



**HARNAIS GETS
PRESIDENTIAL
WELCOME AT
FENWAY**

➤ 6

**MEET THE
2015-16
SECTION
COUNCIL AND
DIVISION
CHAIRS**

➤ 15

SEE PAGE 2 FOR A COMPLETE LISTING OF THIS ISSUE'S CONTENTS.

MASSACHUSETTS LAWYERS JOURNAL

WWW.MASSBAR.ORG

VOLUME 23 | NUMBER 2 | OCTOBER 2015



PRESIDENT'S VIEW

ROBERT W. HARNAIS

East, west — we're all MBA

I recently had the opportunity to visit the western part of our state to meet with lawyers and budding lawyers, and I came away with filled with optimism.

I was honored to speak briefly to members of the Hampshire and Hampden county bar associations, and I also addressed a group at Western New England Law School in Springfield. Later this month, on Oct. 21, I'm looking forward to returning to Springfield when I participate with other MBA volunteers on our next Western Massachusetts Dial-A-Lawyer program.

As I mentioned in my inaugural column as the new president of the Massachusetts Bar Association, one of my interests is in trying to help restore the professional congeniality that I've always valued so much in my own interaction with fellow lawyers. While our system is adversarial, we can still be civil to one another.

In my visits to western Massachusetts, my sense was that the lawyers I met there enjoy a strong sense of camaraderie and collegiality. And to my way of thinking, that's the way it should be. One brotherhood/sisterhood under the law.

We all work in the same system under similar pressures and with similar concerns. The high quality of lawyers and standards of practice are what makes this state such a great place to work in the law. We couldn't do it without each other.

I want to reiterate my call to all of you to make your voice heard regarding issues the MBA should be pressing. From Pittsfield to Provincetown and all points between, we are stronger as one unified bar.

The more people we hear from, the more representative an organization we can be. It would be great to receive input and ideas from every different part of the state, and perhaps we can share some of them in a community bulletin board, either here in this journal or on our website at MassBar.org. That is something I would gladly support.

We are guilty to some extent of operating in our silos, and in some cases, people have preconceptions of what others are like in other regions of our state. But, of course, stereotyping is usu- ➤2

Fastcase coming Dec. 1

Starting Dec. 1, Massachusetts Bar Association members will have free, unlimited access to Fastcase — one of the nation's most popular legal research services. Fastcase will provide MBA members with nationwide coverage from state and federal courts, state statutes and administrative regulations, as well as court rules, constitutions and other valuable libraries.

"One of the greatest benefits of belonging to the Massachusetts Bar Association is access to tools and services that

strengthen an attorney's practice," said MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy. "We're pleased to enhance this benefit by providing MBA members free access to Fastcase — one of the largest online legal research libraries, and the top-rated app for attorneys."

Fastcase will supplant Casemaker as of Dec. 1, and MBA members will be able to log into Fastcase in December through www.massbar.org, using their member IDs/emails and passwords. In



addition to providing free and unlimited customer support from experienced reference attorneys, Fastcase will sponsor complimentary monthly training webinars and there will be short video tutorials on the site. ➤3

IN CLOSING

Boston trial lawyer reflects on remarkable career

BY MIKE VIGNEUX

Richard P. Campbell is a Boston guy to the core. A past president of the Massachusetts Bar Association, Campbell is a graduate of UMass Boston and Boston College Law School. But to really put it in perspective, his law office in Charlestown is located just four blocks away from the church where he was baptized as a baby.

"I'm a native. I'm so local it's ridiculous," said Campbell, the founder of Campbell, Campbell, Edwards & Conroy PC (Campbell Trial Lawyers).

Sandwiched between that baptism at St. Catherine of Siena and the present day, Campbell has spent more than 40 years as a highly respected trial lawyer while building a nationally prominent law firm that primarily represents Fortune 100 companies and has handled cases in more than 30 states, Puerto Rico and the Virgin Islands.

Campbell is in the process of stepping down from his role at the firm, a shift which he refers to as "a work in progress." He is still working on a few pending matters but is not taking on any new assignments.

It has been quite a journey for Campbell, who started a five-lawyer firm as the only partner and shareholder, in February 1983. At its earliest stages, Campbell remembers a time when the firm used borrowed office space and typed up notices of appearances while sitting on phone books. More than 30 years later the firm represents some of the biggest and most prominent corporations in the world in multi-district litigation, class actions, aviation disasters, mass

torts, toxic tort, product liability and major commercial disputes. The two primary offices for the firm are located in Boston and suburban Philadelphia.

Campbell served as one of seven national trial counsel for Caterpillar Inc. and also served as lead counsel for a commercial airline in the 9/11 federal litigation in New York City.

"Many of the leaders and shareholders in the firm today have never worked for anybody but me," said Campbell. "I take great pride in the fact that we created this law firm basically out of whole cloth."

In a career that has seen many accolades, honors and victories in the courtroom, Campbell is most proud of his induction as a fellow into the American College of Trial Lawyers, which is widely considered the premier professional trial organization in America.

"In trial practice the singular honor is recognition by your peers," noted Campbell. "To me, induction as a fellow of the American College of Trial Lawyers is probably the most important professional credit that I have achieved and that's because it's recognition by your peers of your accomplishment in your chosen field."

Volunteering nationally and locally

Volunteering has always been important to Campbell during his career and he has done so on both a national and local level.

He is a past chair of the 34,000 member Tort Trial & Insurance Practice Section of the American Bar Association and has served on the execu-



Richard P. Campbell

tive committees for both the International Association of Defense Counsel and the Product Liability Advisory Council.

Locally, Campbell served as MBA president during the 2011-2012 association year, which Campbell describes as a highlight of his legal career.

"In terms of volunteering in lawyer professional associations, the most important job I had was my service as president of the Massachusetts Bar Association," said Campbell. "To me, as a local guy, ultimately the most important work that you do is local. I will forever hold dear the time that I spent as president of the Massachusetts Bar Association."

The timing of Campbell's presidency coincided with the financial crisis in the courts due to a lack of appropriate funding. Under Campbell's leadership, the MBA launched an unprecedented statewide billboard campaign to raise public awareness about the dire need for court funding. According to Campbell, this initiative "turned a lot of heads" and ➤4

PRESIDENT'S VIEW*Continued from page 1*

ally a mistake. I've traveled to all corners of the commonwealth, and I can assure you there is indoor plumbing, electricity — and good lawyers — everywhere in Massachusetts. And even in cases where there are real differences, we can learn from them and use them to positive effect.

In the coming months, I'll be talking to you more about some of the issues we as an organization want to pursue legislatively and things we want to try to accomplish through policy. In the mean-

time, I'm going to try to talk to as many people as possible to get a strong sense of what's going through their minds.

All of us, no matter where we live and where we work, are providing a great service to the people of this commonwealth. They place their trust in us, and they deserve the best representation possible. I am confident that we do that as well as any state in the union. But we can always be even better. One mark of a great lawyer is someone who is always striving to improve. And that's what we

should be doing as a bar association, as well.

Communication is the key. Boston lawyers, Cape lawyers, Springfield lawyers, Salem lawyers, wherever you practice in Massachusetts — we're all one MBA. I urge you to reach out to us and let us know what you think. I can be reached at robert@harnaislaw.com or you can call the MBA at 617-338-0500 in the Boston office or 413-731-5134 in the Springfield office.

I look forward to hearing from you! ■

MASSACHUSETTS
LAWYERS JOURNAL

Volume 23 / No. 2 / October 2015

EDITOR/DIRECTOR OF MEDIA AND COMMUNICATIONS: Jason M. Scally, Esq.

ASSISTANT EDITOR: Kelsey Sadoff

ASSISTANT EDITOR: Mike Vigneux

SENIOR DESIGN MANAGER: N. Elyse Lindahl

CHIEF OPERATING OFFICER/ CHIEF LEGAL COUNSEL: Martin W. Healy, Esq.

LEGAL EDITOR: Martin W. Healy, Esq.

DIRECTOR OF POLICY AND OPERATIONS: Lee Ann Constantine

PRESIDENT: Robert W. Harnais, Esq.

PRESIDENT-ELECT: Jeffrey N. Catalano, Esq.

VICE PRESIDENT: Christopher A. Kenney, Esq.

TREASURER: Christopher P. Sullivan, Esq.

SECRETARY: John J. Morrissey, Esq.

© 2015 Massachusetts Bar Association

Materials not to be reproduced without permission.

Lawyers Journal (ISSN 1524-1823) is published monthly by the Massachusetts Bar Association, 20 West St, Boston, MA 02111-1204. Periodicals postage paid at Boston, MA 02205. Postmaster: send address changes to *Lawyers Journal*, 20 West St., Boston, MA 02111-1204.

Subscription rate for members is \$20, which is included in the dues. U.S. subscription rate to non-members is \$30. Single copies are \$3.

Telephone numbers: editorial (617) 338-0680; general MBA (617) 338-0500.

Email address: lawjournal@massbar.org.

Readers are invited to express their opinions as letters to the editor and op-ed commentaries. All submissions are subject to editing for length and content. Submit letters and commentaries to: Editor, *Lawyers Journal*, at the address given above or via email to lawjournal@massbar.org, or fax to (617) 542-7947.



A publication of the Massachusetts Bar Association

THE WARREN GROUP
Real Estate & Financial Information Since 1872

THE WARREN GROUP

DESIGN / PRODUCTION / ADVERTISING

ADVERTISING (617) 896-5307

EVENTS (617) 338-5359



Snapshots from around the MBA



PHOTOS BY JOHN PREGMON

MBA-Medical Society Networking Event

The Massachusetts Bar Association's Young Lawyers Division and Health Law Section joined in a networking event with the Massachusetts Medical Society on Aug. 27.

Bar Seen offers snapshots of MBA members and events.

INSIDE THIS ISSUE

MASSACHUSETTS
LAWYERS JOURNAL

EXPERTS & RESOURCES
8, 9, 10, 11

ON THE COVER

- FASTCASE COMING SOON
- BOSTON TRIAL LAWYER REFLECTS ON REMARKABLE CAREER
- PRESIDENT'S VIEW

BAR NEWS

- 5** MEMBER ACCESS
- 6** HARN AIS GETS PRESIDENTIAL WELCOME AT FENWAY
- 7** MASSBAR EDUCATES
- 9** GANTS TO DELIVER STATE OF THE JUDICIARY, OCT. 20
- 10** CALENDAR OF EVENTS

13 MASSBAR FOUNDATION

15 2015-16 SECTION COUNCIL AND DIVISION CHAIRS

16 HOUSE OF DELEGATES PASSES TAX, CRIMINAL JUSTICE MEASURES

17 NOTABLE AND QUOTABLE

FOR YOUR PRACTICE

8 LOOKING FOR DR. GOOD: SEEKING A THERAPIST IN THE HMO ERA

11 TURNING ON THE LIGHTS

12 FALL BACK INTO MARKETING THIS AUTUMN

SECTION REVIEW

18 APPEALS COURT RULES INTEREST IN IRREVOCABLE TRUST IS A MARITAL ASSET

LEGAL NEWS

14 NEWS FROM THE COURTS

FASTCASE
Continued from page 1

“We’re very excited to welcome members of the MassBar to Fastcase,” said Fastcase CEO Ed Walters. “We’re just launching the new version of Fastcase 7 in a public beta, and Fastcase was just named the #1 app for lawyers in the ABA Tech Survey for the third year in a row. It’s an exciting time, and we’re going to continue working hard with the MassBar to provide the best for its members.”

In addition to extensive law libraries, Fastcase also includes several unique features:

Data visualization. Only Fastcase includes the Interactive Timeline, a visual map of search results. Search results in text look all the same — but when you map them, the best answers jump off the page.

Bad Law Bot. Fastcase includes Bad Law Bot, the world’s first big data tool for negative treatment history. When your case has been cited with negative history, Bad Law Bot flags the case.

Mobile sync. The ABA’s 2013, 2014 and 2015 Tech Survey showed that Fastcase’s legal research apps for iPhone, iPad and Android devices are by far the most popular mobile apps for lawyers. Many MBA members already subscribe to Fastcase’s mobile apps. With our new member benefit, when you sync your app on the desktop, you can save documents on your app to print later from the desktop, share research history across your devices or create mobile trial notebooks for tablet devices.



HeinOnline. Fastcase now integrates with HeinOnline, the largest library of law reviews in the world, with more than 2,000 American journals going back to the first page — more than double the size of the law review catalog of traditional research providers. MBA members can search the HeinOnline catalog (which includes the Massachusetts Law Review) and view results for free. To read individual articles, members can subscribe to Hein at a discount. If you’re already a subscriber to HeinOnline, you can access the journals without an additional purchase.

Annotated statutes. Fastcase’s statutes include a free annotation service, so you can see how courts have interpreted statute sections. Scroll to the

bottom of a statute section to view a list of citing cases.

Batch printing. You can use Fastcase’s dual-column printing utility to print clean copies of cases in Word or PDF format, and you can batch print multiple cases, either in a single document, or as a .zip file with each document saved as a separate file. It’s a quick and easy way to pull cases, in a format that you could show a judge, opposing counsel or a client.

To access the scope of Fastcase’s coverage, visit www.fastcase.com/what-is-fastcase/coverage.

Look for more information about the MBA’s newest member benefit at www.massbar.org, and in eJournal and *Lawyers Journal*. ■

Fastcase facts

What is Fastcase: One of the largest online legal research libraries, which includes cases, statutes, regulations, court rules and constitutions, and provides access to a newspaper archive, legal forms and a one-stop PACER search of federal filings

Available: Dec. 1
Users: More than 800,000 subscribers, including 28 state bar associations and many of the nation’s largest law firms

Cost: FREE for MBA members (a \$995 savings)

App: The most popular mobile app among lawyers, according to the ABA’s annual Tech Survey

Support: Available toll free, weekdays from 8 a.m. to 8 p.m. EST.

**PAYMENT PROCESSING,
EXCLUSIVELY
FOR ATTORNEYS.**

1.95% & 20¢ per transaction | No swipe required | No equipment needed

Helping law firms get paid.

IOLTA guidelines and the ABA Rules of Professional Conduct require attorneys to accept credit cards correctly. We guarantee complete separation of earned and unearned fees, giving you the confidence and peace of mind that your transactions are handled the right way.

www.LawPay.com/massbar | 866.376.0950

LawPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL

SAVE THE DATE



MASSBAR
ASSOCIATION

CONSUMER ADVOCACY



SYMPOSIUM

Wednesday, Nov. 18, 4-7 p.m.
MBA, 20 West St., Boston

Featuring panel discussions on the legal issues and litigation triggered by food labeling and mislabeling.



The MBA Pinnacle Awards will also be presented to companies that have taken proactive steps to benefit consumers in Massachusetts.

WWW.MASSBAR.ORG
(617) 338-0530

CAMPBELL

Continued from page 1

had a tremendous impact.

"The Massachusetts Bar Association stood up, took the lead and helped bring about positive change to properly fund the court system," noted Campbell.

Campbell also developed and led an MBA task force which studied the changing face of the law economy, including the unemployment conditions for lawyers graduating from law schools. The "Report of the Task Force on Law, the Economy and Underemployment: Beginning the Conversation," was well received and drew national attention from the ABA who created its own task force to take a national perspective on this topic.

"He was very dedicated to the MBA and during his presidency he always took his responsibilities very seriously," said Martin W. Healy, MBA chief legal counsel and chief operating officer. "Dick was a great president to work with in addition to being quite an accomplished attorney."

During Campbell's time at the MBA, he worked with his fellow officers to get each of them to think beyond their own term as president in developing a collective, ongoing program of initiatives that would be passed on from one president to the next. As a result of this close collaboration, Campbell acknowledges that the MBA officers he worked with became some of his really good friends.

"The whole time he was an officer, Dick was a leader that we always knew we could go to when we needed something important to get done. He not only had great ideas and common sense, but he knew how to make things happen," said Valerie A. Yarashus, MBA past president. "He was so well respected by everyone for having good judgment about things and getting right to the heart of an issue. He really knew how to focus on what was the right priority."

Before becoming a fellow officer with Campbell at the MBA, past President Douglas K. Sheff found himself going against Campbell and his firm in several trials throughout the years.

"It just shows the power of the MBA that even adversaries can be brought together and become good friends," said Sheff. "As powerful an adversary as he was in the courtroom, he's even more powerful as a friend. Just because he's retiring from the firm doesn't mean he's going to be retired from my phone calls."

Fellow MBA past President Denise Squillante agrees. She sees Campbell continuing to be a trusted resource within the legal community even after his retirement.

"He was a great bar leader and stimulated conversations that were elevated to a national level," said Squillante. "I am happy for him as he begins what I refer to as his third act. But I don't think Dick is going anywhere because it's his nature to be involved and help people."

Influential people

A successful career is typically not built by one person alone. Campbell mentioned several colleagues and mentors throughout the legal profession that have helped shape his career.

Campbell began his career at Shanley & Fisher, PC in New Jersey where partners Raymond M. Tierney Jr. and Thomas F. Campion spent countless hours teaching him how to be an effective trial lawyer.

"Collectively, those two guys invested in me their wisdom and insights and made me the lawyer that I am today," said Campbell.

Former Superior Court Justice Charles F. Barrett (ret.) was the head of the litigation department when Campbell worked at Nutter McClennen & Fish. Barrett was known as a great trial lawyer and quickly became a trusted mentor for Campbell.

General Motors was a foundation client for Campbell's firm and he noted the work of former GM lawyers William J. Kemp Jr. and Nicholas J. Wittner, who helped teach him the business of law.

Campbell also tipped his hat to shareholders John Grunert and Dick Edwards, two of the four original lawyers at Campbell, Campbell, Edwards & Conroy, who he worked with for 30 years.

Of course, Campbell's family has played possibly the strongest role in his career, and several members have always been steadily involved in the firm. His son, attorney Richard L. Campbell, is a shareholder and his brother, James M. Campbell, is a shareholder and president.

Many different members of his extended family have worked at the firm in one capacity or another. That list includes five of Campbell's six brothers, sisters-in-law and several nieces and nephews.

"We have such an amazing reputation for being a go-to trial firm. It's certainly a huge legacy that's being passed by my father to me and the other partners at this firm as he retires," said Campbell's son Rich. "Working with him here, he's not only been a tremendous mentor to me, but he's also been a tremendous mentor to everybody that he works with here at the firm. There is no better person for a young trial lawyer to work for than Dick Campbell."

Campbell is also quick to recognize the vital role his wife Barbara has played in his success.

"I was successful as a lawyer because I could work a hundred hours, week after week after week and everything at home was taken care of," acknowledged Campbell. "I never had to do a thing. My wife has been my partner in life and she made it all happen."

What's next?

When speaking about the next chapter of his life, one area that intrigues Campbell is teaching. Of particular interest to Campbell is the intersection of law and business, a space that he is undoubtedly familiar with given his vast experience.

He envisions designing a course someday such as "Law as a Weapon in Business," which would address the practical implications for business people that deal with legal tactics in their day-to-day business affairs.

Like a lot of professionals that reach the point of retirement, Campbell is not sure exactly what lies ahead for him. So much time has been dedicated to his law practice and his clients throughout the years that he hasn't had much time to think about it.

Whatever he chooses, there is no doubt he will put the same kind of energy and dedication into it as he did for the past four decades as a nationally recognized trial lawyer. ■

memberACCESS

MassBarTIPS

**A DOZEN WAYS
TO MAXIMIZE
YOUR MBA
MEMBERSHIP**

- 1** Join a section or practice group 
- 2** Take advantage of FREE CLE 
- 3** Become active on My Bar Access 
- 4** Try our free legal research tools 
- 5** Volunteer to serve the public 
- 6** Seek out leadership opportunities 
- 7** Collaborate on legislation impacting the profession 
- 8** Attend a networking reception or bench bar program 
- 9** Write an article for an MBA publication 
- 10** Obtain coverage through MBA Insurance Agency 
- 11** Become a member of Lawyer Referral Service (LRS) 
- 12** Take advantage of the Fee Arbitration Board or Committee on Professional Ethics 

LEARN MORE ABOUT WAYS TO GET INVOLVED AT
WWW.MASSBAR.ORG/VOLUNTEER

≡ **COMING SOON** ≡



..... **newest**
FREE
member benefit

≡ **JOIN TODAY** ≡
www.MassBar.org/iBelong
(617) 338-0530



MASSBAR
ASSOCIATION

iBelong

To learn more, visit www.MassBar.org/Fastcase.

WHY I USE MBA ON DEMAND

“On Demand is just one of the amazing benefits of MBA membership. Not only do you receive instruction from experts in their respective areas of law, but you get to do so in the privacy and comfort of your own home or office ... and it’s absolutely FREE to all MBA members!”



Maureen L. Reilly, Esq.
Reilly Law LLC, Boston

Watch MBA programs anytime, anywhere, FREE from the comfort of your home or office.

Catch up on MBA educational programs you missed at www.MassBar.org/OnDemand.

YOU Belong here

BAR NEWS

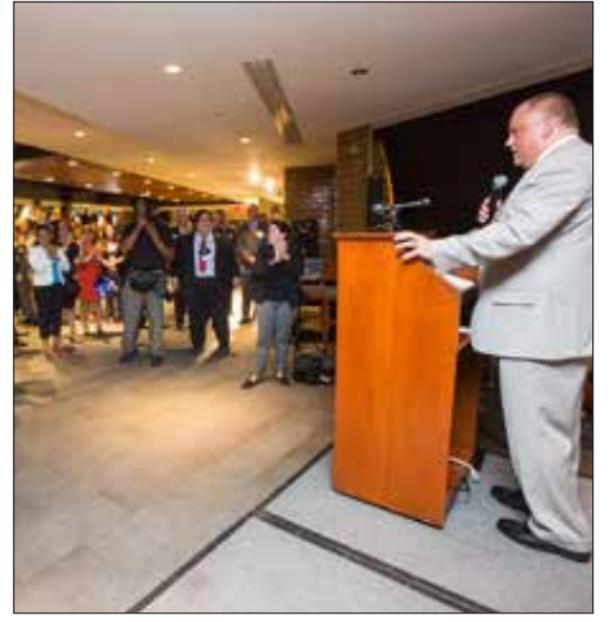
Harnais gets presidential welcome at Fenway



MBA and HNBA attendees took full advantage of the event's spectacular Fenway Park location. PHOTOS BY ERIC HAYNES.



MBA Chief Legal Counsel Martin W. Healy and Boston Mayor Martin J. Walsh.



MBA President Robert W. Harnais spoke about his goals as president, and described the MBA as the place where all members of the Massachusetts bar can connect and find a sense of community.

BY JASON SCALLY

The Massachusetts Bar Association (MBA) held a reception on Sept. 3 at Fenway Park to celebrate new MBA President Robert W. Harnais and ring in the 2015-16 membership year.

The President's Reception was held in conjunction with the Hispanic National Bar Association (HNBA)'s Ohtli Award Reception, part of the HNBA's Annual Convention, which was hosted in Boston this year.

Harnais was introduced and ceremonially "sworn in" as MBA president by Massachusetts District

Court Chief Justice Paul C. Dawley. Harnais told the crowd of judges and MBA, HNBA and Massachusetts Association of Hispanic Attorneys (MAHA) members how proud he was to be the MBA's first Hispanic president. He also spoke about the need for improved civility among lawyers and pledged to do his part during his presidency.

The joint HNBA-MBA reception was a fitting event to honor Harnais, who is a former president of MAHA and a former regional president of the HNBA. Harnais said he was grateful for the opportunities given to him by each association. He also thanked MBA Past President Marsha V. Kazarosian, his fel-

low 2015-16 MBA officers and his many other friends and family in attendance for their support. Harnais' signature sense of humor was also on display when he made a special point to thank "Judge Berman," the federal judge whose "Deflategate" ruling earlier in the day rejected the National Football League's four-game suspension of New England Patriots quarterback Tom Brady.

In addition to the speech by Harnais and the HNBA's award presentations, the reception featured remarks from Boston Mayor Martin J. Walsh, American Bar Association President Paulette Brown and MAHA Past President Jessica Massey. ■

Save the Dates



MASSBAR
ASSOCIATION

CELEBRATE THE HOLIDAYS WITH THE MBA

5th Annual
CASINO
Night

THURSDAY, DEC. 10
5:30-8 P.M.
MBA, 20 WEST ST.
BOSTON

Complimentary hors d'oeuvres
and beverages

R.S.V.P. AT

WWW.MASSBAR.ORG/CASINO

Western Mass.
Holiday Celebration

Tuesday, Dec. 15, 5-7 p.m.
Storrowton Tavern
1305 Memorial Ave.
West Springfield

SPONSORED BY

MBA
INSURANCE
AGENCY

Complimentary hors d'oeuvres and beverages

R.S.V.P. at www.MassBar.org/HolidayReception



MASSBAR EDUCATES

OCT. - NOV. 2015



**MASSBAR CLE —
HIGH QUALITY. TIMELY. EFFORTLESS. CONVENIENT.
... FREE**

Your MBA membership includes FREE, UNLIMITED CLE seminars and MBA On Demand programming.
(Excludes half- and full-day conferences and Practicing with Professionalism courses.)

GENERAL

RISK MANAGEMENT AND THE SJC'S REVISIONS TO THE RULES OF PROFESSIONAL CONDUCT

Tuesday, Oct. 27, 5-7 p.m., MBA, 20 West St., Boston

There are countless malpractice hazards, even for the most diligent practitioner. Attorneys tend to be careful around ethics quandaries, but sometimes may not recognize issues until it's too late. Some uncommon problems are buried in a maze of case law, court rules, statutes and regulations. Having a working knowledge of the Rules of Professional Conduct is an attorney's best chance to recognize and avoid the most common pitfalls.

The Supreme Judicial Court recently adopted revisions to the Rules of Professional Conduct which went into effect July 1, 2015. Our panel of experts will walk you through the changes and how these changes will impact your practice.

Don't put your livelihood at risk. Attend this program and be prepared.

Faculty: Christa Arcos, Esq.; Scott Burke, Esq.; Terrence Welsh, CPCU

FEED YOUR MIND: DRAFTING AND ENFORCING NON-COMPETITION AND NON-SOLICITATION AGREEMENTS

Tuesday, Nov. 3, 12:30-1:30 p.m., MBA, 20 West Street, Boston

Back by popular demand! All Massachusetts Bar Association members are encouraged to attend these free lunchtime programs. We gear these programs toward practitioners of all experience levels, providing an opportunity to participate in a discussion of selected areas of law, or practice, in a collegial setting where you can meet and exchange ideas with other members of the profession.

Michael L. Mason and David M. Rogers will provide expertise and insight on drafting and enforcing non-competition and non-solicitation agreements.

Faculty: Craig Levey, Esq. (co-moderator); Courtney Shea, Esq. (co-moderator); Michael L. Mason, Esq.; David M. Rogers, Esq.



CRAIG LEVEY COURTNEY SHEA

PUBLIC LAW

HOW TO CONDUCT AN OPEN MEETING LAW TRAINING

Tuesday, Nov. 10, 10 a.m.-noon, MBA, 20 West Street, Boston

The Massachusetts Bar Association has partnered with the Attorney General's Office to conduct a "Train the Trainer" session on the Open Meeting Law for attorneys who advise municipal, state agency, and other public sector clients. Attend this free session to learn how to conduct trainings for public bodies seeking guidance on Open Meeting Law compliance, and those that have been ordered to undergo training after a finding of violation.

The MBA is pleased to offer this program FREE of charge.

Faculty: Hanne P. Rush, Esq.; Jonathan C. Sclarsic, Esq.



The MBA offers this affordable and convenient one-day professionalism course to help you enter the legal profession on the right track.

COURSE DATE
Friday, Oct. 23, 9 a.m.-5 p.m.
Western New England University School of Law, Springfield

Look for details on upcoming courses in *Lawyers Journal* or at www.MassBar.org/MassBarProfessionalism.

UPCOMING MBA CONFERENCES

42ND ANNUAL ROBERT FUCHS LABOR LAW CONFERENCE

Thursday, Oct. 29, 1-5 p.m., Suffolk University Law School, Boston

The 42nd Annual Robert Fuchs Labor Law Conference will highlight a year of significant legal developments. Do not miss this exclusive opportunity to network with colleagues, program faculty, and the leaders of the labor and employment bar.

A panel of experts will examine the responses by regulators (the NLRB and DOL), and by employee-side and employer-side practitioners, to the new and perplexing challenges to the changing U.S. employment landscape. The panel will also consider the implications of the NLRB's Browning Ferris decision.

To register, visit MassBar.org/Fuchs

KEYNOTE SPEAKERS



RICHARD F. GRIFFIN JR.
General Counsel, National Labor Relations Board

M. PATRICIA SMITH
Sollicitor of Labor, U.S. Dept. of Labor

THIRD ANNUAL PROBATE LAW CONFERENCE

Friday, Nov. 13, 8 a.m.-4 p.m., Lombardo's, 6 Billings St., Randolph

Join fellow probate judges and practitioners for the Massachusetts Bar Association's Third Annual Probate Law Conference.

The conference will feature a keynote address by the Hon. Anthony R. Nesi, first justice of the Bristol Probate and Family Court. With concurrent programming tracks addressing the needs of all practice levels, there is something for everyone.

Conference highlights include:

- Basic Estate Planning
- MassHealth Update
- Fiduciary Issues Under the MUTC and Spendthrift Trusts After *Pfannenstiel*
- Contested Durable Powers of Attorney/Health Care Proxies

KEYNOTE SPEAKER



HON. ANTHONY R. NESI
First Justice, Bristol Probate and Family Court

To register, visit MassBar.org/Probate

SECOND ANNUAL MBA CONSUMER ADVOCACY SYMPOSIUM AND PINNACLE AWARDS

Wednesday, Nov. 18, 4-7 p.m., MBA 20 West St., Boston

13TH ANNUAL IN-HOUSE COUNSEL CONFERENCE

Thursday, Nov. 19, 9 a.m.-1 p.m.
Westin Waltham Boston, 70 3rd Ave., Waltham



EXPERTS & RESOURCES

FLORIDA PERSONAL INJURY

FLORIDA ATTORNEY

LAW OFFICES OF
Randy C. Botwinick
Formerly of Pazer, Epstein & Jaffe

Concentrating in Personal Injury

- 29 Years Experience
- Co-Counsel and Participation Fees Paid

MIAMI OFFICE
150 Alhambra Circle
Suite 1100
Coral Gables, FL 33134
P: 305 895.5700
F: 305 445.1169

PALM BEACH OFFICE
Peninsula Executive Center
2385 NW Executive Center Dr.
Suite 100, Boca Raton, FL 33431
P: 561 995.5001
F: 561 962.2710

Toll FREE: 1-877-FLA-ATTY (352-2889)
www.personalinjurylawyer.ws

ADR

Where
conflict meets resolution.

Sarah E. Worley,
Conflict Resolution, P.C.



Sarah E. Worley

14 Beacon Street,
Suite 610
Boston,
Mass., 02108

45 Bristol Drive
South Easton,
Mass., 02375

617-419-1900
www.worleyconflictresolution.com

ADR

GLYNN MEDIATION
EXPERIENCE • COMMON SENSE
RESOLUTION

Attorney Glynn has been designated as a neutral for both non-binding mediation and arbitration; he has successfully managed those matters, either resolving/settling cases in mediation or rendering fair/equitable decisions at arbitration.



John B. Glynn, Esq.
25 Braintree Office Hill Park, Suite 408
Braintree, MA 02184
781-356-1399
jbglynn@glynnmediation.com
www.http://glhlaw.com/john-b-glynn

ADR

WOULD YOU RATHER



GAMBLE OR BE CERTAIN!

NORTHEAST
MEDIATION &
ARBITRATION
WWW.NORTHEASTMEDIATION.COM
Case Evaluation | Full Neutral Panel
DENNIS J. CALCAGNO, ESQ.
617. 328. 8888

SURETY BONDS

A.A. DORITY

SURETY BONDS
Since 1899

Office: 617-523-2935
Fax: 617-523-1707
www.aadurity.com

A.A. DORITY
COMPANY, INC.
262 Washington St. • Suite 99
Boston, MA 02108

FOR YOUR PRACTICE

Lawyers Concerned For Lawyers

Looking for Dr. Good: seeking a therapist in the HMO era



BY DR. JEFF FORTGANG



Dr. Jeff Fortgang

Q. I work at a Boston law firm and, sensing it was a good time to return to my former therapist in town, found that she has retired. I got another name from a colleague, conveniently located, but she does not take my HMO (or any insurance), and is surprisingly expensive — over \$200 per session. The colleague expressed the view that, in terms of confidentiality, self-pay is a better arrangement anyhow, but I hate to part with that kind of money on top of those mounting health insurance premiums that are supposed to cover my health needs. A number of people listed on my HMO list turned out to be working only at hospital clinics which, for one reason or another, are not accessible to me (e.g. because my primary care physician is not at that hospital). There are other names near my home in the suburbs, but those I've called have no availability before or after my work hours. Any ideas?

A. You have encountered a reality that we at LCL face recurrently (since a majority of lawyers who come to us for consultation and referral work in Boston). Probably because office rent is more expensive in Boston, and small therapist-friendly offices are few, the supply of therapists practicing in Boston proper is lower than the demand. Although most therapists accept at least one insurance plan (for access to a wider pool of patients and/or because they prefer not to treat only the relatively well-to-do), they would generally prefer self-pay if they can get it. This is because jumping through the managed care hoops can be demanding (each company doing business its own way, and time spent on this is unpaid), and also because signing a contract with a managed care entity means accepting about a 50 percent fee discount.

At LCL, we refer mainly to therapists who do take our clients' insurance; Sometimes that means trying a therapist we don't know or whose practices are less conveniently located. We are also sometimes in a position to help with payment for our clients whose incomes/resources are very limited.

The confidentiality/privacy issue that your colleague raised is real, though perhaps not a big enough problem to deter most people from using insurance. On each claim submitted to insurance, the therapist must indicate a diagnosis. In addition, for HMOs and even some non-HMO plans, the therapist will need to recurrently submit more detailed information in order to get additional sessions (anywhere from perhaps 4 to 12 at a time) authorized. That information typically includes ratings of level of functioning, specific therapy problems and goals, a list of risk factors (such as abusing alcohol/drugs, having suicidal thoughts, having endured past trauma), current medications, etc. The contracts between therapist and insurer and subscriber also permit the insurer to review clinical records (though we have rarely seen this happen with individual practitioners). The upshot: If you can easily afford the fee, the somewhat wider range of therapists and decreased concern for confidentiality may be worth it. If not, though, the privacy risks are relatively low.

LCL's services are free to you as a lawyer (or law student or judge or family member of one). Although our services are limited to consultation/referral, not ongoing therapy, we can help you navigate managed care and make a more informed choice of therapist. We try to keep our referral database up to date and we urge you, as well, to let us know if you have had either quite positive or quite negative experiences with any Massachusetts mental health/addictions provider — that information will, in turn, help our future clients.

.....
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.

CONTINUED ON PAGE 9

BAR NEWS

Gants to deliver State of the Judiciary, Oct. 20



Supreme Judicial Court Chief Justice Ralph D. Gants

Supreme Judicial Court Chief Justice Ralph D. Gants will deliver his State of the Judiciary address to the legal community at the Massachusetts Bar Association’s Annual Bench-Bar Symposium at 4 p.m., on Tuesday, Oct. 20, at the John Adams Courthouse.

Gants’ 2015 address will be his second update to the legal community; he was sworn in as chief justice in July 2014.

“The symposium is a great event, which brings together attorneys and judges from across the state,” said MBA President Robert W. Harnais. “The MBA is looking forward to continuing to work with Chief Justice Gants and other members of the judiciary to advance access to justice opportunities throughout the commonwealth.”

In addition to remarks by Gants and Harnais, other scheduled speakers

at the event include Paula M. Carey, chief justice of the Massachusetts Trial Court, and Court Administrator Lewis H. “Harry” Spence.

“In last year’s State of the Judiciary address, I set forth an ambitious agenda,” Gants said. “I am eager to update the legal community on the considerable progress we have made on those priorities, and to set forth new ideas related to our civil and criminal justice system that we intend to explore in the year ahead.”

The event is free to attend for members of the Massachusetts judiciary and bar. However, those interested in attending should register, as space is limited. Visit www.massbar.org/BBS today.

The speaking program will be followed by a special reception with complimentary appetizers and beverages.

EXPERTS & RESOURCES

CONTINUED FROM PAGE 8

WEATHER

Do you “have a case”?
Let’s find out!



BOB COPELAND
Consulting Meteorologist

- 36 years Boston TV Meteorologist
- Over 20 Years in Forensic Weather
- Doppler *RADAR* expertise
- MS Meteorology - MIT
- BS Electrical Eng’g - Northeastern

603-444-6266
NotchWeather@gmail.com

ATTORNEYS AT LAW

YOUR
CONNECTICUT CONNECTION



**Messier
Massad &
Burdick**
— ATTORNEYS AT LAW —

21 Huntington Street 1050 Main Street
New London, CT 06330 Greenwich, RI 01860
860-443-7014 401-385-3877

Areas of Practice

Personal Injury Commercial Litigation
Real Estate Family Law

Alan R. Messier †* Gregory F. Massad †
Jason B. Burdick †* Kathleen M. Flynn †**
Kelsie C. Leon * Alfred Ferrulo, Jr. †

* Admitted in RI ** Admitted in CT † Admitted in MA

LAWYER ASSISTANCE

Law Office
Management
Assistance Program



Assisting Massachusetts attorneys in establishing professional office practices and procedures to increase their ability to deliver high quality legal services, strengthen client relationships, and enhance their quality of life.

Call for a **Free and Confidential** Consultation
IN PERSON, BY PHONE, OR BY WEB

MASSLOMAP.ORG (857) 383 3250
FUNDED BY LAWYERS CONCERNED FOR LAWYERS, INC.

LAWYER ASSISTANCE

RUNNING ON EMPTY?

**NOT A GOOD PLAN FOR YOUR CAR.
NOT A GOOD PLAN FOR YOU.**

CALL LCL!

We can help you figure out how to refuel.

(617) 482-9600
WWW.LCLMA.ORG



CONTINUED ON PAGE 10



Snapshots from around the MBA



The MBA hosted a CLE program titled “Eric Holder’s Justice Department: People and Policies” on Oct. 6. Featured speakers included Brendan V. Johnson and Timothy Q. Purdon of Robins Kaplan LLP, Minneapolis — both former U.S. Attorneys from the Obama administration. MBA Treasurer Christopher P. Sullivan served as moderator. ■
Bar Seen offers snapshots of MBA members and events

EXPERTS & RESOURCES

BAR NEWS

CONTINUED FROM PAGE 9

MEDIATION



Mediation and Arbitration of all Domestic Relations and Probate Matters



508-588-5800
jill@bostonareamediation.com
www.bostonareamediation.com

MEDIATION

Bette J. Roth, Esq.



- Mediator
- Arbitrator
- Facilitator
- Fact Finder

- 20+ years experience
- New England ADR Superlawyer
- Former Trial Lawyer

“Every case can be settled with hard work and an open mind.”

Bette.roth@gmail.com
(617) 795-2425
www.RothADR.com

MEDIATION

FRANCIS A. FORD, ESQ.

Former Worcester County Clerk of Courts
Extensive Mediation & Trial Experience



FORD MEDIATION

www.FordMediation.com
Contact Fran Directly at
508-791-7776 or
franford@charter.net

35 Harvard Street,
Worcester, MA 01609
(free parking at the door.)

TAX ATTORNEY

LOOKING FOR AN EXPERIENCED TAX ATTORNEY FOR YOUR CLIENTS?

RICK STONE LAW

FORMER CHAIR - MA BAR ASSN. TAXATION SECTION

SERVING MA BAR ASSN. MEMBERS AND THEIR CLIENTS

STATE, FEDERAL, AND INTERNATIONAL TAX MATTERS

PLANNING	INTERNAL REVENUE SERVICE
AUDITS	MA DEPT. OF REVENUE
APPEALS	CIVIL AND CRIMINAL TAX
LITIGATION	

(617) 848 - 9360
(888) 483 - 5884

WWW.RICKSTONELAW.COM
RICK@RICKSTONELAW.COM

ADR

HON. BEVERLY W. BOORSTEIN (RET.)
DISPUTE RESOLUTION



Can we talk!

I will sit down with clients and attorneys in a private, easily accessible location.

I bring 45 years as a practicing attorney and respected judge to the table.

Case evaluations, mediation, arbitration and master's hearings.

“Let’s Reason Together”

TEL (617) 964-8744
www.beverlyboorstein.com

FEDERAL EMPLOYMENT LAW

Federal Employment Law & Security Clearance Law



Attorney Peter Noone and the firm's attorneys have earned Avery, Dooley & Noone an outstanding reputation for its representation of thousands of Federal Employees in a variety of workplace matters: removals, discrimination complaints, retaliation claims, and both Federal Employees and Government Contractors in security clearance matters.

Avery, Dooley & Noone also handles insurance defense, discrimination cases, and disability retirement.
MSPB • EEO • OSC • OPM

3 Brighton Street
Belmont, MA 02478
617-489-5300
www.averydooley.com

Calendar of Events

MONDAY, OCTOBER 19

Mock Trial Teacher Orientation
6 p.m.
MBA, 20 West St., Boston

TUESDAY, OCTOBER 20

Mock Trial Teacher Orientation
5:30 p.m.
Kingston Public Library,
6 Green St., Kingston

TUESDAY, OCTOBER 20

Mock Trial Teacher Orientation
6 p.m.
Mirick O’Connell DeMallie & Lougee,
100 Front St., Worcester

TUESDAY, OCTOBER 20

Annual Bench-Bar Symposium
4-6 p.m.
John Adams Courthouse,
One Pemberton Square, Boston

WEDNESDAY, OCTOBER 21

Western Massachusetts Dial-A-Lawyer Program
4-7 p.m.
Statewide dial-in #: (413) 782-1659

WEDNESDAY, OCTOBER 21

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

THURSDAY, OCTOBER 22

Mock Trial Orientation
5 p.m.
MBA Western Mass. Office,
1441 Main St., Suite 925,
Springfield

FRIDAY, OCTOBER 23

Practicing with Professionalism
9 a.m.-5 p.m.
Western New England University School of Law,
1215 Wilbraham Road, Springfield

TUESDAY, OCTOBER 27

Risk Management and the SJC’s Revisions to the Rules of Professional Conduct
5-7 p.m.
MBA, 20 West St., Boston

TUESDAY, OCTOBER 27

Massachusetts Bar Foundation Western Mass. Grantee Reception
4:30-6:30 p.m.
University of Massachusetts Amherst, Campus Center, Amherst Room

THURSDAY, OCTOBER 29

42nd Annual Robert Fuchs Labor Law Conference: Gov’t and the Bar Confront the Fissured Workplace
1-5 p.m.
Suffolk University Law School,
120 Tremont St., Boston

FRIDAY, OCTOBER 30

TCM Kick-off Event
9 a.m.
Edward M. Kennedy Institute for the U.S. Senate, 210 Morrissey Boulevard, Boston

TUESDAY, NOVEMBER 3

14th Annual Western Massachusetts Bankruptcy Symposium
4-7 p.m.
Western New England University School of Law, 1215 Wilbraham Road, Springfield

WEDNESDAY, NOVEMBER 4

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

TUESDAY, NOVEMBER 10

How to Conduct an Open Meeting Law Training
10 a.m.-noon
MBA, 20 West St., Boston

FRIDAY, NOVEMBER 13

Third Annual Probate Law Conference
8 a.m.-4 p.m.
Lombardo’s, 6 Billings St., Randolph



FOR MORE INFORMATION, VISIT [MASSBAR.ORG/EVENTS/CALENDAR](http://massbar.org/events/calendar)
Real-time webcast available for purchase through MBA On Demand at www.massbar.org/ondemand

CONTINUED ON PAGE 11

FOR YOUR PRACTICE

Turning on the lights

Office space, furniture, equipment and software



BY DAMIAN TURCO



Damian Turco

After practicing in Boston during my first few years in Massachusetts, I recently undertook the project of opening a second office, this time in Newburyport near my home. The game plan: build a divorce and family law practice, supplementing my personal injury practice, while making my own life more convenient.

The process has also brought me through all the basics of opening an office, so I felt it a great time to share my findings with all those of you who are preparing to open up shop.

Essentially, you want the best solution within your budget. The problem is, when you first start out, it's sometimes difficult to know what your budget should be. Then, faced with a multitude of decisions needing seemingly immediate answers, the likelihood that impulsivity will take over increases. To avoid that, let me offer you some quick but valuable advice.

Office space

There are many options, with pros and cons to each, but generally the best option is space amongst other lawyers with a shared, professional reception and conference room. Find great opportunities by networking with other lawyers or posting an inquiry on a discussion board in My Bar Access.

Target spend: under \$1,000 per month.

Furniture

No matter what, you need furniture that will last under the beating of your soon-to-be bustling practice. If your clients will see your office, you will need furniture that appears to be of top quality. That generally means staying away from office superstore furniture. If the office you are taking over has solid, quality furniture, offer to purchase it. That's where you will get the best deal on quality. The next best option is going to a commercial office furniture liquidator. These companies purchase large lots of office furniture from companies going out of business or upgrading. There are a handful of these throughout the state. I spoke to a

few, and ultimately found the best deal with Richard Burke at Atlantic Liquidators in Lynn. You can reach him at 781-593-1090.

Target spend: under \$2,000.

Equipment

This is possibly the easiest decision. Perfectly adequate new computer packages can be readily found at any major big box retailer, office superstore or on Amazon for \$500 or less. Get an all-in-one printer/scanner with form feed for \$100 to \$300, depending on preference. Spend another \$50 on all your initial office supplies and see if you can get all of the above delivered for free on the day you take over your space.

Target spend: under \$1,000 for all of the above.

Software

There are so many options here and you could spend hours and hours sorting it all out. In the end, you need effective solutions within budget. I highly recommend using a practice management software like Clio. It will cost you a few hundred dollars a year, but it will help keep you organized and will make billing your clients easy, and MBA members receive a 10 percent lifetime discount. The other essential is quick, reliable access to the law. The MBA has recently vetted legal research programs and will change to Fastcase, included free with your membership, beginning Dec. 1. Save some money and take advantage. You can always upgrade to a more robust paid service down the road. Additionally, Microsoft Office is a necessity these days, which you can get included in a Microsoft 365 account — highly recommended. Yes, there are free options, but you will increase your productivity and effectiveness by spending some money here.

Target spend: about \$1,200 a year.

MBA resources

If you are just starting out, I also recommend you take advantage of the many CLE programs the MBA offers free and on demand. There is no sense learning lesson the hard way with so many resources at your disposal.

Best of luck!

.....
Damian Turco is the chair of the Law Practice Management Section Council and the owner of Turco legal, PC, handling personal injury and family law matters with offices in Boston and Newburyport.

EXPERTS & RESOURCES

CONTINUED FROM PAGE 10

COMPUTER PROBLEMS

MEDIATION & ARBITRATION

ADVERTISE IN MLJ

TELL THESE EXPERTS YOU SAW THEM IN LAWYERS JOURNAL



If you're an expert and can help MassBar members, email advertising@thewarrengroup.com to introduce your expertise to this influential audience.

FOR YOUR PRACTICE

Fall back into marketing this autumn

BY DANIELLE SPANG



Danielle Spang

“Autumn ... the year’s last, loveliest smile.” — William Cullen Bryant

Early fall can be stressful at times. Between reestablishing schedules and routines and feeling the end-of-the-year crunch around the corner, marketing sometimes takes a back seat to making sure all deadlines are met. However, fall can also be a great opportunity to include

marketing into those schedules and routines if you’re transitioning back out of summer-mode.

Here are a few things anyone can do — whether you’re a partner, solo, a new associate or awaiting bar results:

- Schedule to meet for coffee/lunch with two to three contacts each month
- Update your bio, or revamp your elevator speech
- Attend a bar event, CLE or luncheon — in person
- Speak with non-attorneys about your practice — cases you accept, issues of interest
- Blog or write an article about the questions you answered most frequently this year
- Update your social media, or think about establishing accounts

When growing your business (or your book of business), sometimes advice comes from all directions — non-legal business owners, colleagues, mentors, family members, clients and friends. While the advice can differ in many aspects, the overwhelming common thread is to keep active and make sure people know how they can help, whether that means explaining the types of



cases you accept to potential referral sources and clients, staying in touch with colleagues so that you’re fresh in their minds when a client asks for referrals or continuing to meet new contacts and grow your networks.

Especially when you’re juggling filing deadlines, research and drafting assignments, court appearances, mediations, negotiations and other work pressures on top of personal and family obligations, marketing can sometimes very easily take a back seat. But this fall — invest your last, loveliest smile in spending some face-to-face time with your contacts (attorney and non-attorney), identifying and meeting with some new potential refer-

ral sources or clients and attending bar events in person.

To help with this initiative, you can be on the lookout for a few events the Law Practice Management Section Council will be co-hosting this fall and throughout the year to try to help facilitate meeting and networking between attorneys and other professionals whose expertise dovetails with the law. I look forward to meeting many of you at events this fall!

.....
Danielle Spang is a consumer attorney, focusing her solo practice on assisting people who have been harassed by debt collectors or have errors on their credit reports.

JAMS Boston welcomes Natasha C. Lisman, Esq.

Extensive ADR experience includes more than 30 years as a mediator, arbitrator and member or chair of arbitration tribunals in complex domestic and cross-border disputes

Recognized since 2007 in international arbitration, commercial litigation, insurance law and intellectual property by *Best Lawyers in America* and since 2005 as a *Massachusetts Super Lawyer*

Highly respected for her ability to facilitate fair, timely and cost-effective resolution by tailoring the process for each dispute, as well as her knowledge of multiple languages and diverse cultures; fluent in Russian with a working knowledge of French

Available nationwide to resolve **business/commercial, civil rights, insurance and intellectual property** matters

Our Boston panel also includes these distinguished neutrals:

Hon. Elizabeth Butler (Ret.)

Jerry Cohen, Esq.

Hon. William I. Cowin (Ret.)

Hon. John C. Cratsley (Ret.)

Hon. Gordon L. Doerfer (Ret.)

David Geronemus, Esq.

Hon. R. Malcolm Graham (Ret.)

Hon. Margaret R. Hinkle (Ret.)

Hon. Nancy Holtz (Ret.)

James E. McGuire, Esq.

Hon. Stephen E. Neel (Ret.)

Hon. James V. Ryan (Ret.)

Hon. Charles B. Swartwood, III (Ret.)

Hon. Paul E. Troy (Ret.)

Hon. Allan van Gestel (Ret.)

Eric E. Van Loon, Esq.

Maria C. Walsh, Esq.

Hon. John M. Xifaras (Ret.)



[jamsadr.com/
lisman](http://jamsadr.com/lisman)

Case Manager
Roxanne Zinkowitz
617.228.9124 or
[rzinkowitz@
jamsadr.com](mailto:rzinkowitz@jamsadr.com)



MASSACHUSETTS BAR FOUNDATION

Keeping the promise of justice since 1964

MBF honors 2015 President's Award recipients DiMare and Epstein

The Massachusetts Bar Foundation proudly announces that two of its most dedicated volunteers will be honored with President's Awards at the upcoming MBF Grantee Receptions. Award recipients are:

- Elaine M. Epstein, partner, Todd & Weld LLP, Boston
- Charles J. DiMare, partner, Antonino & DiMare, Amherst

Epstein, an Oliver Wendell Holmes Life Fellow, is being honored for her long-standing support of the MBF and its mission to increase access to justice. A dedicated volunteer and generous donor, she served on the MBF Board of Trustees and the Massachusetts IOLTA Committee, is a past president of the Massachusetts Bar Association, and founded and served as the first president of the Women's Bar Association. Epstein represents the very best of the legal profession. She will receive her award at the Grantee Reception in Boston on October 15.

DiMare's active participation in the MBF began in 1995, when he first became a member of the MBF Society of Fellows. Each year, he volunteers to review grant requests from organizations throughout the western region of the state. DiMare's expertise has helped ensure that the MBF's grantmaking is truly statewide and reaches effective programs that can further the foundation's goals and mission. The MBF will honor DiMare for his dedication and tireless advocacy on behalf of the communities of Western Massachusetts. He will receive his award at the Grantee Reception on October 27 in Amherst.

The MBF hosts grantee receptions annually to show its appreciation to its grantees and supporters.



Elaine M. Epstein



Charles J. DiMare

BUILDING A STRONG FOUNDATION

Why I Give



Louis D. Brandeis Fellow

Angela C. McConney Scheepers

Commonwealth of Massachusetts Division of Administrative Law Appeals

"I have worked as a legal aid lawyer and am committed to civil legal aid. I am delighted to have been actively involved in the Mass. Bar Foundation since 2007. First as a fellow, I served on IOLTA grant committees and met with grant applicants. Now as a trustee, I have chaired a subject grant committee for the last two years and worked with the other trustees in making the difficult decisions in apportioning grants with our desperately needed funds."

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.

NEW MBF LIFE FELLOWS AS OF SEPTEMBER 2015

The MBF would like to recognize those Fellows who have completed their pledges in 2015 to become Life Fellows of the Foundation

OLIVER WENDELL HOLMES LIFE FELLOWS*

MINDEE E. WASSERMAN

Mindee Wasserman, JD, CFP, Boston

DAVID W. WHITE JR.

Breakstone, White, Gluck PC, Boston

FOUNDATION LIFE FELLOWS

JEFFREY N. CATALANO

Todd & Weld LLP, Boston

HON. JOHN C. CRATSLEY

Concord

MARC E. FINKEL

Nelson, Mullins, Riley & Scarborough LLP, Boston

ROBERT S. HEPPE JR.

Harwich Port

PAUL R. SULLIVAN

Curtin-Sullivan & Sullivan PC, Cohasset

ROY J. WATSON JR.

Watson Law Offices, Cambridge

LOUIS D. BRANDEIS LIFE FELLOWS*

GEORGE A. BALKO III

Joyce Law Group, Canton

COLLEEN C. CURRIE

Attorney at Law, Northampton

MICHAEL C. FEE

Pierce & Mandell PC, Boston

JULIO HERNANDO

Gaughen, Gaughen, Lane & Hernando, East Weymouth

ROBERT S. MANGIARATTI

City of Attleboro, City Hall, Attleboro

BARBARA H. MITCHELL

Community Legal Services and Counseling Center, Cambridge

JENNIFER A. THORN

The Law Offices of Jennifer A. Thorn PC, Springfield

**Please note: In accordance with the Massachusetts Code of Judicial Conduct, this list does not include the names of judges who have become Leadership Fellows.*

The Massachusetts Bar Foundation is the commonwealth's premier legal charity. Founded in 1964, the MBF is the philanthropic partner of the Massachusetts Bar Association. Through its grantmaking and charitable activities, the MBF works to increase access to justice for all Massachusetts citizens. There is a role for every lawyer and judge at the MBF to help safeguard the values of our justice system — to ensure that equality under the law is a reality, not just an ideal. Visit our website to learn more about our work and to get involved.

LEGAL NEWS

News from the Courts

Hon. Timothy F. Sullivan
appointed Chief Justice of
the Housing Court

Timothy F. Sullivan

Trial Court Chief Justice Paula M. Carey has announced the appointment of Judge Timothy F. Sullivan as chief justice of the Housing Court for a five-year term starting Oct. 1, in accordance with G.L. c. 211B, §5. Sullivan has served on the Housing Court since 2004, he succeeds Chief Justice Steven D. Pierce, who retired on Sept. 30.

“I am pleased to announce the appointment of Judge Sullivan to lead the Housing Court,” said Carey. “Judge Sullivan has earned a reputation with his colleagues for being accessible, approachable and receptive to addressing diverse concerns. His philosophy of open communication, collaboration and team building will ensure his ability to address the future challenges facing the department. He is firmly committed to Housing Court expansion and will capably continue the great work of Chief Justice Pierce.”

Sullivan is currently the first justice of the Northeast Division. He previously served as an associate justice in the Worcester Division. As first justice, he has worked to streamline case flow management and increase efficiency, introduced a training and certification program for all Housing Court specialists and expanded community outreach and communication with court users and members of the Housing Court bar. He is a member of the Trial Court’s Standing Committee on Court Security, and served as a member of the Standing Committee on Alternate Dispute Resolution from 2004-2012.

“I am honored by Chief Justice Carey’s appointment and I look forward to working closely with her and her leadership team,” Sullivan said. “The Housing Court enjoys a tradition of collegiality and dedication to its mission. It is a privilege to be called to lead such an extraordinary group of committed public servants. I will strive to follow the standard of excellence set by Chief Justice Pierce in his leadership of the Housing Court.”

Prior to his appointment to the bench, Sullivan maintained a general law practice in Newburyport, with a concentration on landlord-tenant, real estate conveyancing, estate administration and land use. He is a graduate of Merrimack College and New England Law School. He resides with his family in Topsfield.

The Housing Court Department is comprised of five divisions with 10 au-



thorized judicial positions across the commonwealth. The Massachusetts Trial Court, which is implementing a strategic plan titled “One Mission: Justice with Dignity and Speed,” includes seven court departments with 379 judges who deliver justice in 101 courthouses across the state.

Gov. Baker administers
ceremonial oath of office to
Appeals Court chief Justice

On Monday, Oct. 5, Gov. Charlie Baker administered the ceremonial Oath of Office to the Honorable Scott L. Kafker, the sixth Chief Justice of the Massachusetts Appeals Court, before an assembly of several hundred people in the Great Hall of the John Adams Courthouse.

“I am honored that Chief Justice Kafker’s appointment was the first of my administration, and believe he is well-suited to uphold the legacy and independence of the court,” said Baker. “Under his leadership, I am confident the Appeals Court will be an essential partner in our work to ensure state government and the courts serve all residents equally before the law.”

Supreme Judicial Court Justice Robert J. Cordy delivered opening remarks and served as Master of Ceremonies. Baker and Lt. Gov. Karyn E. Polito delivered keynote remarks, after which Baker administered the ceremonial Oath of Office.

“I believe that a chief justice must wake up every morning committed to making a difference in the lives of the people of the commonwealth,” Kafker said during his remarks following his swearing in. “The chief justice must be the court’s conscience in terms of constantly comparing its overall performance with its ideals, as the chief is entrusted with the responsibility of being the daily guardian of the court’s administration of justice in the public interest.”

SJC hears oral arguments in
special New Bedford sitting

Massachusetts Supreme Judicial Court Chief Justice Ralph D. Gants and

the six associate justices of the court heard oral arguments in four cases at a special sitting in the Bristol County Superior Court in New Bedford on Oct. 6. The special sitting provided an opportunity for students, media and residents of the local community to view the work of the highest court of the commonwealth outside of the John Adams Courthouse in Boston, where cases are normally heard.

As part of the special sitting, Bristol County Superior Court Clerk Marc Santos acted as clerk to the justices for the day. A group of ninth- and 10th-grade students from the City on a Hill Charter School in New Bedford and a group of 10th-grade students from the Greater New Bedford Regional Vocational High School attended the special sitting.

The justices heard oral arguments in the following cases:

- SJC-11906, *Public Employee Retirement Administration Commission v. Edward A. Bettencourt*
- SJC-11857, *Commonwealth v. Lawrence Moore*
- SJC-11877, *Commonwealth v. Peter Chamberlin*
- SJC-11876, *Commonwealth v. Kyle L. Johnson*

The justices hear appeals on a broad range of criminal and civil cases from September through May. Single justice sessions are held each week throughout the year for certain motions pertaining to cases on trial or on appeal, bail reviews, bar discipline proceedings, petitions for admission to the bar and a variety of other statutory proceedings. The associate justices sit as single justices each month on a rotation schedule.

The justices issue written opinions generally within 130 days following oral arguments. Court opinions are available online after 10:00 a.m. on the day the opinion is issued, and can be accessed on the Office of the Reporter of Decisions new published opinions page.

The full bench renders approximately 200 written decisions each year; The single justices decide a total of approximately 600 cases annually. ■

BE THE FIRST TO KNOW.



The Banker & Tradesman delivers breaking news and essential insights to real estate and financial professionals every day.

Get subscriber-only access to the stories behind the headlines and to password-protected transactions – information you need to get ahead.

Arm yourself with the latest updates on movers and shakers, legislation, major sales, foreclosures, liens, bankruptcies and acquisitions, trends and more.

SUBSCRIBE TODAY!

20% OFF FOR MASS BAR MEMBERS ONLY*

Call 617.896.5388 or email subscriptions@thearrengroup.com

BANKER & TRADESMAN

WWW.BANKERANDTRADESMAN.COM

*Offer available for new customers only and can not be combined with any other promotion. Code: H4KMASSBAR



MASSBAR

ASSOCIATION

THE PREEMINENT VOICE OF THE LEGAL PROFESSION™

2015-16 SECTION COUNCIL AND DIVISION CHAIRS

<p>ACCESS TO JUSTICE</p>  <p>SUSAN G. ANDERSON CHAIR THE OFFICE OF THE STATE TREASURER BOSTON</p>  <p>RAYMOND A. YOX VICE CHAIR SOUTH COASTAL COUNTIES LEGAL SERVICES INC. HYANNIS</p>		<p>BUSINESS LAW</p>  <p>KELLY KNEESHAW-PRICE CHAIR FINNERAN & NICHOLSON PC NEWBURYPORT</p>  <p>DAVID A. PARKE VICE CHAIR BULKLEY, RICHARDSON & GELINAS, SPRINGFIELD</p>		<p>CIVIL RIGHTS & SOCIAL JUSTICE</p>  <p>ROBERT B. GRAHAM CHAIR DANVERS</p>  <p>KEVIN G. POWERS VICE CHAIR RODGERS POWERS & SCHWARTZ LLP BOSTON</p>			
<p>CIVIL LITIGATION</p>  <p>SCOTT M. HEIDORN CHAIR BERGS TRESSER & POLLOCK LLC, BOSTON</p>  <p>ERIC P. FINAMORE VICE CHAIR WESTON PATRICK BOSTON</p>		<p>COMPLEX COMMERCIAL LITIGATION</p>  <p>PAUL E. WHITE CHAIR SUGARMAN, ROGERS BARSHAK & COHEN PC BOSTON</p>  <p>LAURENCE A. SCHOEN VICE CHAIR MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO PC, BOSTON</p>		<p>CRIMINAL JUSTICE</p>  <p>ADAM J. FOSS CHAIR SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE BOSTON</p>  <p>PETER ELIKANN VICE CHAIR LAW OFFICE OF PETER T. ELIKANN CHARLESTOWN</p>		<p>FAMILY LAW</p>  <p>JENNIFER R. CLAPP CHAIR GRINDLE, ROBINSON, GOODHUE & FROLIN WELLESLEY</p>  <p>LLOYD M. GODSON VICE CHAIR GODSON LEGAL GROUP PC LYNNFIELD</p>	
<p>HEALTH LAW</p>  <p>LORIANNE M. SAINSBURY-WONG, CHAIR HEALTH LAW ADVOCATES INC. BOSTON</p>  <p>DONALD WHITMORE VICE CHAIR DEW PARTNERS LLC WATERTOWN</p>		<p>JUDICIAL ADMINISTRATION</p>  <p>LORI A. CIANCIULLI VICE CHAIR CIANCIULLI LAW OFFICES BEVERLY</p>  <p>THOMAS M. BOND VICE CHAIR KAPLAN BOND GROUP BOSTON</p>		<p>JUVENILE & CHILD WELFARE</p>  <p>HOLLY T. SMITH CHAIR CPCS YOUTH ADVOCACY DIVISION BOSTON</p>  <p>ALISIA E. ST. FLORIAN VICE CHAIR MURPHY HESSE TOOMEY & LEHANE LLP QUINCY</p>		<p>LABOR & EMPLOYMENT LAW</p>  <p>JOHN F. TOCCI CHAIR TOCCI, GOSS & LEE PC BOSTON</p>  <p>MARGARET H. PAGET VICE CHAIR KURKER PAGET LLC WALTHAM</p>	
<p>LAW PRACTICE MANAGEMENT</p>  <p>DAMIAN J. TURCO CHAIR TURCO LEGAL PC NEWBURYPORT</p>  <p>SUSAN LETTERMAN WHITE, VICE CHAIR LETTERMAN WHITE CONSULTING, BRAINTREE</p>		<p>PROBATE LAW</p>  <p>TIMOTHY D. SULLIVAN CHAIR ANDOVERLAW PC ANDOVER</p>  <p>KEVIN G. DIAMOND VICE CHAIR RICO, MURPHY & DIAMOND LLP MILLIS</p>		<p>PUBLIC LAW</p>  <p>BRANDON HARRIS MOSS CHAIR MURPHY, HESS E, TOOMEY & LEHANE LLP, QUINCY</p>  <p>KERRY T. RYAN VICE CHAIR MORRIS EY, WILSON & ZAFIROPOULOS LL P, BRAINTREE</p>		<p>REAL ESTATE LAW</p>  <p>ELIZABETH J. YOUNG CHAIR WFT NATIONAL TITLE INSURANCE CO., LYNNFIELD</p>  <p>MELANIE HAGOPIAN VICE CHAIR LAW OFFICES OF MELANIE HAGOPIAN, ARLINGTON</p>	
<p>SOLE PRACTITIONER & SMALL FIRM</p>  <p>LEO M. SPANO CHAIR GAY & GAY PC TAUNTON</p>  <p>VAL C. RIBEIRO VICE CHAIR LAW OFFICE OF VAL C. RIBEIRO FALL RIVER</p>		<p>TAXATION LAW</p>  <p>DAVID G. SALIBA CHAIR SALIBA & SALIBA BOSTON</p>  <p>PATRICIA ANN METZGER VICE CHAIR VACOVEC, MAYOTTE & SINGER LLP NEWTON</p>		<p>WORKERS' COMPENSATION</p>  <p>DEBORAH KOHL CHAIR LAW OFFICE OF DEBORAH G. KOHL FALL RIVER</p>  <p>MARIANNE SWENSON VICE CHAIR CURTIN, MURPHY & O'REILLY PC BOSTON</p>		<p>YOUNG LAWYERS DIVISION</p>  <p>MELISSA CONNER CHAIR CONNER LAW OFFICES BOSTON</p>  <p>VICTORIA SANTORO CHAIR-ELECT MEEHAN, BOYLE, BLACK & BOGDANOW PC, BOSTON</p>	

BAR NEWS

House of Delegates passes tax, criminal justice measures



Robert W. Harnais (at podium) presides over his first meeting as MBA president.

The Massachusetts Bar Association's House of Delegates (HOD) hit the ground running at its first meeting of the 2015-16 year in Boston on Thursday, Sept. 24, passing separate proposals from the Taxation Law and Criminal Justice section councils.

The Taxation Law Section Council requested that the HOD endorse communication with the state secretary of administration and finance to discuss issues related to the Appellate Tax Board, including the board's ad valorem filing fee structure. The measure passed unanimously.

The Criminal Justice Section Council urged the MBA to endorse in principle the concept of legislation that would raise the threshold amount for a felony. According to the proposal, the existing \$250 threshold amount has been around for many years and is "sorely outdated due to inflation." The measure also passed unanimously.

Earlier at the HOD meeting, MBA President Robert W. Harnais welcomed everyone in attendance and was one of several presenters to thank the MBA's active section councils,



House of Delegates members attend the first House of Delegates meeting of the 2015-16 membership year.

whose work is so vital to the association. MBA President-elect Jeffrey N. Catalano made special mention of the energy brought by the MBA's Young Lawyers Division.

Officer reports were also given by MBA Vice President Christopher A. Kenney and MBA Secretary John J. Morrissey. Kenney, who chairs the MBA's Consumer Advocacy Task Force, updated HOD members on the task force's work on the Consumer Resource Center at www.MassLawHelp.com, and said an announcement about the next Consumer Advocacy Sym-

posium and Pinnacle Awards would be coming soon.

Alice Richmond, the American Bar Association's state delegate, also addressed the HOD members, offering personal remarks on her friend and fellow past MBA President Richard K. Donahue, who died in September. Recalling his sense of humor, she called Dick Donahue "an extraordinary man of extraordinary vision."

Following the HOD meeting, many HOD members went next door to the Back Deck, where the MBA held its "Welcome Back" member reception. ■





Designed by lawyers
for lawyers.

Unequalled insurance, ensuring Massachusetts Bar Association members are protected with comprehensive coverage in today's marketplace.

Underwritten by the nation's largest provider of malpractice insurance, MBA Insurance provides expert, customer-focused staff.

WE'VE MOVED

MBA Insurance Agency
1441 Main Street, Suite 925
Springfield, MA 01103-1450

To find out how the MBA Insurance Agency can help you with your malpractice and other coverage needs, contact us:

Boston (617) 338-0581 • Springfield (413) 788-7878
Email: Insurance@MassBar.org

“ NOTABLE AND QUOTABLE ”

MBA MEMBERS IN THE MEDIA

Affidavits in securing warrants

“ There cannot be any side understanding; everything must be in the affidavit. ”

MBA PRESIDENT ROBERT W. HARNAIS
 WORCESTER TELEGRAM & GAZETTE, SEPTEMBER 4



Harnais was quoted in a *Worcester Telegram & Gazette* column about the use of affidavits in obtaining search warrants. A Worcester tactical unit raided a home on Aug. 19 which the homeowners called a mistake. Harnais was also quoted in an additional *WT&G* story about the incident.



Red Sox lawsuit

“ The closer the fan is to the action on the field, the greater the risk. ”

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER
 MARTIN W. HEALY, BOSTON HERALD, AUGUST 29

Healy was quoted in a *Herald* story about a recent lawsuit filed in Suffolk Superior Court against Red Sox owner John Henry involving a fan who was injured by a foul ball while sitting in the EMC Club during a game at Fenway Park in 2014. The complaint says the injury resulted from renovations to the park, which removed protective glass from the area.



Harnais leads MBA officers for 2015–16

“ The court is an adversarial system, but it’s not a street fight. I’d like to go back to the way we used to treat each other. ”

MBA PRESIDENT ROBERT W. HARNAIS
 PATRIOT LEDGER, AUGUST 26

The *Patriot Ledger* ran a feature story on Harnais and his historic appointment as the first Hispanic president of the Massachusetts Bar Association. The election of Harnais and the other MBA officers for 2015–16 was also featured by the *State House News*.

Where available, news clips – including audio/video – can be found on our website at www.MassBar.org.



MASSBAR
 ASSOCIATION

2015–16 ACCESS TO JUSTICE AWARDS NOMINATIONS

The Massachusetts Bar Association annually recognizes the efforts of attorneys and law firms who have made significant strides in enhancing access to justice.

CATEGORIES

- Pro Bono Publico Award
- Defender Award
- Legal Services Award
- Pro Bono Award for Law Firms
- Prosecutor Award
- Rising Star Award



Nominations must be submitted by 5 p.m. on Monday, Oct. 26, 2015.

To view the online form, visit: www.MassBar.org/AJAwards

To nominate by mail, complete the form and send to:

MBA Access to Justice Awards
 20 West St., Boston, MA 02111

Email nominations to: JStevens@MassBar.org

We encourage nominations from local/affiliated bar associations, government agencies and legal services organizations.

Substantive section-specific articles are featured regularly in *Lawyers Journal*.

SECTION REVIEW



MASSACHUSETTS
LAWYERS JOURNAL
OCTOBER 2015

MASSACHUSETTS BAR ASSOCIATION

DIVORCE LAW

Appeals Court rules interest in irrevocable trust is a marital asset

BY JILLIAN B. HIRSCH, LEIHA MACAULEY AND DARIAN M. BUTCHER

On Aug. 27, the Massachusetts Appeals Court held in *Pfannenstiehl v. Pfannenstiehl*, Nos. 13-P-906, 13-P-686, & 13-P-1385, 2015 Mass. App. LEXIS 123, that a husband's interest in an irrevocable trust with an ascertainable standard is a "vested beneficial interest subject to inclusion in the marital estate." This is a significant decision that could impact the way in which trusts and estates practitioners in Massachusetts draft estate plans for clients concerned about divorce protection.

At issue in the case is an irrevocable trust established by the husband's father for the benefit of the husband and his siblings, as well as their children. The trust contains an ascertainable standard, which obligates the trustees to make distributions of income and principal "to provide for the comfortable support, health, maintenance, welfare and education of [the beneficiaries]." The trust also contains a spendthrift clause,



JILLIAN HIRSCH is a partner in Day Pitney's Boston office. She has extensive experience handling trust and will contests, breach of fiduciary duty claims, contested accountings, actions involving reformation and termination of trusts and guardianship and conservatorship proceedings.



DARIAN BUTCHER is an associate in Day Pitney's Boston office. She represents mortgage companies, loan servicers and other financial institutions in the defense of claims by borrowers. She also represents individual and corporate clients in probate controversies.

which prohibits the assignment or attachment of trust assets to creditors of any beneficiary.

Between 2008 and August 2010, the trustees made distributions from the trust to the husband totaling \$800,000. The parties relied heavily on these distributions; indeed, the distributions allowed the parties to live an upper-middle-class lifestyle while also affording to care for their two children, both of whom have special needs. After August 2010, one month before the husband filed for divorce, the trustees ceased

making distributions to the husband. They continued, however, to make distributions to the husband's siblings.

After an eight-day trial, the trial court held that the husband's interest in the trust constituted marital property pursuant to G.L. c. 208, § 34. The trial court based its ruling on its determination that the husband's interest was "presently enforceable" and that the parties had relied on the distributions from the trust to sustain their lifestyle during their marriage. The trial court also found that the husband had a 1/11 beneficial interest in the trust. Accordingly, the trial court ordered the husband to pay 60 percent of the value of his 1/11 share to the wife in 24 monthly payments totaling \$1,133,047.79.

On appeal, the husband contended that he did not have a "present, enforceable right" because the trustees could refuse (and indeed had refused) to make distributions to him pursuant to the trust's ascertainable standard. He also argued that the existence of a spendthrift clause rendered his interest in the trust incapable of division as marital property.

The Appeals Court, in a 3-2 decision, affirmed the trial court's decision that the husband's interest in the trust constituted marital property subject to division pursuant to G.L. c. 208, § 34. Specifically, the Appeals Court held that the trust's ascertainable standard gave the husband a "present enforceable right to distributions from the 2004 trust" because the trustees of the trust "were obligated to, and actually did, distribute the trust assets to the beneficiaries, including the husband, for such things as comfortable support, health, maintenance, welfare and education." Therefore, the court held, "the ascertainable standard embedded in the 2004 trust, the enforceability of that standard for distributions to the husband, and the vested nature of the husband's interest in the 2004 trust warranted the [trial court] judge in including the 2004 trust in the marital estate."

In reaching this conclusion, the Appeals Court weighed heavily the parties' reliance on the trust distributions, emphasizing that the distributions "were woven into the fabric of the marriage," and "were integral to the family unit."

Relying on "settled trust law," the Appeals Court rejected the husband's argument that the presence of a spend-

thrift clause shielded his trust interest from being included in the marital estate. In fact, the court opined that the "spendthrift provision is being invoked [by the husband] as a subterfuge to mask the husband's income stream and thwart the division of the marital estate in divorce," and that the "spendthrift scheme ... is virtually empty of purpose except as a form of insulation to inclusion and valuation in the divorce process." While the Appeals Court held (as it has in the past) that the presence of a spendthrift provision does not preclude inclusion of a trust interest in the marital estate, the court did not hold that trustees of an irrevocable trust can be ordered to make distributions directly to the non-beneficiary divorcing spouse.

Lastly, the Appeals Court affirmed the trial court's award of attorneys' fees to the wife, although neither the trial court nor the Appeals Court held that the award of attorneys' fees need be paid from the trust assets.

The dissenting opinion states that the husband's interest in the trust should have been considered under G.L. c. 208, § 34 as an "opportunity for each [spouse] for future acquisition of capital assets and income" because the value of the husband's interest in the trust was "too remote and speculative." In reaching this conclusion, the dissent notes that the trust has an open class of beneficiaries, making the value of the husband's interest in the trust uncertain. The dissenting opinion also states that the husband's right to the trust assets was uncertain because the ascertainable standard allows the trustees to determine the amount and timing of distributions as well as consider the funds available to the beneficiaries from other sources.

The Appeals Court's decision is significant because it holds that an interest in an irrevocable trust with an ascertainable standard — where there is a history of distributions woven into the fabric of the marriage — is a vested, presently enforceable interest and, therefore, properly included in a marital estate for purposes of equitable division of property in divorce proceedings. While the implications of the decision are not yet clear, Massachusetts trusts and estates practitioners should be mindful of this ruling in drafting estate plans and should consider whether to amend revocable trusts to include fully discretionary standards of distribution for clients concerned about divorce protection.

It is unclear at this point whether the husband will seek further appellate review from the Supreme Judicial Court. ■

Day Pitney LLP and Looney & Grossman LLP represented the wife on appeal. Jillian B. Hirsch of Day Pitney argued the appeal. This article was originally published as a Day Pitney Alert.

TRAUMATIC BRAIN INJURY

Our Team is Committed to Superior Results



Ten Tremont Street
Boston, MA 02108
617-227-7000
www.shefflaw.com

A Sixty Year Tradition of Excellence.
GENEROUS REFERRAL FEES

\$9,800,000

\$7,000,000

\$6,000,000

\$4,000,000

\$3,500,000

\$1,000,000

Red Flag Alerts

PROVIDED BY THE WARREN GROUP

More than **160,000 tax liens, lis pendens and petitions to foreclose** have been filed in Massachusetts since 2010.



Be the first to know about delinquencies. Take immediate action.

Keeping an eye out for delinquencies can be difficult. Red Flag Alerts deliver the information you need in an actionable format.

Red Flag Alerts combine new tax lien filings with *lis pendens* and petition filings. They contain more detailed information than you get from other sources. Important things like owner-occupancy status, property and owner address, an automated value model for the property in question and more.

Essential, timely Red Flag Alerts delivered to you automatically.

**THE
WARREN
GROUP**
Since 1872
Real Estate & Financial Information

DATA SOLUTIONS

Turning Information Into Opportunities

617-896-5392 datasolutions@thewarrengroup.com



WestlawNext®

WESTLAW FORM BUILDER

The easy way to streamline your forms assembly.

WHAT IF

 you could automatically 

REUSE

 client information 

In order to

draft forms faster 

So you could

move on to other work? 

Westlaw® Form Builder provides quick, easy-to-use document assembly that lets you reuse saved client data on additional forms. All forms are from trusted sources, and you'll always have the most current version – plus you have free links to WestlawNext® from any cited authority. Form Builder helps you finish your forms faster, so you can move on to other work.

Discover more at legalsolutions.com/formbuilder

