Stand with the bar that stands with you

The Massachusetts Bar Association means different things to different people. We have very active members for whom the MBA is an integral part of their professional lives — from MBA leaders to CLE faculty members to members who just enjoy participating in as many MBA programs and events as possible. For others, the MBA is more of a complement to their practice. Some belong to the MBA because of the practical tools we offer, such as our FREE CLE programs. Some take advantage of the top-notch insurance offered by the MBA Insurance Agency: one of the most trusted insurance agencies for lawyers in the commonwealth. And many members just appreciate the networking opportunities or the ability to bounce questions off of other similarly situated lawyers in their sections via My Bar Access.

Whatever your reason for joining, there is a place for you at the MBA. It doesn’t matter whether you choose to take advantage of all, some or none of our programs. At the end of the day, I believe there is one invaluable benefit that the MBA offers to all members, and indeed the entire Massachusetts bar: our advocacy on behalf of the legal profession. As my friend and former MBA President Richard P. Campbell said so eloquently back in 2012, “The Massachusetts Bar Association is the singular organization in the commonwealth that speaks for all lawyers regardless of the city or county where they practice; the race, ethnicity, gender or sexual orientation or religious tradition that define them; or the idiosyncrasies of their individual practices.”

Five members to be honored at Volunteer Recognition Dinner

Five Massachusetts Bar Association members will be recognized for their outstanding service at the MBA Volunteer Recognition Dinner on July 22 at Lornado’s in Randolph.

Melissa A. Conner, Peter T. Elikann, Lisa M. Rico and Damian J. Turco will each be presented with the Volunteer Recognition Award, which salutes members who volunteer substantial time and effort to the mission, program and publications of the MBA or otherwise enhance the organization in a significant way.

Mina S. Makarious will receive the Outstanding Young Lawyer Award, which is given to a young lawyer who has demonstrated outstanding character, leadership and legal achievement, and has contributed service to the community. The recipient of the award must be a member of the MBA who has been in practice for fewer than 10 years and who has made a significant contribution to the legal profession.

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.

MELISSA A. CONNER, CONNER LAW OFFICES

A practicing attorney since 2009, Conner has been a dedicated and active member of the Young Lawyers Division (YLD) board, currently serving as chair-elect. As chair of the YLD Law Student Subcommittee she has helped the MBA recruit new law student members by organizing and attending several events at Boston area law schools.

This is the second year that Conner has been nominated for a Volunteer Recognition Award. One of her nominations stated: “More than anything, Melissa believes in the MBA and its mission and is a constant ambassador of its importance. If I had to choose one person to be recognized, it would be her.”

In addition to her leadership roles with the YLD, she has also served as a member of the Membership Committee for the past two association years.

“I think it’s important to be an active part of your community,” said Conner. “It gives you a voice and a way to build your own personal network. The more you volunteer, the more enjoyable it becomes.”

PETER T. ELIKANN, LAW OFFICE OF PETER T. ELIKANN

A well-known criminal defense attorney, Elikann is a tireless and devoted advocate of the MBA. He has been a member of the bar since 1981 and has been active within the MBA for more than a decade. Elikann is a long time member of the House of Delegates, Executive Management Board and Massachusetts Law Review. He has also served as both chair and vice chair of the Criminal Justice Section Council and has been an involved member of the Sole Practitioner & Small Firm, Judicial Administration and Individual Rights & Responsibilities section councils.

Elikann frequently testifies before the Legislature on behalf of the MBA on criminal justice matters and often represents the MBA as a legal expert in the media on current criminal justice issues and high-profile cases. He also serves as the MBA’s representative on the Special Commission to Study the Commonwealth’s Criminal Justice System and the Permanent Legislative Civil Infractions Commission. In addition, he sits on the Massachusetts Superior Court Sentencing Working Group, the Massachusetts Legislative Working Group and the Crime Lab Task Force.

“I’ve always been grateful that for a solo practitioner like myself the MBA has provided essentially a family for me in the field of law,” said Elikann. “As a solo practitioner I don’t feel quite so alone when I know the MBA always has my back and provides an extraordinary amount of support.”

LISA M. RICO, RICO, MURPHY & DIAMOND LLP

Rico is a partner at Rico, Murphy & Diamond LLP, where she focuses on probate and tax law. She has been a featured speaker on estate planning and tax matters for numerous MBA CLE programs, many of which she has taken a lead role in organizing.
Advocacy on behalf of the bar has been a key focus of the MBA since its inception. This year in particular we’ve seen many examples of where the MBA’s voice is making or has made a difference in the day-to-day work of lawyers and our court system.

I’ve written a lot already about the MBA’s role in the successful launch of attorney voir dire this year. But the MBA has been championing just as loudly for issues touching many other segments of the bar — as a state bar association should. Many times the issues we touch involve improving access to justice, such as when we advocate for proper funding for the courts or an increase in spending for legal aid. But other times we’re called upon to use our voice to speak to more narrow issues that impact a particular segment or area of the bar.

Our well-known push for higher bar advocate pay is great example of an issue that we feel affects both a segment of the bar and access to justice. But you might be surprised to learn that the MBA has its fingerprints on dozens of pieces of legislation in Massachusetts. And we thank you for your profession and carry the mantle for our system of justice. There are and will be many more, because that is what we do.

For example, through the efforts of our Tax Law Section Council, the MBA will continue to lobby for the Department of Revenue to make the Uniform Custody Jurisdiction Enforcement Act and the spousal elective share accurate to describe the MBA as a vocal proponent of the legal system wherever it’s needed, whether we are explaining a finer point of law to a member of the media or sounding the alarm when we see a wrong that needs to be righted.

A case in point is the recent kerfuffle surrounding the prison searches that many female defense attorneys were subject to as a condition to visiting their clients in Norfolk County. We heard the attorney complaints, raised our collective voice in objection and set up meetings with the Secretary Daniel Bennett of the Executive Office of Public Safety and Security (who, at our invitation, spoke about the issue at the March House of Delegates meeting). We saw the results of our efforts and the efforts of the Committee for Public Counsel Services who stood with us on the issue, just last month when the Department of Corrections released an updated policy that ensures the personal privacy and integrity of attorneys while at the same time assuring the safety of DOC staff.

Similarly, when we learned of calibration issues affecting certain alcohol-breath test machines, the MBA was the first organization to publicly call for transparency. As a result of our efforts and our work with Secretary Bennett and CPCS, the records are being disseminated for review and strikers are being made to provide the same information to defense attorneys that was made available to the district attorneys.

These are just a few recent examples where the MBA is there for lawyers and our system of justice. There are and will be many more, because that is what we do.

The MBA is proud to stand with you and carry the mantle for our profession in Massachusetts. And we thank you for making this possible by standing with us as members.

MBA members volunteer with Special Olympics Massachusetts

The MBA’s Health Law Section collaborated with Special Olympics Massachusetts to provide volunteers to help staff the Summer Games Track & Field Event on June 6. Volunteers gathered the athletes for each event, directed individual groups to the field, cheered participants to victory and helped at the awards pavilion.

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Mandatory minimum

sentences

The MBA testified before the Joint Committee on the Judiciary in support of legislation that would eliminate mandatory minimum sentences for drug-related crimes on June 9.

MBA President-elect Robert W. Harnais delivered his testimony as part of a panel with Families Against Mandatory Minimums (FAMM), a national nonpartisan, nonprofit organization that works to ensure that punishment fits the crime. Harnais was joined on the panel by Bonnie DiToro, who was sentenced to a 15-year mandatory minimum sentence for being in the next room during a drug deal; Joanne Peterson, executive director of Learn to Cope; and Rahsaan Hall, former Suffolk County prosecutor and deputy director of the Lawyers’ Committee for Civil Rights and Economic Justice.

Both the MBA and FAMM supported two bills that seek to repeal mandatory minimum sentences for drug offenses: S.786, sponsored by Sen. Cynthia Creem (D-Newton), and H.1620, sponsored by Rep. Benjamin Swan (D-Springfield).

“Especially today, when the commonwealth is grappling with a terrible drug epidemic, mandatory minimums are not only part of the problem, they are getting in the way of the solution,” said Harnais. “By removing any discretion for meaningful rehabilitation or treatment, mandatory minimums contribute to the high recidivism rates found in drug offenses, effectively sentencing addicts to ‘life’ on the installment plan.”

The hearing included testimony from Supreme Judicial Court Chief Justice Ralph D. Gants and numerous legislators and community groups. Gants led off the hearing with detailed testimony that described three main reasons abolishing mandatory minimum sentences makes sense: racial justice, justice reinvestment and fairness in sentencing.

The MBA appointed a Drug Policy Task Force in 2008, which found that drug policies in Massachusetts have failed at every level under a system in dire need of repair. Money is wasted, crime is not effectively prevented or reduced, and families are often torn apart.

During the last 15 years, more than 20 states have reformed or repealed their mandatory minimum sentencing laws for drug offenses, efforts that have been supported across the political spectrum.

Scarring and disfigurement compensation

Currently, when Massachusetts workers suffer permanent bodily harm and scarring to their face, neck and hands, they are only eligible for maximum compensation for all attorneys represented in CAFL and C&P cases, and to $53 for those who do Children in Need of Services (CHINS) cases, and to $55 for those who do Children and Family Law (CAFL) cases and to $57 for those who do Children in Need of Services (CHINS) cases.

During the last 15 years, more than 20 states have reformed or repealed their mandatory minimum sentencing laws for drug offenses, efforts that have been supported across the political spectrum.

Court-appointed defense counsel pay

At press time, we were awaiting Gov. Charlie Baker’s signature on a $38.1 billion budget bill that included MBA-backed language to increase compensation rates for assigned private counsel to $53 for District Court work and Children in Need of Services cases, and to $55 for those who do Children and Family Law (CAFL) cases and Care and Protection (C&P) cases. Additionally, the measure raises the cap on billable hours in CAFL and C&P cases from 1,650 to 1,800 hours. The MBA continues to support fair and equitable compensation for all attorneys responsible for making our criminal justice system work. If signed into law, the Massachusetts Academy of Trial Attorneys’ Workers’ Comp Section, and Marcy Goldstein-Gelb, the executive director of MassCOSH, who testified in support of House Bill No. 1707 and Senate Bill No.968, which would amend M.G.L. c. 152, s. 36 subsection k., by removing the requirement that permanent scarring and disfigurement compensation be limited to the face, hands and neck.

Additionally, the bills seek an increase in the maximum allowable benefit to 22.5 times the statewide average weekly wage in Massachusetts. By indexing the maximum benefit, changes in the statewide average weekly wage will not result in differential values for workers scarred or disfigured in industrial accidents.

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Christopher J. Panos

Panos selected for U.S. Bankruptcy Court in Worcester

Chief Judge Sandra L. Lynch of the United States Court of Appeals for the First Circuit recently announced that three new members were appointed to the court’s Rules Advisory Committee: Renee Bunker of Maine, Jack Pirozzolo of Massachusetts, and Salvador J. Antonetti-Stutts of Puerto Rico. Attorneys Bunker, Pirozzolo and Antonetti will be replacing retiring members Karen Frink Wolf of Maine, T. Christopher Donnelly of Massachusetts and Margarita Mercado of Puerto Rico. Ricardo Casellas of Puerto Rico was appointed as the new chairperson of the committee replacing outgoing Chairperson Karen Frink Wolf.

Pursuant to 28 U.S.C. § 2077, the new members were selected to the committee to make recommendations regarding the rules of practice and internal operating procedures for the First Circuit Court of Appeals and the First Circuit Judicial Council. Lynch thanked the retiring members for their commendable service and welcomed the new members.

Rules Advisory Committee selected for U.S. Court of Appeals for the First Circuit

Chief Judge Sandra Lynch of the United States Court of Appeals for the First Circuit has announced that Christopher J. Panos has been selected to fill the upcoming vacancy in the United States Bankruptcy Court for the District of Massachusetts created by Judge William C. Hillman’s retirement and Chief Judge Melvin S. Hoffman’s relocation to Boston. Panos will be appointed to the bankruptcy bench in the summer of 2015, upon FBI clearance. He will sit in Worcester.

Panos received his juris doctor from Boston University School of Law in 1989, where he graduated cum laude, after earning a bachelor of arts from Georgetown University. He is currently the partner-in-charge at Partridge Snow & Hahn LLP’s Boston office, where he has a diverse practice that focuses on commercial litigation, bankruptcy, restructuring, general business law and mergers and acquisitions. His client base is wide-ranging and includes individuals, lenders, borrowers, banks, private equity funds and other business entities. Panos was the managing shareholder of Craig and Macauley PC in Boston.

before the attorneys at that firm joined Partridge Snow & Hahn LLP in 2014 to become its Boston office. In 2008, he was elected as a fellow of the American College of Bankruptcy, which is the nation’s largest financial supporter of pro bono legal service programs related to bankruptcy and insolvency matters, and has been a member of the College’s First Circuit Council since 2011. Panos is also an active member of the Boston Bar Association, Boston Bar Foundation and the American Bankruptcy Institute.

Supreme Judicial Court announces newly reconstituted Access to Justice Commission

The Supreme Judicial Court has appointed 24 members to the third Massachusetts Access to Justice Commission, co-chaired by Supreme Judicial Court Justice Geraldine S. Hines and Susan M. Finegan of Mintz Levin Cohn Ferris Glovsky & Popeo PC. The first meeting of the new five-year commission was on May 21.

The goal of the Massachusetts Access to Justice Commission is to achieve equal access for all persons in the commonwealth by providing leadership to, and coordination with, the many organizations involved in and improving access to justice for those unable to afford an attorney. The members of the Access to Justice Commission include:

• Honorable Geraldine S. Hines, co-chair, Supreme Judicial Court
• Susan M. Finegan, co-chair, Pro Bono Partner, Mintz Levin Cohn Ferris Glovsky & Popeo, PC
• Shannon M. Barnes, partner, Barnes and Leighton
• Mary Lu Bilek, Esq., dean, University of Massachusetts School of Law
• Amy Blumenthal, Blumenthal & Associates
• Martha Born, Esq., chief litigation counsel, Biogen Inc.
• Jacqueline J. Bowman, executive director, Greater Boston Legal Services
• Marjorie Benner Browne, director of lateral partner recruiting, Ropes & Gray LLP
• Anthony M. Doniger, partner, Sugarman, Rogers, Barshak & Cohen, PC
• Russell Engler, professor of law and director of clinical programs, New England Law | Boston
• Joel H. Feldman, partner, Heisler, Feldman, McCormick & Garrow, PC.
• Reginald Fuller
• Honorable Lisa Ann Grant, Boston Municipal Court – Dorchester Division
• Honorable Kathleen E. Hand, Barnstable District Court
• Daniel J. Hogan, clerk magistrate, Boston Municipal Court
• Sheila Hubbard, executive director, Volunteer Lawyers Project
• Georgia Katsoulomitis, executive director, Massachusetts Law Reform Institute
• Ann Bailey Leavensworth
• Jonathan L. Mannina, executive director, Community Legal Aid
• Sue Marsh, executive director, Rosie’s Place
• Honorable Maureen H. Monks, Middlesex Probate and Family Court
• Honorable Mary Lou Muirhead, Boston Housing Court
• Arthur L. Pressman, partner, Nixon Peabody LLP
• James T. Van Buren, partner, Van Buren & O’Hara, LLP
• Wendy S. Wayne, director, Immigration Impact Unit, Committee for Public Counsel Services
• David W. White Jr., partner, Breakstone, White and Gluck PC

Ex Officio members:

• Honorable Ralph D. Gants, chief justice, Supreme Judicial Court
• Honorable Dina E. Fein, special advisor for Access to Justice Initiatives, first justice, Housing Court – Western Division
• Kathleen E. McGrath, chair, Supreme Judicial Court’s Standing Committee on Pro Bono Legal Services, senior corporate counsel, Liberty Mutual Group Inc.
• David Rosenberg, of counsel, Englander, Leggett, & Chicoine

Commissioners Emeritus:

• Honorable Steven D. Pierce, chief justice, Housing Court Department
• Navjeet K. Bal, counsel, Nixon Peabody LLP
• Lee H. Glickenhaus, T. Lex
• Allan G. Rogers
• Jay T. Thiel, Jay T. Thiel Law Office

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MBA secures release of breathalyzer records

Working with Secretary Daniel Bennett of the Executive Office of Public Safety and Security (EOPSS), Massachusetts Bar Association President-elect Robert W. Harnais secured records related to cases where an alcohol breath test device was involved.

An earlier EOPSS review of the Draeger 9150 cases found approximately 150 instances of invalid results due to “operator error.” The MBA will now be able to review the same information about potentially faulty drunk driving tests, which has also been provided to district attorneys and the Committee for Public Counsel Services (CPCS), the state public defender’s office.

“The number of cases impacted by improper use or calibration of the Draeger 9150 appears to be limited, both Secretary Bennett and I agree that any miscarriage of justice is unacceptable and that lawyers should also have the opportunity to review these records in order to determine exactly which cases may have been tainted by error,” said Harnais.

“The Massachusetts Bar Association has a long-standing commitment to ensuring fairness in our criminal justice system,” Harnais continued. “We appreciate Secretary Bennett’s willingness to work with the bar to help make sure drunk-driving convictions in the commonwealth are based on accurate and reliable information.”

In May, after concerns about accuracy of the machines, several district attorneys suspended use of the breath tests. Following calls from the MBA for more transparency, Secretary Bennett met with Harnais to address the bar’s concerns and agreed to give defense attorneys, via the district attorneys, access to the same information and data previously shared with the district attorneys. Harnais said: “The release of this information makes unnecessary the need for any additional review by the Attorney General’s Office, but we are grateful for Attorney General Maura Healey’s work with the MBA and her continued commitment to fairness and transparency in the criminal justice system.”

Materials are available at www.massbar.org/breathtestdocs. Defense lawyers with concerns or questions about particular cases should contact CPCS.

The Massachusetts Bar Association has been in the forefront of advocating for a living wage for criminal justice attorneys. Now is the time for the Legislature to act on this long overdue, pressing issue by passing the pay increase. The wheels of justice depend on fairness for all, including fair compensation to the attorneys assigned to defend the indigent,” said MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy. “Massachusetts citizens deserve a justice system based on accuracy and not a bifurcated system consisting of one for well-heeled clients and another for the working poor. Every citizen deserves a fair opportunity to a quality defense if accused of a crime.”

“The MBA’s 2014 Blue Ribbon Commission Report, “Doing Right by Those Labor for Justice,” concluded that “present salaries paid to attorneys working in our criminal justice system are so inadequate that they cannot meet the financial obligations attendant to the practice of law.”

Housing Court expansion

The MBA continues to stand behind House Bill No. 1656 and Senate Bill No. 901, which would expand the Housing Court’s geographical jurisdiction to include all communities in Massachusetts and would add five Housing Court judges. Currently, more than a third of Massachusetts residents do not have access to Housing Court services.

The establishment of the Housing Court Department has provided landlords and tenants a legal forum to effectively and efficiently resolve cases involving a wide range of housing issues. Many areas of the commonwealth are currently underserved by the Housing Court Department, including major areas with large numbers of rental units, such as Chelsea, Malden, Framingham and Barnstable County. The MBA believes all citizens in Massachusetts deserve access to the Housing Court’s specialized services.

“The Massachusetts Bar Association strongly supports efforts to expand the Housing Court by an additional five judges throughout the state. These judges will bring long overdue expertise and relief to the tens of thousands of citizens not presently being served by the court, who face serious matters, such as evictions and major health and sanitary code violations. Unscrupulous landlords should not prosper at the expense of families because of the lack of judges available to hear disputes,” said Healy. “The MBA believes expansion of the Housing Court will serve a number of poor, unrepresented pro se litigants, who comprise more than 80 percent of the Housing Court’s population. Justice delayed is justice denied.”

MBA ADVOCATES

Continued from page 3

this would be a tremendous first step in attaining increases for all bar advocates. The MBA will work to further expand the rate increases and to expand them to other categories of bar advocates.

The MBA also provided written testimony in support of House Bill 1246, which would provide an increase in the hourly rate for all court-appointed private attorneys. House Bill 1246 would increase compensation to $75 per hour for District Court cases, children-in-need-of-services cases, children and family law cases, case and protection cases, sex offender registry cases, and mental health cases; $100 per hour for Superior Court cases; and $140 per hour for homicide cases.

“The Massachusetts Bar Association has been in the forefront of advocating for a living wage for criminal justice attorneys. Now is the time for the Legislature to act on this long overdue, pressing issue by passing the pay increase. The wheels of justice depend on fairness for all, including fair compensation to the attorneys assigned to defend the indigent,” said MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy. “Massachusetts citizens deserve a justice system based on equity and not a bifurcated system consisting of one for well-heeled clients and another for the working poor. Every citizen deserves a fair opportunity to a quality defense if accused of a crime.”

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Mark your calendars for these upcoming MBA conferences

25th Annual Family Law Conference
FRIDAY, OCT. 16 – SATURDAY, OCT. 17
CHATHAM BARS INN, 297 SHORE ROAD, CHATHAM

25TH ANNUAL FAMILY LAW CONFERENCE
FRIDAY, OCT. 16 – SATURDAY, OCT. 17
CHATHAM BARS INN, 297 SHORE ROAD, CHATHAM

Annual State of the Court Address
Chief Justice Angela M. Ordoñez
Probate and Family Court

Conference Chair
Jennifer R. Clapp, Esq.
Grande, Robinson, Goodhue & Primavera

Conference Co-Chairs
John G. Dugan, Esq.
Ocherip, Greczynowski
Dugan & Canary PC
Franklin

Janice C. Nigro, Esq.
Nigro, Pettepit & Lucas LLP
Newton

Keynote Address
Chief Justice Angela M. Ordoñez
Probate and Family Court

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3rd Annual Probate Law Conference
FRIDAY, NOV. 13, 8 A.M. – 4 P.M.
Registration: 8 a.m.
Program: 9 a.m.
Lombardo’s, 6 Billings St., Randolph

Annual State of the Court Address
Chief Justice Angela M. Ordoñez
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Nigro, Pettepit & Lucas LLP
Newton

Keynote Address
Chief Justice Angela M. Ordoñez
Probate and Family Court

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Bar News

Volunteers Recognized
Continued from page 1
An active member of the Taxation Law Section Council since 2006, Rico previ-
ously served as co-chair in 2009-2010 and chair from 2010 to 2012. She has also
been a representative on the House of Delegates and a member of the Probate Law Section Council and the Education Committee.

“I’m very interested in education and making sure that I’m always up to date in
my practice area,” said Rico. “I also think it’s important to make sure MBA members
are as current as up to date as possible when it comes to education.”

DAMIAN J. TURCO, MASS INJURY FIRM, PC

Turco, vice chair of the
MBA’s Law Practice
Management Section Council,
has volunteered countless hours
on numerous pro-
grams and initia-
tives. As chair of the
Law School
Young
Lawyers
Subcommittee of the MBA Membership
Committee, he has helped increase law stu-
dent membership from 265 in 2013 to 1,105
in 2015. Not only did he recruit law stu-
dents to join the MBA, but he also helped
fortify existing relationships and establish
new ones within the administrations of the
nine area law schools. This past year he also
served on the Oliver Wendell Holmes
Scholarship committee, which honored its
first recipient, Ying Wang of New England
Law Boston, at the MBA’s 2015 Annual Dinner.

A dedicated member of the MBA’s Law Practice Management Section Council, he has engaged and motivated other young at-
torneys to develop programs and networking
opportunities throughout the state. Turco has also been a representative on the
MBA’s House of Delegates and a member of the Membership Committee.

“Volunteering gives you one part of
the balance in life that you really can’t get
anywhere else,” remarked Turco. “It’s re-
ally a unique thing devoting your time to other people or for an organization like the
MBA.”

MINA S. MAKARIOS, ANDERSON & KREIGER LLP

A mid-level associate at An-
derson & Kreiger LLP, Makarious focuses on envi-
ronmental law and public
law. He is a 2006 graduate of Harvard Col-
lege and a 2009 graduate of Har-
vard Law School

where he served as editor of the Harvard Environmental Law Review. Makarious has been recognized as a Massachusetts
Super Lawyers Rising Star and also one
of Boston’s Top 40 Lawyers Under 40 by the
National Law Review.

Makarious is constantly giving back
to his community. His pro bono work has
included representing InnerCity Weight-
lifting, a nonprofit serving at risk young
adults, as well as Roxbury residents in a
case challenging the proposed site of Bos-
ton University’s infectious disease labora-
tory. He also serves on the Board of Alterna-
tives for Community and Environment
which helps advance environmental jus-
tice in under-served communities. In addi-
tion, he is a trustee of the Phillips Brooks
House Association which serves youth in
Boston and Cambridge and is involved
with Y2Y Harvard Square, a student-run
overnight shelter.

Each summer, instead of taking a va-
cation, he works with middle and high
school students to teach them leadership
skills through the Student Leadership
Training Program (SLTP).

“The week of teaching at SLTP every
summer gets me in front of students where
I have to think on my feet, which is a skill
that helps me with my practice,” said Ma-
karious. “Volunteering in the community
also helps me see a lot of the impact of
what we do professionally.”

Calendar of Events

Thursday, July 16
Practicing with Professionalism
9 a.m.-5 p.m.
MBA, 20 West St., Boston

Thursday, June 25
Summer Networking Series
Session II
5:30-7 p.m.
Sterling’s (Outdoor Patio),
60 State St., Boston

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

Wednesday, August 5
Western Mass. Summer Celebration
5-7 p.m.
Storrowton Tavern,
1305 Memorial Ave.,
West Springfield

Thursday, August 13
Summer Networking Series
Session III
5:30-7 p.m.
Tia’s, 200 Atlantic Ave.,
Boston

Wednesday, August 26
WBZ Call For Action
Ask-A-Lawyer Program
7-9 p.m.
Statewide dial-in: (617) 787-7070

For more information, visit massbar.org/events/calendar

Real-time webcast available for purchase through MBA
On Demand at www.massbar.org/ondemand
MBF awards $24,000 to law students for public interest internships

The MBF trustees proudly announce that four exceptional law students were recently selected to receive a stipend of $6,000 each for their unpaid summer internships at non-profit legal aid organizations in Massachusetts. The grants are provided through the MBF’s Legal Intern Fellowship Program (LIFP), which is funded by the MBF Fellows Fund and the Smith Family Fund, and has two concurrent goals: to give talented students the experience and encouragement they need to continue in the public interest law sector and to provide legal aid organizations with much-needed additional staff capacity for the summer.

“Thanks to the generosity of the MBF fellows and friends during our 50th Anniversary campaign, we were able to increase the number of stipends awarded this year,” said MBF President Robert J. Ambrogi.

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 poor in our state. To learn more, or to join, visit www.massbarfoundation.org.
Western Mass. MBA members offer free legal advice

Volunteer attorneys from the Massachusetts Bar Association participated in the MBA’s semiannual Western Massachusetts Dial-A-Lawyer call-in program on May 19, hosted at Western New England University School of Law.

Residents of Berkshire, Franklin, Hampden and Hampshire counties had the opportunity to have their legal questions answered by local attorneys who volunteered their time. The legal advice was provided at no charge as a public service of the MBA.

The calls featured legal questions on a wide-range of topic areas, including employment law, consumer law, tax law, real estate law, elder law and family law.

Launched in 1994, the MBA’s Western Massachusetts Dial-A-Lawyer program is in its 21st year. 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 thanks the following members for donating their time and expertise to this important public service effort:

• William Trauva Bailey, Law Office of Attorney William Trauva Bailey
• Michelle Bugbee, Soluta Inc., Indian Orchard
• Corey M. Carvalho, University of Massachusetts Legal Services, Amherst
• Mark D. Cress, Bulkley, Richardson & Gelinas LLP, Springfield
• Michele J. Feinstein, Shatz, Schwartz and Fentin PC, Springfield
• Stephen R. Manning, Stephen R. Manning PC, East Longmeadow
• Erin J. Meehan, Doherty, Wallace, Pillsbury & Murphy PC, Springfield
• Amy J. Megliola, Siddall & Siddall PC, Springfield
• Timothy F. Murphy, Skoler Abbott & Presser PC, Springfield
• Thomas D. O’Connor, Jr., Thomas D. O’Connor Jr., Attorney at Law, Springfield
• David W. Ostrander, Ostrander Law Office, Northampton
• Stephen J. Phillips, Dunn & Phillips PC, Springfield
• Edward M. Pikula, City of Springfield, Law Department, Springfield
• Barry M. Ryan, Doherty, Wallace, Pillsbury & Murphy PC, Springfield
• Michael Siddall, Siddall & Siddall PC, Springfield
• Rebecca M. Thibault, Doherty, Wallace, Pillsbury & Murphy PC, Springfield
• Jeffrey J. Trapani, Robinson & Donovan PC, Springfield
• Christina M. Turgeon, Law Offices of Christina M. Turgeon, Springfield
• Dorothy Varon, MassMutual Financial Group, Springfield

Moore keynotes annual Health Law Conference

The 2015 Annual Health Law Conference in Boston featured keynote speaker Alice Moore (pictured), undersecretary, Executive Office of Health and Human Services. The conference provided attendees with information about substantive developments related to health care delivery, the role of local hospitals, cost containment, access to experimental drugs and the terminally ill, cyber liability, sustaining our Medicaid (MassHealth) programs and health care reform, and a pending, landmark SCOTUS case King v. Burwell. Miss the conference? Visit www.massbar.org/ondemand to view the program anytime, anywhere.
The Massachusetts Bar Association’s House of Delegates (HOD) convened for its final meeting of the 2014–15 membership year on Thursday, May 28, at the MBA’s Boston office, where HOD members voted to approve several recommendations. Following the officers’ reports, MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy gave an update on the state’s 2016 fiscal budgeting process, particularly as it related to court funding, criminal justice attorney compensation and legal aid. He also presented two matters that were voted on separately — approval of ABA delegates and EMB members — which HOD members passed unanimously.

Susan G. Anderson, chair of the Access to Justice Section Council, introduced a resolution, which was approved by HOD members, stating that “the MBA urges all to recognize that Trial Court Law Libraries are key to providing access to justice by serving self-represented litigants, the public and lawyers, including lawyers providing pro bono services, and that these positions be funded and filled by the Trial Court.”

Two changes to the MBA’s Section Council structure were also passed by the HOD. First, HOD members approved the request of the Immigration Law Section Council, introduced by Chair Jennifer Klein, to disband the Immigration Section and become a practice group under the Access to Justice Section. In addition, HOD members voted affirmatively to change the name of the Individual Rights & Responsibilities Section to the Civil Rights & Social Justice Section, following a presentation by Michelle A. Keith, the section’s chair.

Taxation Law Section Council Chair David Saliba then spoke briefly about updating the “innocent spouse rules” in Massachusetts, which help rectify the inequities that sometimes affect married taxpayers filing jointly due to strict adherence to the rule of joint and several liability for tax deficiencies. Unlike the federal innocent spouse rules, which were updated in 1998, Massachusetts’ innocent spouse rules have remained virtually unchanged. HOD members voted affirmatively to file legislation to amend the innocent spouse rules in Massachusetts (M.G.L. c. 62(C), sec. 84) to make them harmonious with the federal rules.

The HOD meeting marked the last one under MBA President Marsha V. Kazarosian, who, after providing an update of recent and upcoming events, offered heartfelt thanks to her fellow officers and HOD members for their support. Her fellow MBA officers also took time during their officer reports to praise Kazarosian’s leadership during the past year.
We rarely talk about how the people in a law firm are organized together to do the work described by the business model and strategy. Yet it is an organization’s structural design and processes that can improve or constrain business performance. An organization’s structural design is impacted by the different ways in which people are grouped together, e.g., who is interacting with whom and why, and is different from its business plan. A business plan is an explanation of how the law firm expects to generate and collect revenue. It answers very basic questions, such as what the firm intends to sell, to whom, and how it will charge for its work. The marketing plan elaborates on the expected client base and how your law firm will attract and retain their business. Neither explains who will be doing what, who will work with whom and how specific tasks will be done.

The right people need to interact with each other and they need to be engaged in doing the right things at the right time. Organizational structures encourage or discourage the interaction of certain people. Many law firms have separate departments for each of the day-to-day operations: human resources, billing and collections, marketing, leadership and management, and IT. They have different practice groups corresponding to different types of law, key client groups and even industry groups. Each group is a structure. Processes, which affect task completion, encourage or discourage specific behaviors within those interactions. This is true regardless of whether it is a solo practice, mega-firm or something in between.

Consider the following questions, which are tied to organizational structure and process issues:
1. Are you starting a new law firm? 2. Is your firm changing size by more than 10 percent? 3. Are people in leadership positions changing (new people coming in as replacements or to newly created roles)? 4. Are you attracting and keeping the clients you want? 5. Are you hiring, developing and retaining the right people? 6. Do you have any concerns about how the work (services or products) is being produced by your firm? 7. Is your revenue growing or shrinking more or faster than expected? 8. Is information getting to the right people in time? 9. Are people feeling overwhelmed with their leadership or management responsibilities? 10. Do you have the right people with the right competencies available for projects when you need them?

If you responded “yes” to questions 1, 2, 3, 6, 7, or 9, or “no” to questions 4, 5, 8 or 10, evaluate your organizational structures and processes.

Formal structures can be tangible like offices, or intangible and serve the purpose of grouping people and organizing them to work together through the assignment of roles and responsibilities. Informal structures, also called networks, arise for different reasons. They may arise because people like each other and become friends or because there is a desire to receive and share information that isn’t flowing through formal channels.

Years ago I worked with a law firm that was struggling with leadership. Most lawyers were not interested in leading and also unwilling to allow anyone else to lead. As soon as the partners were able to see the informal network structures that had formed, they realized how those structures were blocking the implementation of a business plan, why one person was overwhelmed with requests for information, and what they needed to do to fix their problems.

By restructuring with a coalition-based temporary leadership team, they were able to discuss and reach agreement on the strategy questions that had been blocking progress and reduce the stress and burden on the person who was the bottleneck of information.

More recently, a client, with three service lines and an expectation that associates would contribute to marketing with presentations, and publish articles, was frustrated by a hiring process that had been producing associates with limited qualifications to participate in the firm’s projects at an acceptable performance level. The firm’s primary structure was along hierarchy and operational division lines with further structuring around service lines. By redesigning the structure around projects as the primary focus and treating the hiring, onboarding, development and performance assessment processes as projects, project teams became better able to self-organize, tackle issues and solve problems. In this instance, the new project team tasked with hiring and onboarding included service line leaders to identify different competencies and publish articles associated with learning agility and a new, earlier, performance evaluation process closely related to the needs of service line performance.

In a final example, leadership in a law firm structured by service line where associates were expected to have the technical competencies to contribute immediately complained about associate performance. Further, associates were evaluated by different service line leaders. The work (services or products) was burdened leading to different development demands. When the professional development function was pulled down the hierarchy into new temporary mentoring and peer-to-peer coaching structures, the stress was relieved. Junior lawyers with sufficient knowledge and experience became formal mentors to the even-more-junior lawyers. Professional development by action learning and peer-to-peer coaching (working on real challenges, using the knowledge and skills of a small group of people combined with...
skilled questioning) was encouraged. Development of a continuously updated database of service line specific information was also encouraged to support the new structures and action learning processes.

Processes provide direction, telling people what to do, when to act and how to behave. There are formal processes, such as those governing compensation, and informal processes, such as culture. Organizational structures and processes together drive the thinking, emotions and behavior of the individuals and groups who carry out the various tasks that together comprise a functioning law firm.

If the people in your law firm lack the thinking, emotional composure and performance behavior you need for your law firm to perform at its best, consider how your organizational structures and processes are contributing to the situation. Is the right amount of interaction for the right reasons happening to the right people at the right time? If not, it may be time to redesign your structures. What are the people in your organization thinking, feeling and doing? Is it what you want? If not, how are your key processes — client development and retention, work production, talent engagement and development, and billing and collections — contributing to your current situation?

All the training in the world will not compensate for structures and processes that are not aligned with your business model. Even an ideal business model and plan can’t fix structures and processes that group the wrong people together, do not group the right people together and cause people to do the wrong things.

Susan Letterman White, JD, MS, is a principal in Letterman White Consulting, a consulting practice devoted to improving organization and team performance and training people to think like business leaders. She works with organizations to change their structures and processes to improve business performance. She also runs Lawyers Leaders & Teams, a company devoted to marketing and leadership development training for lawyers. Her advanced training in business strategy and group facilitation from American University and NTL is integrated into all program designs. She designs and delivers performance-improvement programs that include: organization growth strategy, diversity and inclusion, business development and cross-selling, and strategic communication and conflict management. She frequently uses assessments and other tools to help her clients change the way they think and is certified to administer and interpret the Myers Briggs Type Indicator (MBTI)®.

MassINC Forum addresses criminal justice reform

The Massachusetts Bar Association co-sponsored “Getting Criminal Justice Reform Right: Ideas from Independent Experts in the Field,” a forum presented by MassINC and the Massachusetts Criminal Justice Reform Coalition at the State House on June 2.

The event featured a research presentation entitled, “What Caused the Crime Decline?” by Lauren-Brooke Eisen, senior counsel at the Brennan Center for Justice at New York University School of Law. It also included an expert panel discussion with Steven Tompkins, Suffolk County sheriff; Michael Widmer, former president of the Massachusetts Taxpayers Foundation; and Jack McDevitt, director of the Institute on Race and Justice at Northeastern University. The panel was moderated by William D. Delahunt, former congressman and district attorney for Norfolk County.

Other co-sponsors of the event were Northeastern University School of Law, the Brennan Center for Justice at New York University School of Law and Community Resources for Justice.

BUSINESS MODEL

(Continued from page 11)

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Q: As a recent law school graduate, I am wondering if I might have Adult ADHD (Attention Deficit/Hyperactivity Disorder), and if it might account for what seems like a pattern of “sloppiness” that has been interfering with both my current job (not as a lawyer) and my attempts to get a job commensurate with my skills. A close friend, who has long been diagnosed with ADHD, suggested to me that I may have it too, based on my way of operating (constant sloppy mistakes and distraction, getting sidetracked and not finishing things, dating back to childhood). I brought it up with my primary care doctor, who sent me to a psychiatrist, who in turn referred me to a psychological assessment clinic that wants more than $2,000 to give me neuropsychological testing, which my health insurance will not cover. I really cannot spare this kind of money; my friend says he never had to do this. My doctor seemed angry when I asked for a way around it. Any ideas?

A: As you know, ADHD (which may be characterized by inattention, hyperactivity or both) begins in childhood and, we now know, often persists into adulthood. How it presents itself can differ considerably from one person to another, but the kinds of features you describe certainly can be indicative of ADHD. Many useful books on the topic, geared toward a wide audience, have been published, including the early and widely read *Driven to Distraction*; another very clearly written book that can be helpful with diagnosis and seeking appropriate treatment is *More Attention, Less Deficit*. Although people with ADHD face particular obstacles, they are also often quite creative, and good at thinking on their feet or outside the box (indeed, often they are not inclined to think inside the box at all).

Although some providers are inclined to view neuropsychological testing as the litmus test for ADHD, many others believe that this kind of testing can miss ADHD (though it is extremely helpful in diagnosing a number of cognitive/ neurological conditions); a thorough and detailed history may actually be most useful. When money is short and managed care rules out coverage, testing would be quite an expensive way to go.

Your primary care physician does have reason to be cautious about too easily launching into medication treatment (generally with stimulants), since the condition is widely over-diagnosed and stimulants can be used inappropriately (for example, by students seeking an edge to study for exams though they do not actually suffer from attention problems). But, again, a careful history taken by a knowledgeable psychologist or psychiatrist may be the best way to determine who is an appropriate candidate for treatment.

If a physician (typically a psychiatrist) does decide to prescribe, it should become evident fairly soon whether the medication is making a big difference, and also whether it elicits side effects (such as a mood “crash” when it wears off, or undue anxiety) that may outweigh any helpful effects. (In the latter case, there is more than one medicine to try.) But we have seen some lawyers show marked improvement in their work product (e.g., many fewer errors in document details) upon initiation of a regime of ADHD medication.

Medication is not, however, the only intervention that can help. ADHD-oriented coaching (techniques for staying more organized, prioritizing, etc.) is another powerful tool. An ADHD diagnosis can also be more consciously taken into consideration in career planning — some jobs, for example, have a much more here-and-now quality, and less emphasis on paperwork or extended tasks, and can be a better choice. In addition, an administrative assistant with very good organizational ability can be worth his or her weight in gold. Newer treatment techniques involving technology, such as neurofeedback, are also showing promise.

LCL staff would be glad to help you seek a helpful approach — give us a call.

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Dr. Jeff Fortgang is a licensed psychologist and licensed alcohol and drug counselor on staff at Lawyers Concerned for Lawyers of Massachusetts, where he and his colleagues provide confidential consultation to lawyers and law students, and offer presentations on subjects related to the lives of lawyers. Q&A questions are either actual letters/emails or paraphrased and disguised concerns expressed by individuals seeking LCL’s assistance. Questions may be emailed to DrJeff@LCLMa.org.
BAR NEWS

MBA hosts first summer social in Cambridge

The MBA held its first summer social on June 25. (See photos above). Visit www.massbar.org/events to R.S.V.P. for the upcoming socials on Thursday, July 23, at Sterling’s (outdoor patio) in Boston, and Thursday, Aug. 13, at Tie’s on the Waterfront in Boston.

PHOTOS BY KELSEY SADOFF

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Decisions, decisions, decisions

BY BETH M. PADELLARO

BETH M. PADELLARO is an attorney at the Law Office of Frederick L. Nagle Jr., in Haverhill. In private practice since 2006, she is primarily focused on elder law planning, estates and probate planning.

Becoming a lawyer has its own set of stress factors and add to that the stress of having to find employment. The Sole Practitioner & Small Firm Section Council focuses on providing our members with information to attorneys who find themselves practicing on their own or decide to open a practice with another attorney, whether by choice or by default. Once that decision is made the decisions that follow are virtually boundless: location, client base, technology, resources and staffing, not to mention the financial backing required to start up this business. The Sole Practitioner & Small Firm Section Council’s mission is to study the needs of sole and small firm practitioners, impart knowledge, provide support and ideas, and listen to the needs and concerns of those practitioners. By constantly engaging with our members our council can assist the MBA so that these concerns/issues can be addressed as they relate to this specific group of attorneys. The ability to know/understand/utilize the law is taught in law school. I do miss those days of flipping through the pages and placing books upon books on a table just to find the right cite. Well, fast forward to today. Shepardizing a case now involves the touch of a button. LexisNexis, Westlaw, Casemaker (provided by the Massachusetts Bar Association) and several others now provide that information with little more than a search term. There are also a multitude of other resources to find statutes, whether it be federal or state, or define a legal or other term, etc. All of this can be done with the touch of a button. Even more amazing is that today we have the ability to take these resources on the road, in the air, on the water … anywhere (i.e., the “cloud”). The time has come where an attorney can practice virtually anywhere: a home or office, in the courthouse or sitting at a coffee shop, even the beach. With the use of laptops, iPads, tablets and smartphones, legal research is “mobile.” This type of technology and our accessibility to it allows attorneys to develop and step into the “virtual office.” Sole and small firm practitioners, both young and old, can take advantage of all the benefits of being a lawyer, whether it be in a virtual or a physical office. MBA seminars and programs are developed to meet the needs of this virtual world. Thus, it is part of our section council’s mission to ensure that we not only update and teach attorneys about using technology but, how to do so ethically and not get into trouble. This year the section council has presented programs that focused on the IOLTA rules, fee-generating appointments in court and an upcoming program on the use of Acrobat and open-source software. Each program can be summarized as follows:

IOLTA — Recent changes were made to these rules which stressed the importance of staying current with the IOLTA obligations. Not following these rules is the most common reason for the Board of Bar Overseers to get involved. The program reviewed the ways to avoid mishandling of IOLTA funds.

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In December 2014, the Massachusetts’s Department of Elementary and Secondary Education (DESE) officially adopted revisions to the commonwealth’s regulations governing physical restraint in public education programs at 603 CMR 46.00. This article will discuss the changes imposed by the revised regulations to current school practices, including forecasting challenges that may surface when the revised regulations become effective on Jan. 1, 2016. By way of background, the use of physical restraint in schools has been and continues to be limited to scenarios where a student’s behavior threatens imminent, serious, physical harm to himself/herself or others. Physical restraint is an emergency procedure at last resort. No educator or parent ever wants to reach the point where physical restraint of a child is necessary, however, emergencies can and do arise in school. The law is also clear that public education program staff can use reasonable force—such as appropriate physical restraint procedure—to protect themselves, their students and other members of the school community.

What is a physical restraint?

Both DESE and the public commenters focused a great deal of attention on revising the definitions section of the regulations. Under the current regulations, only nine terms are specifically defined. The revised regulations define 14 terms. Several definitions have also been expanded to include specific examples. For instance, the current regulations prohibit the use of mechanical restraint but exempt “protective or stabilizing devices ordered by a physician” from that category.1 Under the revised regulations, DESE has expanded that exemption and lists several concrete examples, including vehicle safety restraints, restraints for medical immobilization and orthopedic devices.

One of the most important new definitions in the revised regulations is for the common practice of “time out.” The current regulations define and prohibit exclusion restraint with the caveat that “the use of time-out procedures during which a staff member remains accessible to the student shall not be considered exclusion restraint.” However, time out is not currently defined, which allows the unfortunate interpretation students can temporarily separate from family and friends and confine them almost two years ago and it allows attorneys to bounce ideas in a certain area of the law. More importantly, it allows attorneys to expand their knowledge in a clean, safe, sanitary space. While this definition echoes standard practice in most schools, for the first time, it also provides families an idea of what students are entitled to expect from a time out.

It is clearly hoped that expanding the definitions will lead to fewer disagreements between DESE, schools, parents and the public about what is or is not a physical restraint. Unfortunately, more regulatory language also provides increased fodder for legal parsing and ambiguity. For example, the revised regulations state “that a student must be continuously observed during a time out. But if the staff member is called away by an emergency, leaving the student unobserved for a few moments, does that time out become a seclusion restraint? Schools and families may need to work through that type of debate after Jan. 1, 2016.

Reporting of physical restraints

Somewhat surprisingly, the current regulations do not require school staff to report a physical restraint to either the principal or the student’s family unless the restraint lasts longer than five minutes or results in injury. This can lead to understandable alarm when a child comes home and reports being restrained without any other context.

Beginning in January 2016, the new regulations will require school to provide at least the student’s family and any and all staff members designated to be notified of every physical restraint, as well as an opportunity to comment on information in the physical restraint report. By contrast, schools will only be required to send reports of an individual restraint to DESE if the restraint resulted in an injury. DESE will instead monitor the use of the physical restraint in the aggregate, by reviewing monthly logs and annual data collected by the public education program.

Hopefully, the increased obligation placed on schools to report physical restraints will reassures families an idea of what restraint is required, promotes school and family collaboration, and assists in monitoring school-wide trends.

Data collection and review

The revised regulations also include several new provisions to ensure that the use of physical restraint is monitored and tracked for individual students, for discrete programs, and for whole school districts. Each school will be required to review their logs to determine if any student has been restrained multiple times in the past week. If so, the principal must convene a review team to analyze and draft a plan to reduce use of restraint for that particular student. On a monthly basis, principals2 are required to review restraint data across the program or school in order to spot any trends or patterns. Last, the schools will annually report data on physical restraint to DESE and that agency has the discretion to launch further investigations if warranted.

Conclusion

Many public education programs are currently re-drafting policies, re-working internal procedures and re-training staff in anticipation of implementing the revised physical restraint regulations. One large concern for schools is the amount of time and staffing necessary to meet the new reporting and data collection obligations. Exchanges go into effect, families of students who are restrained in school will be much better informed. Hopefully that will enable schools and families to better work together to avoid physical restraints for individual students and practice restraints safely when necessary.

See note 4, supra.

1. Full text of the revised regulations is available on the DESE website at www.doe.mass.edu/lawsregs.
2. 603 CMR 46.06
3. Id.
4. 603 CMR 46.50(1)
5. The revised regulations define “principal” as the institutional leader or headmaster of a public education group or school. Therefore, schools have some flexibility in designating individuals to complete the data review and reporting tasks required by the revised regulations.

The section council has also come up with some general and specific pointers that lawyers can use at any stage in their practice. Council member Jeffrey J. Clark emphasizes that once the decision is made to utilize the new law practice, you will want to carefully evaluate your area(s) of practice and your client base before renting office space. Knowing whether your clients will be local, out of state, commercial or domestic, allows one to determine the type of office space you require; are you visible for walk-in traffic; is there parking available; how are face-to-face meetings to occur; what type and how often will you be utilizing telephone/video conferencing. A virtual office space may be an option rather than a constant physical location.

Now that the office is open, the issue of more safe, in particular, how to handle inserts into play. Do you need only a desktop, and how many? What about staffing? What about being transitory? Would a cell phone be an adequate addition? Is a tablet/iPad the better choice? If a cell phone is used, is there an added need for a landline? Then there’s the confusion and frustration of what software packages to pick, practice or case management. There are also the issues of ensuring you have the proper protection and protocols to ensure compliance with your ethical and moral obligations as a practicing attorney. Do you need a fax machine? The Internet? How much, and what vendor to use? Who provides the technical support for your office? The decisions are boundless and specific to each attorney. No one size fits all, especially given all the options that are out there today.

All in all, attending law school was a career choice that I never regret making, but stepping out into the real (legal) world after graduating can, at first, be exhilarating. Our section council and the MBA are here to help and to listen.
A trademark or portfolio of trademarks is often among the most valuable assets of a business. A trademark serves as a fixed representation of a business brand and its goodwill, and conveys a message to customers and potential customers of the quality of goods and services offered by the business. A trademark owner may even have the exclusive right to use its marks in commerce, but also has the right (and in fact the obligation) to stop others from using similar marks in a manner that causes consumer confusion. Thus, vigorous enforcement of trademark rights is necessary in order to preserve those rights. However, a trademark owner is not permitted to misuse its trademark rights so as to intimidate another business into abandoning a mark that does not conflict with the trademark owner’s mark. The question then becomes: where does vigorous enforcement end, and bullying begin?

It is well established that trademark rights do not grant one a complete monopoly on the use of a particular word, logo or symbol. Rather, trademark rights only extend to the goods and services in which the trademark owner has used the mark in commerce. As a result, ownership of a trademark does not permit one to stop all uses of similar or even identical marks. Although a few of the most famous marks — think Budweiser or Coca-Cola — are so strong that it is likely that no one else could use those marks for any goods or services, typically that is not the case. Even strong marks like Delta (Delta Airlines, Delta Faucets, Delta Dental), United (United Airlines, United Van Lines) and Columbia (Columbia Records, Columbia Sportswear), are shared by businesses in unrelated fields.

A trademark owner can only prevent others from using similar or even identical marks in a way that is likely to cause consumer confusion — i.e., will lead consumers to believe that the two marks come from the same source, that the sources of the marks are affiliated, or that one source sponsors or authorizes the other source’s use of the mark. Thus, trademark rights are limited by the extent to which another’s use of a similar mark is likely to cause confusion.

As a result of these competing principles of trademark law — a trademark owner is obligated to vigorously enforce its rights but at the same time must respect the fact that those rights are limited and not monopolistic — a trademark owner frequently is left in a quandary. What measure of enforcement is sufficient to protect its rights without crossing the line? Adding to that tension is the developing concept of “trademark bullying.”

The trademark owner’s dilemma — vigorous enforcement of rights or bullying?

BY THOMAS E. KENNEDY

A trademark owner’s dilemma — vigorous enforcement of rights or bullying?

It is clear that section 365 applies to a debtor’s IP in-license, section 365(c) must be considered. That provision includes a number of exceptions, including that the license rights are not exclusive, or the intellectual property rights are limited by a contract. The real question is whether the debtor’s IP is exclusive, and whether the intellectual property rights are limited by the contract.

The bankruptcy court in In re West El San Juan, Inc. (852 F.2d 79 (3d Cir. 1988)) held that the debtor’s IP rights were exclusive, and therefore not subject to section 365. The court noted that the debtor’s trademark license was exclusive, and that the license agreement provided that the licensor was the exclusive licensor for the trademark in question. The court also noted that the license agreement was a severable agreement, and that the debtor had the right to assign the license to a third party. The court held that the license was exclusive, and therefore not subject to section 365.

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of it (and the corresponding brand) by the consuming public, businesses are quite wary of the damage their brands can suffer as a result of the public airing of bullying accusations — especially on the Internet.

So, what is a responsible trademark owner to do? First of all, a trademark owner must resist the temptation to lose control of the trademark and license something that may turn out to be a liability (and the corresponding brand) by the consuming public, businesses are quite wary of the damage their brands can suffer as a result of the public airing of bullying accusations — especially on the Internet.

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Most people would agree that no, monkeys are not people. However, Steven M. Wise, president and counsel of the Nonhuman Rights Project, believes that chimpanzees are enough like people that some of the fundamental rights to which people are entitled should be guaranteed to them as well — namely, the right to be free.

These aren’t just any chimpanzees. These are two chimpanzees, Hercules and Leo, both 8 years old and both used for research at Stony Brook University in New York. In a court proceeding ordered by Justice Barbara Jaffe for Stony Brook to defend its detention of the chimpanzees, Wise pointed out that chimpanzees, and other great apes, don’t live based only on instinct, but are capable of planning and acting in ways that help determine their future. Wise also argued that the chimps are self-aware, understand the passage of time, and possess math skills and can understand language. As such, “These animals are indeed autonomous, self-determining beings … they are the kinds of beings who can remember the past and plan ahead for the future, which is one of the reasons imprisoning a chimp is at least as bad and maybe worse than imprisoning a person.”

For these reasons, the Nonhuman Rights Project is fighting on the side of the chimpanzees, seeking to free Hercules and Leo from Stony Brook through a writ of habeas corpus, a mechanism through which unlawful imprisonment may be challenged. While habeas corpus is a long established procedure used to challenge unlawful imprisonment of human beings, it has never been applied to any other living creature.

The state argued that chimpanzees are not entitled to the same rights as human beings because they cannot fulfill other duties required of them by human laws, such as bearing moral responsibility in our society, saying, “They are just not equipped the same way as human beings to be members of society.” The state also employed the slippery slope argument, warning against opening a floodgate.

The Nonhuman Rights Project’s ultimate goal is to free the captive chimpanzees (along with others) and move them to a sanctuary where they can live as naturally as possible amongst other chimpanzees. It has long been accepted that chimpanzees possess many characteristics originally believed to be exclusive to human beings. So the question is, do chimpanzees have enough human characteristics to be granted some human rights? Chimpanzees form highly complex social relationships, and different groups display different cultural behavior. Chimpanzees have been observed mourning, laughing, and solving puzzles for entertainment. Natalie Prosin, executive director of the Nonhuman Rights Project, has clarified the group’s position by stating that the project does not believe that animals are people, but that chimpanzees are “autonomous beings, who are self-aware and self-directed,” and that the project is not asking for broad human rights to be granted to the chimpanzees, but is simply seeking their freedom. Is freedom exclusive to human beings, or will Hercules and Leo prove otherwise?
Court closings

We want to know what it means for the movement of cases and attorneys who have to get to the courthouses. Also for the people in some poor communities — they might not have the same access to the administration of justice.

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER
MARTIN W. HEALY, BOSTON HERALD, JUNE 6
Healy was quoted in a Herald story on the possibility of the Trial Court closing as many as a third of the state’s 101 courthouses. Massachusetts Lawyers Weekly also quoted Healy in a June 10 story on a draft of a capital plan calling for the closing of 41 courthouses.

District attorney layoffs

It’s a bit of a frightening situation because these are the people in the front lines. They do the lion’s share of the work. It’s of great concern that you have to start laying people off. The end result is, people won’t have access to justice.

MBA PRESIDENT MARSHA V. KAZAROSIAN
BOSTON HERALD, MAY 26
Kazarosian was quoted in a Boston Herald story on the DA layoffs in Norfolk County. She was also interviewed by WBZ NewsRadio 1030.

Breathalyzer tests

While the number of cases impacted by improper use or calibration of the Draeger 9150 appears to be limited, both Secretary Bennett and I agree that any miscarriage of justice is unacceptable and that lawyers should also have the opportunity to review these records in order to determine exactly which cases may have been tainted by error.

MBA PRESIDENT-ELECT ROBERT W. HARNAIS
MASSACHUSETTS LAWYERS WEEKLY, JUNE 10
Harnais was quoted from an MBA press release on the securing of records from the Executive Office of Public Safety and Security pertaining to 39,000 cases where the Draeger 9150 alcohol breath test device was used.

Shooting of suspected terrorist

It’s really in those last few seconds, it’s so blurry. We really can’t see who’s doing what … if they absolutely had to shoot him in that situation or if there was some way to retreat or to disable him.

MBA CRIMINAL JUSTICE SECTION VICE CHAIR
PETER ELIKANN, FOX25, JUNE 8
Elikann was interviewed by FOX25 for a story about the surveillance video of the Usaamah Rahim shooting in Roslindale.

Massachusetts abolished assumption of the risk defenses so a lot of people still think whatever’s written on the back of a ticket means they’ve assumed the risk of being hit by a ball or a bat. That’s not really true, because that was abolished back in 1974.

MBA TREASURER JEFFREY N. CATALANO
NEW ENGLAND CABLE NEWS, JUNE 8
Catalano was interviewed by New England Cable News for a story on a legal precedent known as the “baseball rule” in relation to spectators who are injured by a ball or bat that enters the stands.
Real Estate Closing Software

- 2015 TILA-RESPA Compliant
- Automatic Calculations
- Balanced Closing Ledger
- Check Printing
- Electronic 1099-S Filing

Family Law Software

- Tax Optimized Divorce Settlements
- Automated Child Support Worksheets
- No Accounting Skills Needed
- Install In Minutes and Save Hours