that Lawrence has to prevent the deterioration of the housing stock in the city.

Lawrence makes the point that any debt is manageable in the early stages of delinquency, but if a delinquency is allowed to linger even in the name of compassion the debt can become unmanageable, and the incentive to bring the account current is lost. Lawrence also agrees with Tallage that few tax takings result in foreclosure, and that most end in redemption.

THE SCOPE OF EQUITABLE POWERS

Perhaps the questions of law that have more resonance for municipalities than the constitutional issues, i.e. sufficiency of notice and the opportunity to be heard, are those concerning the scope of the Land Court’s equitable powers. Does the court have inherent or conferred powers under G.L. c. 60, §§5, 52, 25A, to appoint guardians, receivers or representatives to take action on behalf of absent heirs? Does the court have the power to appoint commissioners to sell properties and to preserve “surplus” for the taxpayer and other creditors pursuant to G.L. c. 241, §§9, 22, 31, 34, 35?

The absence of case law concerning the scope of the court’s powers has led Long to believe that the issue has rarely been explored in the context of tax foreclosure cases because actions to foreclose a taxpayer’s right of redemption have generally been brought and pursued by the municipalities themselves, following legislative procedures set forth in G.L.c. 60 and G.L.C. 58. The inference is that, because homeowners may be treated unfairly when a private party holds municipal receivables, the court can and should exercise its equitable powers to protect vulnerable homeowners. However, the counterargument is that decisional authority on the role of the court in tax collection matters does not exist because there is no need for an equitable remedy where no equitable injury exists.

NCLC asserted that the court’s powers can and do exercise discretion to enter into payment agreements and deferral agreements with taxpayers who seek such assistance, and that G.L.C. 60, §62A allows municipalities to reduce the interest owed on an outstanding tax obligation. In addition, cities and towns may apply to the Commissioner of the Department of Revenue for a reduction of tax titles or from the sale of tax possession properties of tax foreclosure must be used in the calculations of a community’s free cash under G.L.C. 59, section 23, with the exception of certain surplus proceeds received from land of low value foreclosure sales.” Haley Brief at 3.

Long has referred this case to the Appeals Court for review pursuant to Mass.R.Civ.P. 64 before he renders judgment in the instant cases. The amici have presented facts and examples to show that Massachusetts tax foreclosure, whether prosecuted by municipalities or private parties, is constitutionally sound and does not put delinquent taxpayers at a disadvantage. Regardless of the outcome, this case is and will be a source of discussion and examination, particularly as municipalities struggle to balance the needs of individual taxpayers and responsibility to protect the public fisc.
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