President Sheff: Improving the public’s perception

Massachusetts Bar Association President Douglas K. Sheff’s year has been marked by heightened engagement between lawyers and the public. Sheff took steps to improve the visibility of the legal profession’s generous nature. He invited the public to be more than just clients, but partners working together in support of our system of justice. Sheff was also recognized for making landmark strides to improve the public image of lawyers — one of Sheff’s important victories on the road to improving the lives of workers, and sought to promote underrepresented segments of the population.

More than just accomplishments of a successful year, each of these efforts represent goals from the outset of his presidency. Sheff grew up viewing lawyers and judges as leaders and caretakers of their community, and continued to see this in action throughout his 30 years in practice. However, aware that negative stereotypes often cling to the legal profession, he resolved to shed light on the charitable nature of members.

“Lawyers and judges are good folks, givers of their time,” Sheff says. “They give back an average of 56 hours a year in pro bono time (according to a 2013 report by the American Bar Association). That’s not mandated; [it’s] just part of our ethical code.”

He encouraged MBA members to continue supporting established public outreach efforts, and to seek new opportunities. Members rose to the opportunity. The turkey drive helped feed nearly 2,000 people on Thanksgiving, more than 600 families in the Boston area. Members also contributed to a lawyer-backed project to fight homelessness at the Pine Street Inn. The Young Lawyers Division partnered with Cradles to Crayons to collect new and like-new children’s items and warm winter gear as part of its Gear Up for Winter program.

Free CLE starts in September

The MBA is the first and only statewide CLE provider in the commonwealth to offer free CLE to its members. MBA members are highly encouraged to take advantage of this exciting new benefit upon joining for the 2014-2015 association year.

Access to top-notch continuing legal education has always been one of the signature benefits of MBA membership. Sheff notes that both just got bigger. MBA members will have at their fingertips limitless access to educational resources that will help keep them on top of the law, advance their careers and enhance their practices — all at no extra cost.

“We should be proud of ourselves in Massachusetts,” Massachusetts lawyers participate in CLE not because we are required to, but because we want to be the best our profession has to offer,” said incoming MBA President Marsha V. Kazazosian. “The MBA is embracing this commitment by offering our members unfettered, free...”

Anderson, Loew, White honored with Volunteer Recognition Awards

Three Massachusetts Bar Association members were recognized for their outstanding service at the MBA Volunteer Recognition Dinner on July 10 at Leonard’s in Burlington. Susan G. Anderson, Elliott M. Loew and Paul E. White were each presented with the Volunteer Recognition Award, which salutes members who volunteer substantial time and effort to the mission, program and/or publications of the MBA or otherwise enhance the organization in a significant way.

Nominations for the awards were made to the MBA’s Volunteer Recognition Committee who provided recommendations to MBA officers. The officers voted on the award recipients based on the committee’s recommendations.

For additional photos of the dinner, see related story, page 12.

Farewell, but not goodbye

When I became president of the Massachusetts Bar Association last September, I promised myself that I would do everything I could to leave the MBA better than I found it. I knew that was going to be a tough task, given the MBA’s long list of illustrious predecessors. Almost a year later, however, I truly believe we are better. Just look at the ways we’ve grown as an association.

We’ve expanded our influence through efforts like our “12 for 12” program. Through this unique initiative, we united lawyers and the general public, with one voice, and drew greater attention to the need for proper funding for our courts and civil legal aid. We also used our voice in the legislature to support workers and their families in Massachusetts. The MBA’s efforts this year helped...
receive the meaningful awards are now more clearly eligible to with these devastating injuries brain injury, marathon survivors in part, to our public support its protocol for a second distribu-
tion when the One Fund announced enhanced influence was felt to 100,000 workers each year. to enforce its measures, which is currently being repli-
cation of lawyers, and we made improving the public percep-
tion of lawyers, and we made excited to see this now regular interaction continue under new Supreme Judicial Court Chief Justice Ralph D Gants, who has partnered with us on so many im-
portant issues. We are also work-
ing to set up more events with our wonderful clerks, who keep our courts running smoothly. I’ve spoken at length about improving the public percip-
tion of lawyers, and we made great strides in this area, includ-
ing more active outreach and interaction with the media. We spread the word about the posi-
tive contributions of lawyers on TV, radio and print through cov-
erage of our work with marathon victims; our Blue Ribbon Com-
mision’s report on the wrongful salaries paid to ADAs, public defenders and bar advocates; and many other important sto-
nies. The press now frequently calls upon MBA officers and other leaders for legal expertise, and the MBA is now recognized as the place to go for legal com-
mentary.

In addition to these accom-
plishments, we’ve grown as an organization this year. Our mem-
bership is expanding, and we’re especially excited at the anthesis of new attorneys, many of whom joined after taking our Practicing with Professionalism Course — a great new addition to our edu-
cational offerings. Additions to our successful community programs like Dial-A-Lawyer and Tiered Community Mentoring, we also found new ways to represent the underrepresented. MBA volun-
teers helped feed 600 families at a Thanksgiving food drive, and we provided financial support to an innovative program started by lawyers to house the homeless at the Pine Street Store.

Of course, I’ve also grown during my term as president in ways I could not have imagined. I am the son of a trial attorney, and an incredible organization this year, and I am grateful for all of my trust and support. I’ll say farewell, for now, but not good-
bye.

### MBA honors 50-year members

On July 10, the Massachusetts Bar Association honored members of the profession who have served for 50 years. Standing, from left: MBA Treasurer Robert W. Harms, MBA Vice President Martha Rosh O’Mara, MBA Vice President Christopher P. Sullivan, Robert W. Harms, Alan R. Miller, George S. Silverman, James R. Krasnow, MBA President Douglas B. Sheehy, MBA President-elect Martha V. Kazarian. Sitting, from left: Hon. Beverly W. Boorstein, John A. O’Leary, Colette Manoil, Robert Jude Donahue.

### Practice group tours generating station

On Wednesday, June 4, 12 members of the MBA’s Energy Law Practice Group toured the Mystic Generating Station in Charlestown/Everett. The outing provided practice group members, whose practices revolve around the energy industry, with the opportunity to see firsthand how the energy facility operates. The MBA’s Energy Law Practice Group brings together attorneys from across the energy law spectrum and provides a forum for attorneys to improve professional competence and exchange thoughts and ideas in the area of energy law.

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- FREE CLE STARTS IN SEPTEMBER
- PAST PRESIDENT SHEFF: IMPROVING THE PUBLIC’S PERCEPTION
- ANDERSON, LOEW, WHITE HONORED WITH VOLUNTEER RECOGNITION AWARDS
- MBA CELEBRATES GANTS CONFIRMATION

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MBA celebrates Gants confirmation

A reception was held at the Massachusetts Bar Association on July 16, to honor the confirmation of Justice Ralph D. Gants, the next Chief Justice of the Supreme Judicial Court.

From left: Supreme Judicial Court Chief Justice Ralph D. Gants and Michael R. Gants (son) and Deborah A. Ramirez (wife).

From left: MBA Treasurer Robert W. Harnais, Trial Court Intergovernmental Relations Senior Manager Georgia K. Critsley and Massachusetts Association of Hispanic Attorneys President Jessica A. Massey.

From left: Supreme Judicial Court Associate Justice Fernande R. V. Duffy, Juvenile Court Chief Justice Amy L. Nechtem, SJC Associate Justice Margot G. Botsford and Trial Court Chief Justice Paula M. Carey.

From left: MBA Secretary Christopher A. Kenney, MBA Vice President Christopher P. Sullivan and MBA Past President Robert L. Holloway Jr.

From left: MBA Secretary Christopher A. Kenney, MBA Vice President Christopher P. Sullivan and MBA Past President Robert L. Holloway Jr.
When tragedy struck Boston with the Marathon bombings, nearly 90 MBA members immediately turned to the public’s aid. Programs such as the Marathon Bombing Victims Legal Assistance Program and the MBA’s special Dial-A-Lawyer programs ensured that victims knew their rights, had their medical records properly reviewed and received compensation due to them. Support continued as victims and families navigated the difficult year ahead, with pro bono efforts providing support to 25 individuals injured in the blasts.

“Lawyers often have dinners where we recognize a member and give out an award. These dinners aren’t heard by the public,” Sheff observed. “This year we had every major news outlet report something positive about our attorneys and judges.”

Rights for all workers

Sheff himself was honored this year for his efforts on behalf of workers’ rights. The Workers’ Injury Law and Advocacy Group (WILG) presented Sheff with the Special Recognition Award for Innovation and Community Service in recognition of his role in spearheading the MBA’s Workplace Safety Task Force, which is part of his Working Families Initiative. Composed of a diverse representation of industries, individuals on the task force studied statewide trends in workplace safety, with a focus on reducing injuries and deaths in the workplace. They also promoted education and awareness of workers’ rights, and raised awareness in many communities throughout Massachusetts.

The task force played a major part in getting the Right to Know Bill passed in 2012, after the bill had failed nine times previously. The Right to Know Bill mandates that workers receive basic information about their employer and their legal rights, which is particularly important for temporary workers who often lack this knowledge.

The Workplace Safety Task Force was so successful, it was dubbed the “Sheff Model” and is being used as a prototype for other states pursuing similar initiatives, including California, Illinois, New York, Connecticut and Missouri.

“I was thrilled to be honored by this national organization. But what’s twice as nice is having a role in inspiring other groups across the country, to see our work duplicated and grow over the years,” says Sheff. “My vision is to one day see them all join together, sharing one project.”

Sheff and the MBA’s contributions to workers’ rights are ongoing. Just recently, two other MBA-backed workers’ bills were signed into law: the Burial Bill and the Domestic Workers Bill. The Burial Bill increases burial compensation from its previous amount of $4,000 to eight times the average weekly wage in Massachusetts. The Domestic Workers Bill protects and establishes work standards for nannies, homecare workers and house cleaners who work in homes and are vulnerable to abuse and exploitation.

Allies in funding: The 12 for 12 program

Viewing the public as more than just consumers to the legal profession, Sheff created the “12 for 12” program, which calls upon the public as partners in the goal of securing proper court funding. Through the program, he asked 12,000 lawyers to ask 12 of their clients to write to their legislators, advocating the need for adequate court funding. This push took place during the critical 12 week period open to budget deliberations after the governor announced his budget proposal.
MASSACHUSETTS LAWYERS JOURNAL | AUGUST 2014

NEW MBA MEMBER BENEFITS

Take advantage of expanded member benefits when you join for the 2014-15 association year.

MEMBERSHIP DUES RENEWAL REMINDER

Renew your MBA membership by mail or online

The 2014-15 membership year is drawing to a close, and membership renewal notices for the 2014-15 year were recently distributed. As in years past, the MBA offers members two renewal options:

By mail: Renew your MBA membership through the mail with a check or credit card payment.

Online: If you would like to renew now, go to www.massbar.org/renew. We understand that valuable time is in, and are happy to offer you this time-saving green alternative.

If you have any questions, please contact MBA Member Services at (617) 338-0536.

As always, thank you for your continued support of the MBA.

FREE AND UNLIMITED CLE PROGRAMS

Effective September 1, your MBA membership will include free, unlimited CLE seminars and On Demand programming for all our educational programs, excluding conferences.

Visit www.massbar.org/CLE for available programming.

NEW SECTIONS AND UNLIMITED MBA SECTIONS/DIVISION MEMBERSHIP

Join one or more of the Massachusetts Bar Association’s 19 sections or Young Lawyers Division — specialty groups that focus on a specific area of law. Enjoy free, unlimited sections as part of your MBA membership. Keep up-to-date on practice-related developments and expand your networking circle.

Section membership allows you to:

• Build your network of contacts with key lawyers and experts through numerous networking opportunities
• Receive timely notice of recent case law and pending legislation
• Seek appointment to leadership roles in the MBA
• Join practice groups, or specialty groups within a section, free of charge.

To fill expanding member needs, the MBA has added two new sections this year:

• Complex Commercial Litigation
• Workers’ Compensation

The Complex Commercial Litigation section will focus on the needs of attorneys whose practices involve litigation in intellectual property, commercial contracts, business torts, bankruptcy, and other areas across the commercial litigation spectrum.

The Workers’ Compensation section is dedicated to advancing the interests of workers’ compensation practitioners in the commonwealth through educational seminars, legislative support, discussion groups and networking opportunities.

Visit massbar.org for a full list of MBA sections/divisions.

MBA SUSTAINING MEMBER

I give more because...

“...I wish to help sustain the MBA because the MBA has sustained me. The MBA has helped me to practice law in a more scholarly, practical and open-minded and inclusive manner — and to have more fun doing so!”

SUSTAINING MEMBER CATHERINE E. REUBEN
Fitser Roberts Weintraub LLP, Boston
MBA member since 1970

SUSTAINING MEMBERS are those MBA members who demonstrate a high level of commitment to both the association and the profession. Visit www.massbar.org/sustaining to become a sustaining member today.

YOU Belong here
PRESIDENT’S PROFILE
Continued from page 4

“It’s a new unique program, based on the idea that the message would be stronger if it came from more than just the lawyers and judges, but from the people,” he explains. “With the unique geographical distribution of the MBA, we’re in a good position to help.”

While there’s no metric with which to measure the success of the program, the feedback Sheff received was positive.

“Participating attorneys have told me their clients were grateful to be heard,” he says. “The legislature hears plenty from lawyers and judges, but hearing from constituents shows that we all want the same thing.”

Traumatic brain injury: an invisible epidemic

One of the causes Sheff is most passionate about is raising support and awareness for victims of Traumatic Brain Injury (TBI).

“Each year, 2.4 million people suffer from a Traumatic Brain Injury and their case is often mishandled. In the military, there [is] an average of 22 suicides per day linked to head injury,” Sheff says. He is now creating a multi-profession task force, similar to the Worker’s Rights Task Force, to address this problem. The group will study the current state of TBI victim’s rights, advocate for solutions to any shortcomings discovered, and promote awareness.

“We want to provide help to the folks who need it, to educate the public, and to overcome bias which often accompanies an ailment that you can’t easily see, that people aren’t familiar with,” he says. Sheff says the marathon attacks strengthened his resolve to reach out to this population, as many victims of TBI are still seeking compensation.

“This population needs a voice. The TBI task force effort just shows the willingness of the bar to motivate another diverse group,” says Sheff, who will remain committed to this effort beyond his presidency.

New opportunities will continue

During the past year, the MBA House of Delegates voted unanimously to create two new sections: the Complex Commercial Litigation Section, and the Workers’ Compensation Section.

The Workers’ Compensation Section is the first of its kind in Massachusetts and provides Workers’ Compensation lawyers much deserved representation at the MBA. The Complex Commercial Litigation Section is intended to create a home for complex commercial litigators, many of whom practice before the Superior Court’s Business Litigation Section or in the federal courts.

Sheff is pleased to add these new sections and to create new opportunities within the organization.

“Sheff is proud of the accomplishments of the MBA over the past year and looks forward to seeing it continue to thrive under incoming president, Marsha V. Kazarosian.

“The MBA’s goals will never stop; ideas are always picked up and continued by the next leader,” he says. “We don’t erase the board and start over.”

MBA President Douglas K. Sheff met with U.S. Representative Tammy Duckworth (D-IL) this past spring, where they discussed traumatic brain injury.

Sheff raises a toast at the MBA holiday party. Sheff at the Thanksgiving food drive.

The Massachusetts Law Review, the longest continually run law review in the country, is always looking for submissions from members of the bar.

The Law Review is circulated around the world and contains comprehensive analyses of Massachusetts law, commentary on groundbreaking cases and legislation, and reviews of books of interest to practitioners.

Submit articles or proposals to Jason Scally, director of Media and Communications, at JScally@MassBar.org.

For more information, visit www.MassBar.org/Submissions.
One Fund’s final protocol

"We are grateful that the One Fund appears to have listened to our concerns and crafted its protocol to be more inclusive of all survivors, including those with invisible injuries who are now more expressly eligible for cash gifts in addition to programmatic support."

MBA PRESIDENT DOUGLAS K. SHEFF, BOSTON GLOBE, JUNE 20

Sheff was quoted in the Globe in a story on the One Fund’s final protocol for Marathon bombing survivors hoping to receive financial compensation in the second round of disbursements. The protocol now includes those survivors who suffered invisible injuries such as, hearing loss and traumatic brain injury. Sheff was also quoted on Boston.com and in the Boston Business Journal.

Law school enrollment

"It’s a complete structural change, and it’s not going away. The end result is fewer graduates, and fewer law schools."

MBA PAST PRESIDENT RICHARD P. CAMPBELL
BOSTON GLOBE, JULY 9

Campbell spoke to the Globe as part of a story about declining enrollment at the nation’s law schools. During his MBA presidency, Campbell created a Task Force on Law, the Economy and Underemployment which addressed the topic of underemployment among recent law school graduates in its report.

Suspects defending themselves

"Once in awhile we have these cases come through that make everybody’s blood boil but it really is firmly embedded in the American law that people can represent themselves and confront their accusers."

MBA PAST CRIMINAL JUSTICE SECTION CHAIR PETER ELKANN
FOX25, JUNE 20

Elkann provided his analysis of accused rapist Marcos Colon’s representing himself at trial in Suffolk Superior Court. “Yes, unbelievable, isn’t that anybody is so foolish to do this, particularly in a serious case,” Elkann told FOX25.

Voir dire bill

"It’s highly concerning that the Superior Court is spending an enormous amount of energy trying to defeat a measure that would ensure a level playing field and eradicate discrimination and racism from the venue. Frankly, their objections to this are truly befuddling."

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER
MARTIN W. HEALY, MASSACHUSETTS LAWYERS WEEKLY, JULY 7

Healy was quoted in a cover story on a bill that would allow attorney-conducted voir dire in the Superior Court. The proposed law would make attorney-conducted voir dire permissible across the Superior Court.

Gunshot detection technology

"That’s impermissible under the state wiretap statute without a party’s consent, so that’s where it is most questionable."

MBA UNIFORM RIGHTS & RESPONSIBILITIES SECTION
VICE CHAIR RICHARD W. GOLE, WRKM, JUNE 30

Gole provided his insight for a story on Guardian, a new gunshot detection technology which will be used in Methuen public schools this fall. Privacy is a potential issue as the technology records audio of its surroundings when activated.

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planned education programs that have brought several MBA sections together. Most recently, she helped plan and bring faculty to the Public Law Conference.

“I’m so deeply honored by this award, but more than that, I’m truly grateful for all the opportunities the MBA has given me,” said Anderson. “It’s a joy and a privilege to work with inspiring leaders and wonderful lawyers who are so fully committed to improving our legal system, fostering access to justice, and bringing to our communities a greater understanding of the law.”

Elliott M. Loew, Law Offices of Elliott M. Loew PC

Loew has been a member of the MBA’s Mock Trial Committee for 16 years, serving as chairman in 1998, 2007 and 2008. He has been a special instructor of law at Newton North High School since 1980 and was the lawyer/coach of the school’s mock trial team for 14 years (1990-2004). In 2006, Loew became the lawyer/coach of the Newton South High School mock trial team, which won the MBA’s state championship in 2008.

“This award is a wonderful tribute because it’s for spending time doing things I find to be fun, useful and important,” said Loew. “The mock trial program touches a lot of people. Several people have told me how much they loved the case we wrote or about students that continue to be involved in mock trial when they go to college. Where else do you get to do that as a lawyer, with that kind of impact?”

Paul E. White, Sugarman, Rogers, Barshak & Cohen PC

White was recognized for his tireless work as the chair of the MBA’s Marathon Bombing Victims Legal Assistance Program. Since April 2013, he has spent an enormous amount of time organizing, training and recruiting lawyers to provide pro bono assistance to survivors of the Boston Marathon bombings.

“It was enormously rewarding both personally and professionally,” said White. “We were totally helping people. In the end, we all felt that we had achieved something truly significant.”

In addition to his work with the survivors of the Boston Marathon tragedy, Paul serves as chair of the MBA’s new Complex Commercial Litigation Section Council and previously served as co-chair of the MBA’s Civil Litigation Section Council. White has also served on the MBA’s House of Delegates and as a member of the Task Force on Law, the Economy & Underemployment.

“To be recognized by your peers and colleagues with this kind of award means a great deal to me,” said White. “Our job as lawyers is demanding and time consuming and isn’t always necessarily professionally fulfilling. Volunteering provides a sense of fulfillment that sometimes eludes people in our profession.”

BreNnEDay, auguST 12

Western Mass. Summer Reception
5:30-7 p.m.
Storrowton Tavern, 1305 Memorial Ave., West Springfield

WEDNESDAY, auguST 20

WBZ Call For Action Ask-A-Lawyer Program
7-9 p.m.
Statewide dial-in #: (617) 787-7070

THURSDAY, auguST 21

Summer Networking Series
Session III
5:30-7 p.m.
Tia’s, 200 Atlantic Ave., Boston

http://access.massbar.org

The Massachusetts Bar Association invites you to join the conversation on MY BAR ACCESS, the only online member-to-member community exclusive to Massachusetts Bar Association members. MY BAR ACCESS combines social networking, member-created content and imperative bar resources — all in one location.

We encourage you to connect with us on Facebook, Twitter and LinkedIn for additional information on news and upcoming events of interest to the legal community.

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FOR MORE INFORMATION, VISIT MASSBAR.ORG/EVENTS/CALENDAR
I'm an MBF Fellow because...

"The Massachusetts Bar Foundation has provided opportunities to engage and contribute to the community and bar in an intimate and direct way and to interact with attorneys I may not have met in the course of my other activities. As a Fellow of the MBF, I have had the opportunity to contribute to legal organizations and projects that provide a lifeline to both the bench and thousands of pro bono and low income litigants during a period when resources and funding have been substantially reduced. Even as a relatively new practitioner and solo attorney, I believe my participation makes a difference."

CYNTHIA E. MACCAUSLAND
Law Offices of Cynthia E. MacCausland, Norwood

Our list of sponsors is growing!

The MBF thanks the following firms for their support during our 50th Anniversary year. Additional sponsorship opportunities are still available. Contact us at (617) 338-0647 or visit www.MassBarFoundation.org for more information.

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Barnes & Levinson LLP
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Special for our Golden Anniversary

Sponsorships at the Gold, Silver, and Bronze levels include the benefits listed and automatic enrollment in the MBF’s Law Firm and Corporate Partnership Program, which provides:

- A full year of valuable publicity for your firm
- Your logo displayed on all public relations materials by MBF events throughout the year
- Acknowledgment in on-screen presentations during the 50th Anniversary Gala Dinner

Contact the MBF for exclusive sponsorship and underwriting opportunities for contributions of more than $10,000.
access to our CLE programs. This is just one of the many pledges the MBA makes to support its members.”

Each year, the MBA offers educational programs, covering recent case law, new legislation, emerging legal trends, new rules of practice and procedure, and issues of law practice management that will benefit attorneys and their practice. CLE programs cater to new, experienced and transitioning attorneys across a wide range of practices. Courses are taught by some of the most experienced attorneys in the Commonwealth, and most programs include written materials.

Although there is no continuing legal education requirement for attorneys in Massachusetts, the MBA is an accredited sponsor of CLE in New Hampshire, Rhode Island, Vermont and New York. Most MBA CLEs qualify for three hours of CLE credit. Taking advantage of free CLE is easy. Course offerings take place at venues throughout the state, and many can be accessed remotely through MBA On Demand. Members can sign up for programs online at www.massbar.org/cle.

The MBA is in the process of building the catalog of programs for the 2014-15 year. Visit the website regularly — new courses are added all the time.

John Blazo contributed to this article.
Bar News

Western Mass. Dial-A-Lawyer program enters 20th year

Residents of Berkshire, Franklin, Hampden and Hampshire counties had the opportunity to have their legal questions answered through the Massachusetts Bar Association’s semiannual Western Massachusetts Dial-A-Lawyer call-in program on the evening of June 26.

More than 25 volunteer lawyers from the MBA fielded 177 phone calls addressing legal concerns, including family-related issues, real estate, consumer and elder law matters. The legal advice was provided at no charge as a public service of the MBA. Calls were answered and processed by MBA volunteers over a three-hour period at the Western New England University School of Law in Springfield.

Launched in 1994, the MBA’s Western Massachusetts Dial-A-Lawyer program entered its 20th year in 2014. The program is co-sponsored by Western New England University School of Law, The Republican, El Pueblo Latino, the Massachusetts Association of Hispanic Attorneys and the Hispanic National Bar Association.

The MBA has also hosted a monthly Dial-A-Lawyer program in Boston since 1991, which is typically held on the first Wednesday of every month.

“It feels great to be helping people out, and it’s really rewarding,” said attorney Stephen J. Phillips, who has been a Dial-A-Lawyer volunteer for many years. “I think people really look forward to this date so their questions can be answered.”

Phillips said he fielded a diverse group of calls during the program, including questions on elder law, wills, power of attorney, credit card debt and student loan debt.

Attorney Susan A. Melinkowski also enjoys volunteering with the Dial-A-Lawyer program because it provides such a beneficial service to the residents of western Massachusetts.

“As a volunteer opportunity, it’s a great way to feel like you’ve provided some excellent assistance,” said Melinkowski. “You can answer up to 25 or 30 questions in a night, so you really have a terrific opportunity to talk to the community and answer their personal questions.”

The identities of both the callers and the attorneys are kept confidential, which often makes callers feel more comfortable about the questions they ask.

“It’s a great opportunity for somebody who might be a little shy to call an attorney, or maybe somebody who already has an attorney and wants to have a second opinion,” she added. “They can just pick up the phone and get free legal advice.”

The MBA thanks the following members for donating their time and expertise to this important public service effort:

- Corey M. Carvalho, University of Massachusetts Legal Services, Amherst
- Mark D. Cross, Bulkley, Richardson & Gelinas LLP, Springfield
- Colleen C. Currie, Colleen C. Currie, Attorney at Law, Northampton
- Hyman G. Darling, Bacon Wilson PC, Springfield
- Michele Feinstein, Shatz, Schwartz and Fentin PC, Springfield
- Carmina D. Fernandes, Law Office of Carmina Fernandes, Ludlow
- Albert F. Gordon, Albert Gordon Esq., Springfield
- Devon W. Grierson, Aaronson & Associates PC, Pittsfield
- David M. Hirschhorn, David Meir Hirschhorn, Attorney at Law, Springfield
- Kimberly Klimczuk, Skoler Abbott & Presser PC, Springfield
- Stephen R. Manning, Stephen R. Manning PC, East Longmeadow
- L. Jeffrey Meehan, Wallace Pillsbury & Murphy PC, Springfield
- Amy J. Megliola, Siddall & Siddall PC, Springfield
- Susan A. Melinkowski, Cooley Shrair PC, Springfield
- Keith A. Minoff, Law Offices of Keith A. Minoff, PC, Springfield
- Daniel F. Morrissey, Bacon Wilson PC, Springfield
- Stephen J. Phillips, Dunn & Phillips PC, Springfield
- Michael J. Powers, Powers & Lequori, West Springfield
- Andrea R. Reid, Law Office of Andrea R. Reid, Springfield
- Juan M. Rivera, Juan M. Rivera Esq., Springfield
- Katherine A. Robertson, Hampden County District Attorney’s Office, Springfield
- Daniel M. Rothschild, Bulkley, Richardson & Gelinas LLP, Springfield
- Barry M. Ryan, Doherty, Wallace, Pillsbury & Murphy PC, Springfield
- Michael Siddall, Siddall & Siddall PC, Springfield
- Gillian Szelachiewicz Dubay, Szelachiewicz Dubay PC, Chicopee
- Gregory A. Wolf, Law Office of Gregory A. Wolf Esq., Pittsfield

By Mike Vigneux

Expert Resources

Continued from page 10
MBA hosts volunteer recognition dinner

On July 10, Massachusetts Bar Association President Douglas K. Sheff and fellow 2013-14 officers honored attorneys and members of the legal community for their hard work and dedication to MBA initiatives during the last association year.

From left: Jeffrey N. Catalano, Scott M. Houdani, Holly M. Polglase, Russell X. Pollock and Warren F. Fitzgerald.

From left: Kristin A. Monaco, Grace V. Bacon Garcia and Janice C. Migro.

From left: Laurence M. Johnson, Martha Rush O’Mara and Christopher P. Sullivan.

From left: Philip Privitera, Robert L. Holloway and Morgan J. Gray.
Boal becomes Chief Magistrate Judge

Magistrate Judge Jennifer C. Boal became chief magistrate judge on June 16. Boal will serve a term of three years and becomes the ninth chief magistrate judge of the District of Massachusetts. Former Chief Magistrate Judge So-rokin served in that capacity from Feb. 1, 2012, through June 15, 2014, when he was sworn in as a United States district judge.

Boal was appointed United States magistrate judge by the United States District Court in 2010. From 2002 to 2010, Boal served as the chief of the Civil Division in the U.S. Attorney’s Office for the District of Massachusetts. In that capacity, she both litigated cases and supervised a 40-person division.

Before being named civil chief, Boal served in the District of Massachusetts’ Criminal Division for three years prosecuting economic crimes and asset forfeiture cases. She also served as an assistant U.S. attorney from 1991 to 1999 in the Civil Division of the United States Attorney’s Office for the Eastern District of New York. Prior to becoming an assistant U.S. attorney, Boal worked in private practice at Shearman & Sterling in New York City.

The Governor’s Council has unanimously confirmed Justice Geraldine S. Hines to serve as an associate justice of the Massachusetts Supreme Judicial Court. Hines, a respected Appeals Court associate justice, will fill the vacancy created by the retirement of Chief Justice Roderick L. Ireland. Hines will become the first African-American woman to sit on the state’s highest court.

Hines was appointed by Governor Deval L. Patrick as an Appeals Court associate justice in 2013, after serving as a Superior Court associate justice since 2001. Prior to her appointment to the bench, Hines practiced law in Boston, concentrating on criminal defense, civil rights litigation and social justice advocacy.

“We commend the historic confirmation of Judge Geraldine S. Hines as the first African-American woman to sit on the Supreme Judicial Court,” said Massachusetts Bar Association Chief Legal Counsel and Chief Operating Officer Martin W. Healy. “Judge Hines is a well-established champion of individual liberties and civil rights. The SJC, as well as the citizens of Massachusetts, will undoubtedly benefit from the addition of her strong talents and keen intellect.”
When change happens, don’t run up the ladder of inference

BY SUSAN LETTERMAN WHITE

Hypothetical #1: Loren has been a partner at Smith, Green, and Post for close to 10 years. Loren is “a team player.” Until one year ago, Loren was the “right hand” to named partner Chris Smith. Loren managed client relationships and was the first or second chair in most of the complex litigation that Chris claimed as origination. Loren never complained about the share of the firm profits, although the differential between the firm’s highest and lowest paid partners had been widening over the years. Last year Loren was told to develop origination, experienced a pay cut and learned that Chris was giving work to other lawyers, junior to Loren. This year Loren was told that despite finding other sources of work to boost billable hours, Loren needed to leave the firm by the end of the year.

Hypothetical #2: Taylor hung a shingle after years of working in larger firms and as Taylor’s firm grew, the time came to hire another lawyer. After much searching, Taylor hired Sydney about six years ago. It took Taylor and Sydney six months before true comfort in the working relationship developed. After five years, Taylor was certain in the belief that Sydney would become Taylor’s partner. Their work styles were complimentary and they had become close friends. The past 24 months had seen a significant slow down in work and revenue. Indeed, this topic was the first point of discussion for every office meeting. Additionally, Sydney had moved out of state and back home to be near family as Sydney’s family grew larger with the birth of children. Sydney had expressed concern about the drop in revenue and the cost to the firm of keeping Sydney on payroll. When Sydney told Taylor of an intention to take a position with another law firm, Taylor was devastated.

Neither Loren nor Taylor wanted the changes they were experiencing to occur. Both were concerned about how to manage the change and still meet their interests, needs, wants, expectations, hopes, dreams, concerns and goals. People often experience change as an anticipated and undesirable loss and a “felt need” to change or escape from a particular uncomfortable situation. The simple fact is that we are loss-averse. As Nobel Prize-winning economist, Daniel Kahneman says, “the asymmetric intensity of the motives to avoid losses and to achieve gains shows up almost everywhere.” When our thinking and behavior is driven by an intense desire to avoid feelings of loss instead of taking the time to adjust to those feelings and allow them to dissipate at the right time, we stop thinking effectively and instead jump to conclusions. This hinders our ability to move forward strategically and intentionally toward our true interests.

For example, Taylor may be in shock from the surprise that Sydney is leaving. Taylor may also feel a need for more revenue in the business. Instead of first making sense of Sydney’s departure in a way that allows forward movement of actions, Taylor may not consider the possibility of maintaining any part of the relationship with Sydney. Instead Taylor may jump to the conclusion that the relationship is over, that there will be nobody with a complementary skill set and the business won’t survive. Chris Argyris called this thinking, running up the ladder of inference. In the previous example, Taylor may be only able to notice a small set of data relative to the departure of Sydney — that the relationship with Sydney is ended. Taylor selected a piece of data and attached a limited meaning — that the relationships with Sydney is over and without Sydney, the law firm couldn’t be managed well or easily.

In the example with Loren, Loren’s identity as a law firm lawyer may limit options for new positions outside of law firms. If Loren begins with a position that it is better to be a partner in a law firm than counsel in a corporation, Loren won’t notice or consider any opportunities that might be a better fit with Loren’s personality or interests.

When change happens to you, begin with an open mind and challenge your assumptions about the situation. Find your true interests and possible options. Questions to ask:

• How did things change? What are my assumptions about the change(s)? Why?
• What if my assumption was wrong?
• What are my interests, wants, needs, preferences, hopes and concerns?
• How can I move forward toward my interests?
• Where should I look for options?

Susan Letterman White, JD, MS (Organization Development) is a strategic change consultant for clients in professional service industries. Her work is designed to improve organizational, group, and individual performance, leadership, work-flow, diversity and inclusion, communication and business development. Her projects often include data collection and analysis, group facilitation, mediation, training and coaching.

Snapshots from around the MBA

New attorneys sworn in at Faneuil Hall ceremony

Massachusetts Bar Association’s New Practice Management Section Vice Chair Damian Turco speaks to a crowd of 360 new attorneys as they prepare to be formally sworn in to the Massachusetts bar. The admission ceremony took place on June 16 in Faneuil Hall.
Superior Court holds construction manager at-risk responsible for design errors

The Coghlin decision presents real concerns to those engaged in CMR projects. Construction managers typically conduct constructability reviews, but do not generally check all of the architect’s or engineer’s designs and calculations in performing their review. Nonetheless, this decision portends that the construction manager essentially becomes the guarantor of design specifications and that change orders are no longer a legitimate means of seeking recourse for design-related problems that may be encountered on a project. Unless overturned on a likely appeal, there is a serious risk that the Coghlin decision will disincentivize contractors from agreeing to CMR projects. Further, CMR contract terms and conditions will have to be carefully scrutinized and negotiated in order to avoid similar outcomes. In addition, contract price proposals will have to be adjusted to accommodate the enhanced risk associated with CMR contracts pursuant to this decision.

By Kenneth E. Rubinstein and Nancy Mcdarady

The Worcester Superior Court recently issued a potentially landmark decision clarifying the risk that construction managers assume when entering into CMR contracts for public building projects.

In Coghlin Electrical Contractors, Inc. v. Gilbane Building Company, Gilbane and the Massachusetts Division of Capital Asset Management (DCAM) entered into a CMR contract for the construction of a state psychiatric facility with a guaranteed maximum price (GMP) of $237 million. The electrical subcontractor, Coghlin Electrical Contractors, Inc., requested a significant increase in the cost of its subcontract due to alleged mismanagement by construction manager Gilbane, including scheduling issues, improper coordination with other subcontractors, and failure to manage and complete wall and ceiling framing. Although Gilbane issued a change order request to DCAM, the agency denied the request because such an "inefficiency claim" was not allowed under the CMR contract. Coghlin filed suit for cost recovery against Gilbane, which in turn sued DCAM on the grounds that Massachusetts courts historically excepted claims by contractors against the designer, the exception as strictly applying to the developer or owner. The court interpreted that the Spearin Doctrine does not apply to CMR contracts.

The court explained that unlike the traditional design-bid-build arrangement, the CMR process allows public entities to enter into a contract with a construction manager before the design is finished. Pursuant to M.G.L. c.149A, “The purpose of entering into a contract with the CMR contractor during the design phase of the project is to involve the CMR contractor in project planning and to benefit from the CMR contractor’s expertise during the design phase or the project.” The court further differentiated the process of allocating cost overruns in a CMR project from the design-bid-build process. A CMR typically includes a guaranteed maximum price (GMP) that includes the cost of the work, general conditions costs, and the construction manager’s fee. Absent change orders, the construction manager assumes the risk for cost overruns that exceed the GMP.

Given that a construction manager under a CMR contract assumes additional duties and enhanced financial risk, the court determined that the owner/construction manager relationship under a CMR contract is not the same as the owner/general contractor relationship found in a design-bid-build arrangement. The court noted that the CMR contract at issue had imposed upon Gilbane extensive “design review” responsibilities including the continuous review of “drawings, specifications and other design documents, for clarity, consistency, constructability, maintainability/operability...” These design responsibilities also came with “additional financial exposure” such that something going wrong, since CMR contracts also allocate project cost overruns differently than traditional design-bid-build projects (e.g., a CMR contractor is bound by a guaranteed maximum price, absent approved change orders). Hence, as a result of the “material changes in scope” proved unavailing to the court. So was its argument that an exception to the underlying contract’s broad defense and indemnity obligations applied relating to claims for design changes, errors or omissions. The court interpreted that exception as strictly applying to the designee (an agent of DCAM) and noted that because no claims had been brought against the designee, the exception claimed by Gilbane was not relevant.
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