



Legislative Update

## TRIAL COURT FACES REDUCTION IN FUNDING; SENATE PASSES JUVENILE JUSTICE REFORM BILL

In Gov. Charlie Baker's fiscal year 2017 budget, the Trial Court was left with a \$6.7 million reduction in funding from the Legislature's final budget. As the Legislature begins to take up veto overrides, the Massachusetts Bar Association will continue to fight for legislative overrides of the governor's vetoes of Trial Court line items.

Current funding for fiscal year 2017 of \$633 million does not support current staffing levels and may likely result in reduced public hours in clerk's and reg-

istrar's offices, increased caseloads for probation officers, security personnel shortages, and a delay of the ongoing effort to digitize paper court records.

The Massachusetts Legal Assistance Corporation was spared a reduction and is funded at \$18 million for fiscal year 2017, a \$1 million increase over fiscal year 2016.

### Juvenile justice reform bill

In legislation passed by the Senate the second

week of July, juvenile records of misdemeanors would be expunged. The legislation would also create a parent/child privilege, exclude young children (7-10 years old) from delinquency proceedings and codify the Juvenile Court's practice of banning indiscriminate shackling, among other provisions. The bill now awaits action in the House of Representatives. To read the legislation, please visit [malegislature.gov/Bills/189/Senate/S2417](http://malegislature.gov/Bills/189/Senate/S2417).



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

BY JOE KOURIEH

Rewinding back a few decades, few of even the most prescient law professionals around Boston would have expected the curious Quincy kid nosing around the local courthouses to be, in August of 2016, rounding off a successful year as president of the Massachusetts Bar Association.

But as that kid, Robert W. Harnais, would demonstrate to his peers, going beyond what's merely expected is the first step to becoming truly respected.

That's why Harnais has spent the last year traversing the four corners of the commonwealth getting to intimately know its countless communities, from the bay to the Berkshires. He has taken steps to ease the impact of the current opioid crisis on those

communities and made bold strides to foster unity and camaraderie in the legal profession.

Harnais is humble about the leadership role he has held at the MBA and about the importance of the legal community in society.

"As lawyers, we provide a product, and that product is justice," he said. "The product is people's rights, and their protection. The product is > 7



MOBILE

The Massachusetts Bar Association's My Bar Access app is now available! Download the app today from the Apple Store or Google Play by searching for **MassBar: My Bar Access**, and instantly connect with fellow members. Share practice information, documents and tips through discussions, blogs and more — right from your phone or tablet.

STAY CONNECTED

GET THE NEW MBA APP

Push notifications are available for announcements and direct messages. Instantly receive the latest news from your section/division.



PAGE 9



VOLUNTEERS HONORED AT RECOGNITION DINNER

PAGE 11

## INSIDE

2

PRESIDENT'S  
VIEW: THANK  
YOU

20

GUIDE ON  
CONTACTING  
JURORS  
POST  
VERDICT

24

MASSBAR  
BULLETIN

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

## PRESIDENT'S VIEW

## Thank you

They say time flies when you're having fun. That's never been truer than during my year as the president of the Massachusetts Bar Association.

Since I took the gavel in September, I have had the opportunity to travel around the state and meet many of our members at various MBA functions. We've shared many stories and more than a few laughs. While it's been a busy year, it's moments like those that have made this experience truly rewarding and unforgettable.



Robert W. Harnais

I was lucky enough to be able to enter into this profession by attending New England Law | Boston nights while working days, (thank you Larry and Dean O'Brien). I never envisioned myself as the president of the MBA. So I began my term as a genuinely humbled, small general practitioner out of Quincy. I was proud of being the first Hispanic president of our organization, and I wanted to emphasize the collegiality in our profession that has helped make my own career in the law so enjoyable and satisfying.

Our success was made possible this year by the many amazing people I got to work with along the way. I want to thank my fellow officers — Jeff, Chris, Chris and John — for lending their ears, their time and even their jokes to me during this journey. And thank you to Marty Healy and the great staff of the MBA for making sure I didn't mess this up (much). It has been one of the great honors of my life to represent the MBA for the past year. I couldn't have done it without all of you.

One of the things I take away from this past year is a renewed respect and affection for the law as it is practiced in our state. From Cape Cod to Cape Ann to Mount Greylock to Stockbridge and Sturbridge and all points in between, our members represent the highest ideals of the profession. Your erudition and earnestness were clearly evident in my meetings with you at the various events. From every interaction with you I learned so much about our profession — and even some very practical tips that I will take with me as I continue my own practice.

Access to justice is one of the main planks of a democracy. Without it, all the other grand ideals are deflated. You are the people who maintain this access and make it available to citizens of all walks in our commonwealth. Every day in our courthouses and legal offices, members of the MBA carry out what may seem to be small tasks, but they are enormously important. It is not a stretch to recognize you as unsung heroes, and I am grateful for the opportunity this year has given me to meet more of you in person.

Obviously, the adversarial system in which we work can lead to contentiousness. It has always been that way, and always will be. But in my year as president, I have tried to emphasize the idea of not dwelling on it. Instead, make stronger efforts to socialize, enjoy one another's company and place more focus on the areas we share in common. We're all busy. I understand. But take the opportunities when they're there. And make opportunities even when they're not there. We'll be a stronger profession for it.

For those of us working in the criminal arena, I have tried to highlight some ways in which we can help society deal with one of the greatest problems of our time: the opioid crisis. It is a problem that cuts across all demographics. It plays no favorites. It causes pain and kills indiscriminately. When we are working with clients who are addicted, we must use all our talents — and wisdom — to do what is in our clients' best interests. Such situations can be extremely complex, but I know of no one better suited to be so closely involved than the members of the MBA. I am so proud of the work done by the volunteers on our Section 35 program. Because of you, the MBA has filled a void and brought hope to families across the commonwealth.

Speaking of families, I would be nothing without mine. I cannot wait to spend more time with them — and I hope the feeling is still mutual! But seriously, despite the extra meetings and travel this job brings, I am so grateful for my wife and kids, who were there for me unconditionally. Thank you for putting up with me. You know, I've learned a lot and received support from mentors, law partners, my fellow officers and friends. But my family has always been the greatest teacher and cheerleader, and I've never felt that love more than this year. I am truly blessed. Especially with the arrival of my new granddaughter Evie, I can't wait to be able to enjoy her and fill her up with sugar before sending her home (that's going to be fun to watch).

When my term in office ends on August 31, I will step down with the fondest of memories — and, to be honest, what must be a world record for most chickens eaten (who knew there could be so many different recipes for conference-center chicken in one state? At one point I think I coughed up a feather).

But most of all, I will take away the strong conviction that the MBA is the greatest bar association on the planet and one whose future looks very, very bright.

My respect for the Massachusetts Bar Association and its members has never been greater. I urge each and every one of you to participate in and contribute to the MBA's ability to do good so either get a mentor or become a mentor. Thank you for an unbelievable year, and keep up the great work!

Thanks Pete!

## BAR SEEN

Snapshots from around the MBA



## Keches earns MBA Community Service Award

MBA President-elect Jeffrey N. Catalano presented the MBA Community Service Award to George N. Keches (right) at the Bristol County Bar Association Annual Dinner on May 11, at the New Bedford Whaling Museum. Keches was honored for his service to his local community. ■

MASSACHUSETTS  
LAWYERS JOURNAL

Vol. 23 / No. 8 July/August 2016

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

ASSISTANT EDITOR: Kelsey Sadoff

ASSISTANT EDITOR: Mike Vigneux

SENIOR DESIGN MANAGER: N. Elyse Lindahl

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

LEGAL EDITOR: Martin W. Healy, Esq.

DIRECTOR OF POLICY AND OPERATIONS: Lee Ann Constantine

PRESIDENT: Robert W. Harnais, Esq.

PRESIDENT-ELECT: Jeffrey N. Catalano, Esq.

VICE PRESIDENT: Christopher A. Kenney, Esq.

TREASURER: Christopher P. Sullivan, Esq.

SECRETARY: John J. Morrissey, Esq.

© 2016 Massachusetts Bar Association

Materials not to be reproduced without permission.

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

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

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

Email address: lawjournal@massbar.org.

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



A publication of the Massachusetts Bar Association

THE WARREN GROUP  
DESIGN / PRODUCTION / ADVERTISING

ADVERTISING (617) 896-5307 | EVENTS (617) 338-5359

## INSIDE THIS ISSUE

## ON THE COVER

- TRIAL COURT FACES REDUCTION IN FUNDING; SENATE PASSES JUVENILE JUSTICE REFORM BILL
- PRESIDENT HARNAIS: FROM HUMBLE BEGINNINGS TO THE HIGHEST OFFICE

## NEWS

- 2 PRESIDENT'S VIEW
- 3 CALENDAR OF EVENTS
- 4 NEWS FROM THE COURTS
- 4 SQUILLANTE NAMED TO COURT ADMINISTRATOR SEARCH COMMITTEE
- 4 PRACTICE LESSONS FROM THE BAR
- 5 MASSBAR EDUCATES
- 6 BULKLEY RICHARDSON DEFINED BY EXPERTISE, EXPERIENCE AND COMMUNITY COMMITMENT
- 6 TIERED COMMUNITY MENTORING STUDENT MOURNED AS BRIGHT STAR
- 8 YLD HOSTS ABA NEW ENGLAND REGIONAL SUMMIT
- 8 REFLECTIONS ON A SUCCESSFUL YLD YEAR
- 8 MEMBERS GIVE BACK
- 9 GET THE NEW MBA APP
- 10 WESTERN MASS. MEMBERS PROVIDE FREE LEGAL ADVICE AT SEMIANNUAL DIAL-A-LAWYER PROGRAM
- 11 FIVE MEMBERS HONORED AT VOLUNTEER RECOGNITION DINNER
- 12 MBA TEAM RUNS 'LAWYERS HAVE HEART' 5K
- 12 MBA SUPPORTS BOSTON 'BLOOD DONAHS'
- 13 MASSACHUSETTS BAR FOUNDATION

## 14 NOTABLE &amp; QUOTABLE

- 15 MBA HOSTS SECOND SUMMER SOCIAL
- 16 EXPERTS & RESOURCES
- 17 CUBAN LAW SCHOOL DEANS VISIT THE COMMONWEALTH
- 18 LAWYERS CONCERNED FOR LAWYERS
- 18 THE TROUBLE WITH TECHNOLOGY (AND HOW TO FIX IT)
- 20 A GUIDE TO THE NEW RULES ON CONTACTING JURORS POST VERDICT
- 20 MEMBERS HELPING MEMBERS: MY BAR ACCESS Q&A

## SECTION REVIEW

- 21 A PROFESSIONAL APPROACH TO LEGAL INVESTIGATIONS
- 22 WORKERS' COMPENSATION 1991 TO DATE: 25 YEARS IN REVIEW
- 23 THE TRANSFORMATION OF CIVIL LITIGATION

## MASSBAR BULLETIN

- 24 ANNOUNCEMENTS

# CALENDAR OF EVENTS

FOR MORE INFORMATION, VISIT [MASSBAR.ORG/EVENTS/CALENDAR](http://MASSBAR.ORG/EVENTS/CALENDAR)

## July

### Wednesday, July 27

YLD Quest Night at Boda Borg  
6-9 p.m.  
Boda Borg, 90 Pleasant St., Malden

### Wednesday, July 27

Grand Rounds - Probate and Family Court  
8:30 a.m.-1 p.m.  
Suffolk Probate and Family Court - Brooke Courthouse  
24 New Chardon St., Boston

## August

### Wednesday, Aug. 3

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

### Monday, Aug. 8

Affinity Bar Mixer & Networking Event  
6:30-9:30 p.m.  
The Liberty Hotel, 215 Charles St., Boston

### Thursday, Aug. 18

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

### Friday, Aug. 26

End of Summer Boat Cruise  
6-8 p.m.  
Spirit of Boston, 200 Seaport Blvd., Boston

## September

### Wednesday, Sept. 7

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

### Tuesday, Sept. 13

Latest in the Law:  
Workers' Compensation Law  
4-6 p.m.  
MBA, 20 West St., Boston 

### Thursday, Sept. 15

The Massachusetts Paid Sick Leave Law - Let the Enforcement Begin!  
12:30-2 p.m.  
MBA, 20 West St., Boston 

### Thursday, Sept. 15

Workers' Comp. Settlements after the *DiCarlo* Decision  
4:30-7 p.m.  
Holiday Inn, 700 Myles Standish Blvd., Taunton

### Thursday, Sept. 22

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

### Thursday, Sept. 22

Practicing with Professionalism  
8:30 a.m.-4:30 p.m.  
University of Massachusetts Lowell Inn & Conference Center, 50 Warren St., Lowell

### Thursday, Sept. 22

2016-17 "Welcome Back" Member Reception  
5:30-7 p.m.  
Back Deck, 2 West St., Boston

### Monday, Sept. 26

Drones — Surveillance and Warfare  
5-7 p.m.  
MBA, 20 West St., Boston 

### Wednesday, Sept. 28

It's Confidential: Privilege Law in Massachusetts  
4-7 p.m.  
MBA, 20 West St., Boston 

### Thursday, Sept. 29

Divorce Primer: A View from the Bench and Bar  
5-7 p.m.  
MBA, 20 West St., Boston 



REAL-TIME WEBCAST AVAILABLE FOR  
PURCHASE THROUGH MBA ON DEMAND AT  
[WWW.MASSBAR.ORG/ONDEMAND](http://WWW.MASSBAR.ORG/ONDEMAND)

PAYMENT PROCESSING,  
EXCLUSIVELY  
FOR ATTORNEYS.



Proud Member  
Benefit Provider

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

## Helping law firms get paid.

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










[www.LawPay.com/massbar](http://www.LawPay.com/massbar) | 866.376.0950



**CREDIT CARD PROCESSING**

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

## News from the Courts

### Amendments to Rule 26 of the Massachusetts Rules of Civil Procedure approved

The Supreme Judicial Court has approved amendments to Rule 26 of the Massachusetts Rules of Civil Procedure, effective July 1. Reporter's Notes are available at [www.mass.gov/courts](http://www.mass.gov/courts).

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

Chief Judge Jeffrey R. Howard of the United States Court of Appeals for the First Circuit has announced that three new members were appointed to the Court's Rules Advisory Committee: E. Abim Thomas of Massachusetts, Gustavo Gelpi Sr. of Puerto Rico, and Donald C. Lockhart of Rhode Island. Attorneys Thomas, Gelpi and Lockhart will be replacing retiring members Heidi Nadel of Massachusetts, Ricardo Casellas of Puerto Rico and Lynette Labinger of Rhode Island. Lockhart will also serve as the new chairperson for the committee, replacing outgoing chairperson Ricardo Casellas.

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

### Trial Court announces opening of fifth Court Service Center

The Trial Court has announced that Court Service Centers are now operating in five courthouses across the state. The Trial Court's hope is to locate one Court Service Center in each of the state's 15 largest courthouses. The Court Service Centers are a key part of the Trial Court's mission to help people who are representing themselves in court to access the court system.

Court Service Centers provide resources to help members of the public and self-represented litigants navigate the court system. It is estimated that civil legal aid programs in Massachusetts turn away more than 60 percent of indigent clients who are eligible for civil legal aid and are seeking services due to a lack of adequate funding. Court Service Centers are one way that the court system is working to provide equal access to those

who do not have attorneys. Earlier this month, the National Center for Access to Justice released its 2016 Justice Index, measuring how all 50 states, the District of Columbia and Puerto Rico ensure equal justice for all. The Massachusetts court system ranked second in the nation overall, behind only the District of Columbia, and was ranked second in services for people without lawyers, due to the expansion of Court Service Centers across the state.

### Three chief probation officers appointed by Probation Commissioner

New chief probation officers have been appointed by Commissioner of Probation Edward J. Dolan to serve in three separate district courts across the state — the Nantucket and Edgartown, Hingham and Clinton district courts.

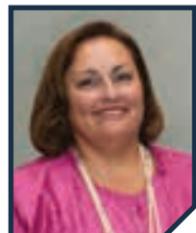
Jennifer Pease, chief probation officer at the Nantucket and Edgartown District Courts, began her new job mid-May. Hingham District Court Chief Probation Officer Jennifer Brady has been on the job since April, and Chief Patrick Ball of Clinton District began in March. The three chiefs are among a group of 11 newly appointed chief probation officers across the state.

### Trial Court establishes best practice principles in criminal sentencing

The Massachusetts Trial Court has announced that the four Trial Court departments with criminal jurisdiction have issued comprehensive criminal sentencing reports, including best practice principles to assist judges in developing individualized, evidence-based sentences that are intended to improve offenders' chances of success upon release, reduce recidivism and better secure public safety.

The Sentencing Best Practice Principles state that sentences should be proportionate to the gravity of the offense, the harm done to crime victims and the role of the offender. A sentence should be no more severe than necessary to achieve its purposes, and special conditions of probation should be narrowly tailored to the needs of the defendant, the public and the victim, because an excessive number of special conditions may increase rather than decrease the likelihood of recidivism. The principles also encourage judges to inform defendants at the time of sentencing that the court will consider early termination of their probation or lift some conditions if they fully comply. Visit [www.mass.gov/courts](http://www.mass.gov/courts) for more information. ■

## Squillante named to court administrator search committee



Denise Squillante

Massachusetts Bar Association Past President Denise Squillante has been named to a newly formed search committee tasked with finding a new court administrator to replace current Court Administrator Lewis H. "Harry" Spence, whose five-year term expires in April 2017. The Court Administrator Search Committee will be chaired by Supreme Court Justice Justice Robert Cordy.

Other members of the search committee include:

- SJC Justice Margot Botsford
- Gardner District Court Clerk-Magistrate Whitney Brown

- Trial Court Chief Information Officer Craig Burlingame
- Essex County Register of Probate Pamela Casey-O'Brien
- Quincy District Court First Justice Mark Coven
- Commissioner of Probation Edward Dolan
- Superior Court Chief Justice Judith Fabricant
- Ruth Ellen Fitch
- Appeals Court Justice James McHugh (ret.)
- Worcester County Clerk-Magistrate Dennis McManus
- Deputy Court Administrator James Morton
- Housing Court Chief Justice Timothy Sullivan

## Practice lessons from the bar



In May, the Massachusetts Bar Association hosted its 37th Annual Labor & Employment Law Spring Conference at Suffolk University Law School. Presented by the MBA's Labor & Employment Law Section, the conference featured a keynote address from U.S. District Court Chief Judge Patti B. Saris. The conference also offered a mediation panel discussion and presentations on "Lessons for the Bar from Uber Litigation and other Class and Collective Actions" and "Critical Labor and Employment Law Developments."

In addition, the MBA's Alternative Dispute Resolution Committee hosted a best practices event in Boston. Skilled and experienced experts discussed collaborative law, case evaluation and early mediation. These processes and others are part of a growing dispute resolution trend, referred to as Planned Early Negotiation (PEN). Attendees also gained invaluable practice tips and learned about expanding options for resolution. ■



**MASSBAR  
EDUCATES**

# YEAR IN REVIEW

“ The MBA is proud to celebrate another successful year of fulfilling its mission of providing high quality diverse education opportunities (from *Ski-LE* to an update on lawyer conducted voir dire) to thousands of lawyers across the commonwealth. ”



Hon. Bonnie H. MacLeod (ret.)

## OUR 2015–16 CLE YEAR BY THE NUMBERS

**MORE THAN 50**



courses offered from September to June are currently available On Demand, along with many other valuable courses offered in previous years.

**MORE THAN**

**93**



CLE seminars, symposiums and conferences were offered throughout the association year, including six Practising with Professionalism courses and eight conferences.



**MORE THAN 850**

attorneys participated in our CLE benefit by accessing our real-time webcasts.

**MORE THAN**

**2,000**



On Demand views.

## 2015–16 MBA CLE PROGRAM HIGHLIGHTS



The MBA's *A View from the Bench*, *Feed Your Mind*, *Latest in the Law* and *Lifecycle of a Business* programs offered practice tips.

Our annual conferences included the 25<sup>th</sup> Annual Family Law Conference, Third Annual Probate Law Conference, 42<sup>nd</sup> Annual Robert Fuchs Labor Law Conference, 13<sup>th</sup> Annual In-House Counsel Conference, How to Start and Run a Successful Solo or Small Firm Practice, Inaugural Complex Commercial Litigation Conference, 37<sup>th</sup> Annual Labor & Employment Law Spring Conference and the 2016 Annual Health Law Symposium.



Our *Practicing With Professionalism* courses helped prepare and educate close to 500 new attorneys.



Our Second Annual *Ski-LE*, provided a fun and interactive approach to learning.

## A LOOK AHEAD UPCOMING PROGRAMS AND CONFERENCES

### Civil Rights & Social Justice

#### Drones — Surveillance and Warfare

Monday, Sept. 26, 5–7 p.m., MBA, 20 West St., Boston

### Family Law

#### Divorce Primer: A View from the Bench and Bar

Thursday, Sept. 29, 5–7 p.m., MBA, 20 West St., Boston

### Labor & Employment

#### The Massachusetts Paid Sick Leave Law — Let the Enforcement Begin!

Thursday, Sept. 15, 12:30–2 p.m., MBA, 20 West St., Boston

### Litigation

#### It's Confidential — Privilege Law in Massachusetts

Wednesday, Sept. 28, 4–7 p.m., MBA, 20 West St., Boston

### Workers' Comp

#### Latest in the Law — Workers' Compensation Law

Tuesday, Sept. 13, 4–6 p.m., MBA, 20 West St., Boston

#### Workers' Comp. Settlements after the *DiCarlo* Decision

Thursday, Sept. 15, 4:30–7 p.m., Holiday Inn, 700 Myles Standish Blvd., Taunton

SAVE THE DATES



### 26<sup>th</sup> Annual Family Law Conference

Friday, Oct. 14–Saturday, Oct. 15  
Chatham Bars Inn, 297 Shore Road, Chatham

### Fourth Annual Probate Law Conference

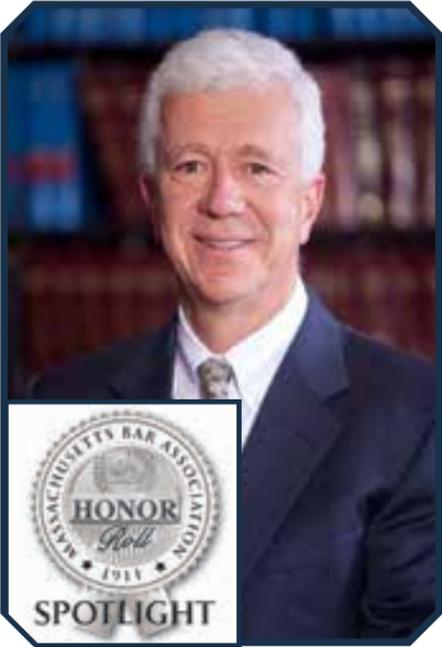
Friday, Nov. 18  
Four Points by Sheraton Norwood  
1125 Boston Providence Turnpike, Norwood

### 14<sup>th</sup> Annual In-House Counsel Conference

Thursday, Dec. 1  
The Westin Waltham Boston, 70 3<sup>rd</sup> Ave., Waltham

A special thank you to all the education committee members, our faculty and volunteers who make MBA CLE the leader in higher learning.

# Bulkley Richardson defined by expertise, experience and community commitment



## What types of law does your firm handle?

Bulkley Richardson provides high-quality legal services to clients. The majority of our 40-plus lawyers are involved in litigation, business and finance, and health law.

## Are there any areas where the firm has made a name for itself?

We have a long-standing reputation for successful litigation, including complex business disputes, professional malpractice defense and white collar criminal defense. On the corporate side, for decades our health law practice has been very strong, and we have assisted clients in completing numerous business acquisitions and sophisticated financing transactions. More recently, we have developed an excellent reputation for our work with startups and entrepreneurs. We also are known for our expertise in assisting tax exempt organizations.

## What firm attribute do clients find most attractive?

Our clients understand that their goals are our goals. We take the time to understand their businesses and objectives. We partner with them to achieve what is important to them. Obviously,

the expertise and experience of our lawyers are critical to implementing this approach, and to delivering desired results efficiently. Finally, our clients appreciate that our integrity is beyond question, and that our commitment to our community is an essential element of our firm culture.

## Briefly describe a recent “win” or client success story that the firm is proud of.

A number of our lawyers recently assisted our client Baystate Health, Inc. in the development of a new combined heat and power plant. Part of the \$27 million cost will be funded through a resiliency grant from the U.S. Department of Housing and Urban Development. The plant will result in a significant reduction of greenhouse gases, provide substantial savings in energy costs to the health system and allow the health system to operate without interruption in the event of a utility crisis.

We also are proud of our involvement in the development by Amherst College of a new Science Center.

## Describe a recent pro bono project the firm has undertaken.

We recently helped the Springfield Chamber of Commerce, Inc. merge with the Affiliated Chambers of Commerce of Greater Springfield, Inc. to become the Springfield Regional Chamber of Commerce, Inc. This helped the chambers implement a strategic objective to streamline operations into a single entity, so that services could be delivered more efficiently.

## Is your firm regularly active with any organizations outside of the MBA?

Our firm, and our attorneys individually, are involved in many different charitable and civic organizations. Jeffrey Poindexter serves on the Judicial Nominating Commission, John Pucci serves on the Special Judicial Nominating Committee for the Supreme Judicial Court, and David Parke is a director and clerk of the Springfield Regional Chamber of Commerce, Inc. and a member of the MCLE business and commercial

curriculum advisory committee. Scott Foster is a director and president of Valley Venture Mentoring Service, Inc. Melinda Phelps is clerk of the Spirit of Springfield, Inc. Bulkley Richardson is also proud to partner with and support Friends of the Homeless and Springfield School Volunteers. Bulkley Richardson lawyers serve on many other boards and chair many committees throughout the communities we serve.

## Anything exciting announcements for the firm?

Bulkley Richardson is pleased that Justice John M. Greaney, former Massachusetts Supreme Judicial Court justice, has joined the firm. As counsel, Greaney will provide advice to the firm’s Litigation Practice Group, contributing his extensive experience as a lawyer and a judge in a range of areas, including trial and appellate advocacy and professional responsibilities.

## What’s one thing about the firm that people might be surprised to learn?

The firm organizes an annual outing in the fall for its staff and their families at Mike’s Maze at the Warner Farm in Sunderland, Massachusetts. Mike’s Maze is a highly acclaimed corn maze that displays world famous corn art. For more than a decade, the maze has been designed by artist Will Sillin, who is married to Bulkley Richardson partner Liz Sillin.

## Why is it important to have all the lawyers in your firm members of the MBA?

MBA provides a medium for lawyers to stay on top of their fields through the outstanding educational offerings, seminars, newsletters and publications. The MBA On Demand allows flexibility in educating attorneys, a benefit our firm finds extremely valuable. The availability of MBA sections and divisions allows attorneys networking opportunities with other top lawyers in their field from across the state.

## How has the MBA benefitted lawyers in your firm?

## Just the facts

### Firm Name:

Bulkley, Richardson and Gelinas, LLP (d/b/a Bulkley Richardson)

**Year founded:** 1924

**Location:** Springfield, Amherst and Boston

**Number of attorneys:** 41

### Managing partners:

Peter H. Barry

The MBA has provided an opportunity for lawyers in the firm to chair MBA sections, and participate at MBA CLE programs and conferences. As the only organization that represents lawyers throughout the commonwealth the MBA has been a great vehicle through which to pursue legislative initiatives of importance to attorneys.

## Are there any specific MBA programs you find particularly helpful?

We have been involved with the MBA In-house Counsel Conference and other conferences for a number of years. These conferences have provided much information that is helpful to our practices. ■

## 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](http://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](mailto:memberservices@massbar.org)

# Tiered Community Mentoring student mourned as bright star

BY ANNA SIMS

The Massachusetts Bar Association is mourning the tragic loss of Nefertiti “Nef” Diasia Burton-Reeves, a standout student in its Tiered Community Mentoring Program (TCM) and a beloved mother, daughter and friend.

“Nef, as she was affectionately known, had remarkable grace and focus. ... I know the legal community was honored to welcome such a bright and engaged young professional,” said Allison Trzop, an associate at WilmerHale and Burton-Reeves’ attorney mentor in the TCM Program. The TCM Program connects students at the high school, undergraduate and law school levels with legal professionals who provide them with mentorship as well as information on the legal field and its career opportunities.

Burton-Reeves, who passed away on April 11, was determined to become a lawyer, said her mother, Radeena Burton. Burton-Reeves became involved with the TCM Program fol-

lowing a recommendation from one of her professors at Roxbury Community College. She completed her Associate’s Degree in Criminal Justice from Roxbury Community College in January and was in the process of earning a paralegal certificate. In the fall, she planned to attend Newbury College to receive a Bachelor’s Degree in Criminal Justice.

“My daughter was a go-getter,” Radeena said. “She climbed mountains and overcame many obstacles being a single mom [to her son, Jordan]. ... She was on a mission to succeed.”

That mission proved to be an inspiration to Radeena, who said her daughter was her “best friend.” Radeena is currently enrolled at Goodwin College in East Hartford and plans to apply to the nursing program. “I would always tell her, ‘Keep going. I’m right behind you. I’m following your lead,’” Radeena said.

According to Trzop, that inspiration was mutual. “[Nef] was driven by her love for her family, and woke

up every day and went to sleep every night thinking about how to make her son proud,” Trzop said.

Burton-Reeves touched many people during her life. Radeena said she was “overwhelmed” by number of visitors who came to see her daughter in the hospital — including many whom she did not know. “I was thinking to myself while I’m hugging these strangers, ‘Oh my gosh, my baby knew all of these people?’” Radeena recalled. “The waiting area was packed. There were people sitting in the hallways.”

Burton-Reeves was born in Boston on Sept. 2, 1993. In addition to her mother and her son, Jordan Giovanni Burton-Reeves, she is survived by her father, Larry C. Reeves Sr., her brothers, Larry C. Reeves Jr. and Stephen M. Reeves, her grandparents, Richard Wallace and Theresa Burton, as well as many aunts, uncles, cousins and friends.

“She is truly missed every day,” Radeena said. “Some people say, ‘It gets easier every day.’ No, it doesn’t. I’m



Nefertiti “Nef” Diasia Burton-Reeves (pictured second from bottom on left) at a Tiered Community Mentoring Program event.

just so glad that my daughter trusted me with her legacy, which is my grandson, and I hope that he will follow in his mother’s footsteps.”

Trzop said: “We all deeply mourn her passing and are committed to ensuring her passion for education and service to others lives on.” ■

**PRESIDENT HARNAIS**  
*Continued from page 1*

representing people to the utmost, all the time.

“Justice is like breathing,” he added, quoting an old trial adage. “You don’t think about it until you don’t have it – until you really need it.”

**Cultural Background**

The winding road that brought Harnais to an MBA presidency began when his Argentinean parents took the leap that countless immigrants before them did in hopes of a more prosperous life, and headed to the U.S.

Harnais said being a first-generation immigrant was never an obstacle for him personally, but recalled feeling embarrassed and even ashamed to be the son of non-native parents, only later realizing the strength required of them to live that life.

“As you get older you’re ashamed that you were ashamed,” he said. “I didn’t see it as an obstacle, but I saw my parents struggle with it more. As I look back I realize more what a brave thing it was that they did, to come to the States. ... They struggled, for good or bad. They struggled for me.”

Harnais has always made a point to stay loyal to his roots and lobby for greater inclusion and diversity in regard to Latinos in the law – something he noticed was lacking.

“It’s the second biggest community in the state – and yet there were only seven Hispanic judges in this whole state,” he said, referring to the time when he was president of the Massachusetts Association of Hispanic Attorneys (MAHA) in the mid-2000s. “The court’s supposed to be reflective of the community.”

As part of his MBA involvement, Harnais has served as the chair of the MBA’s Diversity Task Force, and as president of the association he continued to lift up the Hispanic law community, both at home and abroad. This year, the MBA was proud to host an event with visiting Cuban law school deans.

**Camaraderie**

Locally, for the lawyers of the commonwealth, Harnais is known for his call for professional unity. During his presidency, he established a Committee on Civility and Professionalism.

Harnais described his aim of dulling the “cutthroat” nature that he has witnessed in lawyers toward lawyers, and towards clients.

The harm that a bad lawyer can do was illustrated to Harnais early on, when one of his first bosses consistently lied to a client whose home was being foreclosed upon, assuring him he could remain there. Finally realizing the manipulation, the client barricaded himself in the house. It was left to Harnais to talk him down.

“He was desperate. He relied on a lawyer to help him, but he was lied to,” he said. Although the incident was an extreme one, Harnais realized that it was a corruption of justice and moral duty, and only added to the pop culture reputation of lawyers as deceptive and manipulative.

Harnais expects his peers to make a living as best they can — with a degree, office space and a respectable income — but he believes that the public will come to admire the legal community more when it treats these as the means rather than the end.

“All that’s the business part of it; what people really respect is when you do that extra step, and you care — you sincerely care. You go above and beyond.”

“That’s what’s respected of people in every profession,” he added.

**Community**

It’s easy to talk about “community” as an abstract concept, but in the practical sense it’s composed of one main thing: people. For the idea of community to function in a positive way, the people must live in a state of general safety and wellbeing. In Massachusetts, as in many communities around the nation, that wellbeing is being threatened by drug and alcohol abuse.

During Harnais’ presidency, a Section 35 Helpline was launched to help those individuals seeking court-ordered inpatient treatment for a family member or friend struggling with opioid and alcohol addiction.

As part of the Section 35 Helpline, lawyers involved in the free legal service are available to provide moral support and guidance to family members during court proceedings.

“The reality is, the lawyer doesn’t do much when he or she is there. But the parents will tell you that having the lawyer there with you in court when you’re doing this makes it a little bit easier,” he said. “It’s never easy. But knowing there’s somebody next to me is a great feeling.”

“Is this a cure to the problem? Absolutely not,” Harnais said. “But it’s something we as lawyers can do to try and help people who are suffering.”

“In his year as president, Bob has been able to bring our legal community closer together by drawing attention to civility within our profession,” said Martin W. Healy, MBA chief legal counsel and chief operating officer. “His tireless work to launch our Section 35 Helpline has also addressed a strong need in our local communities for families struggling with a loved one’s drug and alcohol addiction.”

**Future**

Though a dedicated MBA officer, Harnais is looking forward to spending more time with his family, including a newly arrived granddaughter. In addition, he realizes he has to get back to work (at Mahoney & Harnais in Quincy) because he has found out his family thinks food is a necessity.

“The MBA has a great future,” he said. “The team coming up, led by president-elect Jeff Catalano, has great ideas and a lot of energy.”

For his part, Catalano doesn’t intend on diverting too far from the course on which Harnais and his predecessors have set the MBA. He said he respects and has admired Harnais’ style of leading from behind.

“He doesn’t impose,” Catalano said. “He suggests ideas, he invites feedback. He understands what it’s like to be a leader.”

In particular, leadership is something that Catalano will focus on building in the upcoming generation of lawyers, through programs such as a Leadership Academy and enhanced interaction with the city’s incubator program run between several area law schools.

“So many people have to start on their own, and don’t have senior partners to look up to – we want to be that entity. That’s what we’re there for. ... We want to train people to have big vision, and to be at the forefront of everything that matters in society,” Catalano said, adding that the aim is ultimately to make the profession “more enjoyable” for all.

Of his presidency, Harnais said, “We all have to deal with serious issues in our lives, and as lawyers we deal with them all the time, but when you have a moment to enjoy, enjoy it.”



Bench-Bar Symposium speakers included (from left) Trial Court Chief Justice Paula M. Carey, MBA President Robert W. Harnais, Supreme Judicial Court Chief Justice Ralph D. Gants and Trial Court Administrator Harry Spence.



MBA President Robert W. Harnais (center) with his family and Annual Dinner Keynote Speaker Dennis Lehane (third from right).



MBA President Robert W. Harnais (seated third from left) was a panelist at a legislative briefing on civil legal aid at the State House on March 30. Harnais spoke to legislators and their aides about the importance of fulfilling the Massachusetts Legal Assistance Corporation budget request of \$27 million for fiscal year 2017. Harnais also invited legislators to visit their local courts where 64 percent of those eligible for free legal services are turned away from legal aid programs due to a lack of resources.



MBA President Robert W. Harnais in studio with Dan Rea for the “Nightside” program on WBZ News Radio 1030.

# YLD hosts ABA New England Regional Summit



**BY COURTNEY SHEA AND SAMUEL SEGAL**

On June 18, the Massachusetts Bar Association's Young Lawyer Division hosted an American Bar Association New England Regional Summit at the Marriot Courtyard, Back Bay. The event was attended by leaders from the MBA's YLD, as well as leaders from the New Hampshire, Maine, Hampden County and Vermont bar associations' young lawyer divisions, and representatives from the ABA's Law Student Division.

The regional leadership summit was organized by Samuel Segal, the MBA YLD treasurer and upcoming

chair-elect; Courtney Shea, the ABA YLD district representative for Massachusetts and New Hampshire; and Tara Rich, the ABA YLD district representative for Vermont and Maine.

The ABA YLD is comprised of affiliate members from various state and local bar associations, such as the MBA. The Regional Summit provided MBA YLD members with an opportunity to learn from other young lawyers in New England about issues they face as young leaders. There was also an exchange of ideas on programming, mentoring, leadership training and networking. The summit also allowed the different associations to foster a cooperative spirit and work on the collabo-

ration of information and programming among the various young lawyer groups.

In addition to Segal and Shea, the MBA was represented at the summit by Victoria Santoro, Michael Maloney, Meghan Thrash and Elizabeth Dillon.

The program included presentations from each group on their past year's education, community service and social/networking programming. There was a presentation by MBA President Robert W. Harnais, who provided insight on what it means to be leader and how to still be a professional in an industry that has transformed into a business. The attendees also broke up into small groups to brainstorm new

outreach and effective programming ideas. After the summit concluded, the attendees continued networking that evening at the Red Sox game against the Seattle Mariners.

The leadership summit was a tremendous success. Connections were made between regional young lawyers' organizations where none had previously existed. All parties are also excited for the third annual leadership conference next year to be hosted by the Vermont Bar Association Young Lawyers Section.

.....  
**Courtney Shea and Samuel Segal are members of the MBA's Young Lawyers Division.**

# Reflections on a successful YLD year

**BY MELISSA CONNER**



Melissa Conner

Certainly, I am biased, but this year at the Young Lawyers Division was a success. This is absolutely because our board members were, once again, phenomenal. From

our first meeting of the 2015-2016 year, it was clear to me that the board was full of great ideas and ready to get down to business.

This year, with the help of Tara Lynch's Community Service Committee, we had another successful event at the Greater Boston Food Bank. We surpassed our fundraising goal in the Lawyers Have Heart 5K. We collected goods for Cradles to Crayons, food for our Thanksgiving Food Drive and

signed up potential bone marrow donors for Gift of Life.

Meghan Slack and Mike Leard exceeded all of my hopes for our Education Committee. They kept our educational calendar full with panels, such as Persuasiveness in the Courtroom, Conducting Client Intake Interviews, Introduction to MCAD, Going Solo, a Judge's Panel for New Lawyers and a SkiLE panel on depositions.

We continued to engage our young and young-at-heart lawyers with fun, low-stress networking events. Adam Ponte organized our Witches Woods Halloween event and again got us great seats to a Celtics game. Janet Raheb made sure our Cuatro de Mayo party in Worcester was well organized and well attended. Our year is not quite over yet, and I'm sure our Quest Night at Boda Borg and our End of Year Cruise will be a great time as well.

Jason Armiger's Law Student Committee worked hard to make contact with all of the law schools and put on several panels for our law student member. Ralph Gillis's particularly popular Legislative Special Committee, gave us a rousing debate on paternity leave. And Steven Ayr's Technology Special Committee kept us abreast of modern advancements in communications. Mark Preiss and his Nominating Committee gave us a board for next year that I am sure will continue to develop friendships, entertaining events, community service opportunities and education for young lawyers.

Thank you, Jeffrey Morlend, for being someone who every committee of the YLD was able to rely on when they needed help. Thank you, Laura Smith and John Pregmon, for helping us with all of our ideas, even though they were sometimes a bit unconventional.

I will miss being on the board of the YLD: our "unofficial meetings," Mike's minutes, awkward moments when people forgot to mute their phones, the parade of stylish dress socks and the annual cookie party. During my time on the board, I have seen my fellow young lawyers achieve so much: pay off their student loans, get married, get new jobs, buy homes, make partner, win huge cases, pass the patent bar and the list goes on. I know our newer board members will strengthen their networks and thrive in the YLD. Certainly, under the guidance of the incoming Chair Victoria Santoro, the YLD will continue to be a community and a resource for young lawyers and law students.

.....  
**Melissa Conner served as the 2015-16 MBA Young Lawyers Division chair.**

# Members give back



During the first week of June, volunteers from the Massachusetts Bar Association's Complex Commercial Litigation Section (ComCom) served dinner to guests at the Pine Street Inn. Special thanks to Susan Elovecky of Todd & Weld for organizing this event. In addition, on June 4, a group of MBA volunteers lead by the MBA's Health Law Section, teamed up with Special Olympics Massachusetts to help staff the Summer Games at Harvard University. Volunteers oversaw one of three softball toss events, including setting up the field and spotting and measuring the tosses.

# GET THE NEW MBA APP



**MOBILE**



The Massachusetts Bar Association's My Bar Access app is now available! Download the app today from the Apple Store or Google Play by searching for **MassBar: My Bar Access**, and instantly connect with fellow members. Share practice information, documents and tips through discussions, blogs and more – right from your phone or tablet.



## STAY CONNECTED



Get quick access to your fellow MBA members. Easily connect with colleagues phone-to-phone.



Push notifications are available for announcements and direct messages. Instantly receive the latest news from your section/division.



View upcoming MBA seminars, conferences, section and committee meetings.



Collaborate with fellow members and get answers to your questions. All of the MBA Member Groups you are subscribed to are available on the mobile app.



View any direct messages you've received from fellow members.



Save MBA member contact information to your device.



Access any document on the go.

### SET UP ALERTS

Receive notification when your section/division has a new discussion post.

Click on the section/division name from the community list and then on the settings wheel to set your alert preferences.

## HOW TO DOWNLOAD

To download the **MassBar: My Bar Access** Mobile App:

1. Visit your device's application store and search for the app named **MassBar: My Bar Access**. Save time – use your mobile device to scan the applicable QR code.
2. Once downloaded, launch the application.
3. Log in using your regular **MassBar: My Bar Access** username (your email address) and password. You will remain logged in to the app unless you specifically log out.

Save time ... scan the QR code below to download the app.



QUESTIONS? EMAIL:  
MyBarAccess@MassBar.org



**MASSBAR**  
ASSOCIATION

WWW.MASSBAR.ORG • 617.338.0500

**BAR SEEN**

Snapshots from around the MBA



# Western Mass. members provide free legal advice at semiannual Dial-A-Lawyer program

Volunteer attorneys from the Massachusetts Bar Association participated in the MBA's semiannual Western Massachusetts Dial-A-Lawyer call-in program on May 25, hosted at Western New England University School of Law.

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

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

"From an access to justice perspective it's difficult for people to know what's out there in terms of services," said attorney Gillian Szlachetka Dubay, who has been a Dial-A-Lawyer volunteer for several years. "Callers are often overwhelmed by their lives and sometimes don't have the ability to think outside the box. In many family law situations their lives are literally falling apart and they don't know where to go."

Created in 1994, the MBA's Western Massachusetts Dial-A-Lawyer program is in its 22nd year. The program is co-sponsored by Western New England University School of Law, *The Republican*, *El Pueblo Latino*, the Massachusetts Association of Hispanic Attorneys and the Hispanic National Bar Association.

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

- Michelle Bugbee, Eastman Chemical Company, Springfield
- Mark D. Cress, Bulkley, Richardson & Gelinas LLP, Springfield
- Michele J. Feinstein, Shatz, Schwartz and Fentin PC, Springfield
- David M. Hirschhorn, David Meir Hirschhorn, Attorney at Law, Springfield
- Lan Kantany, Connor, Morneau & Olin, LLP, Springfield
- Kimberly Klimczuk, Skoler Abbott & Presser PC, Springfield
- Carol C. Klyman, Shatz, Schwartz and Fentin PC, Springfield
- Kevin V. Maltby, Bacon Wilson, Springfield
- Stephen R. Manning, Stephen R. Manning, PC, East Longmeadow
- Erin J. Meehan, Doherty, Wallace, Pillsbury & Murphy PC, Springfield
- Amy J. Megliola, Siddall & Siddall, P.C., Springfield
- Jeffrey S. Morneau, Connor, Morneau & Olin, LLP, Springfield
- Sanjiv Reejhsinghani, Law Office of Sanjiv Reejhsinghani, Longmeadow
- Michael Siddal, Siddall & Siddall, P.C., Springfield
- Gillian Szlachetka Dubay, Szlachetka Dubay PC, Chicopee
- Christina M. Turgeon, Law Office of Christina M. Turgeon, Springfield
- Daniel M. Rothschild, Bulkley Richardson, Springfield

## MBA takes part in serious illness care summit

The Massachusetts Bar Association added its name to the nearly 60 organizations that have joined the newly formed Massachusetts Coalition for Serious Illness Care, a statewide initiative on advance care planning and serious illness care that is supported by Blue Cross Blue Shield of Massachusetts and the Rx Foundation. The Massachusetts Coalition for Serious Illness Care held its first summit on May 12, at the John F. Kennedy Library in Boston. MBA Health Law Section Vice Chair Donald Whitmore attended the summit on behalf of the MBA. Pictured: Massachusetts Gov. Charlie Baker was one of the speakers at the summit.

# TRAUMATIC BRAIN INJURY

Our Team is Committed to Superior Results



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

*A Sixty Year Tradition of Excellence.*  
GENEROUS REFERRAL FEES

- \$9,800,000
- \$7,000,000
- \$6,000,000
- \$4,000,000
- \$3,500,000
- \$1,000,000



Massachusetts Bar Association President Robert W. Harnais (pictured right) was a guest on WWLP's "Mass Appeal" show on May 25 and spoke to Seth Stutman about how members of the community benefit from the MBA's Western Mass. Dial-A-Lawyer program. In addition, Harnais spoke about the MBA's Section 35 Helpline.



MBA members provided free legal advice at the Western Mass. Dial-A-Lawyer program on May 25.

# Five members honored at Volunteer Recognition Dinner

BY MIKE VIGNEUX

Five Massachusetts Bar Association members were honored for their outstanding service at the MBA Volunteer Recognition Dinner at Lombardo's in Randolph on July 13.

Scott D. Burke, Jennifer Clapp, John G. Dugan and Samuel A. Segal were each presented with the Volunteer Recognition Award, which salutes members who volunteer substantial time and effort to the mission, program and/or publications of the MBA, or otherwise enhance the organization in a significant way.

Maureen E. Curran received the Public Service Award, which is bestowed by the MBA's president upon individuals who have made significant contributions to the work of the MBA, including judges and members of the public, for their contribution to their community, and for furthering the public understanding and respect for the law and showing extraordinary leadership and dedication to improving the administration of justice in the commonwealth.

MBA officers voted to approve the 2016 honorees based on recommendations from the MBA's Volunteer Recognition Committee, which solicited the nominations. The awards were presented by MBA President Robert W. Harnais, President-elect Jeffrey N. Catalano and Volunteer Recognition Committee Chair Grace Garcia.

## Volunteer Recognition Award: Scott D. Burke, Morrison Mahoney LLP



Scott D. Burke is a partner at Morrison Mahoney LLP in Boston, where he was recently elected the firm's managing partner. For 18 years he chaired the firm's non-medical professional liability group.

Burke has been an active member of the MBA's Ethics Committee for the past

eight years, a group that addresses ethical issues faced by members on both an intellectual and practical level. He was also a past member of the MBA's Education Committee and served on the Attorney Financial Responsibility Disclosure Task Force.

In addition to presenting at CLE seminars held throughout the commonwealth, Burke has given highly rated presentations on ethical issues, professionalism and risk management at the MBA's Practicing with Professionalism course for new attorneys.

"He is truly a volunteer that makes a difference for MBA members and does so willingly, with great enthusiasm and projects a professional image that shines the best light on the MBA," read one nomination for Burke.

"It's amazing to be grouped with the people that I have seen receive this award in the past," said Burke. "I have always been impressed by the dedication of so many of my colleagues with whom I have worked on MBA projects, and feel so honored by both those who nominated me and the committee."

## Volunteer Recognition Award: Jennifer Clapp, Grindle Robinson LLP



An attorney with Grindle Robinson LLP since 2005, Jennifer Clapp focuses her practice on all aspects of family law.

She has been a highly respected member of the MBA's Family Law Section Council for the past seven years, during which she has served as chair, vice chair and member-at-large.

Clapp is most proud of the work the section council recently undertook this past year to revise the shared custody bill, as well as the council's progress on alimony reform.

"I loved being involved with the Family Law Section Council. Serving as chair was an opportunity to work with my peers and a group of lawyers and judges that I have respected since I started practicing," said Clapp.

A past member of the Young Lawyers Division, she also served on the MBA's House of Delegates and volunteered for the monthly Dial-A-Lawyer program.

## Volunteer Recognition Award: John G. Dugan, Doherty, Ciechanowski, Dugan & Cannon PC

A former MBA vice president and secretary, John G. Dugan has been practicing law in Massachusetts for more than 40 years. He concentrates in the areas of trusts and estates, probate and family law.

Dugan has served the MBA in many volunteer capacities during his career. A for-



mer member of both the Executive Management Board and House of Delegates, he was honored with the MBA's Community Service Award in 2009. Dugan is also a past member of the Education Committee and has served as a faculty member for several CLE programs.

He has recently been highly involved with the Probate Law Section Council, where he has worked with Jan Nigro in planning, organizing and growing the annual Probate Law Conference. Dugan has always appreciated working within the MBA's section councils with fellow attorneys in the same practice areas.

"It gives you a little bit better feel for how you should be practicing law if you're going to practice in that field," remarked Dugan.

Additionally, Dugan has served as a member of the Budget and Finance Committee, the Family Law Section Council, the Bylaws Committee, the Child Support Guidelines Committee, the Community Service Committee, Gala Dinner Committee and the Judicial Evaluation Committee. He has also been involved with the Elder Law Education Program and has served as a judge for the MBA's High School Mock Trial Program.

## Volunteer Recognition Award: Samuel A. Segal, Law Offices of Samuel A. Segal



The owner and principal of his own solo practice in Boston, Samuel A. Segal focuses on complex personal injury and wrongful death claims and litigation. A 2010 graduate of Northeastern University Law School, Segal has been a constant and dedicated volunteer for many MBA programs. Segal

has been very involved within the Young Lawyers Division (YLD), in particular, serving as director at large and treasurer. He is the incoming chair-elect of the YLD for 2016-17.

Segal has participated in the monthly Dial-A-Lawyer program for the past four years, a role that has been especially meaningful to him given its direct connection to those seeking legal advice and assistance.

"A lot of people have problems and they don't know where to turn," noted Segal speaking about his experience as a Dial-A-Lawyer volunteer. "Callers want help and assistance, and I think that easing their burden just by answering some common questions is pretty gratifying."

In addition to Dial-A-Lawyer, Segal has been a member of the Lawyer Referral Service Committee for the past four years, Segal has also served as both a coach and judge in the MBA's High School Mock Trial Program.

## Public Service Award: Maureen E. Curran, Law Office of Maureen Curran LLC



Maureen E. Curran operates her own practice in Boston, which focuses on probate litigation, trust litigation, contested wills, guardianship and fiduciary law.

A longtime member of the Probate Law Section Council, Curran helped spearhead the Fiduciary Law Probate Session Working

Group, a collective body that has worked diligently to make reforms within the Probate Court. The group drafted a proposal in 2015, which called for the establishment of a separate session for contested trust and estate litigation matters within the Probate Court. A pilot program for the trust and estate litigation cases is expected to begin this coming fall at Norfolk Probate and Family Court.

"Maureen's insight, drive and ability to work to bring a consensus to this diverse group of practitioners is both amazing and helpful to the courts and our clients who were being denied access to justice," read one of her nominations.

In addition to her work with the Probate Law Section Council, Curran has also been a member of the MBA's Civil Litigation Section and that section's ADR, Appellate, Federal Practice and Probate Litigation practice groups. ■

## MBA team runs 'Lawyers Have Heart 5K'



Sixteen Massachusetts Bar Association members participated as a team in the annual Lawyers Have Heart 5K Road Race & Summer Celebration on June 8, at the Blue Hills Bank Pavilion in Boston. The team raised \$2,040 for the American Heart Association. The donation will be used to raise awareness of heart disease and stroke, both of which profoundly affect the legal profession. ■

## BAR SEEN

Snapshots from around the MBA



### An evening with Chief Justice Gants

The MBA's Judicial Administration (JA) Section Council hosted an open meeting with Supreme Judicial Court Chief Justice Ralph D. Gants on May 18, at the MBA's Boston office. Gants gave an update about the court's budget situation and answered questions from audience members about voir dire, unrepresented litigants and the upcoming vacancies on the SJC. Pictured, from left: MBA President Robert W. Harnais, JA Section Vice Chair Thomas M. Bond, Chief Justice Ralph D. Gants and JA Section Chair Lori A. Cianciulli. ■

## MBA supports Boston 'blood donahs'



The Massachusetts Bar Association partnered with Massachusetts General Hospital (MGH) for a blood drive during the month of June. MBA Health Law Section Vice Chair Donald Whitmore (pictured) was one of many MBA members who participated in the drive. Blood donors received a free "Boston Blood Donah" shirt from MGH.

Volunteers' blood donations are used to help save lives in Boston at MGH, which also shares donations with the Massachusetts Eye and Ear Infirmary, Shriners Burn Institute for Children, the Spaulding Rehabilitation Hospital and MassGeneral for Children. ■





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.

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](mailto:Insurance@MassBar.org)

# MASSACHUSETTS BAR FOUNDATION

*Keeping the promise of justice since 1964*

## MBF awards \$24,000 to law students for public interest internships

The Massachusetts Bar Foundation Trustees are proud to announce that four exceptional law students have recently been selected to receive a stipend of \$6,000 each for their volunteer summer internships at non-profit legal aid organizations in Massachusetts. The grants are provided through the MBF's Legal Intern Fellowship Program, which is funded by the MBF Fellows Fund and the Smith Family Fund. The program 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.

This year's award recipients are:



**RACHEL BIER**  
Boston University School of Law  
Northeast Legal Aid:  
Family and Housing Law Unit  
*(Supported by the Smith Family Fund)*



**MARIO PAREDES**  
Boston University School of Law  
Kids in Need of Defense:  
Immigration Law Program  
*(Supported by MBF Fellows Fund)*



**CANDACE PIERRE**  
New England Law | Boston  
Harvard Legal Aid Bureau:  
Family Law Unit  
*(Supported by MBF Fellows Fund)*



**JAMES VAN WAGTENDONK**  
Boston University School of Law  
Greater Boston Legal Services:  
Employment Law Unit  
*(Supported by MBF Fellows Fund)*

For more information about the MBF Legal Intern Fellowship Program, please visit [www.MassBarFoundation.org](http://www.MassBarFoundation.org).

## THANK YOU TO OUR NEWEST FELLOWS

### OLIVER WENDELL HOLMES FELLOWS\*

**MIRIAM H. BABIN, ESQ.**  
Bristol Probate & Family Court  
Fall River

**J. W. CARNEY JR., ESQ.**  
The Law Offices of J. W. Carney Jr. & Associates  
Boston

### LOUIS D. BRANDEIS FELLOW\*

**PHILIP M. CRONIN, ESQ.**  
Peabody & Arnold LLP  
Boston

### FOUNDATION FELLOW

**MARISSA L. ELKINS, ESQ.**  
Elkins Law Group LLC  
Northampton

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

## BUILDING A STRONG FOUNDATION

### Why I give



**DENNIS M. LINDGREN, ESQ.**  
Pierce & Mandell PC, Boston  
MBF Louis D. Brandeis Fellow  
and Trustee

"I am deeply honored to play a part in the important work accomplished by the MBF. Through its IOLTA grants program, fundraising and great events, the MBF has raised and distributed millions of dollars to legal non-profits throughout the commonwealth. My service with the MBF has been a wonderful complement to my professional work as a lawyer."

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



## BECOME AN MBF FELLOW TODAY!

The Massachusetts Bar Foundation Society of Fellows is a membership organization of Massachusetts attorneys and judges who are committed to giving back to the profession and supporting legal services for the poor in our state. Our Fellows are our core supporters, helping to ensure that the MBF is a resource through which the legal community can come together and support initiatives that make access to justice a reality for those in need.

To become an MBF Fellow, visit [www.MassBarFoundation.org](http://www.MassBarFoundation.org).

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

[www.MassBarFoundation.org](http://www.MassBarFoundation.org)

## NOTABLE & QUOTABLE

“

**It's important not to downplay it. The prudent thing to do is notify them. — Jeffrey N. Catalano**

MBA President-elect **Jeffrey N. Catalano** commented on an employee privacy issue in an ongoing civil case in the *Boston Globe* on June 5. When the lawyer for a former Saugus employee requested documents from the town, officials provided material that included the names, Social Security numbers and bank account details for nearly 1,200 Saugus town employees. Catalano told the *Boston Globe* that both sides have a mutual obligation to respect employees' privacy and that given the large number of employees involved, the town should notify those involved of the disclosure.



”

“‘Verdrager’ seen as game-changer,” *Massachusetts Lawyers Weekly* — MBA members **Ellen J. Messing** and **Patricia M. Rapinchuk** offered their insights on employment law.

“Federal judges split on use of anti-SLAPP law,” *Massachusetts Lawyers Weekly* — MBA member **David H. Rich** weighed in on a story involving commercial litigation.

“



**I don't think [the SJC] has ever ruled if words alone can make one responsible for manslaughter. — Peter Elikann.**

MBA Criminal Justice Section Chair **Peter Elikann** provided analysis for the *Boston Globe* on July 1, on the Supreme Judicial Court's recent ruling that a Plainville teenager must stand trial for involuntary manslaughter for allegedly persuading a friend to kill himself after he expressed second thoughts. Elikann was also interviewed by FOX25.

”

“Plaintiffs see early dividends from SJC limit on comp liens,” *Massachusetts Lawyers Weekly* (July 4) — MBA members **Andrew R. Ferguson**, **William L. Keville** and **Curtis B. Dooling** provided commentary on a recent Supreme Judicial Court decision involving workers' compensation.

“Envelopes found in Framingham officer's car sparked evidence room probe,” *MetroWest Daily News* (June 27) — MBA President **Robert W. Harnais** gave his perspective as a criminal defense attorney.

“Bar takes issue with SJC limits on juror contact,” *Massachusetts Lawyers Weekly* (June 27) — MBA member **Annette Gonthier-Kiely** provided comments on the state's new juror contact rule.

“

**All three of them have stellar backgrounds and they're known as moderate, fair judges and and very intellectually based judges. I think the governor set a high standard for his future appointments and I think that particularly the legal community — knowing these three individuals — is very excited by having them elevated to the highest court. — Martin W. Healy**



MBA Chief Legal Counsel and Chief Operating Officer **Martin W. Healy** was quoted as part of a WBUR story on June 15, on Governor Charlie Baker's nomination of Hon. Kimberly Budd, Hon. Frank M. Gaziano and Hon. David A. Lowy to fill the three upcoming judicial vacancies at the Supreme Judicial Court. Healy also appeared in several media outlets including: *Boston Globe*, *The Republican*, *Commonwealth Magazine*, *Sentinel & Enterprise*, *Berkshire Eagle*, *Gloucester Daily Times* and *Salem News*.

”

**Quoted in the media? Let us know. Email [JScally@MassBar.org](mailto:JScally@MassBar.org).**

# MBA hosts second summer social

Massachusetts Bar Association members and guests joined in the second free summer networking event at The Terrace at Hyatt Regency Boston. The next summer social takes place on Aug. 18, at Tia's on the Waterfront, 200 Atlantic Ave., Boston. Visit [www.massbar.org/summersocials](http://www.massbar.org/summersocials) to register.



# EXPERTS & RESOURCES

**ADR**

**Where conflict meets resolution.**

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



**Sarah E. Worley**

14 Beacon Street, Suite 610, Boston, Mass., 02108 | 45 Bristol Drive, South Easton, Mass., 02375

**617-419-1900**  
www.worleyconflictresolution.com

**ADR**

**GLYNN MEDIATION**  
EXPERIENCE • COMMON SENSE  
RESOLUTION

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



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

**TAX ATTORNEY**

LOOKING FOR AN **EXPERIENCED TAX ATTORNEY** FOR YOUR CLIENTS?

**RICK STONE LAW**

FORMER CHAIR - MA BAR ASSN. TAXATION SECTION  
SERVING MA BAR ASSN. MEMBERS AND THEIR CLIENTS  
STATE, FEDERAL, AND INTERNATIONAL TAX MATTERS

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

**(617) 848 - 9360**  
**(888) 483 - 5884**  
WWW.RICKSTONELAW.COM  
RICK@RICKSTONELAW.COM

**ATTORNEYS AT LAW**

YOUR **CONNECTICUT CONNECTION**



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

21 Huntington Street, New London, CT 860-443-7014 | 1050 Main Street, E. Greenwich, RI 401-385-3877

Areas of Practice

Personal Injury | Commercial Litigation  
Real Estate | Family Law

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

† Admitted to RI \* Admitted to CT \*\* Admitted to MA

**ADR**

**WOULD YOU RATHER**



**GAMBLE OR BE CERTAIN!**

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

**MEDIATION**



Mediation and Arbitration of all Domestic Relations and Probate Matters



Judge Steinberg Ret. | Judge Smoot Ret. | Judge Kopelman Ret.

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

**MEDIATION**

**Bette J. Roth, Esq.**

- Mediator
- Arbitrator
- Facilitator
- Fact Finder



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

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

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

**FIREARM SERVICES**



Providing legal solutions for firearms-related issues

- ◆ Conversion of firearms to liquid assets
- ◆ Purchase of single guns, large collections, and estates
- ◆ Temporary storage of firearms for criminal defendants, or items in ownership dispute
- ◆ Recovery of seized firearms from police departments
- ◆ Firearm destruction and disposal
- ◆ Legal removal of firearms found in homes by heirs/guardians

Fully licensed and insured. References available.

**508-381-0230**  
info@neballistic.com  
www.neballistic.com  
PO Box 23, Hopedale, MA 01747

**WEATHER**

Do you “have a case”?  
Let’s find out!



**BOB COPELAND**  
Consulting Meteorologist

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

603-444-6266  
NotchWeather@gmail.com

**TELL THESE EXPERTS YOU SAW THEM IN LAWYERS JOURNAL**



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

**LAWYER ASSISTANCE**

**RUNNING ON EMPTY?**  
NOT A GOOD PLAN FOR YOUR CAR.  
NOT A GOOD PLAN FOR YOU.

**CALL LCL!**  
We can help you figure out how to refuel.

**(617) 482-9600**  
WWW.LCLMA.ORG



# Cuban law school deans visit the commonwealth



In partnership with Suffolk University Law School and the Massachusetts Association of Hispanic Attorneys (MAHA), the Massachusetts Bar Association hosted affinity bar friends and judges on June 7, at a reception for visiting law school deans from Cuba.

## BAR SEEN

Snapshots from around the MBA



PHOTO BY JEFF THIEBAUTH

### MBA recognizes 50-year members

The Massachusetts Bar Association recognized its 50-year members at the MBA Volunteer Recognition Dinner at Lombardo's in Randolph on July 13.

“Respected veterans of the bar, these are the people we have learned from and the lawyers we look up to,” said MBA President-elect Jeffrey N. Catalano. “Fifty years is quite an accomplishment, and we should all be so fortunate to have the amazing careers our honorees have put together for themselves.”

Pictured: Top row (from left): MBA President-elect Jeffrey N. Catalano, Stephen I. Lipman, Daniel G. Harrington, David G. Hanrahan, John C. McCullough and Jordan L. Shapiro. Bottom row (from left): Donald W. Suchma, MBA President Robert W. Harnais, Patricia Ann Metzger and Daniel M. McDonald.

### LAWYER ASSISTANCE

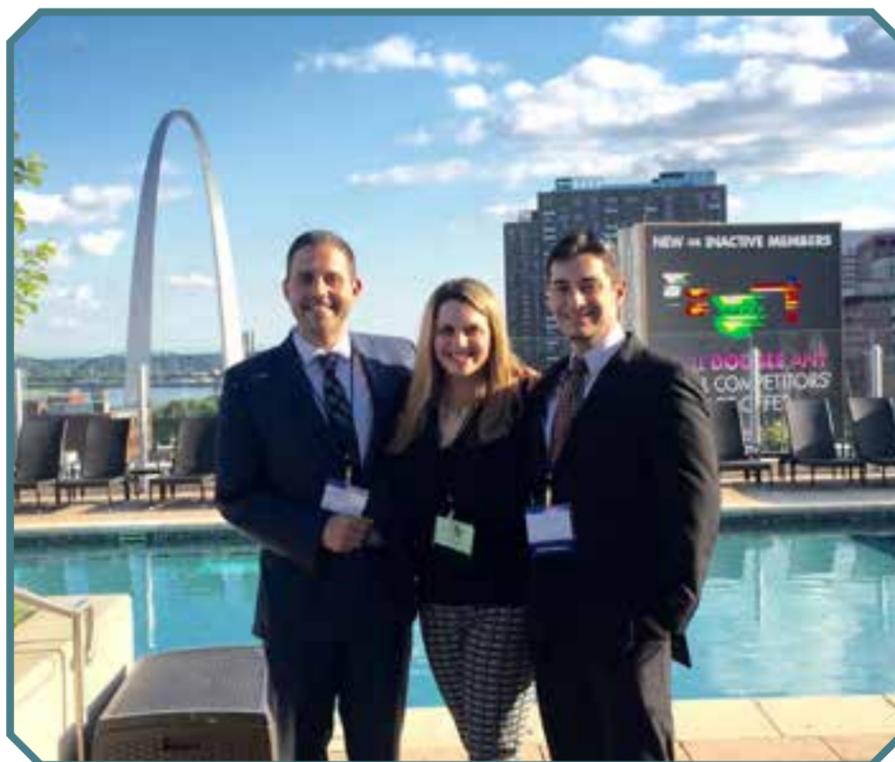
#### Law Office Management Assistance Program



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

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

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



### Young Lawyers in St. Louis

Members of the Massachusetts Bar Association's Young Lawyers Division (YLD) attended the American Bar Association's YLD Spring Conference in St. Louis. Pictured, from left: Michael Moloney, Courtney Shea and Samuel Segal.



## LAWYERS CONCERNED FOR LAWYERS

# Early career complicated by unstable relationship

**Q:** After completing law school in Oregon, I moved to a nonprofit sector job in the Boston area, where I met my current boyfriend, who also hopes to become an attorney. He is essentially a fine person, but we have some differences that are complicating our relationship.



Dr. Jeff Fortgang

Adam (not his real name) was formerly in the Army, including combat, in Afghanistan, and came out of the experience with post-traumatic stress disorder (PTSD), diagnosed by the Department of Veterans Affairs. He can be very kind, but seems afraid to actually get close, and he has a lot of anger in him that sometimes erupts in ways that scare me. At times, he yells at me and accuses me of trying to control him. (Maybe I do, especially when he drinks too much, which he doesn't think is a problem.) So far, he hasn't gotten physical when angry, but I feel as if that could happen. My friends tell me I should get him out of my life, but I really respect his values and dedication, and I keep thinking I can help him heal. Helping people is part of what inspired me to become a lawyer.

**A:** Too many of our returning veterans from places like Afghanistan and Iraq, where they lived in an ongoing state of danger and saw their comrades injured and killed, have come home with PTSD. The "luckier" among them have managed to get treatment, at the VA or elsewhere, but it can be a long and uncertain road to recovery (as well depicted by Bradley Cooper in the film *American Sniper*, and decades earlier by Bruce Dern in *Coming Home* and by Christopher Walken in *The Deer Hunter*).

Among the concerns that you describe in Adam are that he seems potentially violent and that he has some level of drinking problem about which he remains in denial. These features may very well represent PTSD, as well as other kinds of psychological residue of warfare; and it is not unusual for individuals develop addictions in the context of trauma symptoms. (Many veterans, of course, survive without developing PTSD, which itself is in a way amazing.) New understandings of and treatments (both psychological and pharmacological) for trauma are being developed all the time, some at the VA. But improvement is generally not fast, predictable or certain. It also helps if the individual recognizes his problems and takes personal responsibility to address them; Adam does not appear to be at that point.

So, although these decisions are yours to make, your friends' concerns about you are understandable — they would rather see you pursue your fledgling legal career without having much of your emotional energy diverted to the demands of this difficult relationship (which could get worse before it gets better, especially if the heavy drinking persists). Part of this picture is your own inclination to be a caretaker for someone who is hurting or damaged; taking a look at that tendency with a therapist might be a useful undertaking for you, as you attempt to balance your feelings and respect for Adam with your own needs. If desired, we at LCL can help line up an appropriately skilled professional. If Adam actually crosses the threshold of becoming physically aggressive toward you, then there is no question that it is time to reach out for help. ■

.....  
**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 Dr.Jeff@LCLMA.org.**



## TECHNOLOGICALLY SPEAKING

# The trouble with technology (and how to fix it)

BY HEIDI S. ALEXANDER



Heidi S. Alexander

I love technology. I love new gadgets. I love thinking about how technology can transform the legal profession and how it can help bring legal services to a vastly underserved market.

But as much as I love technology, if I'm not careful I find myself overwhelmed and distracted by it. You all know precisely what I'm talking about.

As lawyers, we are constantly juggling client demands, administrative responsibilities, business development opportunities, financial management and much more. We are plugged in 24/7. We're checking emails right before we go to sleep, in the middle of the night and yet again immediately upon waking. We go to seminars and meetings and spend the majority of our time, again, checking and responding to emails, or doing other work on our mobile devices, acting like we have the capacity to multitask, but in-

stead failing to engage or retain anything. So, what are we to do?

My colleague, Jared Correia, educates lawyers about technology and has advocated ditching the smartphone as one drastic measure to avoid disruptions altogether. Indeed he follows his own advice and doesn't even own one himself. But I say there's a time and place for technology. With a few strategies and a little will power, you *can* minimize distractions, focus more on the present and take a break from time to time. Here are a few suggestions to help you make this happen:

### Turn Off Notifications

Every application has a notification, many times activated by default. If you don't take the initiative to disable notifications, you'll be constantly disrupted by the ping of new notifications — whether from your computer or mobile device. By turning off notifications, you've taking one major step towards minimizing distractions as a result of technology and creating more space to focus on the important stuff.

### Schedule Time for Your Tech

For most attorneys, it's primarily because of email that we are slaves to our technology. Although it's not true, we feel that we need to be connected every minute. So, even if we turn off notifications, we may not be able to resist compulsively checking our email to ensure that we haven't missed a beat. To help reduce this anxiety and maintain some sanity, try scheduling time to check email. Reserve two to three chunks of time during the day to check and process your emails.

But don't block time for email at the beginning of your day. Use that fresh and focused time to do something that requires brain power, say, drafting an argument for a brief or composing your opening statements for trial. Try reserving time mid-morning, mid-afternoon and before you leave your office that evening. If you are still worried you might miss an important email from someone in particular, configure your email client to alert you only if you receive an email from that sender. See, technology can even be used to help you minimize the use of it — now that's meta!

### Set Limits and Practice Mindfulness

The next step beyond scheduling time for emails is to set limits on how you use your technology and devote some time to practice mindfulness; that is, to be in the present. For example, you might silence your devices while doing morning yoga, taking a lunchtime walk or having dinner with family. Your mindfulness practice might even include some use of technology, say, listening to music or a podcast while exercising to boost your energy or using your mobile device to record a lecture while you give the speaker your undivided attention. The key is to learn how to use technology to your benefit.

### Synchronize Your Systems

If you are constantly troubleshooting your technology, you won't derive any benefit from it. Of course, sometimes it is inevitable, but many times that frustration can be avoided. If you use multiple devices, such as a desktop computer, laptop, tablet and/or smartphone, ensure that each of those devices syncs to one another and that each device is configured similarly. For example, do you save your contacts to the same application on each device? Depending upon your device, you might be using Google, iCloud, or Microsoft Outlook Exchange. If you save a contact on one device with Google and another device with Microsoft Outlook Exchange, your contacts won't show up on both devices, and that can be frustrating. If you use Apple devices, are you signed in with the same iCloud ID on each device and syncing the same apps (i.e., Mail, Notes and Calendars)? Do you have the same software running on each device and does it sync your settings across devices? Spend the time getting your devices synced up so that you don't get bogged down unexpectedly.

If you can begin to implement these strategies, you should find more time in your day, reduce stress and anxiety, and get more done. In my opinion, it's not necessarily the technology that gets in our way of productivity; it's the way we interact with our technology. Part of this requires an education on how to use technology effectively and the other part requires some modification to our behaviors. The latter, I believe, is the most challenging. If you want to work on overcoming obstacles and changing behaviors, consider talking to my colleague clinicians at Lawyers Concerned for Lawyers, who provide excellent free counseling to attorneys in the commonwealth. You can call them at 1-800-525-0210. ■

.....  
**Heidi S. Alexander is a law practice management advisor at Massachusetts Law Office Management Assistance Program. LOMAP offers free and confidential law practice management consulting to Massachusetts attorneys. For more information call (857) 383-3250 or email info@masslomap.org.**

**BERMAN & SIMMONS**  
 TRIAL ATTORNEYS

**ASSOCIATE  
 ATTORNEY**

Berman & Simmons, P.A., a top-ranked personal injury and medical malpractice law firm, is seeking an attorney with demonstrated excellence in research, writing, and litigation. Applicants should be practicing attorneys with 3-5 years of experience and a proven track record of effective representation. The ideal candidate must be quick-thinking, determined, and have a strong desire to help injured Mainers throughout the State. Applicants should have excellent academic credentials, strong writing and research skills, and be interested in working closely with lead trial counsel in our personal injury practice.

We offer a competitive salary and benefits package. Please submit a cover letter demonstrating an interest in becoming a plaintiff's trial lawyer, a résumé, writing sample, and law school transcript to:

Craig A. Bramley, Esq., P.O. Box 961, Lewiston, ME 04243

[careers@bermansimmons.com](mailto:careers@bermansimmons.com)

All inquiries will be held in confidence.



**fastcase**<sup>®</sup>  
Smarter legal research.

**FREE**  
**for MBA**  
**members**

**Log in and take  
advantage of:**

- An expansive research library
- National coverage
- Apps for iPhone/iPad/Android
- Data visualization
- Printing tools ... and more!

**MASSBAR**  
**iBelong**

**[www.MassBar.org/Fastcase](http://www.MassBar.org/Fastcase) • 617.338.0530**



## FOR YOUR PRACTICE

# A guide to the new rules on contacting jurors post verdict

BY PETER ELIKANN



Peter Elikann

When the Supreme Judicial Court (SJC) rendered its decision in the case of *Commonwealth v. Dwayne Moore* (SJC 11582, June 16, 2016), permitting attorney contact with jurors post verdict, there was a rush to judgment by practitioners that the floodgates had suddenly opened on a free unrestrained exchange between advocates and jurors who had deliberated on or were discharged from the attorney's client's case at trial.

Attorneys hoped to determine whether any undue influence on the jurors may have occurred and, if so, its effect on their deliberations. Additionally, some attorneys anticipated using the once secret information on jury deliberations for their own education and professional development on how they might improve their presentation at future trials. Did the jurors find me unlikable or off-putting in any way? Was I overbearing or convoluted or boring or rude in the manner I handled myself during trial? Did the jurors react well to a particular exhibit I offered, or was it completely ineffective?

In fact, the decision did not grant such "unfettered and unrestricted" access to jurors, but rather is so nuanced that it could potentially present a dangerous minefield to unprepared attorneys. Attorneys need to familiarize themselves with the new rules and protocol set out in *Moore* in order to not conflict with and unwarily violate its new procedural practices.

The *Moore* decision set out to clarify the new Massachusetts Rule of Professional Conduct 3.5(c) that implicitly overruled the prohibition against attorney-initiated post-verdict communications with jurors recognized under the court's 1979 decision in *Commonwealth*

*v. Fidler*, 377 Mass 192 (1979). But it did not overrule *Fidler* in its entirety.

Rule 3.5(c), which essentially followed the American Bar Association's model rule governing juror contact, seemingly begged for clarification since it apparently implied, within its text, that, although there were prohibitions governing certain aspects of their attempted communications, the door still remains open to attorney inquiry of jurors post verdict. It read:

"A lawyer shall not ... communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer, either directly or through communications with the judge or otherwise, a desire not to communicate with the lawyer; or

(3) the communication involves misrepresentation, coercion, duress or harassment."

The court in *Moore* concluded that, while an attorney may interview a consenting juror as to inappropriate outside influences and secure an affidavit, he or she may not delve into the actual substance of the jury's deliberations, including the mental process and thinking of either a single juror or the panel collectively. This could, purportedly, compromise the integrity of the core principle that holds sacrosanct the secrecy of jury deliberations. For better or worse, the result is that one can't inquire in general about the reason for a jury's decision and, presumably, cannot ask if any wrongful intentions or biases affected the verdict, including any impartiality caused by prejudice against a particular race, sexual orientation, gender, nationality or ethnic group. The difficulty is that, once one identifies an extraneous influence, the asking of follow-up questions to determine its effect on a juror or jury seems, at first blush, like such a logical next step. Yet that is a line that cannot be crossed.

In *Moore*, which included, among other charges, four murders, defense counsel, after trial, desired to explore concerns that one juror had conducted independent research and whether other recent highly publicized multiple murders and social media may have affected the jury deliberations.

In a nutshell, the SJC responded after transferring to itself five questions of law reported by the Superior Court judge to the Appeals Court. The court concluded:

1. The court did, in its adoption of Rule 3.5(c) in 2015, overrule the requirement in *Fidler* that jurors could only be contacted post verdict by an attorney with specific permission of court that would also supervise and direct the interview process.
2. The long-established case law principles forbidding inquiry by attorneys into the substance of the deliberations are still in effect. Inquiry is allowed to attempt to determine the presence of improper influence, but, quoting *Fidler*, "not ... to show the role that the improper influence played in the jury's decisions." So the bottom line is that one may ask about potential improper influences but then may not follow the seemingly natural progression of attempting to find out if any juror was, indeed, swayed by these influences.
3. The type of contacts prohibited by law includes communications that run afoul of both statutory law and specific court orders and court rules.
4. The ruling here in *Moore* will not be applied retroactively to cases decided prior to July 1, 2015, when Rule 3.5(c) went into effect. That is unless the case was either on appeal or the appeal period had not run as of that date. The rationale is that, generally speaking, since there is no substantive change here in the common law, but rather an ethical rule concerning lawyer professional responsibility, the common law principles of

retroactivity do not apply. Ethical rules tend to govern and discipline prospective behavior, not past behavior. The existing opposing argument is that defendants whose cases were tried years or decades ago will not be permitted to similarly attempt to uncover potential injustices that occurred through jury deliberations merely because the possible injustice was not recent.

5. While counsel is not required to seek prior court permission to approach jurors, the attorney must delay the attempted debriefing, at least five days in advance, give notice to the other party that it intends to make inquiry of the jury. That gives opposing counsel an opportunity to seek relief from the court if it objects. The notice must be rather detailed in its expression of the manner of contact, the substance of the proposed inquiry, and, if pertinent, the letter or communication that will be sent to the jurors. The SJC declared its preference that the notice be in writing and specifically include "that the juror may decline any contact with the attorney or terminate contact once initiated."

It is currently unclear whether the *Moore* ruling on post-verdict juror contact by attorneys presents a somewhat significant change in practice or might potentially show itself to be so limited and qualified that it proves less effective than anticipated in its application. Yet the protocol outlined in the decision contains enough subtle gradations and distinctions that it is likely incumbent upon a practitioner to thoughtfully become well versed with its nuanced roadmap before attempting to embark on the debriefing of a juror. ■

Peter Elikann is a Boston criminal defense attorney, chair of the MBA's Criminal Justice section, author of books on the criminal justice system and a television legal commentator.

## Members Helping Members: My Bar Access Q&A

**Q:** Hello all:  
Can someone point me in the right direction where I can find sample fee agreements that meet all the requirements for the Mass. R. Prof. C. I want to make sure I am meeting the requirements regarding file storage and retention...thank you in advance!

Michelle D. Licciardi, Esq.  
Law Office of Michelle D. Licciardi

**A:** Hello Michelle and SPSF Members,  
LOMAP maintains a fee agreement package with a variety of sample fee agreements and other administrative documents (such as non-engagement and disengagement letters), as well as clauses like document retention and storage. .  
Please send me an e-mail at [heidi@masslomap.org](mailto:heidi@masslomap.org) if you are interested in receiving our package.

Heidi S. Alexander, Esq.  
Law Practice Advisor - MassLOMAP hope this helps.



My Bar Access is an exclusive, online MBA community. Log in at [www.massbar.org/access](http://www.massbar.org/access) to virtually connect with fellow members and share practice information and tips through discussions, blogs and more.

## Civil Litigation

# A professional approach to legal investigations

## General forensic procedures and lessons learned from case studies

BY FAHMIDA HOSSAIN AND  
VEDA-ANNE ULCICKAS

Irrespective of the failure, the pattern of a forensic analysis is well established. While the tests and analyses selected for individual cases can vary widely based upon materials of construction, the overall method of proceeding from naked eye to detailed microscopic examinations remains the same.

### Guidelines of general forensic procedures

The primary role of a failure analyst in determining the root causes of a failure is to identify the sequence of events involved. At the beginning of an investigation the failure analyst should start with an open mind without any bias, and let the data and evidence collected paint a picture of the incidents which caused or led to the failure. The generally accepted basic steps in an investigation are:

- Collecting data
- Identifying the different damage patterns/modes present
- Planning and performing different tests on the components to find the actual mechanisms which contributed to the failure
- Differentiating between primary and secondary mechanisms involved in the subject failure
- Identifying the possible root causes after analysis of the data collected from the different experimental procedures
- Identifying the primary root cause leading to the failure by refining the possibilities

Many times during an investigation the data may suggest a different root cause for the failure than the one initially hypothesized. All the physical evidence, background information and experimental data has to lead to the actual failure mechanism. Often we call the failure investigation a “puzzle,” and after the analysis all the puzzle pieces have to fall into place.

The failure analyst/forensic engineer needs to understand the physical behavior of the failed component and what different scenarios could cause that particular type of failure. All the physical evidence present in the failed component, in the mating component(s) and the adjacent areas requires careful documentation to identify the failure mechanism. Sometimes the expert witnesses or failure analysts are contacted by lawyers in the beginning of an investigation. This is the best case scenario. However, many times, the experts are brought into a legal case after the initial phase of the investigation. As long as the photographs and all the evidence can be reviewed, the experts may get a good idea of the initial scenario.

Generally the lawyers, investigators and insurance companies involved in the initial phase of examination keep the evidence for later examination. As long as the evidence is kept in proper condition, most or all of the required testing can be performed. It is of utmost importance



to keep the components involved in an investigation in a protected environment so that the failure features of the components are not altered during the storage. In most of the cases, the pieces are not examined right away and it may take a few years before the actual examination can happen. For example, a failed iron pipe, if kept in an outside environment will rust, destroying valuable fracture information. However, if the failed pipe pieces are kept in a controlled environment, most of the features associated with the failure can usually be analyzed and identified.

When a laboratory receives components for a legal investigation, it is the lab’s responsibility to inform the lawyer or the client if destructive tests are going to be performed on the components. All interested parties should be invited to participate in an investigation that includes destructive testing. A specification provided by the American Society of Testing Materials (ASTM E 860) clearly identifies this requirement. If the lawyer involved is not aware of this, it is the investigator’s or lab’s responsibility to educate him/her. The lawyer is then expected to notify all interested parties involved in the particular case and agree upon a date on which all the parties can meet at the particular lab for the analysis. The lab performing the analysis provides a protocol outlining the different steps necessary to determine the root cause of the problem. This protocol is then submitted to the lawyer who circulates it to the other interested parties who may or may not have any feedback or comments. These comments can be addressed before or during the investigation. Many times after doing one or a few steps of the investigation, the proposed protocol may have to be changed due to some evidence present on the components which was not expected before the examination.

Generally the investigation starts with photographic documentation, dimensional measurements and identification of the overall macro-features associated with the failure. Then the different pieces of evidence are examined carefully and primary areas of interest are identified. In-detail examinations of the identified areas are performed by sectioning the pieces as needed and examining them closely.

It should be mentioned here that a failure analyst or forensic engineer should not be a “hired gun” of the law-

yer. The role and opinion of the failure analyst should be independent of any bias and should be strictly based on the facts and data gathered from the investigation. It is a general practice for the expert to discuss the findings with the lawyer before writing a report. We have had many cases where the lawyer did not want a complete report with all the data and findings together with a conclusion as the findings were not in favor of the side that lawyer was representing.

After the investigation and reporting, the next phase might be to provide a deposition or appear as an expert witness in court. At this time the expert witness is expected to present the findings in a simple enough manner so that the lawyers, the juries and the judges can understand the report and the findings. This is very important for an expert to do correctly as the outcome of the case may be altered based on these presented facts.

### Case History Example

A few years ago, Massachusetts Materials Research, Inc. (MMR) performed a litigation investigation on the failed back of a wheelchair that was designed to provide support to the user. The seat back was attached to the upper canes of the wheelchair via four cane clips. The upper two clips contained a latching mechanism to hold metal pins that protruded from the sides of the seat back. The two bottom clips were notched to hold the metal seat back pins. The clips were attached to the canes with a hex bolt which, when tightened, pulled the two sides of the clip toward each other and maintained a tight fit against the

cane. The failure of one of the cane clips caused the subject seat back to fall out while the wheelchair was occupied. Head trauma and subsequent hospitalization led to the death of the 40 year old owner.

Material analysis identified the clips to be a blend of polycarbonate/acrylonitrile butadiene styrene (PC/ABS). This was the intended material of the clips per the manufacturer. Additional extraction type analysis performed on a fractured clip piece yielded an aliphatic liquid. This compound indicated some kind of lubricant, e.g., mineral oil, etc. Note that this was not detected on pieces analyzed away from the fracture. The composition of the clip material was the same at and away from fracture, which was confirmed with different analysis techniques.

The owner bought the wheelchair in February and the accident happened during Thanksgiving weekend in November. There was a presence of spiderweb cracks (known as craze patterned cracks) at the failed locations. The presence of mineral oil at the primary failure location would indicate an environmental stress cracking (ESC) situation. This type of oil can be found in sunscreen, moistening lotion, etc. Our analysis indicated that exposure to an ESC agent caused numerous surface cracks from which cracks progressed with application of normal service loads. Note that these surface cracks would act as stress raisers. Polycarbonate plus ABS type material is known to show ESC when exposed to sunlight, temperature variations and mineral oil type compounds. As personal care products can reasonably be expected to come in contact with these clips, the ESC failure here indicates a poor design vis-a-vis material selection.

The owner used his chair very regularly both indoors and outdoors including transportation. He weighed about 180 pounds and was very active. The seat back was also designed to recline. Combination of an inadequate design and improper material selection caused ESC failure of the seat back and death of the owner. It should be noted here that a few years later the manufacturer completely changed the design of the clips and used aluminum metal instead of the polymer material.

The investigation performed at MMR helped the family of the deceased person to win the case. ■



**Fahmida Hossain, Ph.D.**, director of Materials Engineering at Massachusetts Materials Research, Inc., has been performing root cause failure analysis and engineering consulting for last 25 years since completion of her doctoral studies at The University of Connecticut.



**Veda-Anne Ulcickas**, Senior Materials Engineer at Massachusetts Materials Research, Inc., has an MS in Materials Science and Engineering from Worcester Polytechnic Institute and has been performing root cause failure analysis and engineering consulting for 20 years.

# SECTION REVIEW

MASSACHUSETTS BAR ASSOCIATION

Workers' Compensation

## Workers' compensation 1991 to date: 25 years in review

BY JAMES EDWARD RAMSEY

Where did all the cases go?

For all those unfamiliar with workers' compensation in Massachusetts, our field has experienced a significant transformation over the past 25 years.

This article will provide some insight into those changes, including statistics, analysis and commentary.

Massachusetts has one of the oldest workers' compensation systems in the country. We in Massachusetts like to say it is the oldest, having been created in 1911.<sup>1</sup> We celebrated our 100-year anniversary on July 28, 2011.<sup>2</sup>

Historically the Massachusetts economy has included many industries, such as a combination of industrial, manufacturing, agricultural, construction, service and high-tech. As with many states, construction in Massachusetts has seen many cycles of expansion and contraction. Like most states following the 1990 recession, many jobs were lost to the economy and several sectors changed significantly.<sup>3</sup> It appears that the precipitous decline in manufacturing has been partially offset by a significant growth in the service sector industry.<sup>4</sup> Unfortunately, on average, service sector jobs tend to be less well paid and of a shorter duration. At the same time Massachusetts was experiencing the recession, it was also undergoing legislative reforms.

In 1991, then Gov. William Weld signed into law a comprehensive reform of the workers' compensation system. It was the third change in a relatively short period of time. The reform was designed to address many perceived faults within the system primarily by employers/insurers. Prior to this last reform there was a perception that the laws were anti-employer/insurer. The 1991 reforms swung the proverbial pendulum in the opposite direction — some would say too far.

As we look back now almost 25 years later, the year 1991 was the pinnacle of claims filed and corresponding litigation. Below is a snapshot comparing 1991 to 2014 at the Department of Industrial Accidents (DIA).<sup>5</sup>

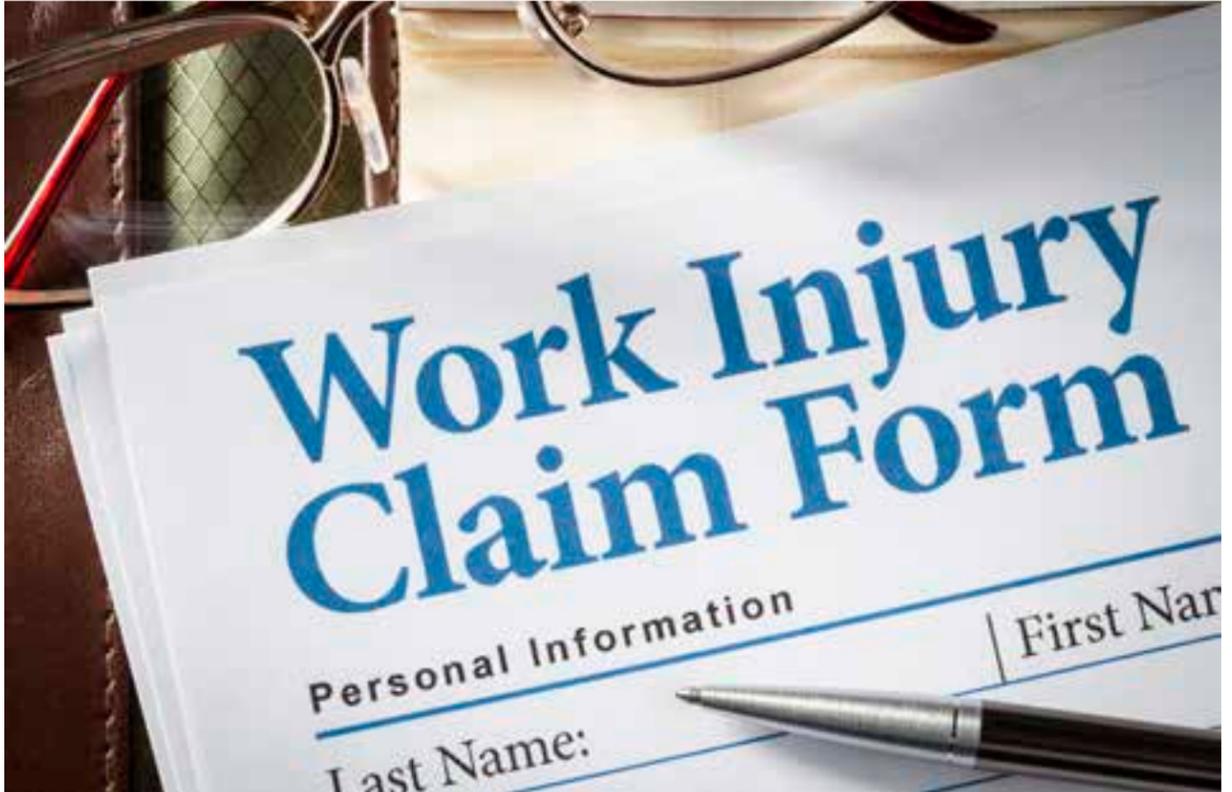
	Cases Filed	Claims	Complaints	Conciliations	Conferences	Hearings	FROI <sup>6</sup>
1991	49725	27158 <sup>7</sup>	11450	39080	17572	7689	54158
2014	12535	10036	1873	12620	6896	3580	31384
-% change	75%	63%	84%	68%	61%	53%	42%

The combination of the then ongoing recession, changing workforce and new legislative reforms shifted the landscape of workers' compensation, leaving fewer cases filed and drastically reducing the amount of litigation. The changes to the economy and loss of jobs have been dealt with in other articles by other authors.<sup>8</sup> The focus here is on workers' compensation.

A summary of the relevant 1991 reforms to M.G.L. Chapter 152 included the following changes:

	Pre-1991	Post-1991 & Current
§34 temporary total benefits:	5 years / 260 weeks	3 years / 156 weeks
Calculated at % of AWW:	2/3 AWW	60% of AWW
§35 temporary partial benefits	11 plus years / 600 weeks	5 years / 260 weeks
Calculated at % of AWW:	No cap, 2/3 difference but varied based on earnings	75% of 34 rate is cap, 60% difference based on earnings
Pay Without Prejudice Period:	60 days / up to 120 days	180 days / up to 365 days
Denial/Payment decision:	14 days	14 days
§11A Impartial Examiner:	Did not exist – dueling doctors	Created – <i>prima facie</i> weight

As for the legislative changes, the data suggest a correlation. In a review of the 1991 changes, the most significant legislative change was the increase of the pay without prejudice period (PWOP) expanding from 60 days/120 days to 180 days/365 days. This simple change has permitted insurers greater flexibility in evaluating and paying claims. The increased decision-making timeframe has allowed many insurers to pay claims that would previously been denied and thrust into litigation. Further, by lengthening the PWOP pe-



riod, minor injuries had sufficient time to resolve and workers return to work who may have otherwise still been recovering at the 60-day mark.

Are the lack of claims filed and decline in litigation solely a result of the insurers paying more claims and injuries healing or a result of fewer injuries? Could there be a corresponding factor of workplace safety or other factors afoot?

An employer must notify the DIA of any injury that removes the employee from the workplace for five or more days.<sup>9</sup> This is done on a Form 101 (FROI, First Report of Injury). In 1991, there were 54,158 injuries reported. In 2014, there were 31,384 reported. This translates to a 42-percent reduction in the number of

injuries reported between 1991 and 2014. This could be a result of work place safety, a changing work force or other causes. The data shows a net loss of 22,774 injuries being reported. Less injuries reported loosely translates to less available claims for possible litigation.

The impact of the legislation, however, becomes apparent when we cross reference the litigation/claims filed with the FROI data. If we were to assume a direct correlation between the two (FROI and cases filed),

then 91 percent percent of all reported injuries on the Form 101 resulted in some type of litigation in 1991. Again, if we assume the same direct correlation, as of 2014, only 40 percent of all reported injuries resulted in litigation.<sup>10</sup> This is an oversimplification. Under further analysis, as of 2014 the amount of claims by the employee represented 80 percent of the litigation (10336 out of 12535 total cases) and the Form 108 complaints only 15 percent (1873 out of 12535).<sup>11</sup> In 1991, the amount of claims by the employee repre-

sented only 55 percent of the litigation (27158 out of 49725 total cases) and the Form 108<sup>12</sup> complaints were 23 percent of the litigation (11450 out of 49725 total cases).<sup>13</sup> Using the figures from the chart above the ratio in 2014 between claims and complaints is significantly different at 5.36. Contrast that to the 1991 ratio of 2.37.<sup>14</sup> Following the 1991 reforms, litigation initiated by the insurer has been significantly reduced, whereas there has been a corresponding increase in the employee-initiated litigation.

There can be several explanations for the shift in claims:

- 1. The 1991 legislative reforms.** I suggest there is a clear correlation with the extension of the PWOP period. The data can be interpreted as showing that the Legislature's equipping insurers with the ability to timely adjust more claims has directly resulted in less litigation solely by the insurer. Of the remaining claims, the employee has overwhelmingly been forced to litigate to seek additional benefits when the insurer has terminated.
- 2. Implementation of the impartial examiner.** This reform removed the "dueling-doctors" and provided both parties with a medical opinion from a doctor assigned by the DIA that had *prima facie* impact. The additional medical certainty may have led to more cases being resolved.
- 3. Implementation of conciliations.** The assignment of conciliators at the start of the dispute resolution process has resulted in a substantial number of litigated claims being resolved, and staying resolved, early on in the process. The DIA administration has made a concerted effort to streamline and expedite the process and to a great degree has been successful as compared to pre-1991 dispute resolution.
- 4. Shift away from dangerous industries.** The fewer injuries lasting five or more days could suggest that the economy's shift away from manufacturing and construction accounts for some of this difference.
- 5. Workplace safety.** It is possible increased workplace safety has reduced injuries resulting in a loss for more than five days (thus not triggering the reporting requirement).
- 6. Fear.** I would be remiss in not noting that with fewer available jobs, an employee's reluctance to report an injury or working injured likely plays a role in the reduction.

The ultimate answer to these questions will vary based on the role you play in the system, employee, insurer, employer, industry or labor, to name a few. There has been very little change in Chapter 152 in the past 25 years, other than regulatory reform and minor adjustments. In 2015, and again in 2016, there is a move to significantly alter the current system. The ► 23

## Civil Litigation

# The transformation of civil litigation

BY STACEY L. PIETROWICZ

Civil litigation in Massachusetts has recently undergone a transformation. Several longstanding initiatives and pilot programs resulted in formal rule changes and new legislation, and a number of new proposals are in the works. While the right to attorney-conducted voir dire and the amended *ad damnum* statute have been extensively discussed, other changes have received a smaller spotlight. The following is a snapshot of recent efforts by the bench and bar to improve the efficacy of our civil justice system.

In April 2015, Rule 45 of the Massachusetts Rules of Civil Procedure was altered to eliminate an ineffective, convoluted procedure for obtaining documents from a non-party in a civil case. What was previously done by noticing a live deposition and waiving the appearance requirement if and when a certified copy of the requested materials was received, was replaced by a streamlined rule allowing attorneys to serve “document only” subpoenas. The rule also allows attorneys to request electronic discovery to be produced in a certain format, and prohibits attorneys from abusing the process by imposing undue burden or expense on non-parties. While the day-to-day outcome is minimally different, the process clarifies the intentions of the parties and is more cost-effective.

In July 2015, the SJC adopted changes to the Massachusetts Rules of Professional Conduct. Clarification and guidance in the rules regarding limited representation will encourage attorneys to take on limited matters, providing broader access to the courts for would-be litigants. Other changes include additional language on obtaining informed consent from a client and when it is required, and parameters for engaging outside counsel to assist in a case. The changes are substantive and extensive. A before and after version is available online.

For those who practice in federal court, as of Dec. 1, 2015, the scope of civil discovery was narrowed from information “reasonably calculated to lead to admissible evidence,” to infor-

mation that is “relevant” to the claim or defense and “proportional to the needs of the case,” the effects of which are still playing out. While there has been some discussion as to whether Massachusetts would adopt similar changes within Mass. R. Civ. P. 26, it is unclear whether any changes made to the Massachusetts rule will be as narrowing as the Federal rule.

Effective Jan. 1, 2016, the Superior Court amended a number of Rules and Standing Orders, and adopted four new rules. Now when filing a motion under Superior Court Rule 9A, the moving party is no longer required to get the court’s permission to file a reply brief, a welcome change to many, but one that should not be abused. What was once Standing Order 1-09 dealing with written discovery in civil actions, has been repealed and replaced by Superior Court Rule 30A (with the former Rule 30A moving to Rule 9C(b)). The new Superior Court Rule 33 addresses the specific notice and filing requirements of parties requesting a continuation of trial.

While we acclimate to changes both big and small, several procedural concepts are in the vetting stages. One Superior Court initiative, posted for comment earlier this year, proposes a “Menu of Options” for individualized case management and tracking orders. The amendment to Superior Court Standing Order 1-88 would allow parties to stipulate to (or obtain a court order for) an individualized tracking order, provided that the proposed deadlines occur no later than the would-be deadlines for that case type. The suggested Superior Court Rule 20 would permit parties to stipulate to any number of altered procedures, including attendance at a non-binding judicial assessment of the case, immediate scheduling of a prompt and firm trial date, waiver of the summary judgment process or agreement to a reduced number of jurors, to name a few. Theoretically, the flexibility will foster early resolution and reduce expenses in less complex cases where parties can agree on the necessary and unnecessary facets of litigation. For example, in a motor vehicle personal injury case with clear liability but contested damages,

the parties may stipulate to a shortened discovery period, an immediate trial date and a waiver of the summary judgment process, which would move the case along much faster than if it were placed on the typical fast track in Superior Court.

The second recently-announced initiative involves early case management for real estate, construction, products liability, and employment discrimination cases. For each of these case types, the court would convene a status conference with counsel within 90 days of service, (with the possibility of also shortening the period to make service of process). The parties would attend the conference having discussed an agenda, exchanged written settlement proposals and having submitted materials to the court. The procedure would fall under an amended Superior Court Standing Order 1-88, which would establish guidelines for the conferences and the court submissions. Once again, this proposal looks to streamline cases or otherwise keep them firmly on track.

A third proposition would set a concrete deadline for the exchange of expert disclosures, to occur no later than the final pretrial conference, within the joint memorandum. While parties sometimes defer disclosures until after the pretrial conference, under the new Superior Court rule the final pretrial conference would be the end of the line (subject, of course, to judicial discretion). No party could “reserve the right” to disclose an expert opinion after the conference, and would be prohibited from calling the expert to testify at trial, a significant repercussion for failing to make a timely disclosure.

Another noteworthy initiative arose amidst concerns raised last year when a proposal surfaced to increase the juris-

dictional limit for Superior Court cases from \$25,000 to \$50,000. Since that time, the District Courts have added more dedicated civil sessions, so that fewer civil cases fall in priority behind criminal and domestic abuse cases. Once the District Court civil sessions are running the new sessions efficiently, the proposal to increase the procedural amount will be revisited, which will undoubtedly revive the push-back from those who want to see the benefits of attorney-conducted voir dire and other Superior Court procedures in the District Court.

Finally, the Superior Court recently established a working group consisting of judges, clerks, practitioners and members of medical organizations and insurers to address the problems plaguing the medical malpractice tribunal system. Those who handle malpractice actions have increasingly encountered delayed tribunals due to the difficulty of getting panel members. The delayed tribunals result in discovery disputes and prolong the case. The working group looks to generate proposals to resolve these issues, which may include rule changes, new legislation or tribunal alternatives. This is likely to be a growing topic of debate and discussion over the coming months.

Practitioners, clerks, judges and staff have put a tremendous amount of time and effort into replacing and revising inefficient and outdated rules and procedures, with the laudable goal of making litigation more cost-effective and less time-consuming. These recent changes, current initiatives and ongoing developments have the potential to truly relieve some of the burdens on our court system and to shorten to months a process that currently takes years, improving access to the civil justice system. ■



**Stacey L. Pietrowicz** is the newest partner at Sugarman & Sugarman, P.C., where she focuses her practice on plaintiff’s personal injury litigation, including medical malpractice, products liability and other complex torts. She is also a third-year member of the MBA’s Civil Litigation Section Council.

## WORKERS' COMPENSATION Continued from page 22

Legislature is in the process of reviewing proposed changes. A few proposed reforms will significantly increase the employee’s benefits with few benefiting the employer/insurer. Could it be that the pendulum is about to swing the other way?

As a defense attorney with 20 years of experience, I suggest restraint to our legislative leaders. Based on the above statistics from the Workers’ Compensation Advisory Council, it is argued that the Legislature should remain cautious with the entreaties toward any radical changes. Massachusetts need not abandon its place as the founder and leader in worker’s compensation solely to be able to claim it is “doing more” or “provides the most benefits.” As with all things, a balanced compromise is the best solution. ■

1. The Board by Joseph F. Agnelli, Jr. Esquire, page 1.

2. The Board by Joseph F. Agnelli, Jr. Esquire, page 1.

3. See Job Creation and Destruction in Massachusetts: Gross Flows Among Industries, Katharine L. Bradbury, New England Economic Review September/October 1999.

4. See Job Creation and Destruction in Massachusetts: Gross Flows Among Industries, Katharine L. Bradbury, New England Economic Review September/October 1999, page 37.

5. Workers’ Compensation Advisory Council – FY’14 Annual Report, page 30.

6. Department of Industrial Accidents chart prepared January 2016 (FRI filed with DIA 1990 – 2016).

7. This statistic is slightly higher than the WCAC statistic. I have combined the \$36 claims (3918) with the employee claims (23240) because the 2014 data combined the two.

8. See Job Creation and Destruction in Massachusetts: Gross Flows Among Industries, Katharine L. Bradbury, New England Economic Review September/October 1999.

9. M.G.L. Chapter 152 §6.

10. These numbers have to be viewed in the context that an employee may file a claim due to a work injury almost any time after the injury but generally within four years and an insurer file a complaint on a rolling timeframe post injury whereas the FROI is generally filed within the same year as the injury. Although not directly comparable, for the purpose of this analysis I presume the litigation of a claim on a yearly basis is comparable to the amount of injuries reported.

11. Workers’ Compensation Advisory Council – FY’14 Annual Report, page 30.

12. The Form 108 is the complaint filed by an insurer to modify or terminate an employee’s weekly benefits.

13. The figures between 1991 and 2014 are slightly skewed due to a difference in reporting of data. Some assumptions within the data had to be made to complete the analysis.

14. The WCAC noted in its 1991 Annual Report that the ratio of employee claims (including Section 36) to discontinuances was 54.6/23 = 2.37. These figures differ slightly from mine due to reporting differences between the years. Workers’ Compensation Advisory Council – FY’91 Annual Report, page 25.



**James Edward Ramsey** is a solo practitioner at Ramsey Law Offices, P.C., with 20 years of experience before the Massachusetts Department of Industrial Accidents. A member of the MBA Workers’ Compensation Section, he has litigated hundreds of cases before the department’s five regional offices and served on several MBA committees focusing on improvements at the department.

# MASSBAR BULLETIN

## Announcements

### BRISTOL



Jason Thomas Sutton

**Jason Thomas Sutton** and Catherine Ann Folan were married on Sunday, June 12, 2016, at the Queset Gardens in Easton. The bride, an American Military University graduate, and the groom, a Colgate University and Roger Williams School of Law graduate, met while volunteering through Boston Cares. They both currently work at the Law Office of Sutton & Sutton, P.C., located in South Easton.

### NORFOLK



Robert A. Gordon

**Hon. Robert A. Gordon (ret.)** is now of counsel to Amara Immigration Law LLC. Gordon is a retired associate justice of the Springfield District Court, where he served from 2001 until 2015. Prior to being appointed to a judgeship, he was a trial lawyer for more than 20 years, representing clients in criminal and civil litigation cases in the state and federal courts. Amara Immigration Law LLC (amaraimmigrationlaw.com) is located in Coolidge Corner, Brookline.

### SUFFOLK



Ryan P. McLaughlin

**Ryan P. McLaughlin** has joined Todd & Weld LLP  as an associate and will concentrate his practice on domestic relations law, including drafting and negotiating complex settlement agreements, and creating comprehensive financial statements. McLaughlin regularly represents clients in court for evidentiary hearings, pre-trial conferences and substantive motions, as well as in alternative dispute resolution forums.



Denotes: MBA Honor Roll Firm

On May 24, the Committee for Public Counsel Services honored attorneys, social workers, investigators and professional administrative staff for their exemplary work and their dedication to indigent defense at the John Adams Courthouse. Attorney **Barbara Kaban**, director of Juvenile Appeals for YAD, and attorney **Arnie Lucinda Stewart**, managing director of CPCS's Northeast Region, were among those honored.

**Rebecca G. Pontikes** of Pontikes Law LLC is pleased to announce that Bryn Sfetsios has joined the firm as an associate. Sfetsios worked as a litigation fellow with Boston's Lawyers' Committee for Civil Rights and Economic Justice for two years, where she represented clients on employment discrimination and sexual harassment cases.

### WORCESTER

**Leonardo Angiulo** recently opened his own office in Worcester, focusing on criminal defense and plaintiff-side personal injury matters.

**Mirick, O'Connell, DeMallie & Lougee LLP**  is celebrating its 100th anniversary and the opening of its new Boston office. Since its founding, Mirick O'Connell has established itself as one of the leading business-focused law firms in the region with offices in Worcester, Westborough and Boston, and specializes in practices including business and reorganizations, labor, employment and employee benefits, litigation and trusts and estates. In celebration of its 100th anniversary, the firm recently launched a yearlong initiative called "#100ThankYous!" to highlight the various ways the firm has given back to the community, partnered with clients and shown appreciation for its clients and employees.

**Kevin Pelletier** of Massachusetts Materials Research Inc. in West Boylston has received a Master of Business Administration (MBA) degree from Nichols College in Dudley.

## RENEW YOUR MBA MEMBERSHIP.



**Renew your MBA membership and continue to benefit from the many tools and opportunities we offer.**

**MORE NETWORKING.  
MORE RESOURCES.  
MORE VALUE.**

- Free CLE
- Fastcase
- Unlimited Sections (including the NEW Dispute Resolution section)
- Engaging Events
- Advocacy and Service Opportunities
- MBA Insurance
- My Bar Access



[www.MassBar.org/Renew](http://www.MassBar.org/Renew) • 617.338.0530