Access to Justice

Even as the economy recovers, growing economic inequality will continue to put pressure on legal service programs, and, increasingly, on private practices. With the middle class no longer representing a majority of the population (Source: Fletcher, Michael A., “Income inequality has squeezed the middle class out of the majority,” The Washington Post, Dec. 9), lawyers will find serving that market more challenging. As a profession, we need to make a strong case for the value we add.
— Susan G. Anderson, chair

Business Law

Areas where I think there will be interest include:
• Cybersecurity, including implementing and managing programs to address cybersecurity threats and breaches of data privacy.
• Protection of personal information (the Massachusetts standards are among the strictest in the U.S.).
• The state’s independent contractor standards, which are the strictest in the U.S.
• Proposed Massachusetts legislation to restrict non-compete agreements.
— David A. Parke, vice chair

Civil Litigation

Although changes in the law are part of every attorney’s practice, Massachusetts civil litigation practice is undergoing unusually rapid changes on several fronts. Litigators are getting used to the availability of expanded jury voir dire, including panel voir dire, and lawyers and courts will continue to learn its uses and limits. Lawyers are adapting to their ability to suggest specific damage amounts in personal injury cases and other cases of general damages. Lawyers and courts will also start grappling with the new amended Federal Rules of Civil Procedure, and the corre-

Section leaders foresee focus on amended rules, new laws

2016 THE YEAR IN PREVIEW

MBA LAUNCHES SECTION 35 HELPLINE PAGE 4

NEED A ‘LYFT’ HOME? PAGE 6

INSIDE

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SEE PAGE 2 FOR A COMPLETE LISTING OF THIS ISSUE’S CONTENTS.
Re-entry can open doors to a better life

In November, I wrote a column proposing that criminal defense lawyers could in many instances serve their drug-dependent clients well if they sought situations that included intensive drug treatment.

Now I’d like to make a recommendation along similar lines in suggesting that defense lawyers try to get their clients into an inpatient re-entry program if it becomes clear that incarceration is inevitable or highly likely.

Over the last decade, the concept of re-entry has increasingly been seen as a key to reducing recidivism. From a societal point of view, that means fewer crimes and fewer crime victims. It also means defendants are not getting back into trouble as frequently.

“What a minute! That’s had for business,” says one of my wiseacres defense bar friends. Perhaps, but there seems to be an inexhaustible supply of people who want to enter the criminal justice system. And if you really care about a client’s well-being, re-entry programs give the repeat offender a fighting chance of changing his future for the better.

The concept is simple. Corrections officials work with offenders while they are incarcerated to address the problems and traits that led to their committing crimes. Counseling on substance abuse, domestic abuse and impulse control are common among the various programs. But it goes further than that to address substandard education, housing and health care. All of these areas fall under the umbrella of the best re-entry programs. Vocational training often is part of the program as well.

Norfolk County Sheriff Michael G. Bellotti, for whom I worked as general counsel, is a big proponent of re-entry. “Virtually all of our inmates at the Norfolk County House of Correction return to their communities — our communities — in a matter of months,” Sheriff Bellotti says. “It behooves everyone to help them stop committing crimes.”

He added, “The big test is the transition to freedom upon wrapping up their sentence. There has to be some continuity of the progress made while incarcerated. We use volunteer mentors who meet with the inmates while they’re in jail, establish a rapport, and continue to help them after their release in capacities such as an AA sponsor or maybe they help them find employment or give them a ride to health appointments. There are a whole host of ways they contribute.”

Re-entry is a concept that has been embraced by Democrats and Republicans alike, including President Barack Obama and the U.S. Department of Justice and Gov. Charlie Baker here in Massachusetts. Last month, Baker’s Public Safety Secretary, Daniel Bennett, met with Hampden County Sheriff Michael J. Ashe Jr. to discuss the programs there.

You can even go back as far as the administration of President George W. Bush, who in his 2004 State of the Union address said, “This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit more crimes and return to prison … America is the land of the second chance, and when the gates of the prison open, the path should lead to a better life.”

Almost all Massachusetts correctional agencies are involved with re-entry programs, some more extensively than others. But wherever you are, re-entry may be something you give your consideration when you’re trying to negotiate plea agreements. I recognize that there is a limited amount of influence a defender can have once a sentence is handed down. But just getting a client in the right environment and making him aware of programs he can access could pay dividends for him down the road.

There is an alternative to mandatory sentences!
February

Wednesday, Feb. 10
Third Annual Central Mass. Healthcare Symposium
3-7 p.m.
College of The Holy Cross, 1 College St., Worcester

Thursday, February 11
Practicing with Professionalism
8:30 a.m.-4:30 p.m.
College of The Holy Cross, Hogan Campus Center, 1 College St., Worcester

Tuesday, February 23
Building your Family Law Practice with LAR and Fixed Fee Agreements
Noon-1 p.m.
MBA, 20 West St., Boston

Thursday, February 25
Risk Management and the SJC’s Revisions to the Rules of Professional Conduct
5-7 p.m.
Holiday Inn, 700 Myles Standish Blvd., Taunton

March

Wednesday, March 2
MBA Monthly Dial-A-Lawyer Program
5:30-7:30 p.m.
Statewide dial-in #: (617) 338-0610

Tuesday, March 8
How to Get Paid: Structures, Referrals and Collecting
12:30-2:30 p.m.
MBA, 20 West St., Boston

Tuesday, March 15
Feed Your Mind: Massachusetts Appellate Practice and Procedure
12:30-1:30 p.m.
MBA, 20 West St., Boston

Thursday, March 17
Practicing with Professionalism
8:30 a.m.-4:30 p.m.
Holiday Inn, 700 Myles Standish Blvd, Taunton

Thursday, March 24
House of Delegates Meeting
4-6 p.m.
MBA, 20 West St., Boston

Thursday, March 24
A Criminal Lawyer’s Guide to Practicing in Massachusetts District Courts
1-5 p.m.
Massachusetts School of Law, 500 Federal St., Andover

Wednesday, March 30
From Bankruptcy to the Bank: Getting Paid if a Client Files for Bankruptcy
Noon-2 p.m.
MBA, 20 West St., Boston

MBA seeks nominations for 2016-17 officer, delegate positions

The Massachusetts Bar Association is currently accepting nominations for officer and delegate positions for the 2016-17 membership year. Nominees must submit a letter of intent and a current resume to MBA Secretary John J. Morrissey by 5 p.m. on Friday, Feb. 19, to be eligible. If you have any questions about the nomination process, call MBA Chief Operating Officer Martin W. Healy at (617) 988-4777.

To submit a nomination, mail or hand-deliver the information to:
Massachusetts Bar Association
Attn: John J. Morrissey, MBA secretary
20 West St., Boston, MA 02111

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News from the Courts

Supreme Judicial Court posts oral argument schedule

The Supreme Judicial Court has posted its sitting list for oral arguments in February and March 2016. Oral arguments are public proceedings. Arguments are webcast and are archived for later public viewing. Visit www.ma-appellatecourts.org for more information.

Superior Court’s new guidelines for Probation Violation Proceedings take effect

The Superior Court’s newly-adopted Guidelines for Probation Violation Proceedings take effect Feb. 1, 2016. The purpose of the guidelines is to ensure that judicial proceedings undertaken in the Superior Court on an allegation of a violation of probation are conducted in accordance with applicable law, and in a prompt, uniform and consistent manner. The guidelines clarify certain legal requirements, set timelines and establish a general policy against tracking of violation hearings with pending criminal cases, subject to exception based on a finding of good cause by a judge or magistrate.

New website for Center of Excellence for Specialty Courts

The Massachusetts Trial Court, in partnership with the University of Massachusetts Medical School, the Department of Public Health, and the Department of Mental Health, now has a new website for the Center of Excellence for Specialty Courts, www.macoe.org. The site will be a vital resource for judges, probation officers, clinicians, attorneys, drug court participants and their families and the public. It includes a searchable database of national case law and research about specialty courts, the Trial Court’s new Adult Drug Court Manual, announcements for upcoming trainings and other events, court forms and a list of specialty court sessions in Massachusetts.

The new website will share evidence-based practices, as well as information about training and resources to enable specialty courts to incorporate the latest advances. The site will also provide useful information to educate the public about specialty courts.

Probation commissioner appoints new statewide Electronic Monitoring Program manager

Massachusetts Commissioner of Probation Edward J. Dolan has appointed Daniel Pires as the new statewide manager of the Electronic Monitoring (ELMO) Program. The ELMO Program is a 365-day, 24-hour operation which employs a 40-member staff. The employees closely monitor the whereabouts of 2,900 parolees and parolees who are sentenced to wear the GPS bracelet. As the new statewide manager of ELMO, his duties include the development and implementation of ELMO Center operation policies and practices, management of ELMO Center operations and oversight of staff, ensuring compliance with subpoena for records and testimony by ELMO staff, and monitoring the issuance of warrants by the on-call staff.

Pires held the position of program manager at the Electronic Monitoring Center prior to his new appointment. He first joined the service as an assistant ELMO coordinator in 2004. In 2007, he was promoted from assistant ELMO coordinator to ELMO coordinator, a position he held until 2008, when Pires was named program manager.

He earned both a bachelor of arts degree in elementary/special education in 1999 from Providence College in Providence, Rhode Island and a master’s degree in public administration with a concentration in criminal justice in 2014 from Anna Maria College in Paxton.

Attorney vacancies at the U.S. Department of Justice

Every year, more than 1,800 volunteer legal interns serve in U.S. Department of Justice components and U.S. Attorneys’ Offices throughout the country. Any law student enrolled at least half-time, and who has completed at least one semester of law school, is eligible to apply for a volunteer legal internship.

DOJ offices recruit for legal interns through vacation announcements posted on the DOJ Legal Careers website at www.justice.gov/legal-careers/volunteer-internship-opportunities. Each announcement lists the applicable deadlines and requirements and students interested in volunteer internships at DOJ for spring and summer 2016 should apply now. Students apply directly to each office in which they have an interest.

MBA launches Norfolk County helpline to fight substance abuse

The Massachusetts Bar Association has launched a free legal assistance program in Norfolk County to help county residents who are seeking court-ordered inpatient treatment for a family member or friend struggling with opioid and other alcohol or drug addictions.

The MBA program offers assistance with Mass. Gen. Laws Ch. 123, Section 35, which permits individuals to petition the courts to involuntarily commit substance abusers to an inpatient treatment program when their alcohol or drug use puts themselves or others at risk. A substance abuse can be sent to a treatment program for up to 90 days if a judge determines, following a hearing and a review of medical evidence, that there is a “likelihood of serious harm” to themselves or others.

Norfolk County residents can contact the MBA’s Section 35 Helpline, available toll-free at (844) 843-6221, or via email at HelpUs@MassBar.org, where they will be put in touch with volunteer lawyers, who will assist them with their Section 35 petitions, up to and including going to court procedures.

The Section 35 Helpline, the first of its kind in the commonwealth, is currently being run as a pilot program and pro bono lawyers are only available to Norfolk County residents. Norfolk District Attorney Michael Morrissey recently said the number of people who have died from opioid overdoses in Norfolk County has more than doubled the total from two years ago. “Opioid deaths in Norfolk County show big rise,” Boston Globe, Dec. 16, 2015.

“Having a loved one ‘sectioned’ and forced into treatment is not an easy thing to do and often viewed as a last resort to save someone’s life,” no one should have to go through this alone,” said MBA President Robert W. Harnais, who created the program. Attorneys interested in volunteering for the Norfolk County pilot project should email Harnais at thar@massbar.org.

More information about the Section 35 Helpline Norfolk County Pilot Project can be found at www.MassBar.org/NorfolkHelpline.
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.**

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.**

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617-896-5392 datasolutions@thewarrengroup.com
In an innovative way to raise awareness of drunk driving and prevent it from occurring, Boston firm Sweeney Merrigan Law partnered with ride-sharing service Lyft to provide $5,000 worth of rides to Boston-area residents who pledged not to drink and drive on New Year’s Eve.

The firm gave out 333 Lyft discount codes valued at $15 per code to those who signed up online at sweeneymerrigan.com and took the pledge. The pledge webpage was left open after all the discount codes had been provided and more than 600 people submitted pledges to not drink and drive.

Sweeney Merrigan specializes in personal injury cases, so this initiative aligns well with the firm’s overall mission.

“As personal injury attorneys, so much of our practice involves community safety. With every case we work on there’s always some sort of unnecessary and otherwise preventable injury,” said firm partner and Massachusetts Bar Association member J. Tucker Merrigan. “Nowhere is it more apparent than in alcohol-related cases. For us, this is a charitable endeavor that directly coincides with the backbone of our practice.”

Based on the overwhelming success of the Sober Ride Home Program in its first year, the firm plans to make it an annual initiative.

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Massachusetts Bar Association members can now view online and search every past issue of the MBA’s Massachusetts Law Review through a partnership with HeinOnline.

The Massachusetts Law Review is the longest continually published law review in the nation.

MBA members can now view every issue, starting with the Massachusetts Law Quarterly (the original name of the Massachusetts Law Review) Vol. 1, No 1, from November 1915, through the most recent Massachusetts Law Review, Vol. 97, No. 2. Using the HeinOnline search function, users can type in a search term (e.g., “eminent domain”) to find all of the Massachusetts Law Review articles over the past 100 years, where that term has appeared.

Previously, the MBA website included only the most recent issues of Massachusetts Law Review and older issues had to be looked up on microfiche. There was also no way to search past issues by keyword.

Log in under the Publications tab on www.MassBar.org for easy access to the law review’s articles, case comments and book reviews, using an online, searchable database. This service is provided to MBA members as a free member benefit.

The Massachusetts Law Review archive on HeinOnline also works seamlessly with the MBA’s recently introduced Fastcase benefit. In many cases, citations to Massachusetts appellate court opinions that appear in the law review articles will hyperlink directly to the opinion itself.

HeinOnline is a product of William S. Hein & Co. Inc., which has been serving the library community for more than 50 years. HeinOnline is a premier online product with more than 120 million pages available in an online, fully searchable, image-based format.

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Damian LaPlaca, chair of the Intellectual Property Committee of the Complex Commercial Litigation Section, is pleased to announce that the following practitioners have taken on additional leadership roles within the IP Litigation Committee:

• Jennifer Furey, Goulston & Storrs, co-chair for Patent Litigation
• Jerry Cohen, JAMS and Burns & Levinson, co-chair for Trade Secrets Litigation
• Thomas E. Kenney-Pierce & Mandell PC, co-chair for Trademark Litigation
• Stephen Y. Chow-Burns & Levinson, co-chair for Copyright Litigation

We look forward to the educational programs, seminars and CLEs that each co-chair will develop for 2016.

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The Massachusetts Bar Association has displayed artwork once given to Susan Waters, a former executive director of the Massachusetts Bar Association (1993 to 2000), who was widely hailed as a remarkable and inspiring colleague. Waters passed away in December 2014; she was chief executive director of the National Association of Insurance and Financial Advisors at the time. Her family returned the artwork and the MBA is displaying it on the second floor in her memory.
General
Risk Management and the SJC’s Revisions to the Rules of Professional Conduct
Thursday, Feb. 25, 5-7 p.m.
Holiday Inn, 700 Mylne Standish Blvd., Taunton
There are countless malpractice hazards, even for the most diligent prac-
titioner. 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 adopted revisions to the Rules of Profes-
sional Conduct, which went into effect July 1, 2015. Our panel of experts
will walk you through the changes and how the revised rules will impact your
practice.
Don’t put your livelihood at risk. Attend this program and be prepared.
Additional faculty to be announced.
Faculty: Leo M. Spano, Esq., program chair, Gay & Gay PC, Taunton

How to Get Paid: Fee Structures, Referrals and Collecting
Tuesday, March 8, 12:30-2 p.m.
Mass. 20 West St., Boston
Experienced attorneys will explain the various fee structures available
for attorneys in Massachusetts, including referral fees between attorneys.
A Massachusetts Bar Association representative will discuss the MBA’s Fee
Arbitration Board, which helps facilitate the settlement of fee disputes
with former clients. A first assistant bar counsel from the Office of Bar
Counsel will also review the best practices in getting paid in order to avoid
any ethics violations.
Faculty:
Joseph B. Simons, Esq., program chair Simons Law Office, Boston
Dorothy S. Anderson, Esq., Commonwealth of Massachusetts-Office of the
Bar Counsel, Boston
Marc A. D’Antonio, Esq., Massachusetts Bar Association, Boston

From Bankruptcy to the Bank: Getting Paid if a Client Files for Bankruptcy
Wednesday, March 30, noon-2 p.m.
Massachusetts Bar Association, 20 West St., Boston
A client has filed for bankruptcy. What do you do?
Join our panel of expert bankruptcy attorneys for a discussion on what
options are available to maximize the chances of a practitioner getting paid.
Topics include:
• Filing proofs of claim
• Working with bankruptcy trustees
• Filing motions in the Bankruptcy Court
• What NOT to do – avoiding violations of the Bankruptcy Stay
• Objecting to the bankruptcy discharge
• Understanding exemptions
• Getting employed as special counsel to the estate attorney liens
Faculty:
Dmitry Lev, Esq., program chair, Law Offices of D. Lev PC, Watertown
Kristofer C. Munroe, Esq., Lallier Munroe, Amesbury
William C. Parks, Esq., Law Offices Of William C. Parks PC, Boston

Health Care Law
Third Annual Central Mass. Health Care Symposium
Wednesday, February 10, 3-7 p.m.
College of The Holy Cross, 1 College St., Worcester
The Third Annual Central Mass. Health Care Symposium will assist you in
navigating substantive legal developments to improve your health law practice.
Experienced and esteemed faculty will provide information on digital health,
HIPAA hot topics, charitable hospital duties under the Patient Protection and Af-
fordable Care Act (Obamacare) and the U.S. Tax Code, corporate compliance strat-
egies for health care organizations, how to hire international medical graduates, and
more. In addition, attendees will be provided scenarios for client representation.
This health care training provides an exceptional opportunity for greater
Worcester County practitioners who seek to improve their knowledge and law
practice management skills.
Faculty:
Lorianne M. Sainsbury-Wong, Esq., program chair
Health Law Advocates, Inc., Boston
Kathleen E. Dion, Esq., Robinson & Cole LLP, Hartford
David Harlow, Esq., The Harlow Group LLC, Newton
Kathryn M. Rattigan, Esq., Robinson & Cole LLP, Providence
Roy J. Watson, Jr., Esq., Watson Law Offices, Cambridge

Family Law
Building your Family Law Practice with LAR and Fixed Fee Agreements
Tuesday, Feb. 23, noon-1 p.m.
MBA, 20 West St., Boston
The panel will discuss Limited Assistance Representation (LAR), what it is,
how to get trained and how to get on the list.
Questions presented include:
1. What types of cases are good to take on a limited representation basis?
2. Should you charge your normal hourly rate for LAR cases?
3. What kind of cases can you file a general appearance?
4. Can you do it the other way around, why or why not?
5. In what sorts of circumstances should you consider doing a fixed fee agreement?
6. What are the range of fees?
7. The panel will also discuss ethical issues surrounding LAR, examples from
their experience with LAR fee structures and how using LAR can build
one’s practice.
Faculty:
Cynthia T. Runge, Esq., program co-chair
Gabriel Cheong, Esq., program co-chair, Infinity Law Group LLC, Quincy
Ilene Mitchell, Esq., Administrative Office of the Probate & Family Court-Boston,
Boston
Daniel Nelligan, Esq., Think Pink Law, Boston

Litigation
Feed Your Mind: Massachusetts Appellate Practice and Procedure
Tuesday, March 15, 12:30-1:30 p.m.
MBA, 20 West St., Boston
Join Massachusetts Appeals Court Associate Justice William Meade and Ap-
peals Court Clerk Joseph Stanton for an informative Legal Lunch Program on Mas-
sachusetts Appellate Practice and Procedure.
Topics will include:
• The role of briefing and oral argument
• Practice tips: From preparation of the briefs and record appendix to having a
successful oral argument
• How judges prepare for argument
• Frequently made, and sometimes fatal, missteps by counsel
• How appellate panels decide the cases before them
• The role of amicus briefs
• Published vs. unpublished opinions
The Legal Lunch Series is geared toward practitioners of all experience lev-
els, 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. The program is moderated by Craig
Levey, Esq. of Davis, Malm & D’Agostine PC, and Courtney Shea. Esq. of Pea-
body & Arnold LLP.
Attendees are encouraged to bring their own lunch.

Criminal Law
A Criminal Lawyer’s Guide to Practicing in the Massachusetts District Courts
Thursday, March 24, 1-5 p.m.
Massachusetts School of Law, 500 Federal St., Andover
To effectively advocate on behalf of their clients, criminal defense attorneys,
practicing, or planning to practice, in the district courts of the commonwealth
need to be well versed in not only the law, but procedure. The Hon. Barbara S.
Pearson leads a panel of experts as they discuss the nuances of practicing criminal
law in the Massachusetts District Court.
Specific topics include:
• Arrangements and bail hearings
• Revocation of bail requests and
probation surrender hearings
• Alternatives to bail bracelets,
pre-trial probation and civil com-
mittments under Sec. 35
• Pre-trial conference reports
• Bill of particulars
• Motions to suppress
• Motions to dismiss
• Pleas
• Trial issues (including voir dire
and motions in limine)
• Sentencing
In addition, all program attendees will have the opportunity to attend an inter-
active trip to court to observe these concepts in action.
Additional speakers to be announced.
Faculty:
Hon. Barbara S. Pearson, program chair, Lowell District Court, Lowell

Register online at www.massbar.org/education or call (617) 338-0530.
The Massachusetts Bar Association is currently accepting applications for its Oliver Wendell Holmes Jr. Scholarship — a $10,000 scholarship that will be awarded this April to a third-year law student attending a Massachusetts law school who is committed to providing legal assistance to underrepresented individuals/communities in Massachusetts upon graduating.

Candidates applying for this scholarship must meet the qualities that the MBA values and finds essential in those who will become practicing attorneys. In particular, applicants must: demonstrate a strong and specific commitment to serve the public interest; have a proven record of hard work and academic accomplishment; and have demonstrated integrity and honesty.

Applicants must submit a completed online application, including three essay questions, along with a letter of recommendation and resume to holmesscholarship@massbar.org no later than Feb. 12. The MBA may then require a transcript and may conduct an in-person interview of the final applicants to further assess that applicant’s experience, qualifications and interests. The scholarship will be awarded at the MBA’s Annual Dinner on April 28, 2016, at the Westin Boston Waterfront.
With the help of numerous MBA member volunteers, the MBA is able to support the community across the commonwealth through our annual Gear Up For Winter drive, Greater Boston Food Bank night, Lawyers Have a Heart 5K and more.

The MBA provides numerous opportunities to shape the future of our legal profession and inspire the next generation of lawyers through educational partnerships including our Tiered Community Mentoring Program, Mock Trial Program and Law Day initiatives.

MBA attorneys participated in Dial-A-Lawyer in October.

Members celebrated the holidays in Boston at Casino Night on Dec. 10, and at the Western Mass. Holiday Celebration on Dec. 13.

The MBA annually co-sponsors the Walk to the Hill for Civil Legal Aid, where hundreds of attorneys gather to call on state lawmakers to increase funding for civil legal services throughout the commonwealth.

More than 100 members helped kick off the Massachusetts Bar Association 2015-16 association year at our annual Welcome Back Reception at the Back Deck in Boston.

The Young Lawyers Division hosted a speed networking event for new lawyers on Dec. 3, at the MBA’s Boston office. The event provided attorneys with an opportunity to share practice tips. The session was followed by a networking reception.

Members celebrated the holidays in Boston at Casino Night on Dec. 10, and at the Western Mass. Holiday Celebration on Dec. 13.

The MBA annually co-sponsors the Walk to the Hill for Civil Legal Aid, where hundreds of attorneys gather to call on state lawmakers to increase funding for civil legal services throughout the commonwealth.

MBA leaders helped swear in 1,176 new attorneys at Faneuil Hall’s Great Hall during eight admission ceremonies in late November. Join the MBA at one of our seven Practicing with Professionalism classes held statewide in 2016. Register at www.MassBar.org/MassBarProfessionalism.

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on the effect that mental health and substance abuse services have on the recidivism rate, prevention-oriented po-
cilicing strategies, civilian workforce re-
tegration in the prisoner reentry and whether the incarceration and recidivism rates could be decreased through early re-
learn the importance of public safety and justice for victims of violent crime.

After years of dormancy, the 15-mem-
ber Massachusetts Sentencing Commission
has vigorously reconvened under the leadership of Superior Court Judge Jack Lu, who charged with bringing a “critical and necessary look at evidence-based sentencing practices.” It also has consult-
with experts on smart-on-crime meth-
look at people who have already been
sentencing in the commonwealth, from whether or not mandatory sentencing is effective, to sentencing guidelines, to ev-

C. 123, § 35 for juveniles. This will cre-

• Objections to Rule 34 document re-

The amendments to Rule 26 of the

There is, at this very time, an almost

The Family Law Section Council (FLSC) anticipates a very busy 2016 for family law practitioners. There is a tre-
normative work of the Massachusetts Juvenile

titled “An Act Relative to Child-Centered

Family Law. SB384 was filed in 2015 as

The Family Law Section Council (FLSC) held a special meeting on April 14, 2015. Three of the most sig-

• Uniform standards for imposing san-

tions for failing to preserve ESI (elec-
tronically stored information) were written into the law with a particular focus on
duty to preserve ESI but failed to take
reasonable steps to do so, and the ESI
cannot be restored or replaced through
additional discovery, upon a finding of

provide a difficult situation given the
dearth of substance abuse resources available for

In Commonwealth v. Okoro, 471 Mass. 511 (2015), the SJC extended the same procedural protections provided to juveniles convicted of first degree mur-
der the state to set caps on charges.

to be called.

Law Practice Management

Technology continues to become

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Public Law

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Bonauto to receive MBF’s Great Friend of Justice Award

The Trustees of the Massachusetts Bar Foundation proudly announce that they have selected Attorney Mary L. Bonauto of Gay & Lesbian Advocates & Defenders (GLAD) to receive the MBF’s 2016 Great Friend of Justice Award. The award will be presented at the Foundation’s Annual Meeting on March 15, 2016, at the Social Law Library in the John Adams Courthouse in Boston.

The MBF’s Great Friend of Justice Award is presented annually to an individual who has demonstrated extraordinary passion for justice, consistent with the MBF’s values and mission of increasing access to justice throughout Massachusetts.

“It is no exaggeration to say that Mary Bonauto’s achievements in fighting for LGBT civil rights and equality have been momentous,” said MBF President Robert J. Ambroggi. “She has devoted her entire career to the pursuit of justice and is truly deserving of this award.”

Bonauto is a leading civil rights lawyer whose powerful arguments and long-term legal strategies have led to historic strides in achieving marriage equality for same-sex couples across the United States. The Civil Rights Project Director at GLAD since 1990, she has worked tirelessly to eradicate discrimination based on sexual orientation and gender identity.

For sponsorship opportunities and more information about this event, please visit www.MassBarFoundation.org.

MBF IOLTA grant applications now available

Deadline: March 11

The Massachusetts Bar Foundation is pleased to announce the availability of applications for the 2016/2017 IOLTA Grants Program. The MBF expects to award approximately $1.9 million to nonprofit organizations for law-related programs that either provide civil legal services to the state’s low-income population, or improve the administration of justice in the commonwealth.

MBF IOLTA grants for providing direct legal services typically include support to domestic violence programs, special education advocacy, humanitarian immigration assistance and homelessness prevention. Grants to improve the administration of justice generally include efforts such as court-connected mediation and lawyer of the day programs.

Funds for these grants are provided by the Massachusetts Supreme Judicial Court’s Interest on Lawyer’s Trust Accounts (IOLTA) Program. The MBF is one of three charitable entities in Massachusetts that distributes IOLTA funds.

Law students: summer funding opportunity!

Deadline: March 18

The Massachusetts Bar Foundation believes that helping to support the development of the next generation of public interest lawyers is critically important. One way we can assist is by making summer internships in legal services financially viable for today’s law students, many of whom are carrying significant education debt. Through the MBF Legal Intern Fellowship Program (LIFP), the MBF provides a $6,000 stipend to several exceptional law students for their volunteer summer internships providing civil legal services to low-income clients at nonprofit legal aid organizations in Massachusetts.

The MBF LIFP, funded by the MBF Fellows Fund and the Smith Family Fund, 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.

All current law students are eligible to apply. Visit www.MassBarFoundation.org for application information.

SAVE THE DATE: 2016 ANNUAL MEETING

Tuesday, March 15, 2016
5:30–7:30 p.m.
Social Law Library
John Adams Courthouse, Boston
Real Estate Law

In the alphabet soup of statutory acronyms, compliance with “TRID” and “WISP” must be the focus of residential real estate attorneys.

The Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act have been merged in the new requirement for Integrated Mortgage Disclosures under the Dodd-Frank Act (TRID). Lenders may use a third party, i.e. attorney/settlement agent, to prepare the Closing Disclosure under TRID.

Moreover, residential real estate closing attorneys have an opportunity (some would say responsibility) to educate real estate agents and lender clients of their respective requirements under TRID.

Massachusetts Written Information Security Plan requires practitioners to develop and implement a comprehensive Written Information Security Program (WISP) to create safeguards for the protection of personal information of residents, including our employees and clients.

Protection of our clients as consumers of financial products and as individuals with privacy rights is of utmost concern in our practices.

— Melanie Hagopian, vice chair

Taxation Law

Lack of IRS funding and service will continue to adversely impact the way we do business with the IRS on behalf of clients, particularly with limited IRS resources being deployed to address identity theft, cybersecurity and other important issues that affect the security of taxpayer information and our filing system. However, offshore asset disclosure is an area of increased enforcement. Exercising due diligence in this area while steering clients away from severe civil and criminal penalties will be an increasing priority in 2016.

Anticipated changes in the Massachusetts public records law may make it easier to obtain required state-level information.

— Marc C. Lovell, section council member

Workers’ Compensation

The Workers’ Compensation Section is anticipating that the Judicial Survey will be completed, analyzed and disseminated in early 2016, providing feedback on the judges before whom we practice. Additionally, we are awaiting public hearings on the regulations that have been reviewed in the Rules and Regulations Committee that met during fall 2015. Once the public hearings have taken place, it is anticipated that the revised rules will go into effect in 2016. The new year also should see public hearings on the Sec. 36 bill that has been proposed by the Massachusetts Bar Association. While the Senate has passed a different version of the bill, the section is hopeful that revisions of Sec. 36 disfigurement and scarring will pass both sides of the Legislature and be enacted in 2016.

— Deborah G. Kohl, chair

Young Lawyers Division

In 2016, I expect that the student loan crisis will continue to gain attention. I expect that the dischargeability of student loans will continue to be debated. Regardless of the result, as the federal government discusses policy changes that will affect the future of student loans, new lawyers will find themselves with increased options for student loan repayment and negotiation.

— Melissa A. Conner, chair

MBA helps kids ‘Gear Up for Winter’

In November and December, the Massachusetts Bar Association once again joined Cradles to Crayons’ Gear Up for Winter program — a collection for children’s coats, warm clothing and boots to help thousands of families. Thank you to everyone who donated children’s items and helped make a difference in this year’s program, including Ballin & Associates LLC, Marcotte Law Firm and the Young Lawyers Division.

— Photo by Kelsey Sadoff

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

Designed by lawyers for lawyers.

Unequaled 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.

MBA helps kids ‘Gear Up for Winter’
“Having a loved one ‘sectioned’ and forced into treatment is not an easy thing to do and often viewed as a last resort to save someone’s life. No one should have to go through this alone.”

MBA President Robert W. Harnais was interviewed by WBUR radio on Jan. 12 about the MBA’s new Section 35 Helpline, a free legal assistance pilot program in Norfolk County designed to help county residents who are seeking court-ordered inpatient treatment for a family member or friend struggling with opioid addiction and other substance abuse issues. Harnais was also interviewed on the same topic by the Cape Cod Times. The Helpline was covered by the Associated Press and appeared in several media outlets across the state.

MBA members Archer B. Battista, Michael B. Bogdanow, Marissa Leigh Elkins, Jillian B. Hirsch, Matthew Segal, Karen L. Stern and Melinda L. Thompson were selected as “Lawyers of the Year” in the Jan. 18 issue of Massachusetts Lawyers Weekly.

“T&E bar looks for guidance on access to digital assets.”

Massachusetts Lawyers Weekly (Jan. 18) — MBA members Michael Simolo, Hanson S. Reynolds and Melissa F. Langa were quoted on efforts by trusts and estates attorneys to localize a uniform law on digital access for fiduciaries.

“1st Circuit expands use of supplemental pleadings rule.”

Massachusetts Lawyers Weekly (Jan. 4) — MBA member Jerry Cohen was quoted on a recent decision by the 1st U.S. Circuit Court of Appeals.

“Federal bar adapting to ‘seismic’ rule changes.”

Massachusetts Lawyers Weekly (Jan. 11) — MBA members Mark Ventola, Elizabeth N. Mulvey and Thomas E. Peisch were quoted on changes to the Federal Rules of Civil Procedure, which took effect Dec. 1.

“Can Camille Cosby be forced to testify against her husband? It’s murky.”

Washington Post (Jan. 8) — MBA Criminal Justice Section Vice Chair Peter Elkanin was quoted about the possibility of Camille Cosby having to testify against her husband, comedian Bill Cosby, in a defamation case over sexual assault allegations.

“Snap judgments: The top Massachusetts legal news story of 2016 will be …”

Massachusetts Lawyers Weekly (Jan. 11) — MBA members Michelle R. Peirce, Hon. Edward M. Ginsburg (ret.) and Matthew Segal were quoted in a “snap judgments” feature predicting what the top legal stories of 2016 might be.

“Ruling has patent bar exhaling sigh of relief.”

Massachusetts Lawyers Weekly (Jan. 4) — MBA members Lee T. Gesmer, Thomas M. Bond and Richard M. Zielinski were quoted on a recent SJC decision affecting patent law.

“Federal bar adapting to ‘seismic’ rule changes.”

Massachusetts Lawyers Weekly (Jan. 11) — MBA members Mark Ventola, Elizabeth N. Mulvey and Thomas E. Peisch were quoted on changes to the Federal Rules of Civil Procedure, which took effect Dec. 1.

“It always depends on resources: people resources, money resources, space resources. The devil is in the detail. The important thing — that all sides are committed to making it work — seems to be there.”

MBA Judicial Administration Section Chair Lori A. Cianciulli was quoted in the Dec. 28 issue of Massachusetts Lawyers Weekly (“Dedicated civil sessions to get trial run in New Year”) about the possibility of raising the damages cap in District Court. Cianciulli is the MBA representative on a committee tasked with exploring a pilot program.
Almost two years ago, probably because of sleep apnea (now treated), I banged my head in a minor collision, and then zoom out to a wider angle. Let’s begin with the head injury issue and then zoom out to a wider angle.

To conclusively rule out some kind of neurological/cognitive impairment, if not already done, it would make sense to seek both a new neurological exam (fleshed out, if your neurologist thinks it appropriate, perhaps by neuro-imaging) and neuropsychological testing. The latter would be performed by a psychologist with advanced training, and would take hours to do and interpret. Although health insurance would have to agree to authorize it (not easy to accomplish, but the head trauma history will help), this kind of testing would be a way to carefully assess many different kinds of functioning and to learn which, if any, are out of kilter in comparison to your general abilities or to others in your age group.

But I’m not sure whether that will turn out to be the key issue, since in some ways you may have been “asleep at the wheel” in general, not only when driving. Your history, at least as you describe it, seems to show a pattern of, let’s say, “living in the moment” and “going with the flow.” While many professionals are too buttoned-up and wish they could move in that direction, you seem to be at the other end of the continuum, someone who “finds himself” in one situation or another based on impulse or what seemed like a good idea at the time. That pattern seems to apply to your personal life as well as your career path and time management. With a low threshold for making changes in your life (relationships, career commitments) these choices are made too easily, and only later you notice what may be going wrong. Fortunately, when it comes to the substance of your legal work, your standards are appropriately high to the point that you blew the whistle on yourself and could not tolerate the idea of potential negative impact on your client. That kind of professional conscience is admirable.

If it turns out that the lapse in your work was not the result of cognitive deficit, one might speculate that it was your way of signaling that you are no longer feeling sufficiently gratified or stimulated by your work life. It would probably be a mistake to simply leap to a new woman or a new line of work. If you have a therapist or coach, this would be a good time to focus on seeking to become much more aware of the feelings and underlying thoughts that probably drive your behavior and choices. You know that you have a passion for fly fishing, and have stuck with that activity. Now you can gradually identity what is most meaningful and gratifying to you in the worlds of legal practice (or other work if necessary) and human connection, and then make conscious decisions about what course to follow. It’s usually better to steer toward a planned destination than to drive aimlessly and eventually run out of gas. You may be in need of a GPS – Grounded Perception of Self.

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.
Recent Superior Court decisions favor arbitration

By Michael B. Donahue

For many reasons, it’s good to be a New England Patriots quarterback Tom Brady in Boston. However, in light of two recent Massachusetts trial court decisions, it may have been good for him that he was not in court over the summer when challenging the NFL’s adverse arbitration ruling. Over the space of two weeks in late November and early December, the Massachusetts Superior Court showed a marked, if not surprising, pro-arbitration bent, as it upheld a party’s right to enforce an agreement to arbitrate claims arising from an eight-months’ litigation in court, and uphold an arbitral award that applied out-of-state law in connection with damages against a respondent despite a choice-of-law clause in the agreement mandating Massachusetts law. Either decision taken individually would be indicative of significant judicial deference to arbitration and arbitral awards. Together, they show the challenges that parties may face when attempting to avoid both an arbitration clause and/or a highly adverse, perhaps even peculiar, result.

In the first case, Harelick v. CRIC, LLC, et al., Suffolk Superior Court Civil Action 2014 CV 3930 BLST, the plaintiff and one of several admittedly affiliated defendants were party to an agreement requiring, essentially, arbitration of all disputes between them. After Harelick served the complaint in December 2014, the defendants moved to dismiss, but did not raise the arbitration clause as a reason. Harelick sought to and did amend his complaint, in response to which the defendants moved again to dismiss or stay the matter in August 2015, this time asserting the arbitration agreement between him and one of them. Sometime amid all of this, the defendants commenced discovery, the extent of which was not disclosed by the court. It has long been the law in Massachusettsthat a party may waive its right to arbitration through delay, or by invoking the doctrine of undue delay, by engaging in the mechanics of civil discovery (all of which are inconsistent with the arbitration agreement). However, in Harelick, the Superior Court found the discovery process not so much on whether the party seeking arbitration acted inconsistently with that right, but on a balancing of the prejudice to the opposing party from “undue delay” with the “strong judicial policy favoring arbitration.” The court found that even though CRIC had only eight months to assert its right to arbitrate (on its second bite at the apple, no less) and even though discovery had been “undue” delay and engaged in the discovery, there had been only “slight” prejudice to Harelick, who would have had to deal with discovery requests in the arbitration process. (Again, it is unknown what the discovery had been, and so, it is unclear whether this pro-nomeration held.)

Harelick is a refinement of Home Gas, Inc. v. Walter’s of Hadley, 403 Mass. 772 (1989), the seminal Massachusetts case on waiver of arbitration, under which “undue” delay coupled with engagement in civil discovery of any meaningful kind was considered to be sufficiently inconsistent with the right to arbitrate as to waive it. Cases subsequent to Home Gas injected the notion of unfair prejudice to a determination of waiver by conduct. The Harelick decision is further evidence of the strength of the judicial policy in favor of arbitration. However, parties should not consider the decision to be permission to postpone assertion of arbitration rights. While it is unknown what, exactly, constitutes “unfair prejudice” to the litigant between a delay of 5 months and one of 10 months, it is safe to conclude that something does, and it may be most prudent not to sit on one’s rights.

The second decision, Family Endowment Partners, LP, et al. v. Satow, et al., Suffolk Superior Court Civil Action 2015 CV 1411 BLS1, suggests that arbitral awards will continue to be challenging for disappointed litigants to overturn. In that case, the Satows challenged a permanent and arbitrability determination agreement. Family Endowment Partners (FEP) had been grossly negligent, breached fiduciary duties and committed investment fraud in violation of state and federal law. The agreement between them contained a choice-of-law provision, requiring Massachusetts law in questions of its interpretation and enforcement, “all disputes.” That provision “carved out” the litigants from the award’s coverage. The dispute was arbitrated for 13 days, after which the arbitrator entered an $8 million award in favor of the Satows, which included multiple damages under Pennsylvania law. The respondents sought to overturn the award in an action in Superior Court, maintaining that the arbitrator was biased and had exceeded his authority by applying Pennsylvania law, by awarding multiple damages despite a limitation of liability clause in the underlying agreement. The Superior Court rejected all arguments for vacatur. It held that, because the arbitration clause was far more broad than the choice of law provision, “a tort claim for fraud, a breach of fiduciary duty claim or a claim that FEP and Weiss violated Pennsylvania statutes is beyond what is limited by the choice of law provision, but are well within that scope of arbitration as claims ‘related to’ the Agreement but one arising under the Agreement.” The court declined to review the question of whether the arbitrator properly applied the Pennsylvania statutes and noted that because the limitation of liability clause did not specifically exclude “punitive” damages, there was no bar to them being awarded. Because the individual participated in the arbitration without objection to jurisdiction or otherwise attempting to preserve his rights to contest the arbitrator’s authority over him, he was held to have waived the ability to avoid the award on jurisdictional grounds.

Taken as whole, these cases appear to confirm Massachusetts courts’ reluctance to interfere in the arbitral process or to overturn arbitrators’ decisions. In Massachusetts, a party who agrees to arbitrate disputes has little ability to limit the scope of an arbitrator’s decisions by seeking to vacate an award. The lesson to parties and counsel is to draft arbitration clauses prudently — if a party wants to restrict an arbitrator’s authority, he will be able to so only by drafting it. It seems that, in the absence of extreme circumstances, arguments over an arbitrator’s authority are unlikely to encourage stiff scrutiny on actions to vacate.

Harelick and Satow indicate that Massachusetts courts remain increasingly unwilling to interfere where parties have agreed to arbitration, and potentially more significantly, that parties who agree to arbitrate will be held to the consequences of such an agreement, good or bad. Now more than ever, parties should not gloss over arbitration clauses since they will live with the results, even if those results were not intended or contemplated at the time of the contract.

Michael B. Donahue is a partner in Duane Morris Boston office and practices in the areas of construction law and litigation, including arbitration and alternative dispute resolution, public procurement law and the drafting of design and construction agreements.

Solid state of affairs: What can your hard drive do for you?

By Jared D. Correia

One of the best ways to save money in a small law practice is to be an intelligent purchasing of technology. If your law firm can achieve a high-level of efficiency at a reasonable cost, you’ll end up operating at an advantage over your competitors — many of whom will wait until the betterendid to reuse or replace antiquated hardware. Do you need to replace your smartphone just because a new version of the iPhone was released? Or, do you want to wait for the bugs to get worked out before you dive in on the new version? Do you instead make the decision to upgrade at every other release? Or do you want until the latest update on your current phone is up before you upgrade? The middle ground is making reasonable and about updating law firm technology.

Let’s look at a specific example, in order to flesh this out: Lawyers are still the jurisdictional rules in the trial court, attorneys must create an official firm policy, many attorneys get the itch to replace their existing laptops every two to four years. But that’s often just a random timeframe. Especially if the laptop often remains on a desk, and is not frequently carted around, it may retain a longer life span, via the application of a sneaky upgrade. State of replacing your laptop, consider replacing your standard hard drive with a solid state hard drive. Solid state hard drives are lighter and stay cooler than traditional hard drives. Solid state hard drives also use less energy than traditional hard drives, which means that they can extend battery life. Solid state hard drives are more durable than traditional hard drives because they do not have a mechanical design featuring moving parts as traditional hard drives do. That means that solid state hard drives can access data more quickly, since spinning discs relied upon by traditional hard drives is not part of their design. Solid state hard drives. Solid state hard drives are more expensive than traditional hard drives (sometimes by a factor of four or five), but they’re still only a fraction of the cost of a new, high-end laptop, and may double the useful life of your existing laptop.

If your old laptop is still functional, but unresponsive or scans slowly, maybe it’s time to give your traditional hard drive the boot.
Prepare for change with contextual leadership

Most people must learn to make difficult changes to their thinking and behavior before they can transform their habitual efforts into successful efforts. Leading your organization toward success means encouraging a large group of people to make difficult changes to their thinking and behavior. This is changing when change is hard.

It's never easy to change the comfortable and familiar ways in which people have learned over time to think, feel and behave. Consider the development phase of the talent cycle as an example. Many seasoned lawyers shy away from giving direct face-to-face feedback to less experienced lawyers about what they are doing wrong and the workplace behaviors and work products that are acceptable. Instead of mentoring, a lawyer may choose to provide written feedback on a brief that makes the brief look like it returned from a bloody battle with life-threatening injuries. On the flip side, instead of thinking of the written feedback on the brief as a gift and clear indication of what the seasoned lawyer wants to see, the less experienced lawyer may interpret event as unfair and unhelpful criticism. We gravitate toward the familiar because we do not yet know what is and is not important. Invariably, doing so requires collaboration among people with diverse perspectives and leaders who are adept at developing and managing this level of organizational diversity.

Although we may think that leadership is the exercise of formal authority to direct others with clear communication, that style of leadership is not sufficient, especially for leaders seeking to collect broad intelligence. We have learned to think that we are all equal, which has many pros and one con. The formal authority previously termed leadership is no longer as powerful as it used to be. When everyone is equal, nobody is an expert and nobody has enough power to assume his or her clear directives will be followed. Astute leaders know this and, consequently, learn the art of contextual leadership.

Learning from mistakes

Sometimes the de facto leaders of an organization have followers, people who will fall into line and respond with behaviors that are aligned with the wishes of leaders. More often than not, they have a variety of “others” in the organization, many of whom have their own strong agendas driving their behavior. Some “others” are followers, while other “others” are bystanders and obstructionists. Some of these people are easy to identify, while others are hidden within the organization and only obviously using social networking mapping software that can generate a visual display that identifies the highly influential and connected people.

Today’s successful leaders spend less time trying to directly influence others in their organization and more time becoming aware of and adjusting the elements of their organizational context, such as the visible and invisible structures that connect and organize people and the processes that drive the decisions people make about what to do and how to do it. These structures and processes have a profound effect on organizational dynamics, politics and culture. It has become a mandatory leadership skill to understand and change organizational structures, processes, policies and culture.

The following example of effective contextual leadership was offered at a recent conference. The chief talent partner and chief talent officer in a global firm experimented with different ways of structuring talent management processes until they found the options that worked best for their firm. They caused a lot of discomfort, which is actually an incredibly valuable driver of intentional change, and made mistakes, which are part of an effective strategy design and implementation process.

They led by aiming change at the elements of the context within their control — the array of structures and processes that fell within their talent cycle — and it worked. Contextual leadership includes a willingness to make mistakes and cause others discomfort.

Contextual leadership is what it means to be a leader in today's law firms, law schools and law departments. Do not expect deference to expertise or formal authority, because the meanings of these terms and the power, formerly associated with such roles, has changed.

Expertise today means someone with a skill in high demand and low supply in the marketplace. Expertise allows one to price one's services without sensitivity to the effects of the downward pricing pressures of commoditization. It also supplements the power of formal authority to lead others. People will listen and follow the directions of an expert because they assume that person knows something they do not and is trustworthy.

Expertise based on the ability to collect data, analyze it in a linear, logical way and use it in a rote or rule-based manner, is narrowing because it's easier and cheaper for technology and a large group of people to do the same thing. Thus, that type of expertise is not as valuable or powerful as it was.

Formal authority also doesn't command the trust it once did because of a cultural shift in the deference it gives. Examples are seen in decreased formality in how people address one another regardless of age, hierarchical role or professional status, the blurring of formal boundaries, the diminished sense of organizational loyalty and the shrinking scope of the “taking-care-of-others” attitude demonstrated by highly publicized organization closings and massive job lay-offs.

Consequently, leadership that works is contextual. A successful leader in today's legal industry is aware of every force exerting influence on the thinking, feelings and behaviors of the people in the leader’s organization and aims adjustments at those factors.

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Susan Letterman White, JD, MSG, is a Boston-based organization development and change management consultant with more than 25 years of experience working in the legal sector, consulting sector, government and higher education.
So you think you’re ready to hang your own shingle?

BY NICOLE B. NORKEVICIUS

Yes, being your own boss can be invigorating and allows an attorney to set their own schedule and manage their caseload. However, solo practitioners often struggle in their practice and do not get to enjoy such benefits. The Massachusetts Bar Association’s Solo Practitioner & Small Firm Section offers some very poignant pointers before delving into the vast world of solo practitioners, with ongoing support and education programs offered throughout the year.

Of course, the legal profession is a calling that can lead to a very worthwhile profession, but first-time solo practitioners are often faced with numerous pitfalls that can be very costly. Knowing the law is just the beginning; a successful solo practitioner must balance so much more than keeping current with the changes in their respective specialties — they must also run a successful business!

Here are some tips for every solo practitioner starting out:

**Be a minimalist:** Manage assets wisely. Start small and spend sparingly — work from home. Reserve a conference room in the local law library or registry. You can even rent or borrow a conference room from another attorney to meet with new clients. Many large practices often allow this practice for other attorneys as part of their pro bono initiatives.

**Create an Internet presence:** Developing a simple website can be much less expensive than traditional advertising and can reach a vast audience with minimal cost. Today, most prospective clients will research online before contacting an attorney, and your website is their first glimpse at you as an attorney.

**Volunteer:** Time spent volunteering can be a worthwhile way to create contacts in your field and sometimes obtain new clients. Several Probate and Family courts throughout the commonwealth offer Lawyer of the Day programs, which are run by the local bar association or legal services program. Volunteering in these types of programs allows a solo practitioner to meet and work with the registry staff in these courts, while offering a value service to public. These relationships can be quite beneficial when you are later in court on your own matter. However, a solo practitioner must manage their time wisely; ideally, all time is billable time. Volunteering in the courts you routinely practice in can also be quite beneficial to building your practice.

**Find a mentor:** Practicing on your own is often lonely. While there are lots of benefits to having your own practice, you can’t successfully practice in a bubble. You must find a mentor or ideally an experienced attorney and another contemporary colleague that you can consult with about case-related matters and court specific procedures. A great way to meet different attorneys is to join bar associations, which often also provides opportunities to socialize with judges and court staff. Try to have lunch with a different attorney once a month or, realistically, once a quarter, because as a business manager, a solo practitioner must be vigilant in balancing their time. But building relationships with other attorneys are integral to your success.

**Contact LOMAP:** Every attorney considering hanging a shingle and going out on their own should contact the Massachusetts Law Office Management Assistance Program (LOMAP), which is a free and confidential program offered by Lawyers Concerned for Lawyers Inc. LOMAP provides invaluable materials for attorneys considering opening their own practice and steps to avoid ethical pitfalls. In addition, attorneys can schedule a meeting with one of LOMAP’s law practice advisor to discuss specific questions about their practice.

Nicole B. Norkevicius is a solo practitioner in Buzzards Bay. She previously worked at two small firms before opening her own practice in October 2015, where she primarily practices in all aspects of family law.
Glynn Mediation

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

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Peabody & Arnold LLP: A local firm with a national scope

Peabody & Arnold LLP, based in Boston with an office in Providence, is a Massachusetts Bar Association Honor Roll Firm. Managing partner Allen David discusses the firm’s lengthy history and its current mission:

What types of law does Peabody & Arnold LLP handle?
We focus exclusively on litigation and insurance matters.

What are the particular areas of specialization where Peabody & Arnold LLP has made a name for itself?
There are four areas of law for which the firm is best known. On a local and regional level, it is known for its experience in professional liability defense — primarily legal malpractice — and employment law representing management. On a national level, it is known for its work in insurance coverage, and medical malpractice — and employment law — primarily legal malpractice defense as well as pro bono litigation.

Anything to announce in the coming year?
Peabody & Arnold LLP has long been known as an excellent trial firm. What the public and the legal community may not know, however, is that Peabody & Arnold LLP has been quietly developing a stellar group of women trial attorneys. Forty percent of the firm’s partners are women. Women make up 45 percent of the partners in the litigation group and those partners have significant trial experience on the local and national level. In the coming year, the firm plans to celebrate with our clients, and the public, the depth of our women lawyer trial bench and our commitment to train the next generation of women to become accomplished trial lawyers.

Describe a recent pro bono project the firm has undertaken.
The firm volunteered to represent a Boston Marathon bombing victim and was assigned to represent a young woman who had part of her calf sheared off by shrapnel and had suffered post-traumatic stress disorder. The firm shepherded her through the One Fund and through the Massachusetts Victim’s Fund procedures, such that she received the maximum recovery for which she was entitled. It drafted an appropriate estate plan for her, and found her a financial manager to shepherded her through the One Fund and through the Massachusetts Victim’s Fund procedures, such that she received the maximum recovery for which she was entitled. It drafted an appropriate estate plan for her, and found her a financial manager to help her in establishing professional office relationships, strengthen client relationships, and enhance their quality of life.

Name at least one fact about Peabody & Arnold LLP that people might be surprised to learn (famous alumni, etc.).
It would have to be John Brooks. John, who died in 2012, spent his entire career here. He was champion of legal services for the poor and was instrumental in founding Greater Boston Legal Services. When John was 80, President Bill Clinton appointed him to the board of the Legal Services Corporation. The MBA presented him with its 100th Community Service Award in 1994. As a lifelong Quaker, John was active in the anti-draft movement in the 1960s, and tried a draft case with William Kunstler.

Why is it important to have all the lawyers in your firm members of the MBA?
Providing membership to all members of our firm encourages our attorneys to be active in the greater legal community and to participate in the various programs offered by the MBA.

Additionally, all of our attorneys have the ability to take advantage of the MBA’s free CLE programs, many of which are located just a short walk from our office at the MBA’s headquarters in Boston. The CLEs are also offered at convenient times, usually lunch or early evening, making it easier for our attorneys to attend. Many CLEs are also live streamed for those that cannot make it to the live program.

In what ways do you find the MBA beneficial to the lawyers in your firm?
Membership in the MBA has been beneficial to both experienced practitioners in our firm and younger associates. For the more experienced practitioners, the MBA has provided an outlet for them to give back to the legal community, whether it be mentoring newer attorneys and law students, presenting at CLE programs or volunteering in the MBA’s Dial-a-Lawyer program as well as other MBA volunteer initiatives and pro bono programs. The MBA also provides these attorneys with an opportunity to network with their peers from other area firms, including those who specialize in different practices areas.

For the newer attorneys, the MBA provides many similar opportunities. It also provides these individuals with opportunities for leadership roles early on in their careers. Further, these attorneys enjoy the chance to attend free CLE programs on a variety of topics relevant to their practice. Many of our firm’s associates are involved in the MBA’s Young Lawyers’ Division which is specifically geared to meet these needs and provides an inviting environment for them to commence their bar association involvement.

The MBA — your firm’s partner
MBA Honor Roll firms have five or more Massachusetts lawyers and enroll 100 percent of their attorneys in the MBA within an association year. Learn more about the many ways the MBA can work for your firm at www.massbar.org/honorroll.

Join our growing list of Honor Roll firms by contacting MBA Member Services at (617) 338-0530 or memberservices@massbar.org.
Software companies versus doctors: Who owns electronic health records?

BY DEBORAH W. HEMDAL AND SEAN NALI

Congress enacted the American Re-covery and Reinvestment Act in 2009. A section of that legislation was the Health Information Technology for Economic and Clinical Health Act (HITECH Act). The provisions of the HITECH Act included the Meaningful Use Program operated by the Centers for Medicare and Medicaid Ser-vices and mandated by the Affordable Care Act. (42 U.S.C. §§ 3002 and 3013 (2010)) Providers are given financial incentives by the Meaningful Use program to implement electronic health records. The incentives can amount “up to $44,000 through the Medicare EHR Incentive Program and up to $63,750 through the Medicaid EHR Incentive Program.” (Affordable Care Act Implementation and Information, Ameri-can Medical Group Association, available at https://www.ama-assn.org/go/advocacy/Issues/aca_issues.aspx). As providers have begun taking advantage of this cash-for-EHR system, many have overlooked the terms and implications of the contractual relationship binding providers and EHR software companies.

Ownership

In order to understand who owns EHR, one has to start with the paper records in a traditional doctor’s office. The doctor owned the paper, therefore he owned the record. Let’s fast forward to the transfer of patient records to a digital format. Now who owns the record? The doctor does not own the paper any more. He or she gener-ally contracts with a third party to purchase or lease storage devices or data storage space in the cloud. Further, software isn’t purchased; it is licensed, which can lead to confusion and uncertainty.

One of the first cases to touch upon ownership of electronic health records is H.M.O. Systems, Inc. v. Choicecare Health Services, Inc., 665 P.2d 635 (Colo. App. 1983). In 1977, Choicecare leased comput-er hardware for 48 months with an option to buy from H.M.O. Systems and executed a non-expiring software license for a lump sum with H.M.O. Systems. Unfortunately, Choicecare declared bankruptcy three years later. H.M.O. Systems tried to repossess the hardware and terminate the license agree-ment with Choicecare. The Colorado Ap-peal Court ruled that the hardware lease had intended to create a security interest for Choicecare and thus was subject to Article 9 of the U.C.C. Since H.M.O. Systems had already received the payment for the software li-ence, it could not repossess the hardware. Because Choicecare had missed only one lease payment and was in receivership, the court decided that the hardware could not be repossessed either. The contracts in this case were treated as traditional contracts between lessees and lessors. The court was able to sidestep consideration of the own-ership of the patient data stored on the com-puter system.

Two recent cases have highlighted the problem with treating ownership of elec-tronic health records through the perspec-tive of the simple contract dispute. Milwaukee Health Services, Inc. v. H.M.I. Systems, Inc. (Milwaukee District of Wisconsin 2013), Business Computer Applications, Inc. (B.C.A) blocked access to all of Milwaukee Health Services, Inc. (MHSI) patient records in default of a commercial license agreement. MHSI applied for preliminary injunction to gain access to its records. The court denied the motion for preliminary injunction ruling that MHSI did not meet the threshold requirements for an injunction. The court stated that MHSI could access its patient records if it “... simply complies with B.C.A’s demands.” (U.S. Dist. Ct. Case No. 13-C-797, Order and Decision on Injunction July 31, 2013). The parties finally reached a settlement in December 2013. The agreement required MHSI to re-turn all of B.C.A’s software and associated media and allow MHSI to transfer patient data to another EHR system. A similar case is currently work-ing its way through the Maine courts. (https://www.bostonlobe.com/news/ nation/2014/09/21/ele\nc\none-health-rec\nc\nord-system-dr\n-sues-\n-dealer.html). Full Circle Health Care is in a dispute over payments for software sup-port with CompGroup. CompGroup has blocked Full Circle’s access to its patients’ electronic health records.

This case brings to the fore the unique issue regarding disputes over ownership of health records as data being manipulated by an EHR software system. The patient does not control his own medical record in an EHR system, and cannot transfer his record without assistance from the doctor or the software provider. The patient cannot ob-tain his medical history from another doc-tor; the history is unique and irreplaceable. While the courts interpret EHR disputes as contract matters, patients are held hostage. They are not parties to the contracts and do not have standing. Even if a patient were to sue to transfer their information to another doctor.

Software Licensing

Another problem area with EHR is soft-ware licensing agreements. In the settle-ment between B.C.A and MHSI, MHSI has to return all of B.C.A’s software and docu-mentation. MHSI must necessarily transfer its medical records to another EHR system. Who is responsible for performing that transfer of information? Who is responsible for confirming the completeness and integrity of the transfer? If there are errors or omissions in the transfer who is liable? We consider questions like these in the next section.

When providers contract with EHR software companies to provide software, they are not purchasing goods as under-stood in the U.C.C. Instead providers are purchasing a software license to operate the system during the duration of a license agreement. This may seem like an ordinary sale-purchase transaction. However, the contract for EHR software licenses are treated as a standard contractual dispute such as a dispute regarding the sale of goods.

Although the statutes and regulations, which have “incentivized” the push for EHR’s, are devoid of any guidance regard-ing EHR licensing, many industry insiders have begun to suggest good practices that should be negotiated into every EHR soft-ware license. The first is the perpetual license. (EHR Contracts: Key Contract Terms for Users to Understand, https://www.healthit.gov/sites/default/files/ehr_contracting_terms_final_508_compliant.pdf). A perpetual li-ence would allow providers to have unlim-ited access to the EHR software. However, there is one catch, once the term of the soft-ware license agreement is up, the software company will no longer have to support the provider. Thus, providers will have access to the information, but will not receive up-grades to their system or help from the soft-ware company in maintaining the system. Although this may interrupt provider’s abil-ity to use the multitude of features included within EHR software, such as integrated billing, providers will still be able to main-tain access to their patient’s health records without disrupting treatment.

The second important term that should be negotiated in every EHR software licens-ing agreement is a wind-down period. (EHR Contracts: Key Contract Terms for Users to Understand, https://www.healthit.gov/sites/default/files/ehr_contracting_terms_final_508_compliant.pdf). This would require-licensing companies to allow and assist providers during a design-ated time period to transition off of the EHR software, before providers are locked out. In keeping with the purpose of the EHR software programs, this wind-down period will protect patient access to their health records. If and when providers are locked out of EHR software, patients are also locked out from accessing their records.

Until our legislators and regulators de-vise laws and rules dealing with EHR soft-ware licensing that account for the protec-tion of patient access to health records, those in the position to negotiate these licensing agreements must not forget the underlying purpose of EHR systems. Although doctors are incentivized to use EHR software, and EHR software companies should be com-pensated for their intellectual property, the continuity of patient treatment and access to records should never be interfered with.

When the health care provider and EHR vendor have a dispute what happens to the patient? We will write about patient stand-ing next.

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The fiscal year ending Sept. 30, 2014, marked the fourth consecutive year of reduced appropriations for the Internal Revenue Service. Substantially reduced funding has had a serious negative impact on taxpayer services, and the number of audits dropped 12 percent from the previous fiscal year to its lowest number since 2005. Despite these reduced resources, the IRS, along with the Department of Justice and the Financial Crimes Enforcement Network (FinCen), has focused strongly on steps to ensure taxpayer disclosure of offshore assets.

As of early November 2015, the Treasury Department has signed 78 Intergovernmental Agreements (IGAs) with other countries in furtherance of the enforcement and compliance provisions of the Foreign Account Tax Compliance Act (FATCA). Moreover, IGAs have been reached in substance but are still pending with 34 other countries. Under these IGAs, Competent Authority Arrangements (CAAs) continue to be reached between the IRS and foreign tax authorities to exchange tax information. On Sept. 24, 2015, the IRS announced that it had entered into signed CAAs with Australia and the U.K., with the expectation that several other CAAs will be reached in the near future. Financial institutions and tax authorities in IGA countries will exchange taxpayer and account holder information using the International Data Exchange Service (IDES) in an effort to enforce offshore account disclosure and prevent money laundering and related crimes. Under the terms of some IGAs, foreign financial institutions (FFIs) must register with the IRS to disclose information directly to IRS personnel or face a 30 percent withholding tax on U.S.-source payments made to them. Despite doubts from critics about the ability of Treasury to exert such extraterritorial jurisdiction over foreign financial institutions, there are 177,147 FFIs registered with the IRS as of early November 2015, with the total number steadily increasing monthly.

Moreover, the Department of Justice has been very active during 2015, in reaching agreements under its Swiss Bank Program, in which eligible Swiss banks may resolve potential criminal liability through disclosure of information and other steps. As of early November, the Department of Justice has made 37 announcements that either involve Swiss Bank Program agreements or involve convictions of taxpayers failing to disclose offshore assets or the income from offshore assets. Accordingly, despite the reduction in IRS resources, the IRS and other agencies continue to press forward with taxpayer compliance with offshore asset disclosure. Such steps include enforcement of the compliance requirements associated with the two most widely applicable disclosure obligations for U.S. taxpayers: the obligation under the Bank Secrecy Act to file FinCen Form 114, Report of Foreign Bank and Financial Accounts and the FATCA requirement to file IRS Form 8938, Statement of Specified Foreign Financial Assets.

While taxpayers willfully hiding offshore assets are most certainly the focal point of these filing obligations and enforcement measures, most taxpayers who run afoul of these filing obligations are not hiding offshore assets at all, but rather, find themselves caught within the very wide net cast by these rules. Inheritances, business transactions, and many other common and innocuous transactions or situations will frequently bring ownership interests or accounts into a taxpayer’s circumstances which are reportable under one or both sets of rules.

Given the large number of taxpayers affected by these two sets of rules, and the substantial civil and criminal penalties for failure to adhere to these requirements, attorneys need to develop a working knowledge of the rules associated with each of these two separate filing obligations to properly advise clients about filing obligations. It is also imperative to understand what actions may cause the attorney or law firm to trigger a disclosure obligation, which may occur through the use of trust or escrow accounts or other financial arrangements to facilitate client business. A good overview of the relevant rules will help the attorney “issue spot” and understand what triggers a disclosure requirement.

Both sets of rules involve various complexities and “gray areas” where further guidance would be helpful. It isn’t possible to cover all of these complexities within this article. In the absence of such clear guidance, experienced judgments on part of the tax practitioners are frequently required. In addition, these two sets of rules form only part of a much larger compliance and disclosure environment, which includes other sets of rules that form separate disclosure obligations for other various interests and one interest in a foreign asset or entity may trigger several different disclosure requirements each year under the various sets of rules that exist beyond those discussed herein. In addition, the IRS has established programs for taxpayers who have not filed many of the required forms to remedy their delinquency and comply.

The Bank Secrecy Act and FATCA disclosure rules are the most widely applicable disclosure rules, and accordingly, some insight into these two sets of rules can greatly assist attorneys in steering themselves and clients clear of the significant penalties associated with noncompliance.

(For a more in-depth discussion about the relevant rules associated with Bank Secrecy Act and FATCA, visit www.massbar.org/offshoreasset.)

1. Internal Revenue Service Data Book, 2014. Letter from the Commissioner. It is anticipated that the release date for the 2015 IRS Data Book will be March, 2016. Actual appropriation amounts and other sources and amounts of IRS operating funds, such as those from special programs and user fees, may be found in the 2015 Budget in Brief, Internal Revenue Service. This is a publication of the Department of the Treasury. This 2015 Budget in Brief may be found at https://www.gov/federalbudget/ IRS%20FY%202015%20Budget%20in%20Brief.pdf.
Reasonableness versus precision
SJC clarifies evidentiary standard for regulating adverse secondary effects of expressive content

BY BRANDON H. MOSS

Municipalities have long sought to mitigate the adverse secondary effects of adult entertainment. When these secondary effects are the focus, courts have generally applied intermediate scrutiny: the regulation must serve a substantial government interest; the regulation must be “narrowly tailored” to accomplishing that interest; and there must be “reasonable alternative avenues of communication.” See D.H.L. Assocs., Inc. v. O’Gorman, 199 F.3d 50, 59 (1st Cir. 1999); D.H.L. Assocs., Inc. v. Selectmen of Town of Natick, 64 Mass. App. Ct. 254, 257 (2005).

Yet, in evaluating the constitutionality of government regulation under Article 16 of the Massachusetts Declaration of Rights, Massachusetts courts have varied between utilizing the federal standard and adopting a more protective standard, depending on the circumstances. The federal standard is involved — such as restricting the specific location of an adult business — Massachusetts courts have applied the standard applicable under the First Amendment to the United States Constitution, as this latter standard is viewed as sufficiently safeguarding the rights of Massachusetts citizens. See D.H.L. Assocs., Inc. v. Selectmen of Town of Natick, 64 Mass. App. Ct. at 257. Conversely, in certain other respects, the federal standard does not sufficiently protect such rights and, as a result, a different outcome may ensue. For example, a public indecency ordinance prohibiting public nudity was held unconstitutional under Article 16 — even though a similar ordinance passed constitutional muster under the First Amendment when reviewed by the United States Supreme Court. Compare Mendoza v. Licensing Board of Fall River, 444 Mass. 188 (2005), with City of Erie v. Pap’s A.M., 529 U.S. 277 (2000).

Regulating Adverse Secondary Effects

But what exactly is an adverse secondary effect? Examples of adverse secondary effects include, but are not limited to, crime prevention, sustaining property values, impact on local businesses, and protecting and preserving the quality of life. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48 (1986). Combating these adverse secondary effects from adult entertainment can be considered a substantial government interest. Even Mendoza, which invalidated a public indecency ordinance under Article 16, recognized that crime prevention and maintaining property values and protecting the public health could serve as substantial government interests. See 444 Mass. at 198-99.

However, the substantial government interest must be sufficiently demonstrated in either the legislative or judicial record. See Cabinet Enterprises, Inc. v. Alcoholic Beverages Control Comm’n, 393 Mass. 13, 17 (1984). Moreover, the substantial government interest must be a motivating factor in the enactment of the government regulation. See T & D Video, Inc. v. City of Revere, 423 Mass. 577, 581 (1996). Renton recognizes — under First Amendment jurisprudence — that, in adopting an adult entertainment regulation, a municipality must base its regulation of adult entertainment upon the experiences of and evidence involving other municipalities that “is reasonably believed to be relevant.” See 475 U.S. at 52.

However, a fatal defect in enactment occurs when a municipality has not identified any evidence of a substantial government interest to justify its regulation of adult entertainment businesses. Such a scenario may exist where the proponent, the local planning board or the local legislative body have not identified any substantial governmental interest, findings or other evidence for the targeted secondary effect, and the text of the regulation is similarly silent. Under this scenario, courts have readily invalidated government regulations, without considering the other prongs of intermediate scrutiny. See, e.g., T & D Video, 423 Mass. at 581-82. If the basis for the government regulation is first articulated after enactment, it is already too late. See id. at 581. Thus, in T & D Video, the Supreme Judicial Court invalidated adult entertainment ordinances because the legislative record was “barren,” there was no support contained in the express intent and purpose of the ordinances, and the justification for the ordinances was first identified during litigation, long after the ordinances were enacted and enforced. See id. at 581-82.

Mendoza presented another scenario, where the pre-enactment evidence, while existing, did not sufficiently fit the targeted activities. The public indecency ordinance in Mendoza generally prohibited public nudity. However, the studies cited to support the challenged ordinance were not specific to “nudity per se” and instead restricted in focus to the adverse secondary effects of sexually oriented businesses. See 444 Mass. at 198 n. 13. Thus, the Supreme Judicial Court criticized the cited studies as a basis to broadly address the “secondary effects of public nudity.” See id.

The ‘Reasonableness’ Standard

Subsequently, in Showtime Entertainment LLC v. Town of Mendon, which was certified by the United States Court of Appeals for the First Circuit, the Supreme Judicial Court recently considered the sufficiency of the evidence for a local bylaw prohibiting the sale and consumption of alcohol on the premises of an adult entertainment establishment. 472 Mass. 102 (2015). While Showtime Entertainment ultimately held that the local bylaw was not narrowly tailored, it is nonetheless instructive on the type of evidence sufficient to justify a government regulation directed at the adverse secondary effects of adult entertainment.

The alcohol prohibition in Showtime Entertainment was enacted by the town meeting, the local legislative body, which also enacted various adult entertainment zoning bylaws. To justify the alcohol prohibition, a local citizen group made a presentation, and in doing so cited two studies linking adult entertainment businesses to an increase in crime. See id. at 104. One of these studies involved the City of Garden Grove, California, analyzing data from 17 years before the challenged alcohol prohibition was enacted, and it expressly correlated the availability of alcohol in the vicinity of adult businesses to higher crime rates. See id. at 104 n.3. The text of the challenged alcohol prohibition also identified a stated concern with curbing anticipated crime impacts from combining alcohol and adult entertainment.

In Showtime Entertainment, the Supreme Judicial Court acknowledged the secondary effects doctrine by recognizing that a demonstrated government interest targeting adverse secondary effects — as opposed to the content of protected speech — was the dividing line between content-based regulations (subject to the more demanding strict scrutiny review) and content-neutral regulations (subject to the less demanding intermediate scrutiny review). See id. at 107. Provided that these adverse secondary effects were demonstrated in the judicial record or legislative record — as an actual consideration occurring prior to enactment, and not for the first time in litigation — a substantial government interest could be established. See id.

Notably, in Showtime Entertainment, the evidentiary standard for demonstrating an adverse secondary effect was regarded as less exacting than perfection. See id. at 108 n.5. Instead, only a reasonableness standard was implicated: “the evidence before the municipality must lead to the reasonable conclusion that a countervailing state interest exists in fact.” See id.

Thus, the studies cited in the town meeting presentation constituted evidence reasonably supporting the stated concern with secondary crime effects from combining adult entertainment and alcohol. See id. at 108. Indeed, a study was criticized by the plaintiff for highlighting secondary crime effects within a defined geographic radius of an adult business, rather than at “at” the site of the adult business — but the Supreme Judicial Court held that this was sufficient because the radius included the center of that radius (i.e., the site of the adult business). See id. at 108 n.6.

The studies presented to the legislative body in Showtime Entertainment supported a reasonable conclusion of curbing secondary crime effects and the criticisms to these studies were rejected as insufficient. See id. at 108-09. Although the plaintiff challenged the use of statistics as discussed in an academic article — this was insufficient because the defendant town did not cite the studies referenced in that article. The Supreme Judicial Court recognized that affirmative evidence
Six tax traps for foreign investors

**BY WILLIAM F. GRIFFIN JR.**

The Internal Revenue Code contains numerous traps for the unwary foreign investor in U.S. real estate or businesses. The tax law provisions applicable to nonresident foreign investors are very often quite different — and more onerous — than the familiar tax rules applicable to U.S. citizens, such as residents in the United States. This article identifies a few of the most common areas where nonresident foreign investors may need specialized tax advice to avoid costly mistakes.

**Estate Tax**

Nonresident foreign investors are subject to estate tax rules that are far less favorable than those applicable to U.S. citizens and residents.

An estate of a U.S. citizen or resident is subject to an estate tax based upon the value of the worldwide property, tangible and intangible, owned by the decedent on the date of death or over which he or she had certain rights or powers. The current estate tax rate for 2015 is 40 percent for taxable estates in excess of a $5.34 million exemption, which is adjusted annually for inflation. A U.S. estate may also deduct from the taxable estate a marital deduction equal to the value of property left to a surviving spouse. The amount of lifetime taxable gifts during the decedent’s life is also included in calculating the gross estate.

A nonresident’s estate of a nonresident foreign investor includes all tangible and intangible property situated in the U.S. (U.S. property), in which the decedent has an interest at the time of his death, or over which he has certain rights or powers. The estate is taxed at rates ranging from 26 percent to 40 percent of the value of estates in excess of a $60,000 exemption (the 40 percent rate applies to taxable estates over $1 million in value).

The estate tax is imposed on gifts made worldwide. An annual exclusion of $14,000 per donee (for 2014) is allowed for gifts of non-trust present interests; spouses may elect to make joint gifts (split 50/50 between spouses). A lifetime exemption of $5.43 million, combined with the estate tax exclusion, is allowed.

A nonresident foreign national is subject to a federal gift tax on gifts of real estate and tangible personal property and cash located in the United States. Intangible assets such as corporate stock and partnership interests are not subject to tax. An annual exclusion of $14,000, adjusted for inflation, is allowed per donee. Gifts to spouses are not allowed unless the spouse is a U.S. person. Gifts to non-citizen spouses are not allowed unless the spouse is a U.S. person. Gifts to non-citizen spouses are not allowed unless the spouse is a U.S. person.

Withholding Taxes

The tax code imposes a number of special withholding taxes on U.S. source income received by nonresident foreign nationals.

Rents, dividends, interest, royalties and other “fixed or determinable annual or periodic income” (FDAP) received by nonresident foreign nationals are taxed at a flat rate of 30 percent on the gross amount received determined without deductions, unless these amounts “effectively connected” with a U.S. trade or business conducted by the taxpayer. This tax must be withheld at the source by the payor, and — although referred to as the “withholding tax” — is a true tax, not a credit against income taxes. In some cases, tax treaties reduce or eliminate the withholding rates for certain classes of income.

Net income “effectively connected” with a U.S. business conducted by a nonresident foreign national is taxed at customary U.S. personal and corporate income tax rates. A special election permits income from real estate activities to be classified as “effectively connected” and thus taxed on a net — rather than a gross — basis.

Income of a nonresident foreign investor in a U.S. partnership is subject to withholding at a 39.6 percent rate for individuals (35 percent for corporations). Unlike the 30 percent tax on FDAP amounts withheld by the partnership, the income is taxable to the foreign partner and is potentially refundable, in a manner similar to the familiar withholding from U.S. employee income.

Interest of a nonresident foreign investor from the sale or disposition of U.S. real property interests is subject to “FIRPTA” withholding at the rate of 10 percent of the gross proceeds of sale. An amendment to the tax code, effective Feb. 16, 2016, increases this rate to 15 percent for properties other than a principal residence, and for principal residences sold for more than $1 million. This amount is withheld at the source by the buyer and is creditable and potentially deductible like the partnership withholding discussed above. The amount withheld may be greater than the capital gain tax imposed on the seller and sometimes greater than the net cash received by the investor.

Nonresident foreign investors cannot take advantage of the benefits provided by the S corporation classification, since stock ownership by a nonresident foreign investor will terminate the corporation’s S corporation election.

Branch Profits Tax

Foreign corporations engaged in business in the U.S. are subject to a “branch profits tax,” a second tax in addition to the regular U.S. corporate income tax. This tax is equal to 30 percent of the corporation’s “dividend equivalent amount,” and effectively imposes a 30 percent tax on corporate income deemed distributed as a dividend to its foreign shareholders.

Earnings Stripping

U.S. and foreign corporations which pay interest to foreign lenders may not deduct the interest payments if the interest income is not taxable to the recipient or to the extent it is reduced by a tax treaty.

Conclusion

The foregoing discussion is only a general summary of a complex topic, and is subject to numerous qualifications and exceptions. In many cases, the severity of the tax rules applicable to foreign investors can be mitigated by competent pre-investment tax advice and proper structuring of the investment transaction.

For a more complete discussion of this topic, please see the publication “Tax Guide for Foreign Investors in U.S. Residential Real Estate” available on the Davis Malm & D’Agostine, PC website (www.davismalm.com) or upon request.

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BY ELIZABETH DILLON and KARLENE MANLEY

The Massachusetts Bar Association’s Young Lawyers Division is designed for attorneys in practice for 10 years or fewer (or since no earlier than 2005). Many of these young lawyers are employed in solo practices and small firms as a result of their difficulty finding employment during and after the Great Recession of 2007-2009. Now that the economy is recovering, these young lawyers have an opportunity to expand their legal practices.

Careful consideration should be paid, however, to the potential economic cost of expansion, particularly in light of changes in Massachusetts and federal employment law. Worth of consideration are:
1. Recent increases to the Massachusetts minimum wage.
2. Leave that certain Massachusetts employers are now required to provide.
3. The Department of Labor’s recent proposals to expand overtime regulations.

These laws in particular stand to impact the bottom line of solo practices and small firms at which many young lawyers are employed, and so should be afforded particular consideration prior to any hiring or other expansion.

The impact of the increasing minimum wage

The first change of note is the increased Massachusetts minimum wage. On Jan. 1, 2016, Massachusetts’ minimum wage rose from $9 per hour to $10 per hour. The minimum wage will increase again on Jan. 1, 2017, rising to $11 per hour (M.G.L. c.151, §§1, 2, 7).

The increased minimum wage will necessarily result in an increased cost of labor, which may affect solo practitioners and small firms disproportionately, as small businesses tend to hire more minimum wage and near-minimum wage employees than other businesses. Businesses that pay employees more than the minimum wage are likely to feel an economic impact as well. According to the Brookings Institute, raising the minimum wage has a ripple effect, leading to increased hourly wages for not only minimum wage earners, but also for near-minimum wage earners. The Massachusetts Budget and Policy Center estimates that 20 percent of Massachusetts workers will be directly or indirectly affected when the minimum wage increases to $11 in 2017.

While larger firms can often offset these increased labor costs with higher hourly rates or by simply absorbing the economic impact, this approach may not be feasible for smaller firms. It may be, however, that increased labor costs will at least be partly offset for smaller firms by increased turnover and increased worker productivity expected to result from the rising minimum wage.

It is important to note that firms that do not pay minimum wage or near minimum wage may also be impacted by the rising minimum wage, as they may directly benefit if workers with larger incomes choose to spend part of their additional wages on legal services.

The potential effects of Massachusetts’ scheduled minimum wage increases are hotly disputed. Small business owners themselves disagree on the nature of any impact that raising the minimum wage will have. While the United States Department of Labor claims that the majority of small business owners nationwide support increasing the minimum wage, many small business owners oppose the changes, on the belief that any benefit derived from the increased minimum wage will not offset the cost associated with it. While the topic is disputed, it is clear that small firms in particular should consider the potential impact the rising minimum wage will have on any expansion plans, and in particular, any hiring plans.

The impact of recent changes to employee leave laws

Firms considering expansion and hiring should also consider the potential impact of changes to employment leave, including leave provided under the new earned sick time law (M.G.L. c.149, §148C), the Parental Leave Act (M.G.L. c.149, §105D) and the new Domestic Violence Leave Act (M.G.L. c.149, §52E).

Under the new earned sick time law, Massachusetts employers generally earn one hour of sick leave for every 30 hours worked, up to a total of 40 total accrued hours. Employers with 11 or more employees must provide paid sick leave, whereas employers with fewer than 11 employees may provide either paid or unpaid sick leave.

Under the Parental Leave Act, employers must provide a total of 12 months of family and medical leave over a period of 12 months from the birth or adoption of a child, but this entitles employees to only eight weeks of unpaid leave. Under the Domestic Violence Leave Act employees are entitled to a total of eight weeks of leave, paid or unpaid, to seek protection or receive assistance related to domestic violence.

The overall impact of these changes has yet to be determined. Like the rising minimum wage, one direct impact will likely be increased labor costs. The new earned sick time law alone will cost Massachusetts businesses approximately $198 million, according to the Institute for Women’s Policy Research (IWPR). This amount represents a 19 cent per hour increase for employees receiving paid leave under the law.

Like with the minimum wage, increased labor costs may ultimately be offset by other factors. For example, the IWPR estimates that costs resulting from the Earned Sick Leave Act, will be more than fully offset by reduced turnover, fewer sick days (due to the decreased spread of illness at the workplace) and higher employee productivity.

Also of note is the fact that the changes do not apply to all small businesses. Again, the Domestic Violence Leave Act only pertains to employers with more than 50 employees, and the Earned Sick Leave Act only requires paid leave for employers with eleven or more employees. For firms with fewer employees, the impact may be more limited.

The potential impact of proposed Department of Labor regulations

Solo and small firms should also consider proposed changes to employment laws, including the Department of Labor’s (DOL) proposed changes to overtime regulations issued under the Fair Labor Standards Act (FLSA).

The FLSA’s overtime regulations exempt from overtime pay certain employees who meet minimum tests related to their primary job duties (the so-called “primary duties test”) and who are paid a salary over a minimum amount. Currently, the standard salary level required for exemption is $455 per week (or $23,600 per year). The DOL proposes to more than double the standard salary level required for exemption, to $970 per week (or $50,440 per year), and proposes the adoption of a mechanism which would automatically update the standard salary for exemption going forward.

Raising the standard salary level for exemption may not be as impactful for solo and small firms as for other small businesses, as law firm employees who would be affected under any new regulations are fairly limited. For example, the DOL has repeatedly held that paralegals are non-exempt no matter the base salary, based on their primary duties. Similarly, legal secretaries and receptionists generally are and will remain non-exempt, again based on their duties. In contrast, lawyers are specifically exempted by regulation, no matter their salary (C.F.R. §541.304). These employees are unlikely to be directly affected by any change in the FLSA regulations.

Some law firm employees will be affected by the proposed changes, however. Most notably, it is expected that law clerks, summer associates and legal interns who have not already obtained a law degree, and who make less than $970 per week (or $50,440 per year) would be entitled to overtime under the proposed changes.

A bright future for young lawyers

The future looks bright for young lawyers. Using the same entrepreneurial skills and innovative approaches they used in job-hunting immediately after the Great Recession, young lawyers are growing their firms and expanding their opportunities in the recovering economy. To ensure the continued success of this growth, young lawyers, and specifically solo practitioners and those employed in small firms, should take particular care to consider the impact of the ever-developing world of employment law.

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A primer for the new immigration practitioner

BY JOSEPH MOLINA FLYNN

Understand your client’s fears

Immigration clients, at times, feel disillusioned by the way our government has treated them. Undoubtedly, some of this feeling is compounded by the rhetoric we hear daily on the news (generally from the likes of Donald Trump). But even when their experiences are not shaped by the virulently biased media, clients experience fear and confusion when seeking immigration relief.

Lawyers need to be able to penetrate through that fear and establish a trusting relationship allowing the client to be completely honest and forthcoming. In reality, attorneys must build trust with every client. Still, the cultural nuances of immigration practice make trust building particularly unique.

At a minimum, attorneys should become familiar with the culture of the clients they represent. The tone of the intake should be geared toward each client’s sensitivities. Intakes can prove far more fruitful if not handled as a question and answer session. Focus instead on the services you can provide and how you can help the client get the desired relief. Minutiae can be gathered later in the process. This approach will leave clients with the sense that the attorney cares about their legal issues and respects their emotional space.

Know when and how to say ‘no’

One of the more difficult tasks I have encountered in my immigration practice is learning when to say “no.” Immigration clients have compelling stories, and as practitioners we want to help them. The Immigration and Nationality Act (INA) is both comprehensive and limited in its reach, which, unfortunately, means that not every client has a ground for relief available.

The following (oversimplified) dialogue is common in immigration intakes: “I have been in the United States without documentation for the past 25 years. I entered without inspection; I am tired of living in the shadows, and all I want is to have some sort of work permit.” These stories are so pervasive that our instinct is to help whatever way we can. It is imperative to understand that charging a client legal fees for something we cannot, in fact, accomplish is unethical and can leave clients with the sense that the attorney cares about their legal issues and respects their emotional space.

Decide how you will structure your fees

Fee structure is fear-inducing, particularly early in practice. I am no exception. I was admitted to practice in the commonwealth in June of this year. Gauging the break-even point for my cases has proven difficult. Thus, the fee-setting conundrum.

In order to eliminate some of the uncertainty, I have structured my immigration practice as a flat fee practice. I keep track of the amount of time I spend on each matter as a barometer for whether my fees are too high or too low. Because I am careful when setting my fees, when a client simply does not want to pay the flat fee charged, I decline representation. For those clients who cannot afford the fee, I analyze whether I can accept the matter on a pro bono or partial pro bono basis. If it makes economic sense, I take it; if it does not, I refer the client to other providers within the community who may be able to provide more affordable representation.

Know the landscape and sell yourself

Immigration clients are savvy. They communicate with others within immigrant communities, they talk about the merits of their cases with each other, and they price shop. Price shopping can lead clients to seek the services of unlicensed individuals (“notarios”) and non-attorney practitioners who are accredited by the Board of Immigration Appeals (BIA). As an immigration practitioner, you’ll need to learn to deal with this competition. Notarios and non-attorney practitioners alike will often promise to do the same work as an attorney for a portion of the price. Notarios, however, will often leave their clients in worse situations due to shoddy work. Therefore, the client may eventually end up having to pay an attorney much more than the initial quote to resolve the issue the notario created, make sure your client is aware of that possibility and use the opportunity to sell your credentials.

Not all non-attorney practitioners can be painted with the same brush. Though many religious institutions are licensed by the BIA to represent individuals in immigration proceedings, these institutions fill the gap by providing low-cost or pro bono services to those individuals in the community who are most in need of assistance. To that end, these institutions can be our allies; they can recognize when cases go beyond their level of expertise and can become a plentiful referral source.

Ultimately, immigration work is both challenging and rewarding. Receiving good news for immigration clients is a great source of pride for the immigration practitioner. Approach immigration practice carefully, start with the basics and build from there. Most importantly, know when to look to your mentors for assistance.
Pharmaceutical regulation: Symptoms may include cheaper drugs and fewer ads

BY ELITA MARIANI

You see it every time you turn on the TV. The prompt to “talk to your doctor,” paired with rushed, small-print, side-effects disclosure, hastily run across the screen. There is a chance that this may change. On Nov. 17, 2015, the American Medical Association (AMA) called for a ban on direct to consumer advertising of prescription drugs and medical devices.

The cost of health care is a huge issue in America right now. Pharmaceutical companies have placed themselves in the very center of the debate with their pricing practices. For example, Valeant Pharmaceuticals acquired two old heart drugs in February 2015 and promptly increased their prices by more than 500 and 200 percent. As a result, the only relief from the stigma of juvenile records is the inherent privacy of closed juvenile court proceedings, reporting restrictions governed by G.L. c. 276 §100A, and the sealing process governed by G.L. c. 276 §100B.

The sealing process, however, is both delayed and insufficient in the relief it provides to juveniles. Juvenile records in Massachusetts are only eligible to be sealed three years from the date of last disposition. Even after the three year waiting period, a criminal, insufficient relief as certain employers, college admission officers and landlords may all still access limited information. The only options are often the gatekeepers in determining whether young people may leave their past behind them in favor of more productive, meaningful and successful lives. This limited access to information invites speculation about the nature of the sealed record that is consequently made difficult to reconcile.

As juveniles begin their adult lives, the existence of a juvenile record becomes ever more burdensome. National studies have shown that 95 percent of youth in the juvenile justice system have committed only nonviolent offenses. Thus, the risk of eliminating even limited access to these records is trivial in terms of actual community safety versus the stigma that attaches to these juveniles. Secondly, neurodevelopmental science shows that adolescent brains are not fully developed and are capable of mature and non-impulsive thought processes until these young adults have reached their mid-twenties. Thus, a current legislative scheme governing juvenile records fails to acknowledge this well accepted difference.

In addition, the existence of a criminal record is often enough to drive compliance. One recent attempt to regulate pharmaceutical companies regards the promotion of drugs to physicians. The Food and Drug Administration (FDA) brought suit under misbranding charges under the Food, Drug and Cosmetic Act in United States v. Caronia. Decided on Dec. 3, 2012, this was the first time a federal district court directly addressed the connection between the First Amendment protection of speech and pharmaceutical company promotion of FDA-approved drugs for non-FDA approved uses (also known as “off-label”).

On Aug. 7, 2015, in Amarin Pharma, Inc. v. FDA, the United States District Court for the Southern District of New York interpreted Caronia broadly to protect any truthful, non-misleading speech to physicians about legal (although off-label) use. One of the FDA’s concerns with Amarin’s proposed disclosure to physicians was that the disclosure would cause a physician to prescribe Vascepa in lieu of promoting healthy dietary and lifestyle changes or prescribing statin therapy. The FDA commissioner, acknowledging the issue, claims that physicians are able to understand nuanced drug distinctions and clinical results.

Finally, the Amarin court affirmed that the FDA can pursue misbranding charges under the FDCA against pharmaceutical companies promoting speech that is not truthful or non-misleading. Because “truthful” and “non-misleading” are vague and subjective terms that change as new science and medicine develops, pharmaceutical companies will likely keep the FDA involved in the creation and promotion of marketing materials and labeling regardless. Thus, like for subpopulations, the fear of action (here a misbranding suit) may be enough to drive compliance despite these two pro-pharmaceutical company rulings.

Another recent attempt to regulate pharmaceutical company promotional speech regarding the advertising of drugs to consumers. The AMA has called for a total ban on prescription drug and medical device advertisement. Apparently, the cost of generic and prescription drugs has increased consistently (4.7 percent this year), and New Zealand is the only other country in the world that allows advertising of prescription drugs directly to consumers. The AMA believes that the large amount of money spent on ads contributes to this increase in drug prices.

The AMA is also concerned that such advertising causes customer confusion and creates high demand for expensive treatments. If prescriptions are too costly, patients will delay treatment, creating a real risk to the health of the public. The AMA also focuses on protecting pharmaceutical advertisement targeted to consumers mirrors one of the FDA’s concerns in Amarin with proposed disclosures to physicians. However, the Amarin court’s assurance that physicians can adequately interpret the disclosure message does not apply in the area of consumer advertising. It will be interesting to see how this plays out, especially given the limits Amarin has set on the FDA’s ability to regulate pharmaceutical speech.

By Elita Mariani

Elita Mariani is a third-year student at Boston College Law School. She has served as a president of the student-run Health Law Society, and worked at atheahealth, Tufts Medical Center and the law firm of Donoghue, Barrett & Singal. She received her undergraduate degree from Cornell University.
Essential free software for your law practice

BY SAMUEL A. SEGAL

Software is at the heart of any successful law practice. It is the engine that keeps the gears turning. For young lawyers, small firms and solo practitioners, cost is a large factor in deciding what software to use. There are many problems that are addressed with software, and if you know where to look, there are many free and fully functional programs to use. The following are some of the best free software that almost any law practice can use.

CCleaner

Piriform’s CCleaner is a utility program that removes unneeded temporary files and data from your computer. With every web page you visit and email you download, your computer saves a bit of the data to your hard drive. Over time, this data accumulates, taking up ever-larger portions of your computer’s memory. This makes your computer run slower, because it has to sort through this unneeded data to get to what you want.

CCleaner is the solution. It will delete these unnecessary leftover files to clear up space on your hard drive. This, in turn, will allow your computer to run faster like it did when it was new.

Running the program takes just a few minutes and can revive computers that have slowed down with age.

CCleaner can also be used to clean up your computer’s registry. The registry will affect your significant files in any way (client files, emails, contacts, etc.). You do not need to worry about accidentally deleting important files with CCleaner.

CCleaner can erase saved Internet passwords, however, so you will likely have to re-log into email accounts and other browser programs once it is done. Make sure you know your passwords.

CCleaner should be run about once per month for best results. A premium version is available, but not needed. Download it at www.piriform.com/ccleaner.

AVG

AVG Free edition is a powerful anti-virus and anti-malware program to protect the security of your systems and files. The security of your client files and documents is paramount and you should not be lax in your computer protection. Using a program like AVG is a good first step. It provides virus and malware scanning features with automatic updates.

However, it also helps to know basic Internet safety. For instance, do not open attachments on emails that you do not recognize. Many hackers attempt to install malware on computers through fake “fax” emails that insist you have received a fax. If you do not recognize where the email came from, do not open the attachment. If you are unsure whether an attached file is a virus, you can right-click the file select “Scan with AVG” to see if it contains a virus or piece of malware.

Overall, you should be scanning your computers for viruses and malware regularly in my practice is forms being filled out incorrectly. Paint.net is your solution. With client assent, you can use it to revise the forms to correct the information for submission.

A second problem I often encounter are documents that are too dark to print or fax. With Paint.net, you can turn up the brightness on the image and erase unwanted streaks so that it transmits properly.

Paint.net

Paint.net is the closest thing to Photoshop a lawyer should ever need. It is a fully-functional image manipulator/editor. One problem I encounter regularly in my practice is forms being filled out incorrectly. Paint.net is your solution. With client assent, you can use it to revise the forms to correct the information for submission.

SyncToy

SyncToy is a free Microsoft Windows application that makes file backups easy. When run, SyncToy checks both changes from one into the other, making two identical copies of your folder in two places.

Creating backups of client and other vital digital files is a must in this legal age. SyncToy offers a free method of creating these backups without paying the expensive cloud storage and backup fees offered by many commercial competitors.


Samuel A. Segal is the founder and principle of the law offices of Samuel A. Segal. He has served on the Technology Committee of the Young Lawyers Division for four years and on the MBA’s Technology Committee, as of fall 2015.

My Bar Access Q&A

Q: Good Morning Everyone, Can someone please let me know what language you add into the end of a Deed regarding a title exam not being conducted. I’ve seen it before but cannot remember the exact language. Thank you in advance!

Karina Krikorian

Parnagian & Marinelli PC

Boston, MA

A: I’ve seen this used by estate planning attorneys when notarizing a deed into an estate planning vehicle: No title search was requested and none was performed.

Michael E. Katin

Scheier Katin & Epstein PC

Acton, MA
In Memoriam

William E. Bernstein

William E. Bernstein, 85, who served as Massachusetts Bar Association president from 1983-84 and as a partner at Bernstein and Stern Law Office, passed away on Jan. 8. Bernstein, of Worcester, practiced law for more than 60 years and served as past chairman of the Board of Bar Overseers, past president of Mount Pleasant County Club, former member of the Judiciary Nominating Commission, as a member of the Federal Judicial Nominating Committee of Massachusetts, the Massachusetts Trial Lawyers Association, past chairman of the Committee of Public Counsel Services, fellow of the American Trial Lawyers, and past member of Commission on Appointment of Federal Judges, Magistrates, U.S. Attorneys and Marshalls. The recipient of Anna Maria College’s honorary doctorate of law degree, Bernstein was honored with many awards and recognitions. He was also a member of the board of trustees of Temple Emanuel.

Harold Dondis

Harold Dondis, a Massachusetts Bar Association life member and a former managing director at Rich May, where he practiced for 70 years, has died. Dondis served as founder and former chairman of the U.S. Chess Trust (the former charitable arm of the U.S. Chess Federation) and wrote the Boston Globe’s Chess Notes column for more than 50 years.

James Francis Meehan

The MBA will host a celebration of the life of James Francis Meehan on Feb. 8. Please join us to share joy, camaraderie and celebration of the life and times of a titan of the trial bar. Co-sponsored by Meehan, Boyle, Black & Bogdanow PC, together with the MBA, MATA, the BBA, the FBA-Mass. Chapter and MassDLA.

Monday, February 8, 2016, 4 – 6 p.m.
Massachusetts Bar Association, 20 West St, Boston, MA 02111
R.S.V.P. to Alex Buckingham: abuckingham@meehanboyle.com

David Reed Lucas

David Reed Lucas, principal and founder of Lucas Law Group LLC, is pleased to announce the paperback version of his book, “Family Law in America 2d.” has been published by Oxford University Press and is available through Amazon.com. He said the book, which contains a great deal of material on Massachusetts Family Law, has been hailed as “sure to become a classic.”

Maureen Reilly

Maureen Reilly is pleased to announce the opening of a New York branch of Reilly Law. The New York office, which will focus on family law, personal injury, civil rights and general litigation, is located in downtown Manhattan at 11 Broadway, New York, NY 10004.

Aaron Hutchins

Aaron Hutchins of Hutchins Law, P.C. of Northborough, is pleased to announce the opening of their second office in Hudson. The firm continues to serve individuals needing family, criminal, civil and personal injury services.

Announcements

ESSEX

MBA Past President Murshe V. Kazarosian announced a firm change. Kazarosian Costello LLP continues to combine experience and commitment from a team with a record of success with attorneys licensed to practice in Massachusetts, New Hampshire, Maine, New York, California and the Federal Courts.

Patricia S. Fernandez announced that her firm, Patricia S. Fernandez & Associates, has relocated to 4 High St, Suite 306, North Andover, MA 01845, a newly refurbished space in a former mill building in the area known as Machine Shop Village. Her firm’s email addresses, phone and fax numbers remain the same.

John J. Hanrahan is pleased to announce that his law office has moved to Haverhill. His practice focuses on criminal defense trials and appeals, civil litigation and family law.

MIDDLESEX

Adam M. Hamel has been elected a director of McLane Middleton. A member of the firm’s litigation department in Woburn, Hamel concentrates his practice on business, employment and probate matters.

Colleen Hunt, an attorney at Nigro, Pettepit & Lucas in Wakefield, recently accepted the Shining Star Award at the National Multiple Sclerosis Society/New England Chapter Gala, an award presented to the MS annual walk’s top fundraising team captain. Hunt, captain and founder of Team MB, and her 10-member team, have raised nearly $10,000 for MS research in just two years. The team is comprised of family and friends who walk in the annual event in Wakefield to raise money in honor of Hunt’s mother who was diagnosed with the disease six years ago.

Aaron Hutchins, Hudson (See Worcester).

SUFFOLK

John J. Hanrahan

R.S.V.P. to Alex Buckingham: abuckingham@meehanboyle.com

MATA, the BBA, the FBA-Mass. Chapter and MassDLA. trial bar. Co-sponsored by Meehan, Boyle, Black & Bogdanow PC, together with the MBA, MATA, the BBA, the FBA-Mass. Chapter and MassDLA.

Monday, February 8, 2016, 4 – 6 p.m.
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R.S.V.P. to Alex Buckingham: abuckingham@meehanboyle.com

WORCESTER

Sanford N. Katz of Boston College Law School in Newton announced that the paperback version of his book, “Family Law in America 2d,” has been published by Oxford University Press and is available through Amazon.com. He said the book, which contains a great deal of material on Massachusetts Family Law, has been hailed as “sure to become a classic.”

Professor Sanford N. Katz

Adam M. Hamel

Colleen Hunt