During the last days of the 2013-2014 legislative session, the Legislature took up several bills of interest to the Massachusetts Bar Association.

Juvenile parole: Last month the House passed legislation, by a vote of 127 to 16, providing for the opportunity for parole for juveniles convicted of first degree murder after serving 20 to 25 years. Juveniles convicted in cases deemed to be pre-meditated, committed with malice or extremely cruel would be eligible for parole after serving 25 to 30 years. This bill also increases the wait to 10 years before for a second parole hearing. The MBA, at its May House of Delegates meeting, adopted a set of parole principles for juveniles.

I’ve said it before: the Massachusetts Bar Association has a long history of giving a voice to the underrepresented. Given some of the events of the past few weeks, we have proof that people are listening. For starters, Gov. Deval L. Patrick recently signed into law MBA-backed legislation creating a Domestic Workers’ Bill of Rights. Under the law increasing the minimum wage, he also passed an MBA-backed proposal to increase burial benefits for workers’ compensation deaths. (See related story, this page.) This is not only your government at work; this is the MBA at work, and you can be proud of our efforts advancing laws like these that support workers and their families.

In June you may have also seen the news that the One Fund announced its protocol for the second distribution of charitable funds to Boston Marathon bombing survivors. Under an earlier draft of the protocol, some survivors with traumatic brain injury (TBI) and hearing loss — the so-called “invisible injuries” — appeared to have been left out. The MBA will host two more networking receptions this summer. Join us on July 17 at The Yard, Liberty Hotel, and Aug. 21 at Tia’s on the Waterfront. RSVP at www.massbar.org.
IN THE APRIL Lawyers Journal, the MBA included a section thanking all Marathon Bombing Victims Legal Assistance Program volunteers. Boston attorney Bernard A. Kansky should have appeared on the list.

In the June Lawyers Journal, an image on page 8 appeared with an incorrect caption. MBA Past President Leo V. Boyle appeared as there are those who don’t understand why we would support those with TBI and other "invisible" wounds, there remains a need for our voice to be heard. That is why I am in the process of creating a Brain Injury Task Force, which I described back in March in this very column. Through this we will educate, coordinate, collaborate and, with the help of our lawmaker friends, legislate to improve conditions for victims of TBI. We are the preeminent voice of the profession, and our advocacy truly makes a difference.

Twenty-one Massachusetts Bar Association members participated as a team in the Seventh Annual Lawyers Have Heart 5K Road & Summer Celebration on June 2 at the Blue Hills Bank Pavilion in Boston. The team raised $33,185 for the American Heart Association. The donation will be used to raise awareness of heart disease and stroke, both of which profoundly affect the legal profession.
Massachusetts Board of Bar Examiners enacts military spouse attorney licensing policy

BY ELIZABETH JAMISON

The Massachusetts Board of Bar Examiners voluntarily enacted a military spouse attorney licensing policy, effective as of March 2014. The following message appears on their website:

“The Massachusetts Board of Bar Examiners welcomes inquiries and applications for admission on motion from attorney spouses of service members in the United States Uniformed Services. Understanding the unique challenges faced by military spouse attorneys who move frequently in support of the nation’s defense, the Board of Bar Examiners is committed to working with these attorneys in the bar application process to the extent possible when their service brings them to Massachusetts. Military spouse attorneys are encouraged to contact the Board of Bar Examiners Executive Director Marilyn Wellington at (617) 482-4466 or Marilyn.Wellington@bbe.state.ma.us for more information regarding this process.”

Massachusetts allows all attorneys to submit applications for admission on motion. Admission is not based on reciprocity or limited to candidates from specific jurisdictions. However, the current rules for admission request proof that an applicant has been actively engaged in the practice of law for five out of the past seven years immediately preceding the application. Additionally, the applicant must have graduated from a law school that is ABA-approved or authorized by a state statute to grant the degree of bachelor of laws or J.D. at the time of graduation. However, the Board of Bar Examiners will consider military spouses on a case-by-case basis and the new policy encourages them to accommodate the hardships faced by military spouse attorneys.

While there is no specific ruling in place regarding military spouse attorneys, the Superior Judicial Court directed this effort and, recognizing the numerous employment barriers faced by attorney spouses of members of the military, encourages the Board of Bar Examiners to work with military spouses.

Massachusetts Board of Bar Examiners Executive Director Marilyn Wellington has praised the new policy and looks forward to working with the Supreme Judicial Court and the Bar Examiners on a rule that fully addresses licensing issues for military spouse attorneys in Massachusetts.

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LEGAL NEWS

Boston to host national convention of Hispanic lawyers in 2015

The Hispanic National Bar Association (HNBA) has chosen the Massachusetts Association of Hispanic Attorneys (MAHA), an affiliated bar of the Massachusetts Bar Association, to host its 2015 Annual Convention in Boston, after the HNBA withdrew its conference from Phoenix in opposition to a discriminatory law proposal in Arizona. Boston was originally selected to host the 2016 HNBA Annual Convention.

The HNBA announced Boston as the site of its 2015 convention at a reception hosted by the MBA on May 29.

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The MBF Society of Fellows includes Massachusetts attorneys and judges who are committed to giving back to the profession and supporting legal services for the year in our state. To learn more, or to join, visit www.MassBarFoundation.org.

Future of public service looks bright: MBF awards grants for law student internships

Each year, the MBF’s Legal Intern Fellowship Program (LIFP) provides stipends to law students who will spend their summer interning at Massachusetts organizations providing civil legal services to the poor. The MBF Trustees are proud to announce that three outstanding law students were selected from a competitive pool of applicants to receive stipends of $6,000 for their public interest law internships this year.

This year’s award recipients are:

Eleanor Cashmore of Boston College Law School. Cashmore will be working in the Elder, Health and Disability Unit at Greater Boston Legal Services. This will be her second summer at GBLS. (Supported by the MBF Fellows Fund)

Kuong Ly, a Massachusetts native currently studying at UCLA School of Law. Ly will spend his summer working with the Housing and Homelessness Program at the Massachusetts Law Reform Institute. (Supported by the MBF Fellows Fund)

Jessica Wikstrom of Boston College Law School. A former teacher, Wikstrom will work in the Child and Adolescent Legal Services Program at the Children’s Law Center of Massachusetts. (Supported by the Smith Family Fund)

The MBF’s LIFP has two concurrent goals: to give talented students the experience and encouragement they need to pursue careers in the public interest law sector and to provide legal aid organizations with much-needed additional staff capacity for the summer. These awards are supported by generous contributions to the MBF Fellows Fund from lawyers and judges statewide, as well as by the Smith Family Fund.
which is administered by the MBA with support from the Massachusetts Bar Foundation, attracts teams from more than 130 public, private, parochial and charter high schools across the commonwealth.

But Marshfield, despite being home to Daniel Webster, one of the nation’s greatest legal scholars and orators, did not have a team until Kasten came to the school in 1999.

“I’ve always been a political junkie,” said Kasten, a middle school English teacher. “History, politics, the law, all connect.”

In Springfield, where Kasten taught previously, he started an after-school mock trial program with the help of the county district attorney, who was also the father of one of his students. When Kasten came to Marshfield in 1999, he asked for permission to start a similar after-school mock trial program at the high school. Not knowing any local attorneys, he got Gibson’s name and asked him to become the team’s attorney coach.

“They were looking for someone with trial experience,” Gibson said. “I didn’t know Neil, had never been involved in the mock trial program, but I said, ‘OK. I enjoy high school students and teaching, and am very committed to this community.’”

The students met once a week after school in Gibson’s office. It was not an instant success, even or a gradual success. The team did not win a single trial for five years. Many times the group almost disbanded. Parental donations, including an anonymous $25,000 gift, kept the program going.

The breakthrough came in 2005. The team finally won a trial, and advanced all the way to the “Sweet 16” in the state tournament.

“When we got to the Sweet 16, I knew if we were going to grow, we had to meet more often,” Kasten said. That summer he wrote a curriculum that tied the mock trial program to a high school class, and won school board approval to make “Courtroom and the Law” a fully accredited course at the high school, one of the few, if not the only, accredited mock trial high school courses in the state.

The year-long class, which meets for 90 minutes every six days, as well as three hours every Saturday from 10 a.m. to 1 p.m., has become one of the most popular at the high school, open to freshmen through seniors.

“Half of the kids in the class are interested in law,” said Kasten. “It’s a good way to get involved and learn more about the law.”

In 2006, Kasten and Gibson added a new team, to which Kasten taught “back in the day.”

Since becoming a fully accredited high school course in 2006, Marshfield’s mock trial team has advanced to the Sweet 16 every year. The team has now reached the Final Four five years in a row.

In addition to participating in the state tournament, the Marshfield team was also invited to a national high school mock trial tournament at Yale University. Marshfield also fielded a team at the Garden City Invitational in Newton.

“We had 20 trials last year,” Kasten said. “That’s like five years of courtroom experience in one year for these kids.”

Gibson teaches the students just like he was taught “back in the day.”

“Students stand when they speak, argue and present points firmly but politely,” said Kasten. “I bump into people at the bank, grocery store, the cleaners, and instead of talking sports, they want to talk about the mock trial team. The radio station follows us. It’s a real community effort, and one of the reasons why it has been so successful.”

The high school has not announced who will replace Kasten and Gibson, but has assured students and the community that the class and team will continue.

“I feel we all have an obligation to help with the education and rearing of all of the students in our community,” said Gibson of his 15 years of pro bono work with the Marshfield High School mock trial program. “Whenever we can do some community good, we all benefit.”
Judicial Youth Corps returns to Springfield under MBA/SJC partnership

BY MIKE VIGNELUX

The Supreme Judicial Court’s Judicial Youth Corps program returns to Springfield this summer after a 13-year absence in the city. The program teaches public and private high school students about the judicial branch of government and fundamental principles of law.

In collaboration with the SJC, the Massachusetts Bar Association will administer both the Springfield and Worcester Judicial Youth Corps programs. The Springfield program was developed through a partnership with the SJC, the MBA and Western New England University School of Law.

SJC Chief Justice Roderick L. Ireland, an advisor and ardent supporter of the Judicial Youth Corps program since its inception, marked the return of the Springfield program on June 6 at the High School of Commerce, where he administered an oath to 10 Springfield-area students.

“This is a program with great potential to open doors,” remarked Ireland, who noted that past participants have gone on to successful careers as lawyers, doctors and many other professional roles. “I hope this program gives you an appetite for the future,” he said.

“The SJC has operated the Judicial Youth Corps program in Boston continuously since 1991. The expansion of the Judicial Youth Corps program to Springfield marks the second time the MBA has helped grow the Judicial Youth Corps program beyond its Boston roots. In 2007, the MBA, in cooperation with the SJC, expanded the highly successful program to the city of Worcester.”

“The MBA is proud to fund and provide such an innovative program in Springfield this year, giving students in one of the commonwealth’s largest urban centers an opportunity to experience firsthand how the justice system works in Massachusetts,” said MBA President Douglas K. Sheff. “We are also pleased to continue our partnership with the Supreme Judicial Court on the successful Judicial Youth Corps program in Worcester, whose program will again benefit from financial support of our philanthropic partner, the Massachusetts Bar Foundation.”

Between May and June, students in both Springfield and Worcester take part in educational sessions over the course of six weeks, which orient them on the court system and the law. In July and August, students participate in paid internships in the court system over another six-week period.

More than 700 students in Massachusetts have participated in Judicial Youth Corps since its inception.
Massachusetts legal community celebrates Law Day

Each May, in celebration of Law Day, the Massachusetts Bar Association sends attorneys and judges to various high school classes to engage students on a specific legal topic. This year’s Law Day topic spoke to a basic right in our society that affects students and schools directly: freedom of speech.

As part of the MBA’s Law Day Every Day 2014 program, volunteer attorneys and judges visited local schools to engage students in an open conversation about free speech. Volunteers brought the Constitution to life to help students understand how it plays a vital role in their daily lives and to help teachers educate students about their rights and responsibilities as citizens.

Massachusetts Law Review seeks submissions

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.
Harnais honored by Quincy Bar Association

Massachusetts Bar Association Treasurer Robert W. Harnais was honored with the 2014 Alfred P. Malaney Award at the Quincy Bar Association annual dinner on June 5 at the Terrell Room in Quincy.

The award, named for Malaney, a long-time Quincy attorney who passed away unexpectedly, is presented to an attorney for distinguished legal services. The honor is commonly referred to as the “Man of the Year Award.”

A general practitioner, Harnais concentrates on criminal law, family law, real estate, labor and consumer law. A member of the Norfolk County Bar Association, Harnais has served as a member of the Race and Ethnic Advisory Board for the Massachusetts Legal Assistance Corporation. The House of Delegates voted at its March meeting to support the bill.

V. Kazarosian before the Joint Committee on Labor and Workforce Development at the State House in Boston. The bill was an MBA-backed proposal to increase burial benefits for workers’ compensation deaths from $4,000 to eight times the average weekly wage under the Workers’ Compensation Statute. "Increasing the burial benefit will do much to alleviate the financial burden for families who are faced with the shocking and sudden death of a loved one while on the job," said MBA President-Elect Marsha V. Kazarian before the Joint Committee on Labor and Workforce Development earlier this year.

Domestic Workers’ Bill of Rights: Also last month, Patrick signed into law MBA-backed legislation creating a Domestic Workers’ Bill of Rights that would establish labor standards and protect the basic rights of domestic workers. The House of Delegates voted at its March meeting to support the bill.

FY15 budget: Earlier this month the Legislature enacted the FY2015 state budget, which provided $15 million for the Massachusetts Legal Assistance Corporation. At press time, the budget was awaiting action by Patrick, who has 10 days to review it.

LEGISLATIVE SESSION UPDATES (Continued from page 1)
By Mike Vigneux

New attorneys across the state have been heading back to “the classroom” for a required one-day Practicing with Professionalism course within 18 months of being admitted to the bar.

With the implementation of Rule 3:16 by the Supreme Judicial Court’s (SJC) Standing Committee on Professionalism, all newly admitted Massachusetts attorneys must attend the course in order to maintain their good standing at the bar. The rule applies to anyone newly licensed to practice law in Massachusetts on or after Sept. 1, 2013.

The Massachusetts Bar Association is the only SJC-approved provider to offer the course statewide. Since January 2014, the MBA has partnered with the University of Massachusetts at Worcester to host the one-day course on UMass campuses in Worcester, Boston, and Dartmouth. The course will also be offered at UMass Lowell on Sept. 19 and UMass Amherst on Oct. 27.

On May 22, newly admitted attorneys made their way to UMass Medical School in Worcester for a full day of training and networking. Some general themes of the day included building a good reputation, finding a mentor, making ethical decisions, giving back through pro bono work and the importance of continuing legal education.

MBA Secretary Christopher M. Kenney welcomed the attendees by noting that this was the first of many SJC-approved providers to offer the course. Kenney said he wished he had attended a similar course when he first began practice.

“We’re all subject to it. It doesn’t matter what your race or gender is,” Kenney said.

By using the current example of Los Angeles Clippers owner Donald Sterling, who has been accused of making racially discriminatory comments, Frison remarked that the media attention in that situation has made bias “not so hidden anymore.”However, most cases of everyday bias don’t play out on a national stage.

“Keep the discussion on the table,” said Frison. “Don’t be afraid to discuss these issues as they come up.”

After Frison’s presentation the afternoon sessions covered topics such as navigating social media, time management, and introductions to law office management, managing client fund accounts and trust account recordkeeping, the bar disciplinary system, the Massachusetts court system and bar associations.

The Practicing with Professionalism course registration fee includes breakfast, lunch, a cocktail reception and opportunities to network and learn about pro-bono projects in the legal services community. All necessary record keeping and attendance reports to the Board of Bar Overseers are handled by the MBA and course attendees enjoy complimentary MBA membership which allows new attorneys to take advantage of valuable resources and programs.

“This course covered everything I set out to learn,” acknowledged a new attorney on a course evaluation form.

For more information on the Practicing with Professionalism course, including dates, locations and frequently asked questions, visit massbar.org/practicingwithprofessionalism.

Continued from page 10

Anthony Tarricone, concentrating in cases involving serious personal injuries and wrongful death resulting from the operation, design, and maintenance of all types of aircraft. Twenty-five years experience in aviation cases including airline, commercial and general aviation.

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MBA Secretary Christopher A. Kenney welcomes newly admitted attorneys to the Massachusetts Bar Association’s Practicing with Professionalism class in Worcester on May 22.
MBA hosts press conference for marathon survivors

The Massachusetts Bar Association hosted a press conference on June 20 on behalf of a group of Boston Marathon bombing survivors seeking a meaningful award from the One Fund Boston after sustaining hearing loss and traumatic brain injury (TBI) more than a year ago. The event, moderated by MBA President Douglas K. Sheff, included survivors, TBI experts and representatives from the Hearing Loss Association of America (HLAA).

The press conference came in response to the One Fund’s call for public comment on the draft protocol for the second distribution of nearly $20 million in charitable funds. The MBA issued a formal statement on the protocol and submitted a letter to the One Fund from Sheff.

The Boston Globe also published a letter to the editor co-written by Sheff and Paul White, chairman of the MBA’s Marathon Bombing Victims Assistance Program Boston, which addressed comments made by a One Fund spokeswoman who, in an earlier Boston Globe article, accused the marathon survivors’ volunteer attorneys of improperly taking advantage of the outpouring of support for their own gain. The “Un-charitable view of Marathon survivors’ attorneys is unfair” letter ran in the June 26 Boston Globe.

In addition, on June 27, The One Fund released its Final Protocol for the second distribution of funds. The MBA released the following statement:

The One Fund’s Final Protocol for the second distribution of charitable funds is a welcome advancement for survivors of the Boston Marathon bombings who suffered traumatic brain injury (TBI), hearing loss and other invisible injuries. 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. We are eager to see what meaningful impact the final distribution has for these survivors, and hope that the Final Protocol leads to more equitable awards for all. As we did during the first One Fund distribution, the Massachusetts Bar Association will again provide volunteer lawyers to assist survivors free of charge with their questions and legal needs related to this new application process.
CONTINUED FROM PAGE 12

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Young Lawyers Division hosts blood drive

The Massachusetts Bar Association’s Young Lawyers Division hosted an American Red Cross Blood Drive on May 30 at the MBA’s Boston office. More than 20 MBA members participated in the drive.

YLd networking reception draws crowd

Members of the Massachusetts Bar Association’s Young Lawyers Division gathered for an end-of-the-year networking reception on May 28 at the Hyatt Regency in downtown Boston. The event was co-sponsored by the Massachusetts Academy of Trial Attorneys. From left: Samuel S. Reidy of Reardon Law Office LLC; Jaime Winchenbach of JPMorgan Chase; Ralph B. Gillis of Gillis, Borchardt & Barthel LLP.

REGISTER ONLINE AT WWW.MASSBAR.ORG/CLE OR CALL (617) 338-0530.
Support for marathon survivors

“Their lives will never be the same and they’re relying upon and hoping that they don’t slip through the cracks during this, the second round of disbursements.”

MBA PRESIDENT DOUGLAS K. SHEFF, NECN, JUNE 20
Sheff was interviewed prior to a press conference hosted by the MBA on behalf of a group of Boston Marathon bombing survivors still seeking financial compensation from One Fund Boston, which announced plans to distribute $19 million in a second round of disbursements. The press conference generated additional coverage by the Boston Globe, WHDH, FOX25, WCVB, the Boston Business Journal, Massachusetts Lawyers Weekly and BostInno. Paul White, chair of the MBA’s Marathon Bombing Victims Legal Assistance Program, was also quoted in several stories.

Hines SJC nomination

“I think she’s known as a no-nonsense judge. If someone deserves society’s punishment and deserves to serve time, she’s not afraid to impose that punishment.”

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER MARTIN W. HEALY, BOSTON GLOBE, JUNE 13
Healy spoke to the Globe about Governor Deval L. Patrick’s historic nomination of Appeals Court Judge Geraldine S. Hines to the Supreme Judicial Court. If confirmed by the Governor’s Council, Hines will become the first African-American woman to serve on the state’s highest court.

South Yarmouth abuse case

“This is pretty serious. They’re probably playing it pretty carefully because they don’t want to make a misstep.”

MBA PRESIDENT-ELECT MARSHA V. KAZAROSIAN CAPE COD TIMES, JUNE 1
Kazarosian was quoted in the Cape Cod Times in a story on a Department of Children and Families (DCF) report that accuses two South Yarmouth caregivers of abuse, which could have contributed to the death of 23-month-old Lucas Braman in February. Authorities have not determined a cause of death and the investigation is ongoing.

Hernandez case

“The lawyers are doing exactly what they should. When you have a murder charge where somebody’s facing life without the possibility of parole, you leave no stone unturned even if there’s a one percent chance you’re going to be successful.”

MBA PAST CRIMINAL JUSTICE SECTION CHAIR PETER ELIKANN FOX25, JUNE 17
Elikann was a live guest on the FOX25 Morning News to discuss the latest court appearance of Aaron Hernandez in the ongoing Odin Lloyd murder investigation.

Matanov arrest in Tsarnaev case

“I would say there are two potential reasons that they waited so long to indict him: One could be to gather more information, and the other could be to strengthen the death penalty claim.”

MBA PRESIDENT DOUGLAS K. SHEFF BOSTON HERALD, MAY 31
Sheff spoke to the Herald about Khairullozhon Matanov, a Quincy cab driver and friend of accused Marathon bombers Dzhokhar and Tamerlan Tsarnaev, who was arrested and charged with obstructing the investigation. MBA Past Criminal Justice Section Chair Peter Elikann was also a featured guest on New England Cable News on May 30, the day Matanov appeared in federal court.

Where available, news clips—including audio/video—can be found on our website at www.massbar.org.
FOR YOUR PRACTICE
Summertime business development ideas

BY DAMIAN TURCO

Ah, summertime. Things just seem to slow down a bit while we take it all in. And when it comes to business development, we seem to consider the summer as time off. Well — don’t! Yes, people take vacations and leave work early in the summer. It can be difficult to get people to volunteer for things or get excited about new ideas, but to put the summer categorically off limits as a time to build your business is nonsense. There are plenty of ways you can drive business this summer. Here are a few ideas to get you started:

Go to events. Hey, I realize you want to get home while it’s still light out, but summer events can be a lot of fun and are a great venue for building new relationships. They tend to be more relaxed, outdoors and focused on socialization. The MBA has two more summer socials and you should put them on your calendar. The next one is Thursday, July 17 at The Yard at the Liberty Hotel. And on Thursday, August 21, there have the highly anticipated social at Tia’s on the waterfront. Be there!

Promote yourself in existing social circles. The summer is a great time to catch up with friends at cookouts, weddings and family get-togethers. Before you go to your next one, formulate an interesting story or two about your practice. Make it interesting to the non-lawyer while highlighting your knowledge, short of sounding boring or arrogant. This will give other party-givers some insight into your industry while gently reminding them that you are their legal resource.

Get involved in a section. The MBA has several sections, mainly aligned with practice areas and practice management. Because our membership year begins in September, the summer is a great time to sign up for more involvement starting in the fall. Identify a section of interest and commit to a plan of involvement. Join a Section Council, commit to help organize an educational program, or write a related article by reaching out to the section’s incoming chair. Section involvement builds your professional credibility and gets you more exposure. When you make the move you get back. The more credibility you have, the easier it is to land clients.

Assess your Internet presence. Okay, there are admittedly some slower days in the summer. That’s exactly what you need to effectively assess your Internet presence and strategize changes. Take an hour or two to see what your competition is doing. Compare that to what’s being done in other markets and other states. Read about trends and formulate a tactical plan for better success this fall and next year.

Be creative. Unique, creative ideas are great. While there are reliable ways to develop business in every practice area, unique ideas are a great way to develop your brand. How do you that should be closely related to the practice area, but generally speaking, you want to do something few others (if any) are doing. Sponsor a softball team and get your firm’s name on its jerseys. Participate in a fundraising effort the people of your firm for a worthy cause. Create a branded pro bono program with the help of a local organization. Be creative and do good and you will win every time.

Damas Turco owns Mass Injury Firm PC, a Boston based personal injury law firm, representing the victims of negligence across Massachusetts. Damian is the chair of the Law Practice Management section.

Book Review

The ‘Long Mile Home’ through an attorney’s lens

BY LYNN S. MUSTER

Riveting. This was a riveting, and most readers know the end. Even if you know the facts, you might not know the stories. So there is plenty to digest in this comprehensive account of the events surrounding the Boston Marathon bombings.

The book focuses on five people, weaving their “stories” through information gathered from news reports and extensive interviews. That approach has the book feel less like a dry chronology, and more like an engaging narrative. It also means the book is accessible to more than just Bostonians.

Reading through an attorney’s lens, the reader learns what could be used on cross-examination of Dzhokhar Tsarnaev, or, more likely, at his sentencing hearing. Dzhokhar will argue he was the “patsy,” that he was under the influence of his strong-willed brother, Tamerlan, and that Tamerlan was the brains behind the operation. The facts presented by the authors, if true, do not support that theory.

For example, aside from the implication that Tamerlan suffered from mental illness, having confided to others of hearing voices, the Tsarnaevs deemed Dzhokhar to be the “smart” brother, boasting he was Ivy League material. Dzhokhar was a high-volume marijuana dealer (the authors claim he earned $1,000/week). Dzhokhar even had suggested that the 9/11 terrorist attacks, and attacks like them, “were sometimes justified by U.S. actions around the world.”

In the year before the bombings, Dzhokhar tweeted that he had been in the United States for a decade and he “want[ed] out.” (Notwithstanding that he obtained citizenship in 2012.) His college grades were sinking. And after the bombings, he coldly went about his life as if nothing had happened. “Not only was he not hiding — he seemed over cast.”

In the note written on the inside of the boat Dzhokhar hunkered down in during the manhunt, he admitted to his role in the bombings and defiantly claimed they were justified. When investigators searched Dzhokhar’s laptop, they found materials promoting radical Islamic interpretations and martyrdom.

The reader will be curious about two issues that the authors, due to lack of information, could only speculate on or explore. First, Sean Collier, the MIT police officer killed in his police vehicle, may have known Tamerlan. Collier was schooled at Salem State University, where Tamerlan “partied with friends.” Also, Collier was active in Somerville boxing circles while Tamerlan “trained at one of the gym’s gyms.” Perhaps this connection explains why the brothers proceeded so directly to the MIT campus in their attempt to supplement their weaponry.

And second, how had the house-by-house search teams not found Dzhokhar even though he was just 2 miles from where he had ditched his getaway car? The authors conclud- ed that the manhunt “had hardly proved air- tight,” and that, were it not for Dzhokhar’s injuries, the boat owner’s discovery of him could have resulted in another victim. Read this book, as an attorney, as a lover of Boston or as a citizen of the United States. It is an engrossing and heartbreakingly well-told story not only the death and destruction caused by the Tsarnaev brothers, but also the heroism, strength and recovery of the people of Greater Boston.

Lynn S. Muster is a senior staff attorney at the Massachusetts Appeals Court, where she has worked since 2000. She is an active member of the Massachusetts Bar Association, who served on its Appellate bench bar committee and its 2012 Task Force on Law, the Economy and Underemployment.

“Long Mile Home,” by Scott Helman & Jamie Russell

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Tax consequences related to the transfer of stock options in a divorce

BY WILLIAM H. SCHMIDT AND AMY L. GREEN

For some employees, stock options are regular components of their compensation packages, whether received as non-qualified stock options (NSOs) or incentive stock options (ISOs). Challenges for these employees and their attorneys often arise during a divorce when determining how to treat said stock options for purposes of division of assets and support awards and the tax consequences that follow. In 2001, Massachusetts courts concluded that language in M.G.L. c. 208, s. 34 clearly indicates that both vested and unvested stock options may be treated as marital assets for purposes of dividing a marital estate. Massachusetts courts have also concluded that income from the exercise of stock options can be considered as part of gross annual income under a divorce judgment. For those stock options divided as assets, there are a number of factors to consider, determined primarily by what type of stock option(s) the employee has been granted.

Types of grants
NONQUALIFIED STOCK OPTIONS

Nonqualified stock options (NSOs), or nonstatutory stock options, are more commonly granted than incentive stock options (ISOs). NSOs do not carry the same tax advantages as ISOs for employees. Employers are able to deduct the spread between the strike price and the fair market value of the stock at the time of exercise. ISOs are more favorable to employees. Therefore, they are granted less often than NSOs. Like NSOs, ISOs are not taxed upon the grant of the option. If an employee makes a disposition of the stock received from the exercise of an ISO, the income from the transaction is capital gain or loss. NSOs generally are not taxable to employees upon the grant of the option. The first taxable event occurs upon exercise of the option. Upon exercise, the employee receives compensation income equal to the spread between the strike price and the price on the date of exercise and pays ordinary income tax on the spread. The employer receives a tax deduction equal to the income recognized by the employee upon exercise. The sale of stock triggers a second taxable event with respect to the gain on the sale, which is the excess of the sale price over the price on the date of exercise. If the stock is sold at least one year after the option is exercised, the employee pays long-term capital gains tax, but if the stock is sold within one year of the exercise, the employee pays ordinary tax rates.

ISOs can be granted to anyone, including employees, consultants, advisors and directors. Further, NSOs may be transferrable in the case of divorce, depending on the stock plan. Because NSOs can be granted to anyone and are more favorable to employees, stock options to be considered in a divorce will most likely be the NSOs.

INCENTIVE STOCK OPTIONS

ISOs are options that conform to all of the statutory requirements of IRC §§ 421, 422 and 424 at the time of the grant. ISOs are more favorable to the employee from a tax standpoint and less advantageous for employers. Therefore, they are granted less often than ISOs. Like NSOs, ISOs are not taxed upon the grant of the option. If an employee makes a disposition of the stock received from the exercise of an ISO, the income from the transaction is capital gain or loss. NSOs generally are not taxable to employees upon the grant of the option. Despite the favorable income tax treatment of ISOs for employees, ISOs are treated as NSOs for purposes of the Alternative Minimum Tax. ISOs can only be granted to employees and if an employee leaves his or her job, he or she may have three months to exercise the options or they revert to NSOs. Pursuant to IRC § 422, ISOs are not transferable. Therefore, ISOs cannot be transferred by an employee to a nonemployee spouse in a divorce.

Issues to consider

Is an employee who transfers nonstatutory stock options to a former spouse pursuant to a divorce required to include an amount in gross income upon the exercise of the employee’s former spouse stock options? IRC § 1041(a) provides that no gain or loss is recognized on a transfer of property if incident to divorce. IRC § 1041(b) provides that the property transferred is generally treated as acquired by the transferee by gift and that the transferee is the donee of the property. IRC § 83 provides that the value of the stock on the date of exercise exceeds the amount paid for the stock. The employee/transferee is not required to include any amount in gross income when the transferee exercises the stock options.

What is the effect upon taxation under FICA, FUTA and income tax withholding of a transfer of nonstatutory stock options incident to divorce? Federal Insurance Contributions Act (FICA): IRC §§ 3101 and 3111 impose FICA taxes on “wages,” as defined in § 3121(a). These taxes are imposed on both the employer and employee. IRC § 3102(a) provides that the employee portion of FICA taxes must be collected by the employer of the taxpayer by deducting the amount of the tax from wages as and when paid. IRC § 3102(a)(1)(a) provides that the employer is required to collect the tax, notwithstanding that wages are paid in something other than money. Section 3102(b)(3) provides that every employer required to deduct the FICA tax is liable for the payment of that tax, and is indemnified against the claims and demands of any person for the amount of any such payment made by such employer. See IRC Rev. Rul. 2004-60.

The fact that payments are includable in the gross income of an individual other than an employee for the employee’s former spouse does not remove the payments from FICA wages. Nothing in IRC § 1041, pertaining to transfers of property between spouses or incident to divorce, excludes payments to a person other than an employee from wages for purposes of FICA. The property paid to such remuneration is subject to FICA to the same extent as if paid to the employee spouse. See IRS Rev. Rul. 2004-60.

To the extent the distributed payments are FICA wages, the employee FICA tax is deducted from the payment made to the transferee. The payment made to the transferee is includable in the gross income of the transferee is not reduced by any FICA withholding from the payments, including transfers of property, to the transferee. See Rev. Rul. 86-109 and Rev. Rul. 71-116.

Federal Unemployment Tax Act (FUTA): The FUTA taxation provisions applicable with respect to nonstatutory stock options are similar to the FICA provisions, except that only the employer pays the tax imposed under FUTA. See IRC §§ 3301, 3306(b) and 3306(b)(2) and the regulations thereunder. To the extent wage tax applies, the wages are FUTA wages of the employee, subject to the maximum wage base contained in § 3306(b)(1).

Income tax withholding: IRC § 3402(a), relating to income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon these wages a tax determined in accordance with prescribed tables or computational procedures. IRC § 3401 provides that wages for income tax withholding purposes means all remuneration for services performed by an employee for his employer, including the cash value of all remuneration, including benefits, paid in any medium other than cash, with certain exceptions. Under Treasury Regulation § 31.3402(a)-1(c), an employer is required to deduct and withhold the tax notwithstanding that the wages are paid in something other than money. Therefore, an employer is required to deduct and withhold the tax even when the wages are paid by way of stock options. IRC § 31 provides that the amount withheld from wages as income tax withholding will be allowed as a credit against the income taxes imposed by Section A to the “recipient of the income” for purposes of the § 31 credit, pursuant to Treasury Regulation § 1.31-1, is the individual who is subject to income taxes upon the wages from which the tax was withheld. Because the compensatory interests transferred under § 1041 to the nonemployee spouse pursuant to the divorce remain taxable for employment tax purposes to the same extent as if retained by the employee spouse, the income recognized by the nonemployee spouse is subject to the exercise of the nonstatutory stock options are considered remuneration for employment and wages for purposes of income tax withholding under § 3402. Therefore, pursuant to § 31-1(a), because the income recognized with respect to this compensation is includable in the gross income of the nonemployee spouse, the nonemployee spouse is entitled to the credit for the income tax withheld in respect of these wage payments. See IRS Rev. Rul. 2004-60.
§ 6051 requires those who remunerate employees to report said payments on a Form W-2. Given the nonemployee spouse is not an employee, the reporting requirements of IRC § 6051 do not apply. Under a scenario where a nonemployee spouse realizes income from the exercise of the nonstatutory stock options, the employer, under § 6041(a), must file an information return reporting said income. The income realized upon the exercise of the nonstatutory stock options would be reportable to the nonemployee spouse by the employer on Form 1099-MISC and issued to the nonemployee spouse. See IRS Rev. Rul. 2004-60.

Under Treasury Regulation § 31.6051-1(a)(1), the employee’s wages that are subject to social security and Medicare taxes are included in the appropriate boxes on the employee’s Form W-2 issued by the employer.

What is the effect of the transfer of stock received upon exercise of an ISO?

IRC § 424(c)(4) provides that in the event of a transfer of stock between spouses or incident to divorce, as described in § 1041(a), said transfer of stock should not be treated as a disposition. Further, the same tax treatment with respect to the transferred stock shall apply to the nonemployee/transferee as would have applied to the employee/transferor.

When representing clients in a divorce who are receiving stock issued upon the exercise of an ISO, special attention should be given to the grant date of the original option. Provided the option was exercised more than one year after vesting and the transferee then sells the stocks more than two years after the grant of the option, the amount realized on sale in excess of the exercise price is taxed as long-term capital gains. Otherwise, the amount realized is treated as ordinary income and is taxed accordingly.

Though significant attention is often given to the categorization of stock options, specifically, whether they should be deemed assets for division or as income for purposes of calculating support, all too often insufficient attention is paid to the tax consequences related to the options. Attorneys should be mindful throughout the divorce process of the stock options granted to an employee client and the potential tax consequences related to the disposition of same. It is often prudent to engage a tax professional to advise clients on the specific tax consequences applicable to his or her specific scenario.

Tip 1. Attorneys should not be reluctant to contact other attorneys in their field for advice on a particular matter if they are unsure of a certain procedure, court order, etc. It is always helpful to explain a certain matter to another attorney and obtain some advice concerning handling the matter, next steps, procedural matters, substantive matters, etc.

Tip 2. Attorneys should not be reluctant to refer potential clients to other counsel if they are either too busy to take on the matter or it is a matter which is unfamiliar to them. Many times, the client would rather have a referral to someone who has time to handle the matter immediately. Also, many of us are used to referring cases to attorneys who practice in fields other than us. The return referrals more than make up for the difficulties involved in attempting to handle a client matter in an unfamiliar area.

Tip 3. When you may not be sure as to which attorney or attorneys to refer a client matter in an unfamiliar area, the Massachusetts Bar Association is a great resource. You can contact someone from a particular section council and inquire as to suggestions, or you can refer the client to the MBA for referral.

Tip courtesy of Thomas J. Barbar of Deutsch, Williams, Brooks, DeRensis & Holland PC.

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FOR YOUR PRACTICE

Law practice management tips

Utilize fellow attorneys

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